

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

SETTLEMENT AGREEMENT
IN THE MATTER OF
CALIFORNIA DEPARTMENT OF TRANSPORTATION AND GHILOTTI
CONSTRUCTION COMPANY

HIGHWAY 101 HIGH OCCUPANCY VEHICLE CENTRAL PROJECT
NORTH OF PEPPER ROAD IN PETALUMA TO ROHNERT PARK EXPRESSWAY IN
ROHNERT PARK

This Settlement Agreement (Agreement) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (North Coast Water Board), on behalf of the North Coast Water Board Prosecution Team (Prosecution Team), and the California Department of Transportation (Caltrans), Ghilotti Construction Company (Ghilotti), and Gordon N. Ball, Inc. (GNB) (collectively, Respondents) (the Prosecution Team and Respondents are collectively known as the Parties) and is presented to the North Coast Water Board, or its delegee, for adoption as a settlement, pursuant to Government Code section 11415.60.

Recitals

- A. On November 5, 2012, the North Coast Water Board issued Administrative Civil Liability Complaint (ACLC) R1-2012-0112 to Caltrans and Ghilotti, in the amount of \$5,565,860 related to the Highway 101 High Occupancy Vehicle Central Project (Project). The Project included, among other activities, widening bridges at the Laguna de Santa Rosa and Copeland Creek. The ACLC alleged violations of the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from the Caltrans Properties, Facilities, and Activities, Order No. 99-06-DWQ (Caltrans Storm Water Permit) and the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, at that time, Order 2009-0009-DWQ (NPDES No. 000002) (Construction General Permit). The ACLC also alleged violations of the 401 Water Quality Certification issued for the Project by the North Coast Water Board to Caltrans on January 20, 2009.
- B. The violations alleged in ACLC R1-2012-0112 fell into essentially two categories: failure to install adequate best management practices (BMPs) to prevent discharges of material to waters of the United States on the one hand (Non-reporting Violations), and inadequate monitoring and submission of required reports on the other hand (Reporting Violations). This Agreement resolves all of the Non-reporting Violations.
- C. Ghilotti was named in ACLC R1-2012-0112 because of its contractual relationship with Caltrans and as the contractor responsible for and with ability to control day-to-

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY

day Project decisions that directly affected water quality during the Project. After the issuance of the ACLC, Ghilotti sought to have GNB named in an amended ACLC based upon the Project work that Ghilotti subcontracted to GNB. The Prosecution Team has declined to so amend the ACLC and the respective liabilities as between Ghilotti and GNB are the subject of a civil suit pending in Sonoma County Superior Court. GNB has participated in settlement discussions relating to ACLC R1-2012-0112 since shortly after the civil suit was filed and has agreed to be bound by the terms of this Agreement and be a signatory hereto.

- D. The ACLC R1-2012-0112 settlement discussion included two meetings of the Parties at the North Coast Regional Board on March 7, 2013, and April 18, 2013, followed by the Parties' exchange of written settlement positions in an attempt to resolve the Reporting Violations and the Non-reporting Violations alleged in ACLC R1-2012-0112.
- E. This Agreement will resolve the Non-reporting Violations only. The resolved amount for the Non-reporting Violations can be jointly and severally enforced against Caltrans, Ghilotti and GNB by virtue of this Agreement. The North Coast Regional Board does not take a position regarding allocation of the settlement amount among the three parties as long as the entire amount is received within thirty (30) days after the execution of this Agreement by the Board or by its delegee.
- F. The Prosecution Team is concurrently amending R1-2012-0112 to allege the Reporting Violations against Caltrans (the Amended ACLC). Caltrans may seek to add Ghilotti as an interested party thereto. The Parties agree that GNB has no liability for the alleged Reporting Violations.

Regulatory Considerations

- G. To effectuate the Parties' intention, this Settlement Agreement resolves the Non-reporting Violations alleged in ACLC R1-2012-0112. In connection with the resolution of the Non-reporting Violations, the Reporting Violations alleged in ACLC R1-2012-0112 will be asserted in the Amended ACLC naming Caltrans alone. Caltrans agrees that it will accept service of the Amended ACLC, a true and correct copy of which is attached hereto as Attachment A, but such acceptance of service by Caltrans is not a concession of liability or of the truth of any of the matters asserted in Attachment A. While Caltrans will have all of its rights to assert that Ghilotti should be named an interested or designated party to the Amended ACLC, Caltrans waives any argument of laches premised on the duration of any administrative delay between the service of the ACLC initiating this action and the service of the Amended ACLC. The North Coast Water Board staff has concluded that the Respondents have violated Water Code section 13385 for unpermitted discharges, violations of the CGP and 401 Certification. The North Coast Water Board may assess administrative civil liability based on Water Code section 13385, as appropriate. Caltrans, Ghilotti and GNB deny this allegation.

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY

- H. Water Code section 13385(c)(1) states: "Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in the amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violations occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but 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."
- I. Water Code section 13385(e) states: "In determining the amount of liability imposed under this section, the regional board . . . shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

Settlement

Now therefore, the Parties mutually agree as follows:

The Parties have engaged in confidential settlement negotiations and agree to settle the Non-reporting Violations without administrative or civil litigation and by presenting this Agreement to the North Coast Water Board, or its delegee, for adoption as an Order by settlement pursuant to Government Code section 11415.60. The North Coast Water Board Prosecution Team believes that the resolution of the alleged Non-reporting Violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the Non-reporting Violations being resolved and that this Agreement is in the best interests of the public. The Parties agree that upon execution of this Agreement in final form, the Prosecution Team will serve Caltrans with an amended ACLC R1-2012-0112 alleging only those violations stated in ACLC R1-2012-0112 not settled hereby (the Reporting Violations).

- J. The Parties are agreeing to a resolution of all claims, not otherwise specifically reserved herein or identified in the Amended ACLC R1-2012-0112 attached as Attachment A, arising out of or related in any manner to the allegations contained in ACLC R1-2012-0112. The Parties further agree that the liability imposed by this Order is less than the liability determined using the penalty methodology in the Water Quality Enforcement Policy, as described in Attachment B. The adjustment is the result of settlement negotiations between the Parties and is based on the inherent risks associated with an administrative hearing and potential subsequent litigation.

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY

The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives with respect to the alleged violations not identified in the Amended ACLC included as Attachment A, and is in the best interests of the public. While this settlement resolves all claims not otherwise reserved herein between the Parties, nothing herein should be construed to limit any third parties' rights to enforce any alleged violations not resolved and described in Attachment A, or reserved and which will be brought in Amended ACLC R1-2012-0112.

- K. To resolve the discharges by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$127,725 in liability against the Respondents.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** Respondents hereby agree to pay **one hundred twenty-seven thousand, seven hundred and twenty-five dollars (\$127,725)** to the North Coast Water Board to resolve the alleged Non-reporting Violations, specifically:
 - a. **One hundred twenty-seven thousand, seven hundred and twenty-five dollars (\$127,725)** shall be paid to the *State Water Board Cleanup and Abatement Account*, and;
 - b. payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the North Coast Water Board, and;
 - c. the check shall indicate the number of this Order and the original shall be sent to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888, with copies sent to Julie Macedo, Senior Staff Counsel, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and David F. Leland, Assistant Executive Officer, Regional Water Quality Control Board, North Coast, 5550 Skylane Boulevard, Suite A, Santa Rosa, CA 94503.
2. **Compliance with Applicable Laws:** The Respondents understand that payment as outlined in paragraph 1(a), (b), and (c), above, and in accordance with the terms of this Agreement is not a substitute for compliance with applicable laws, and that continuing violations may subject them to further enforcement, including additional administrative civil liability, except as expressly resolved herein.
3. **Party Contacts for Communications related to Agreement:**

For the North Coast Water Board:

David F. Leland
Assistant Executive Officer

SETTLEMENT AGREEMENT

R1-2012-0112

SONOMA COUNTY

North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 94503
(707) 576-2069

Julie Macedo – Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95812
(916) 323-6847

For Caltrans:

Doug Jensen – Deputy Attorney
Jeffrey Wilcox – Deputy Attorney
California Department of Transportation Legal Division
111 Grand Avenue, Suite 11-100
Oakland, CA 94612
(510) 433-9100

For Ghilotti:

Sean Hungerford – Counsel
Harrison Temblador Hungerford & Johnson
980 9th Street, Suite 1400
Sacramento, CA 95814
(916) 382-4377

For GNB:

Edward P. Garson – Counsel
Wilson Elser
525 Market Street, 17th Floor
San Francisco, CA 94105
(415) 433-0990

4. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
5. **Matters Addressed by Stipulation:** Upon the North Coast Water Board's, or its delegee's, adoption of this Agreement and entry of an Order, this Agreement represents a final and binding resolution and settlement of any and all claims, not otherwise specifically reserved herein or identified in the Amended ACLC R1 2012-0112 included as Attachment A, arising out of or related in any manner to the allegations contained in the ACLC R1-2012-0112. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 1 herein.

SETTLEMENT AGREEMENT

R1-2012-0112

SONOMA COUNTY

6. **Public Notice:** The Respondents understand that this Agreement will be noticed for a 30-day public review and comment period prior to consideration by the North Coast Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Agreement to the North Coast Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Agreement void and decide not to present it to the North Coast Water Board, or its delegee. The Respondents agree that they may not rescind or otherwise withdraw their approval of this Agreement.
7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the North Coast Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Agreement, will be adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
8. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or North Coast Water Board to enforce any provision of this Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Agreement. The failure of the Prosecution Team or North Coast Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement or Order.
9. **Interpretation:** This Agreement shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
10. **Modification:** This Agreement shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing and approved by the all Parties.
11. **If Order Does Not Take Effect:** In the event that this Agreement does not take effect because it is not approved by the North Coast Water Board or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the North Coast Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. Subject to the foregoing sentence, the Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - (a) Objections related to prejudice or bias of any of the North Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the North Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Agreement, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or

SETTLEMENT AGREEMENT

R1-2012-0112

SONOMA COUNTY

- (b) Laches or undue delay premised on the duration of any administrative delay between the service of the ACLC initiating this action and the service of the Amended ACLC.
12. **No Admission of Liability:** This is the settlement of a disputed claim. In settling this matter, the Respondents do not admit to any of the findings in the ACLC, the Amended ACLC included as Attachment A, the violations alleged and resolved as reflected consistent with the Water Quality Enforcement Policy calculation methodology included as Attachment B or in this Agreement, or that they have been or are in violation of the Water Code, or any other federal, state, or local law or ordinance. The Parties recognize that this Agreement may be cited in any future complaint to demonstrate previous compliance issues, consistent with Water Code section 13327, as long as a statement indicating that the alleged violations were resolved by settlement is included.
 13. **Waiver of Hearing:** The Respondents have been informed of the rights provided by Water Code section 13323(b), and hereby waive their right to a hearing before the North Coast Water Board prior to the adoption of the Agreement.
 14. **Waiver of Right to Petition:** The Respondents hereby waive their right to petition the North Coast Water Board's adoption of the Agreement as written for review by the State Water Board, and further waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
 15. **Covenant Not to Sue:** The Respondents covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any violation alleged herein.
 16. **North Coast Water Board is Not Liable:** Neither the North Coast Water Board members nor the North Coast Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Respondents, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Agreement.
 17. **Authority to Bind:** Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.
 18. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever.
 19. **Effective Date:** This Agreement shall be effective and binding on the Parties upon the date the North Coast Water Board, or its delegee, enters the Order.
 20. **Counterpart Signatures:** This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY
IT IS SO STIPULATED.

**California Regional Water Quality Control Board Prosecution Team
North Coast Region**

By: _____
David F. Leland
Assistant Executive Officer

Date: _____

California Department of Transportation

By: _____
Bob Finney
Deputy District Director, Construction

Date: _____

Ghilotti Construction Company

By: _____
Ali Yazdi
Vice President and General Manager

Date: _____

Gordon N. Ball, Inc.

By: _____
Hal Stober
President

Date: 7.1.15

Order of the North Coast Water Board

1. In adopting this Order, the North Coast Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the North Coast Water Board's staff in investigating the allegations concerning the Respondents discussed herein or otherwise provided to the North Coast Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the North Coast Water Board. The method of compliance with this enforcement action consists

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY
IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
North Coast Region

By: _____
David F. Leland
Assistant Executive Officer

Date: _____

California Department of Transportation

By: _____
Bob Finney
Deputy District Director, Construction

Date: _____

Ghilotti Construction Company

By: _____
Ali Yazdi
Ali Yazdi
Vice President and General Manager

Date: 6/30/2015

Gordon N. Ball, Inc.

By: _____
Hal Stober
President

Date: _____

Order of the North Coast Water Board

1. In adopting this Order, the North Coast Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the North Coast Water Board's staff in investigating the allegations concerning the Respondents discussed herein or otherwise provided to the North Coast Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the North Coast Water Board. The method of compliance with this enforcement action consists

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
North Coast Region

By: Shin-Roei Lee
~~David F. Leland~~ Shin-Roei Lee
Assistant Executive Officer

Date: 8/4/15

California Department of Transportation

By: Dave G Pang 7/13/15
Bob Finney
Deputy District Director, Construction

Date: 7/13/15

Ghilotti Construction Company

By: _____
Ali Yazdi
Vice President and General Manager

Date: _____

Gordon N. Ball, Inc.

By: _____
Hal Stober
President

Date: _____

Order of the North Coast Water Board

1. In adopting this Order, the North Coast Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the North Coast Water Board's staff in investigating the allegations concerning the Respondents discussed herein or otherwise provided to the North Coast Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the North Coast Water Board. The method of compliance with this enforcement action consists

SETTLEMENT AGREEMENT
R1-2012-0112
SONOMA COUNTY

entirely of payment of amounts for administrative civil liability. As such, the North Coast Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the North Coast Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the North Coast Water Board.

Pursuant to Water Code sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, North Coast Region.

By: _____
Matthias St. John
Executive Officer

Date: _____