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The VOICE of the Construction Industry



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Re: Comments to A-2208(a) and (b); ACL Complaint No. R1-2009-0095
Confusion Hill Bypass Project, California Regional Water Quality Control Board, North Coast Region

Dear Ms. Townsend:

These comments are offered on behalf of Associated General Contractors of California ("AGC") concerning the Confusion Hill bridge construction project, and Administrative Civil Liability Order No. R1-2012-0034, in which the North Coast Regional Water Quality Control Board imposed penalties against the California Department of Transportation ("Caltrans"). We understand the State Water Resources Control Board's staff has reviewed the Regional Board's order and proposes to uphold the order in virtually all respects. AGC requests that the State Board staff and members reconsider this matter and its damaging effect on California's construction industry.

AGC is an organization composed of nearly 600 contractors and specialty subcontractor members throughout California, and more than 400 associate companies and firms that support California's construction industry. Many of these members are involved in state and local public construction projects, including the Confusion Hill project at the center of this proceeding. Confusion Hill is the latest example of a dispute between Caltrans and the water boards that traps the construction industry in the unfortunate middle. Because projects are bid after agency approvals are in place, contractors have no opportunity to participate in the permitting process before the water boards, yet those contractors must bear the burden of civil penalties if the water boards' expectations are not fulfilled.



This inequitable and untenable condition is a strong example of why California is an increasingly difficult environment for the construction industry.

This matter also highlights AGC's ongoing concern over the water boards' role in the selection of best management practices ("BMPs"). Water quality certifications generally do not instruct Caltrans or its contractors in the specifics of the construction process. They require Caltrans to select BMPs that minimize turbidity and impacts to water quality. This necessarily requires Caltrans and its contractors to exercise their professional skill and judgment. If the water boards are to maintain the practice of allowing Caltrans and contractors to select BMPs, it is essential that the water boards also grant them the latitude to employ their professional expertise in their job. Where staff substitutes its opinion for the contractors' expertise, it naturally creates inconsistencies in how the water boards view the adequacy of BMPs from project to project. It appears to us that this is what happened in the Confusion Hill project.

AGC thanks the State Board and its staff for the opportunity to provide its views.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas T. Holsman". The signature is fluid and cursive, with the first name being the most prominent.

Thomas T. Holsman
Chief Executive Officer

Cc: Dave Ackerman
Edmundo A. Puchi
Sean Hungerford