CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2009-0089

ORDER SETTLING ADMINISTRATIVE CIVIL LIABILITY FOR:

State of California, Department of Transportation - District 4
Santa Clara County

This Order is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2008-0064, dated September 19, 2008 ("Complaint"). The parties to this proceeding are the California Regional Water Quality Control Board, San Francisco Bay Region's ("Regional Water Board's") Prosecution Team, and California Department of Transportation ("Discharger")(collectively hereinafter the "Parties").

The Regional Water Board has been presented with a proposed settlement of the claims alleged in the Complaint (Attachment 1) that has been developed during negotiations between the Parties' representatives. The proposed settlement ("Settlement Agreement") is provided as Attachment 3, and represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability in the amount of $150,000 to the State Water Resources Control Board Cleanup and Abatement Account under Complaint No. R2-2008-0064 and the execution of a Memorandum of Understanding between the Parties ("MOU")(Attachment 2).

The Parties recommend that the Regional Water Board Executive Officer, pursuant to his delegated authority to issue administrative civil liability orders under Resolution No. R2-2008-0055, issue this Order to effectuate the Settlement Agreement. Having provided public notice of the Settlement Agreement and an opportunity for public comment, the Executive Officer finds that:

1. The Complaint proposes administrative civil liability of $248,000 for alleged violations of the Caltrans Statewide Storm Water Permit Order No. 99-06-DWQ, NPDES No. CAS000003 ("Statewide Permit") and the San Francisco Bay Basin Water Quality Control Plan ("Basin Plan") for the discharge of 155,000 gallons of raw sewage and 18,000 gallons of sediment-laden water, through the City of San Jose's storm drain system to the Guadalupe River, a water of the State and United States.

2. The Regional Water Board may impose discretionary administrative civil liability for these alleged violations pursuant to CWC Sections 13385(a)(2) and 13385(a)(4). The authority and process for imposing administrative civil liability are set forth in CWC Section 13323.

3. The Parties, through their respective representatives, have reached agreement on the Settlement Agreement, which includes a reduced penalty, contingent upon the Discharger's commitment to improving its existing project planning procedures, and spill identification and response procedures. The MOU outlines the agreed upon goals and required deliverables necessary to ensure that these improvements are implemented. The MOU is

incorporated by reference into the terms of the Settlement Agreement.

4. In accepting the Settlement Agreement, the Executive Officer has considered, where applicable, each of the factors prescribed in Water Code Section 13385(e). The Executive Officer's consideration of these factors, including the revised penalty amount discussed in the Settlement Agreement, is based upon information and comments provided by the Discharger and the public. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Regional Water Board in evaluating and preparing the Complaint and related documents.

5. Notice of the Settlement Agreement and assessment of civil liability was published on the Regional Water Board's website on or before October 28, 2009, notifying the public of the review period and soliciting public comments on the terms of the Settlement Agreement. The Settlement Agreement supports the assessment of administrative civil liability in the amount of $150,000. This Order and assessment of administrative civil liability serves the public interest and provides for the full and final resolution of the alleged violations set forth in the Complaint.

6. This Order is an action to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

IT IS HEREBY ORDERED that pursuant to California Water Code section 13385 and Government Code section 11415.60 that:

1. The Settlement Agreement and MOU are approved;

2. The Discharger shall pay the sums agreed to under the Settlement Agreement in accordance with its terms and fulfill all obligations contained in the MOU;

3. Fulfillment of the Discharger's obligations under the Settlement Agreement and MOU constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Settlement Agreement.

Digitally signed by Bruce Wolfe
Date: 2009.12.03 18:56:21 -08'00'

Date: December 3, 2009

Bruce H. Wolfe
Executive Officer

Attachments:
1. Complaint No. R2-2008-0064
2. Memorandum of Understanding, effective October 8, 2009
3. Settlement Agreement, effective October 8, 2009