EXHIBIT 89

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2010-0071

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
FAILURE TO COMPLY WITH NPDES MUNICIPAL STORMWATER PERMIT ORDER NO. 99-06-DWQ AND CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION
INTERSTATE 680 SUNOL/FREMONT ROADWAY REHABILITATION PROJECT
CALIFORNIA DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
OAKLAND, ALAMEDA COUNTY

This Complaint is issued to the California Department of Transportation (the Discharger or Caltrans) to assess administrative civil liability pursuant to California Water Code (CWC) Section 13385. The Complaint alleges; (1) Caltrans failed at its Interstate 680 Sunol/Fremont Roadway Rehabilitation Project (Project) to implement appropriate stormwater BMPs; (2) Caltrans discharged turbid water and sediment to waters of the State; and (3) Caltrans failed to timely prepare and submit a stormwater pollution prevention plan (SWPPP) amendment. These activities are required by the State Water Resources Control Board's (State Water Board's) Water Quality Order No. 99-06-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000003, Statewide Stormwater Permit, Waste Discharge Requirements for State of California Department of Transportation (Department's Permit); the State Water Board's Water Quality Order No. 99-08-DWQ, Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities (Construction Stormwater Permit); and the April 16, 2008, Clean Water Act (CWA) Section 401 Water Quality Certification issued for the Project. The violations cited herein occurred from October 7, 2009, through March 3, 2010.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) hereby gives notice that:

1. The Discharger is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385. This Complaint proposes to assess $664,400 in administrative civil liability for the violations cited based on the considerations described herein.

2. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

STATEMENT OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER

The Discharger is required to comply with the following:

3. The Department's Permit, Provision H.2, requires compliance with the Construction Stormwater Permit.

4. The Construction Stormwater Permit, Discharge Prohibition No. 3, requires that storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

5. The Construction Stormwater Permit, Special Provisions for Construction Activity, No. 2, requires that all dischargers develop and implement a SWPPP in accordance with Section A: Under Section A, dischargers are required to implement controls to reduce pollutants in storm water discharges from their construction sites to the performance standard of best available technology economically achievable and best conventional pollutant control technology.

6. The Construction Stormwater Permit, Section A, Stormwater Pollution Prevention Plan, No. 6 – Erosion Control, Second Paragraph, requires that, at a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season.

7. CWA Section 401 Water Quality Certification, Conditional Acceptance of Stormwater Pollution Prevention Plan, issued April 16, 2008, required the submittal of an acceptable SWPPP amendment by September 15, 2009.

ALLEGED VIOLATIONS OF PROHIBITIONS, PROVISIONS, AND REQUIREMENTS APPLICABLE TO THE DISCHARGER

8. **Violation No. 1:** The Discharger failed to implement complete and appropriate construction stormwater best management practices (BMPs) from October 13, 2009, through March 3, 2010, for a period of 141 days, in violation of the Department's Permit.

9. **Violation No. 2:** On March 3, 2010, Caltrans discharged about 64,000 gallons of turbid water and sediment in violation of the Department's Permit. The discharge first entered an unnamed tributary that provides habitat for rainbow trout, the California Red-Legged Frog (Rana aurora draytonii), and the California Tiger Salamander (Ambystoma californiense).[1] The unnamed tributary flows for about ¾ of a mile before joining Alameda Creek, which is

[1] Both the California Red-Legged Frog and the California Tiger Salamander are listed as threatened under the Federal Endangered Species Act.

habitat for the fauna mentioned above and also for the threatened Central California Coast Steelhead.[2]

10. **Violation No. 3:** The Discharger failed to timely prepare and submit the required SWPPP amendment, due September 15, 2009, for the October 2009-to-April 2010 winter work window. The amendment was submitted December 1, 2009, seventy-seven days late, in violation of the Project's April 16, 2008, CWA Section 401 Water Quality Certification. The SWPPP amendment was not acceptable as submitted, as it did not present an acceptable plan to minimize erosion or sediment transport. In addition, the Discharger did not implement an effective combination of erosion and sediment controls before or after the SWPPP amendment was completed and submitted.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

The following evidence supports the alleged violations described above:

11. The United States Environmental Protection Agency's (US EPA's) October 7, 2009, inspection report and photos support alleged Violation No. 1. The US EPA report notes that adequate BMPs had not been implemented, including construction roadway stabilization, erosion and sediment controls for disturbed areas, and proper drainage for access roads. The report also documents areas where failed sediment control BMPs had not been repaired and noted that effective vehicle tracking controls had not been implemented. The report includes inspection reports completed by Caltrans' own stormwater inspectors that document similar compliance issues as early as September 9, 2009. However Caltrans' inspection reports characterized the issues as "minor or insignificant deficiencies that did not require prompt attention." This characterization meant that Caltrans did not require its contractor to promptly respond to the noted deficiencies.

12. The Regional Water Board's October 7, 2009, inspection report and photos further support alleged Violation No. 1. The report notes that the site did not have any erosion controls and sediment controls were not installed in many likely discharge areas where stormwater filtration would be required (e.g., discharge points downstream of unstabilized soils). Dirt tracking on roadways immediately adjacent to the Project's access points was ubiquitous because Caltrans had not rocked any of the construction ingresses or egresses.

13. The Regional Water Board's October 13, 2009, inspection report, photos, and video support alleged Violation Nos. 1 and 2. Staff noted on this rainy day large areas of the Project, including slopes with exposed soil, with either absent or inadequate erosion and sediment controls. Staff found that turbid water was discharging from a number of discharge points and was likely to discharge from two of the open footing excavations that were collecting

[2] This steelhead species (Oncorhynchus mykiss) is listed by the Federal Fish and Wildlife Service as either endangered or threatened status throughout much of California. In addition, Alameda Creek still supports native stream fishes including Rainbow Trout, Pacific Lamprey, California Roach, Hitch, Sacramento Blackfish, Hardhead, Sacramento Pikeminnow, Sacramento sucker, Threespine Stickleback, Sacramento Perch, Prickly Sculpin, and Tule Perch .

turbid rain water. No contractor or Caltrans employees were working onsite to implement appropriate BMPs or to maintain the limited BMPs that were on-site, and about 95% of the Project's graded soil was exposed and improperly protected.

14. The Regional Water Board's November 12, 2009, inspection report and photos support alleged Violation No. 1. Staff observed that Caltrans had completed some erosion control and perimeter filtration in response to the October inspection, but much of the site, including the site's construction yard, had been left unstabilized. Trench spoils had been placed in areas likely to be in the path of stormwater runoff and many of the BMPs were inappropriately installed. Staff observed that the site would likely discharge significant volumes of sediment and turbid water in a rain event.

15. The Regional Water Board's December 1, 2009, inspection report and photos support alleged Violation No. 1. Caltrans and its contractor completed some BMP installation in response to the Regional Water Board's November 12, 2009, inspection, but still left large areas with insufficient erosion and sediment controls.

16. The Regional Water Board's December 17, 2009, inspection report and photos support alleged Violation No. 1. Caltrans did stabilize some of the site areas discussed during the Regional Water Board December 1, 2009, inspection, but did not address all of the Project areas that had inadequate controls. Project areas that had not been explicitly discussed during the December 1 inspection were left with inadequate erosion and sediment controls.

17. The Regional Water Board's March 3, 2010, inspection report, photos and video support alleged Violation Nos. 1 and 2. During the March inspection, Caltrans staff stated they had left most of the site without erosion and sediment controls because they thought that the lower part of the site was not connected to either newly built or pre-Project drop inlets and thus would not discharge during a rainstorm. However, at least one of the pre-Project inlets was connected, allowing the inadequately protected Project area to drain to the immediately adjacent unnamed tributary/drainage ditch and subsequently to Alameda Creek.

18. The Regional Water Board's November 10, 2009, Notice of Violation (NOV) to Caltrans documents the October 2009 turbid discharge, BMP implementation failure, and late SWPPP amendment—alleged Violation Nos. 1, 2 and 3.

19. The July 6, 2009, July 20, 2009, August 3, 2009, August 17, 2009, September 14, 2009, and September 28, 2009, Caltrans stormwater inspection reports support alleged Violation No. 1 because they document Caltrans inspectors noting significant stormwater BMP violations but score the inspection with a green or yellow "flag," which allows the Project to move forward without requiring that the violations be corrected in a timely fashion. The August 25, 2009, and October 26, 2009, reports document Caltrans noting in their inspection reports that significant violations existed and needed immediate attention. However, the violations were not corrected, which indicates that Caltrans was not able to enforce its own requirements.

20. Substantive email correspondence and phone call notes between the Discharger and Regional Water Board staff support alleged Violation Nos. 1, 2 and 3. In particular, on October 23, 2009, the Regional Water Board's Assistant Executive Officer contacted senior Caltrans managers via both email and telephone to alert them of the violations and to encourage Caltrans to bring the Project into compliance.

STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH APPLICABLE REQUIREMENTS

21. Pursuant to CWC section 13385(a), any person who violates any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160 is subject to administrative civil liability pursuant to CWC section 13385(c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars ($10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

FACTORS CONSIDERED IN DETERMINING ADMINSTRATIVE CIVIL LIABILITY

22. On November 17, 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at:

    http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

    The specific required factors in CWC section 13385(e) are the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

    The specific factors required by the Enforcement Policy are: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the discharger's culpability; cleanup and the discharger's cooperation; the history of violations; the discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the

statute-required factors and also are used to calculate penalties consistent with both the CWC and the Enforcement Policy.

Each factor of the enforcement policy incorporated into this administrative civil liability and its corresponding category or adjustment score for each violation are included as Attachment – A below.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

23. Based on the consideration of the above facts, the Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of $664,400. This amount is the economic benefit plus 10% from the avoided and delayed costs associated with the violations noted, $635,000, and $29,400 for the recovery of staff costs.

24. Further failure to comply with the Department's Permit, the Project's 401 Water Quality Certification, or amendments thereof beyond the date of this Complaint may subject the Discharger to further administrative civil liability, and/or other appropriate enforcement action(s), including referral to the Attorney General.

July 15, 2010

Thomas Mumley
Assistant Executive Officer

Date

Attachment: A - Specific Factors Considered – Civil Liability

Attachment – A

Specific Factors Considered – Civil Liability

Attachment A - Complaint No. R2-2010-0071
Specific Factors Considered - Civil Liability
State of California Department of Transportation

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. ***Violation One (this is a non-discharge violation):*** The Discharger failed to implement complete and appropriate construction stormwater best management practices (BMPs) from October 13, 2009, through March 3, 2010, for a period of 141 days, in violation of the Department's Permit.

   a) ***Specific Factor:*** Potential Harm to Beneficial Uses

      Category: Moderate

      Discussion: Due to the lack of an effective combination of erosion and sediment controls, the Discharger potentially discharged large volumes of sediment-laden stormwater directly to tributaries that provide habitat for rainbow trout, California Red-Legged Frog, and the California Tiger Salamander, and potentially discharged into tributaries that eventually discharge to Alameda Creek, which is habitat for the above fauna in addition to the threatened Central California Coast Steelhead.

   b) ***Specific Factor:*** Deviation from Requirement

      Category: Moderate

      Discussion: The Discharger implemented some BMPs. However, many areas were left untreated during the period of violation and many of the BMPs were installed incorrectly.

   c) ***Specific Factor:*** Alternative Approach – Multiple Day Violations

      Days Violated: 141

      Alternative Days Violated: 28

      Discussion: The Enforcement Policy allows for a reduction in violation days when it can be determined that the ongoing violation is not causing daily detrimental impacts to the environment or the regulatory program. This determination is appropriate for this non-discharge violation for the following reason: while this is a non-discharge violation for inadequate or non-implementation of BMPs, the violation's effects were most significant during periods when the inadequate BMPs likely led to discharges of turbid, sediment-laden runoff. During the period of violation, there were approximately 28 days of rain that equaled or exceeded one tenth of an inch and likely resulted in discharges of turbid stormwater[3]

[3] This estimate is based on rain gauge data for Livermore, Fremont, and Sunol. The data was provided by the Department of Commerce National Climatic Data Center and the California Department of Water Resources California Data Exchange Center.

d) ***Civil Liability:*** Initial Amount of Administrative Civil Liability for this violation

Amount: $98,000

Adjustments to Determination of Initial Liability for this Violation

e) ***Specific Factor:*** Culpability

Adjustment: 1.3

Discussion: The Discharger's culpability is high due to the repeated and negligent nature of its behavior. In addition, the Discharger had the opportunity to come into compliance after each of six compliance inspections conducted by the Regional Water Board and US EPA, but failed to do so. The Discharger was given detailed guidance by both US EPA and Regional Water Board staff regarding the Department's Permit's requirement to implement appropriate BMPs to minimize the discharge of pollutants in stormwater runoff exposed to construction activity. The Discharger still repeatedly failed to consistently implement appropriate BMPs.

f) ***Specific Factor:*** Cleanup and Cooperation

Adjustment: 1.2

Discussion: The Discharger implemented some but inadequate BMPs in response to repeated regulatory inspections that revealed substandard BMPs, and formal notifications by US EPA and the Regional Water Board regarding the Discharger's violations.

g) ***Specific Factor:*** History of Violations

Adjustment: 1.2

Discussion: The penalty has been raised by 20% due to repeated similar violations at this and other sites controlled by the Discharger.

h) ***Civil Liability:*** Adjusted Amount of Administrative Civil Liability for this violation

Amount: $166,600

2. ***Violation Two (this is a discharge violation):*** On March 3, 2010, Caltrans discharged about 64,000 gallons of turbid water and sediment in violation of the Department's Permit. Regional Water Board staff documented the discharge with on-site observations, including video, during a one-hour time period on March 3, 2010. According to a rain gauge on Calaveras Road, a total of 0.81 inches of rain fell during the entire day and a total of 12.11 inches fell during the period from October 1, 2009, through March 31, 2010. These precipitation records are estimates of the rainfall at the Project site, as the actual rainfall at the site may have been more or less than reported at this gauge. While the exact volume of polluted stormwater runoff discharged during the period of non-compliance from October 7,

2009, to March 3, 2010, was not calculated, it was much larger than the amount observed to have discharged during one hour of a single rainfall event on March 3, 2010.

a) ***Specific Factor:*** Potential Harm to Beneficial uses

Score: 2 - Below Moderate

Discussion: The beneficial uses of the unnamed tributary and Alameda Creek were likely adversely affected due to the Discharger's direct discharge of large volumes of turbid, sediment-laden water and the likely subsequent deposition of sediment in the creek beds. The unnamed tributary provides habitat for rainbow trout, California Red-Legged Frog, and the California Tiger Salamander and discharges into tributaries that eventually discharge to Alameda Creek, which is also habitat for the threatened Central California Coast Steelhead.

Excessive sediment and turbidity can have deleterious effects on aquatic environments and aquatic organisms. Some of the most significant impacts include reduced light penetration and thus decreased rates of photosynthesis within the food chain, reduction in respiratory capacity of fish gills, and smothering of gravel beds resulting in lethal effects on fish eggs, decreased juvenile fish survival rates and reduction in fish feeding efficiency.

b) ***Specific Factor:*** Physical, Chemical, Biological or Thermal Characteristics

Score: 2

Discussion: The impacts on receiving waters of discharged sediment-laden stormwater can be significant, as clay particles can take days or weeks to settle from the water column and therefore travel large distances during high flow rain events. Sediment pollution can be a cause of chronic and acute toxicity to aquatic species, including invertebrates and fish.

c) ***Specific Factor:*** Susceptibility to Cleanup

Score: 1

Discussion: Less than 50% of the discharge was susceptible to cleanup or abatement. The remediation of habitat impacted by sediment-laden stormwater is rarely undertaken and can be impracticable due to the large aerial extent of impacts and because remedial action may result in greater damage than the impacts it is intended to fix.

d) ***Specific Factor:*** Deviation from Requirement

Category: Major

Discussion: The requirement to minimize the generation of turbid stormwater and discharged sediment was not met during this discharge event. The disturbed project area was not appropriately stabilized and it was directly connected to the receiving water via a drop inlet, ensuring that turbid, sediment-laden stormwater runoff would discharge directly to the unnamed tributary and subsequently to Alameda Creek.

e) ***Specific Factor:*** Gallons Discharged

Amount: 64,000 gallons

Discussion: The volume discharged was calculated in the field by estimating the cross-sectional area of flow in the discharge channel and timing a float's speed over a known distance. This process was memorialized using a video camera.

f) ***Civil Liability:*** Initial Amount of Administrative Civil Liability for this violation

Amount: $97,500

Adjustments to Determination of Initial Liability for this Violation

g) ***Specific Factor:*** Culpability

Adjustment: 1.3

Discussion: The Discharger's culpability is high with regard to this discharge violation. Prior to the discharge, the discharger had received numerous clear communications from Regional Water Board staff regarding the inadequacy of the Discharger's stormwater BMPs. The Discharger should have stabilized all exposed soil and should have known that the drop inlet would discharge directly to the unnamed tributary.

h) ***Specific Factor:*** Cleanup and Cooperation

Adjustment: 1

Discussion: The Discharger was given the neutral score of 1, which neither increases nor decreases the fine, because they did contact Regional Water Board staff after the discharge was documented on March 3, 2010.

i) ***Specific Factor:*** History of Violations

Adjustment: 1.2

Discussion: This factor increases the base penalty by 20% due to the history of similar discharge violations noted most recently at the: Isabel Avenue/Interstate 580 Interchange

Improvement Project in Livermore; the SR-121 Duhig Road Widening and Realignment Project in Napa; and the San Francisco-Oakland Bay Bridge Seismic Safety Project, East Touchdown in Oakland.

j) ***Civil Liability:*** Adjusted Amount of Administrative Civil Liability for this Violation

Amount: $146,250

3. ***Violation Three (this is a non-discharge violation):*** The Discharger failed to timely prepare and submit a required SWPPP amendment, due September 15, 2009, for the Project's October 2009 to April 2010 winter work window. The amendment was submitted December 1, 2009, seventy-seven days late, in violation of the CWA Section 401 Water Quality Certification.

a) ***Specific Factor:*** Potential Harm to Beneficial Uses

Category: Moderate

Discussion: The lack of an updated SWPPP prior to December 1, 2009, likely resulted in poor BMP implementation and the subsequent discharge of turbid stormwater to State and US waters during rain events. The substandard SWPPP amendment that was submitted would not have improved compliance, even if implemented correctly, because it did not contain the appropriately detailed information necessary to ensure implementation of BMPs to reduce the site's discharge of pollutants.

b) ***Specific Factor:*** Deviation from Requirement

Category: Moderate

c) ***Discussion:*** Caltrans is aware of the requirement to prepare and maintain onsite a site specific SWPPP. The Regional Board required a SWPPP amendment by September 15, 2009, in its CWA Section 401 Water Quality Certification because the original project SWPPP did not contain the required site specific details to govern effective pollution control during a rainy season. The deviation from the requirement is moderate, rather than major, because an amendment was finally submitted.

d) ***Specific Factor:*** Alternative Approach – Multiple Day Violations

Days Violated: 77

Alternative Days Violated: 8

Discussion: The Enforcement Policy allows for a reduction in violation days when it can be determined that the ongoing violation is not causing daily detrimental impacts to the environment or the regulatory program. This determination is appropriate for this non-discharge violation.

e) ***Civil Liability:*** Initial Amount of Administrative Civil Liability for this Violation

Amount: $28,000

Adjustments to Determination of Initial Liability for this Violation

f) ***Specific Factor:*** Culpability

Adjustment: 1.3

Discussion: Caltrans is well aware of the requirement to maintain a site specific SWPPP as both the Department's Permit and the Construction Stormwater Permit contain this explicit requirement. In addition, Caltrans was notified in the Regional Water Board's CWA Section 401 Water Quality Certification that a SWPPP amendment would be required prior to the 2009 wet weather season. Therefore, Caltrans' culpability is high and this factor raises the civil liability by 30%.

g) ***Specific Factor:*** Cleanup and Cooperation

Adjustment: 1

Discussion: A neutral score of 1 was selected for this factor because the Discharger did submit the SWPPP amendment.

h) ***Specific Factor:*** History of Violations

Adjustment: 1.1

Discussion: The discharger has historically missed submittal deadlines and has received Notices of Violation and other informal enforcement actions as a result.

i) ***Civil Liability:*** Adjusted Amount of Administrative Civil Liability for this Violation

Amount: $39,200

FACTORS APPLIED TO ALL THREE VIOLATIONS

4. The following factors apply to all three of the violations discussed above.

a) ***Specific Factor:*** Ability to Pay and Continue in Business

Discussion: The Discharger is a department of the State of California with an annual budget of approximately $14 billion. The Project's total budget at the time of award was $37,456,545. The Regional Water Board has no evidence that the Discharger would be unable to pay the proposed liability set forth in this Complaint or that the amount of the liability would cause undue financial hardship.

b) ***Specific Factor:*** Other factors as justice may require

Discussion: The staff time to prepare this Complaint and supporting information, complete the historical inspections, and prepare the NOV is estimated to be 196 hours. Based on an average cost to the State of $150 per hour, and a total of 196 hours of staff time, the total staff cost is estimated to be $29,400.

c) ***Specific Factor:*** Economic Benefit

Amount: $577,300

Discussion: The Discharger has realized economic benefit by failing to implement a complete and effective combination of erosion and sediment control BMPs. The estimated economic benefit for not implementing the appropriate pollution control measures is $577,300.[4] This amount includes the avoided costs for the purchase and installation of erosion and sediment controls and the economic benefit of having access to these funds. The enforcement policy requires that the civil liability cannot be less than the economic benefit plus 10%. Therefore the civil liability must not be less than $635,000.

The liability of $352,100 calculated by using the Enforcement policy is less than the economic benefit (plus 10%) obtained from the avoided compliance, which was $635,000.

d) ***Civil Liability:*** Minimum Liability Amount

Amount: $635,000

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. The above-referenced number is the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint.

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[4] References used to estimate delayed and avoided costs: 1)California Department of Transportation, Division of Environmental Analysis, Soil Stabilization BMP Research for Erosion and Sediment Controls, Cost Survey Memorandum, July 2007; 2)California Stormwater Quality Association, California Stormwater BMP Handbook, Construction, Table F-2 Temporary Stabilization Comparison Table, November 2009; and 3)Earth Aid USA; BMP Superstore; line item costs at www.earthaidusa.com

e) ***Civil Liability:*** Maximum Liability Amount

Amount: $2,820,000

Discussion: The maximum liability amount is the maximum amount allowed by Water Code Section 13385: (1) ten thousand dollars ($10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.