California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint R1-2012-0112

for
Violations of Clean Water Act, Section 401, Water Quality Certification
WDID No. 1B08081WNSO
and
State Water Resources Control Board Order No. 99-06-DWQ (NPDES No. CAS000003)

In the Matter of the

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

Sonoma County

The Assistant Executive Officer of the California Regional Water Quality Board, North Coast Region (hereinafter the Regional Water Board), under his lawfully delegated authority hereby gives notice that:

1. This administrative civil liability complaint (Complaint) is issued under the authority of California Water Code section 13323 to the California Department of Transportation (Caltrans) and Ghilotti Construction Company, Inc. (Contractor) (collectively hereinafter Dischargers) to assess administrative civil liability pursuant to Water Code sections 13323 and 13385(a)(1), (a)(4), and (a)(5).

2. Unless waived, the Regional Water Board will hold a hearing on this Complaint at the **January 24, 2013** Board meeting located at 5550 Skylane Boulevard, Santa Rosa, California. The Dischargers or their representatives will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of the civil liability. Not less than 10 days before the hearing date, an agenda for the meeting will be available on the Regional Water Board's website: http://www.waterboards.ca.gov/northcoast/board_info/boardmeetings/.

3. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability (including an increase in the amount of the civil liability up to the statutory maximum), or refer the matter to the Attorney General to have a Superior Court consider enforcement. The Dischargers can waive their right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

4. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this administrative civil liability complaint through hearing. The enforcement costs can be considered as an additional factor as justice may require.

5. Regulations of the United States Environmental Protection Agency (U.S. EPA) require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

THE ASSISTANT EXECUTIVE OFFICER OF THE NORTH COAST REGIONAL WATER BOARD ALLEGES:

STATEMENT OF REGULATORY AUTHORITY

6. Caltrans is responsible for the design, construction, management, and maintenance of the State's highway system, including freeways, bridges, maintenance facilities, and related properties. Caltrans contracted with North Bay Construction to construct the Highway 101 Widening Central Project (Project). North Bay Construction merged in 2010 with Ghilotti Construction Company, via an asset sale, with the combined entity bearing the Ghilotti Construction Company name. Caltrans is jointly and severally liable for all of the violations in this Complaint as a result of obtaining the permits and certifications described herein to complete the Project. Contractor is jointly and severally liable for all of the violations in the Complaint as a result of its day-to-day control over decisions that directly affected water quality during the Project and its contractual relationship with Caltrans.

7. The Project consists of 83 acres from Rohnert Park Expressway to North of Pepper Road in Petaluma, extending from post mile (PM) 14.4 to PM 22.4, where additional lanes and shoulders are being added for the High Occupancy Vehicle (HOV) Project. The Project includes widening Highway 101 from four to six lanes, creating standard 10-foot outside and inside shoulders, construction of auxiliary lanes between the Highway 116 and Rohnert Park Expressway interchanges, widening bridges at the Laguna de Santa Rosa and Copeland Creek, and making on- and off-ramp improvements for the Highway 116 interchange. Work on the Project began in January 2010, with Project completion projected for summer 2012. The stated purpose of the Project is to reduce traffic congestion, and to address existing roadway and operational deficiencies. Caltrans deemed the Project as having achieved substantial completion on July 9, 2012, although as of the date of this Complaint, punch list items were still in progress.

8. The Water Quality Control Plan for the North Coast Region (Basin Plan) designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin. Existing and potential beneficial uses applicable to the Laguna Hydrologic Subarea of the Russian River Hydrologic Unit, including Copeland Creek and the Laguna de Santa Rosa, are municipal and domestic supply; agricultural supply; industrial service supply; industrial process supply; groundwater recharge;

freshwater replenishment; navigation; hydropower generation; water contact recreation; non-contact water recreation; commercial and sportfishing; warm freshwater habitat; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; shellfish harvesting; and aquaculture.

9. On October 11, 2011, U.S. EPA provided final approval of the 2008-2010 303(d) list of impaired water bodies prepared by the State of California. The list identifies the entire Russian River watershed, including its tributaries, and specifically including the Laguna de Santa Rosa, as impaired by excess sediment and siltation. The Project was constructed in the Russian River watershed.

10. Pursuant to North Coast Regional Water Board Resolution R1-2004-0087, *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region*, the Executive Officer is directed to "*rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste*."

STORMWATER

11. On July 15, 1999, the State Water Resources Control Board (State Water Board) adopted a 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). The Caltrans Storm Water Permit regulates storm water discharges from all Caltrans properties, facilities, and activities, including construction activities. The Caltrans Storm Water Permit conditionally authorizes storm and non-storm water discharges of pollutants and material other than storm water that are not authorized by the Storm Water Permit.

12. The Caltrans Storm Water Permit requires the Dischargers to prepare and implement a Construction Management Program in compliance with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, currently Order 2009-0009-DWQ (NPDES No. CAS000002) (Construction General Permit). The Caltrans Storm Water Permit also requires development and implementation of a comprehensive Storm Water Management Plan (SWMP) (General Requirements, Construction Program Management), submittal of a Notification of Construction 30 days prior to commencing construction activities (Construction Program Management H.8.a), and development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), as required by the Construction General Permit (Construction Program Management H.8.b).

13. The Dischargers submitted a Notice of Construction for the Project on December 24, 2009.

14. Construction Program Management Provision H.2 in the Caltrans Storm Water Permit requires the Dischargers' Construction Management Program to comply with the requirements of the Construction General Permit. The Construction General Permit requires dischargers to assess the risk level of a site based on both sediment transport and receiving water risk. On November 10, 2010, the Regional Water Board exercised its authority and required the Dischargers to comply with the Section VIII Risk Determination Requirements of the current Construction General Permit (Order No. 2009-0009-DWQ) earlier than would otherwise be required. The Project was subsequently determined to be Risk Level 2 and subject to the requirements contained in Attachment D, Risk Level 2 Requirements, of Order No. 2009-0009-DWQ.

WATER QUALITY CERTIFICATION

15. The Clean Water Act, section 401, requires Caltrans to apply for and obtain a Water Quality Certification for the Project (Certification).

16. On April 5 and September 6, 2007, Caltrans, the Sonoma County Transit Authority, and Regional Water Board staff met to discuss the Water Quality Certification requirements for the Project. Board staff emphasized that storm water treatment is required for all the net impervious surfaces and that due to site restrictions, the Project was not anticipated to meet this treatment goal.

17. On May 6, 2008, Caltrans, in conjunction with the Sonoma County Transit Authority, filed an application for Certification. The application specifically noted, in the Draft Storm Water Data Report, proposed wetland impacts to the culvert crossing at Laguna de Santa Rosa Creek. As stated in the application, Caltrans anticipated the need for a dewatering permit for discharging accumulated stormwater or surface water from excavations or temporary containment facilities due to temporary channel obstruction on the Laguna de Santa Rosa and culvert extension on Copeland Creek. The Regional Water Board issued the Certification on January 20, 2009.

18. The Certification contains Project-specific requirements designed to reduce temporary and permanent impacts caused by the Project's activities, including requirements for monitoring and reporting, implementation of best management practices, implementation of the Project as described in the application for Certification, cessation of Project activities in the event of an unauthorized discharge or water quality problem, as well as a prohibition against unauthorized discharges and working in flowing or standing surface water.

CHRONOLOGY

19. At a semiannual interagency meeting for the Project on August 31, 2010, staff of the Regional Water Board, the Dischargers, the U.S. Army Corps of Engineers and several resource agencies including the California Department of Fish and Game (DFG), the United States Fish and Wildlife Service, and the National Marine Fisheries Service met to discuss items including the status of the Project, environmental compliance and monitoring

requirements, the SWPPP inspection and environmental issues related to the diversions in Laguna and Copeland Creek. Regional Water Board Staff reminded the Dischargers of Certification, Condition 18's requirement to submit monthly monitoring reports.

20. At a semiannual interagency meeting for the Project on March 21, 2011, staff of the Regional Water Board, the Dischargers, and several resource agencies including the California Department of Fish and Game, the United States Fish and Wildlife Service, and the National Marine Fisheries Service met to discuss the status of the Project and the possible methods of diversion. The Dischargers' representatives included the Resident Engineer and stormwater and biology staff, as well as the water pollution control manager employed by the Ghilotti Construction Company and various consultants. Regional Water Board staff reminded the Dischargers of the need to conduct in-stream water quality monitoring for any diversions. Additionally, Regional Water Board and DFG staff expressed concerns to the Resident Engineer that the proposal to replace a single four-foot diameter pipe for the diversion in Copeland Creek with two eighteen-inch diameter pipes would likely result in inadequate conveyance capacity for the characteristically rapid response of the watershed. Regional Water Board staff suggested the Dischargers review the appropriate best management practices (BMPs). The Dischargers were alerted that a summer thunderstorm could produce potentially 0.5 to 1.0 inches of rain which could overwhelm the diversion and isolated work areas. During this meeting, Regional Water Board staff reiterated the August 2010 reminder to the Dischargers that Condition 18 of the Certification required submittal of monthly monitoring reports.

JUNE 28-29, 2011 COPELAND CREEK AND LAGUNA DE SANTA ROSA INSPECTIONS

21. Regional Water Board staff inspected portions of the Project on June 28 and 29, 2011. It started to rain the morning of June 28, leading Board staff to drive by the Copeland Creek site on the way into work. The Dischargers' crew members were observed filling bags and applying erosion and sediment control measures, including wattles and silt fencing, to unprotected locations. Potential problems at the site were noted, including an excavator in Copeland Creek, prompting an inspection later that same day.

22. Regional Water Board staff conducted an inspection of the Copeland Creek bridge portion of the Project at mid-day on June 28, 2011. Upon returning to the location where the excavator had been observed, Board staff noted that three pumps had been placed upstream of the work area and that water was being pumped to divert it around the isolated Project work area, apparently in response to a failure of the water diversion for Copeland Creek. The water elevation upstream of the diversion was observed to be nearly equal to that of the work area, indicating that the diversion attempt was failing. Board staff also observed the Dischargers' staff neck-deep, swimming or wading in Copeland Creek to attach lines for the diversion, as well as Dischargers' staff inside the box culvert, downstream of the temporary dam. At this point in the inspection, Regional Water Board staff expressed immediate concerns regarding worker safety within the work area to Contractor staff and to the Resident Engineer. Regional Water Board staff observed that the discharge from the pumps had resulted in a noticeable increase in foam and turbidity in

Copeland Creek, and that excess foam from the pumping extended approximately 700 feet downstream of the work area. The turbidity appeared to be increased for well over 1,000 feet downstream.

23. During the inspection, Regional Water Board staff spoke with the Dischargers' Resident Engineer, construction manager, area construction engineer, and biological inspectors, site superintendent, and water pollution control manager (WPCM). The WPCM informed staff that the water had been increasing in the diversion area, and as the rains continued, the upstream end of the diversion was being overrun by the creek. According to the WPCM, when the diversion started to be overrun, the Dischargers excavated the bank of the creek and placed an earthen dam in the downstream end of the work area, in an attempt to save the diversion. The WPCM mentioned that he had collected upstream and downstream samples for turbidity, with results of 20 nephelometric turbidity units (NTU) and 175 NTU, respectively, but that he did not report those since the downstream turbidity was below 250 NTU (the numeric action level in the Construction General Permit). Regional Water Board staff explained that the 401 Certification contained additional turbidity requirements to those in the Construction General Permit and particularly advised the WPCM of Conditions 23 and 24 of the Certification, which require hourly monitoring of the receiving stream when downstream turbidity is increased by more than 20 percent over background, determination of the extent of the increased turbidity plume, and reporting to the Regional Water Board. Since turbidity levels had been observed to extend for over 1,000 feet downstream of the work area, Board staff suggested that the WPCM take a second downstream turbidity measurement where the foam was no longer visible. During this discussion, Regional Water Board staff again reminded the Dischargers' staff of the monthly reporting requirements contained in Condition 18 of the Certification and reiterated the request that the delinquent reports, along with the Rain Event Action Plan (REAP) for the current storm, as described in Attachment D to the Construction General Permit, at Rain Event Action Plan H.1, be promptly submitted to the Regional Water Board.

24. Regional Water Board staff contacted Lieutenant Kyle Hiatt of DFG's Office of Spill Prevention and Response (OSPR). Lieutenant Hiatt arrived at the Project site and worked with Board staff to assess the extent of damage to Copeland Creek by observing the condition of the isolated work area and the upstream diversion.

25. After Lieutenant Hiatt's arrival at the Project site, Regional Water Board staff continued the inspection at the Laguna de Santa Rosa work site. Upon arrival at the site, staff observed that an earthen dam similar to the one constructed at Copeland Creek, also formed from approximately 75 cubic yards of soil, had also been placed in the work area of the Laguna de Santa Rosa work site and that yellow foam sealant had been used in a corner of the upstream diversion. The earthen dam appeared to be stable and staff observed that water levels were not rising as rapidly as at the Copeland Creek site. The diversion at the Laguna de Santa Rosa site appeared to be functioning. Regional Water Board staff also observed that the bags used in the diversions contained sand and silt, as opposed to clean-washed gravel.

26. On June 29, 2011, Regional Water Board staff conducted a follow-up inspection of the Copeland Creek and Laguna de Santa Rosa work areas in conjunction with DFG OSPR staff. Regional Water Board staff observed that the earthen dams were still in place at both sites, and that many of the surrounding best management practices on the adjacent banks appeared to be damaged and ineffective. Water levels at Copeland Creek were observed to have dropped significantly. Pumps were still in place in Copeland Creek and continued to divert water around the work area. The Dischargers began work to fix the diversion. Regional Water Board Staff noticed that foam and turbidity downstream were increasing due to the pumping. Regional Water Board staff alerted the Dischargers' staff to the increased foam and turbidity. In response, Dischargers' staff added plastic sheeting below the discharge in an attempt to reduce the turbidity and foam. However, the diversions were still ineffective and the pumping continued. By the end of the day, the Dischargers had successfully reconnected the diversion and water was flowing through the diversion pipes at both sites. However, many of the BMPs were damaged and ineffective.

27. On June 30, 2011, Regional Water Board staff e-mailed Caltrans staff with a summary of the Certification's monitoring and reporting requirements, emphasizing the differences between the Construction General Permit water quality requirements and triggers incorporated into the Caltrans Storm Water Permit and those in the Certification. In the e-mail, Regional Water Board staff specifically reminded the Dischargers' staff of the Certification's requirement that monitoring data for each month be reported to the Regional Water Board by the fifteenth of the following month. The e-mail noted that despite repeated verbal requests, the Regional Water Board had still not received any of the Certification Condition 18 monthly monitoring reports; the Certification Condition 28 rainy day report; the Certification Conditions 22, 23, and 24 in-stream activity monitoring data; or the previously-requested water quality tail-gate meeting notes and sign-in sheets required to be maintained by Certification Condition 25.

28. Regional Water Board staff entered violations of Conditions 4.a. and 14 of the Certification into the California Integrated Water Quality System (CIWQS) on November 10, 2011.

29. On May 10, 2012, Regional Water Board staff requested that Caltrans submit SWPPP amendments, all inspection records, all sampling and analysis results, all rain event action plans, and all other records required under the Construction General Permit, Attachment D by May 17, 2012. On May 17, 2012, Caltrans submitted records and documents partially responsive to the May 10, 2012 request, including the June, July, and August 2011 monthly monitoring reports required by Condition 18 of the Certification.

30. On October 12, 2012, following notification to the Dischargers of the impending issuance of this Complaint, Regional Board staff received the September 2012 monitoring report.

PERMIT AND CERTIFICATION REQUIREMENTS

31. The Caltrans Storm Water Permit contains, in pertinent part, the following requirements:

General Discharge Prohibition A.2: "*The discharge of pollutants or dredged or fill material to waters of the United States, except as authorized by an NPDES Permit or a dredged or fill material permit (subject to the exemption described in California Water Code (CWC) section 13376), is prohibited*."

General Discharge Prohibition A.3: "*The discharge of waste to waters of the State in a manner causing or threatening to cause a condition of pollution or nuisance defined in CWC section 13050, is prohibited*."

General Discharge Prohibition A.4: "*The dumping, deposition, or discharge of waste by Caltrans directly into waters of the State or adjacent to such waters in any manner that may allow its being transported into the waters is prohibited unless authorized by the RWQCB*."

General Discharge Prohibition A.6: "*The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect or threaten to affect beneficial uses of such waters, is prohibited*."

RWQCB Authority D.4: "*RWQCBs may require additional monitoring and reporting program requirements and may provide guidance on monitoring plan implementation*."

RWQCB Authority D.5: "*RWQCBs may require Caltrans to conduct additional site inspections, submit reports and certifications, to perform water quality sampling and analysis of discharges from construction sites, roadways and maintenance facilities*."

Construction Program Management H.1: "*Caltrans shall have a program to control all construction in the rights-of-way. Such a program must include: requirements of structural and nonstructural BMPs; site inspections and enforcement; and education of construction site operators. The SWMP must be revised to address these requirements and have a program and a schedule for inspections. The program must include: a. review of construction site plans; b. requirement of structural and nonstructural BMPs; c. site inspections and enforcement; and d. education of construction site operators*."

Construction Program Management H.2: "*The Construction Management Program shall be in compliance with requirements of the NPDES General Permit for Construction Activities (Construction General Permit) not including NOI filing. The current Construction General Permit is SWRCB Board Order 92-08—DWQ [currently, 2009-0009-DWQ].*"

32. The Construction General Permit contains, in pertinent part, the following requirements:

> Discharge Prohibition III.B: "*All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by the Construction General Permit or another NPDES permit.*"
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> Attachment D, Risk Level 2 Requirements, Good Site Management "Housekeeping" B.1:b: "*Risk Level 2 Dischargers shall implement good site management (i.e., "housekeeping") measures for construction materials that could potentially be a threat to water quality if discharged. At a minimum, Risk Level 2 Dischargers shall implement the following good housekeeping measures:…b. Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soils, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.)*"
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> Attachment D, Risk Level 2 Requirements, Sediment Control E.3: "*Risk Level 2 Dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction*."

33. The Water Quality Certification contains, in pertinent part, the following conditions:

> Condition 4: "*Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the North Coast Region Water Quality Control Plan (Basin Plan)*."
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> Condition 5: "*Caltrans shall construct the project in accordance with the conditions described in the application and the findings above, and shall comply with all applicable water quality standards*."
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> Condition 9: "*If, at any time, there is an unauthorized discharge to surface water (including wetlands, rivers or streams), or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises*."
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> Condition 10: "*No debris soil, silt, sand, bark, slash, sawdust, rubbish, cement, or concrete or concrete washings, welding slag, oil or petroleum projects, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State*."
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> Condition 12: "*Work in flowing or standing surface waters, unless otherwise proposed in the application and approved by the Regional Water Board, is prohibited. If construction dewatering is found to be necessary, the Applicant shall use a disposal method other than disposal to surface waters (such as land disposal) or the Applicant shall apply for coverage under the General Construction Dewatering Permit and receive notification of coverage to discharge to surface waters, prior to the discharge*."

Condition 14: "*BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during, and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water. BMPs shall be implemented in accordance with the Caltrans Construction Site Best Management Practices Manual (CCSBMPM) and all contractors and subcontractors shall comply with the CCSBMPM*."

Condition 18: "*Monthly monitoring reports shall be submitted to the appropriate Regional Water Board staff person. The monthly monitoring reports shall include at a minimum a summary of discharges, a summary of corrective actions taken (if necessary), pictures, all field sampling measurements and/or results, project status (i.e. upcoming construction schedule and disturbed soil area updates), biological monitoring reports, changes to the SWPPP. Monthly monitoring reports are due to the Regional Water Board by the 15th of each month once work on the project has been initiated*."

Condition 22: "*Visual observations of Copeland Creek and/or the Laguna de Santa Rosa shall be conducted whenever a project activity has the potential to mobilize sediment and increase the turbidity and/or pH of Copeland Creek and/or the Laguna de Santa Rosa. In order to demonstrate compliance with receiving water limitations, field turbidity and/or pH measurements shall be collected whenever a project activity may cause turbidity and/or pH of Copeland Creek and/or the Laguna de Santa Rosa to be increased above background concentrations*."

Condition 23: "*Whenever turbidity and/or pH in Copeland Creek and/or the Laguna de Santa Rosa is increased above background as a result of project activities, turbidity and/or pH measurements shall be collected upstream (within 50 feet) of project activities (background) and downstream (within 100 feet) of the source. The frequency of turbidity and/or pH monitoring shall be a minimum of every hour during periods of increased turbidity and/or pH and shall continue until measurements demonstrate compliance with receiving water limitations and turbidity and pH levels are no longer increasing as a result of project activities. If turbidity levels are greater than 20 percent above background, or pH levels are beyond the water quality objective (6.5 – 8.5) 100 feet downstream of the source(s), all necessary steps shall be taken to install, repair, and/or modify BMPs to control the source(s) of sediment or increased pH. In addition, the overall distance from the source(s) of turbidity or pH to the downstream extent of the increased turbidity or pH (20 percent above background / 6.5 - 8.5) shall be measured*."

Condition 24: "*Turbidity and pH monitoring results shall be reported to appropriate Regional Water Board staff person by telephone within one hour of taking any turbidity measurement higher than 20 percent above background or pH measurements outside of 6.5 – 8.5 at a point 100 feet or more downstream of the source(s). Pictures of Copeland Creek and/or the Laguna de Santa Rosa upstream, downstream and within the working and/or disturbed area shall be taken and submitted to the appropriate Regional Water Board staff via e-mail or fax within 24 hours of the incident*."

Condition 28: "*Caltrans shall take photos of all areas disturbed by project activities, including all excess materials disposal areas, after the first rainfall event that*

generates visible runoff from these areas in order to demonstrate that erosion control measures have been successful. A report containing these photos shall be submitted within 60 days of the first rainfall event that generates runoff from the disturbed areas."

VIOLATIONS AND DETERMINATION OF LIABILITY

34. Water Code section 13385, subdivisions (a)(1), (a)(4), and (a)(5) provide the basis for civil liability. Subdivision (a)(1) provides for civil liability against any person who violates Water Code section 13376, which requires a person discharging pollutants or dredged or fill material into navigable waters of the United States to file a report of waste discharge. Subdivision (a)(4) provides for civil liability against any person who violates any waste discharge requirement or Basin Plan prohibition issued pursuant to Water Code section 13243 of the Water Code. Subdivision (a)(5) provides for civil liability against any person who violates any requirements of Section 401 of the Clean Water Act, as amended. As detailed in this complaint, the Dischargers violated the discharge prohibitions and requirements of the Certification, the Caltrans Storm Water Permit, and the Basin Plan. Water Code section 13385, subdivision (c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is $10,000 for each day of violation in addition to an amount not to exceed $10 per gallon of waste discharged but not cleaned up in excess of 1,000 gallons.

35. Pursuant to Water Code section 13385, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require.

    Water Code section 13385, subdivision (e) also requires that at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s).

36. On November 17, 2009, 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 Water Code section 13385. The entire Enforcement Policy can be found at:

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

37. The required factors have been considered for the violations described in Findings 39 through 52 using the methodology in the Enforcement Policy, as explained in detail in Attachment A, which is attached hereto and incorporated herein by reference.

38. Determinations of maximum and proposed liabilities are described in Findings 39 through 52 and the results are summarized in the following table:

Permit	Requirement Violated	Maximum Liability	Proposed Liability
Storm Water	Prohibition A.2: No discharge of dredge or fill material to waters of the United States (1 day; 2 sites; 15,000 gal/site)	$300,000	$76,050
Storm Water	Prohibition A.3: No discharge of waste to waters of the state (1 day; 2 sites; 15,000 gal/site)	$300,000	$76,050
Storm Water	Prohibition A.4: No dumping, depositing or discharging into waters of the state (1 day; 2 sites; 15,000 gal/site)	$300,000	$76,050
Storm Water	Prohibition A.6: No sand, silt or earthen materials in waters of the State (1 day; 2 sites; 15,000 gal/site)	$300,000	$76,050
Storm Water	CGP Attachment D, Sediment Controls E.3: Erosion control BMPs (1 day, 2 sites)	$20,000	$18,590
Certification	Condition 4.a: Mitigation in strict compliance with 401 project description (2 days, 2 sites)	$40,000	$37,180
Certification	Condition 4.b: Actions compliant with Basin Plan (1 day, 1 site)	$10,000	$9,295
Certification	Condition 9: Project activities cease if unauthorized discharge and inadequate BMPs (2 days, 1 site)	$20,000	$18,590
Certification	Condition 10: No soil, sand, or earthen material placed where may be washed by rainfall into waters of the State (1 day; 2 sites; 15,000 gal/site)	$300,000	$76,050
Certification	Condition 12: No working in flowing or standing waters unless proposed in application and approved by Regional Water Board (2 days at Copeland Creek, 1 day at Laguna de Santa Rosa)	$30,000	$27,885
Certification	Condition 14: BMPs implemented (1 day, 2 sites)	$20,000	$18,590
Certification	Condition 18: Submittal of monthly monitoring reports (15,632 days late as of October 15, 2012)	$156,350,000	$4,811,625
Certification	Condition 24: 1 hour/24 hour reporting of turbidity measurements (1 day, 1 site)	$10,000	$5,915
Certification	Condition 28: First rainfall event report (904 days late as of October 15, 2012)	$9,040,000	$212,940
	Violations Total	$167,040,000	$5,540,860
	Staff Costs	--	$25,000
	TOTAL LIABILITY	--	$5,565,860

VIOLATIONS OF THE CALTRANS STORM WATER PERMIT

39. General Discharge Prohibition A.2 of the Caltrans Storm Water Permit prohibits the discharge of dredge or fill material to waters of the United States, except as authorized by a dredge or fill material permit (*i.e.*, 401 certification). Violations of the Certification are, therefore, also violations of the Caltrans Storm Water Permit.

    The Dischargers placed approximately 75 cubic yards of soil (equivalent to approximately 30,000 gallons) in Copeland Creek and another 75 cubic yards of soil in the Laguna de Santa Rosa to construct temporary earthen dams. Such discharge activities were not authorized by the Dischargers' 401 Certification and, therefore, were performed contrary to General Discharge Prohibition A.2.

    The maximum potential administrative civil liability in violation of the Caltrans Storm Water Permit is $280,000 [$10 x 14,000 gallons (15,000 gallons -1,000 gallons) x 2 sites] + $20,000 [($10,000) x 2 sites] = $300,000.

40. General Discharge Prohibition A.3 of the Caltrans Storm Water Permit prohibits "[*t*]*he discharge of waste to waters of the State in a manner causing or threatening to cause a condition of pollution or nuisance defined in CWC section 13050.*"

    The Dischargers deposited approximately 75 cubic yards of soil (equivalent to approximately 30,000 gallons) in Copeland Creek as an earthen dam, an additional 75 cubic yards of soil in the Laguna de Santa Rosa, also as an earthen dam, and placed diversion bags containing silt and sand (as opposed to clean gravel) in both Copeland Creek and the Laguna de Santa Rosa.

    The Basin Plan contains an objective for inland surface waters that turbidity shall not be increased more than 20 percent above naturally occurring background levels (p. 3-3.00). This objective was exceeded on June 28, 2011 with the Dischargers' Copeland Creek turbidity sample results of 20 NTU upstream of the work area and 175 NTU downstream of the work area—an increase of 775 percent above background.

    The Basin Plan contains an objective for floating material in inland surface waters that "[*w*]*aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses* [p. 3-3.00]." The excess foam observed on June 28, 2011 in Copeland Creek, extending from the Project work area to a distance approximately 700 feet downstream violated the Basin Plan's Floating Material objective.

    The deposition of approximately 150 cubic yards of soil and the activities resulting in violations of the Basin Plan objectives for turbidity and floating material caused, or threatened to cause, a condition of pollution, contrary to General Discharge Prohibition A.3.

The maximum potential administrative civil liability in violation of the Caltrans Storm Water Permit is $280,000 [$10 x 14,000 gallons (15,000 gallons -1,000 gallons) x 2 sites] + $20,000 [($10,000) x 2 sites] = $300,000.

41. General Discharge Prohibition A.4 of the Caltrans Storm Water Permit prohibits "[*t*]*he dumping, deposition, or discharge of waste by Caltrans directly into waters of the State or adjacent to such waters in any manner that may allow its being transported into the waters…unless authorized by the* [Regional Water Board]."

    The Dischargers deposited approximately 75 cubic yards of soil in Copeland Creek and another 75 cubic yards of soil in the Laguna de Santa Rosa to construct temporary earthen dams. The deposition of soil into Copeland Creek and the Laguna de Santa Rosa—both waters of the State—was not authorized by the Regional Water Board and was, therefore, performed contrary to General Discharge Prohibition A.2.

    The maximum potential administrative civil liability in violation of the Caltrans Storm Water Permit is $280,000 [$10 x 14,000 gallons (15,000 gallons -1,000 gallons) x 2 sites] + $20,000 [($10,000) x 2 sites] = $300,000.

42. General Discharge Prohibition A.6 of the Caltrans Storm Water Permit prohibits the discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect or threaten to affect beneficial uses of such waters.

    The Dischargers deposited approximately 75 cubic yards of soil (equivalent to approximately 30,000 gallons) in Copeland Creek as an earthen dam, an additional 75 cubic yards of soil in the Laguna de Santa Rosa, also as an earthen dam, and placed diversion bags containing silt and sand (as opposed to clean gravel) in both Copeland Creek and the Laguna de Santa Rosa, without authorization by the Regional Water Board. On June 28, 2011, the Dischargers' water pollution control manager informed Regional Water Board staff that he had sampled Copeland Creek and found the upstream turbidity to be 20 NTU and the downstream turbidity to be 175 NTU—an increase of 775 percent above background. The earthen dams and sand- and silt-containing bags contributed to turbidity, in violation of General Discharge Prohibition A.6.

    The maximum potential administrative civil liability in violation of the Caltrans Storm Water Permit is $280,000 [$10 x 14,000 gallons (15,000 gallons -1,000 gallons) x 2 sites] + $20,000 [($10,000) x 2 sites] = $300,000.

43. Attachment D to the Construction General Permit, at Sediment Controls E.3, requires the Dischargers to implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.

During the June 28, 2011 inspection, Regional Water Board staff observed the Dischargers' crew members filling bags and applying erosion control measures, including silt fencing, to locations that were still bare several hours after rainfall had started. Implementation of appropriate BMPs includes timely implementation of those BMPs. Implementation of BMPs several hours after rainfall begins does not constitute appropriate or adequate implementation of BMPs. Essentially, the Dischargers failed to follow its BMPs at both Copeland Creek and the Laguna de Santa Rosa.

The maximum potential administrative civil liability in violation of the Caltrans Storm Water Permit is $10,000/day x 2 sites = $20,000.

VIOLATIONS OF THE 401 CERTIFICATION

44. The Certification requires, at Condition 4.a, that the Dischargers complete "*all proposed mitigation in strict compliance with the Applicant's* [Dischargers'] *project description.*"

The Dischargers violated the certification by placing pumps in Copeland Creek to reroute creek water from the construction activities and discharge back into the creek downstream. Such activities were not authorized by the Certification. The placement of pumps in Copeland Creek on June 28 and 29, 2011 was unauthorized and not included in the description of the Project. The Certification states that "*[a]ll in-water work at Laguna de Santa Rosa and Copeland Creek will be conducted between June 15 and October 15 when there is minimal flow in Laguna de Santa Rosa and typically no flow in Copeland Creek*." Based on this description, the application indicated that the Dischargers were proposing to perform work in Copeland Creek only during no-flow conditions and in Laguna de Santa Rosa only during minimal flow conditions, not as the streams were rising during the middle of a rainfall event. Additionally, the Dischargers created a temporary impact by using an excavator at Copeland Creek, which was not an approved activity under the Certification.

The maximum potential administrative civil liability in violation of the 401 Certification is $10,000/day x 2 sites x 2 days = $40,000.

45. The Certification states, at Condition 4.b, that all certification actions are contingent on compliance with applicable requirements of the Basin Plan.

The Basin Plan contains an objective for inland surface waters that turbidity shall not be increased more than 20 percent above naturally occurring background levels (p. 3-3.00). This objective was exceeded on June 28, 2011 with the Dischargers' Copeland Creek turbidity sample results of 20 NTU upstream of the work area and 175 NTU downstream of the work area—an increase of 775 percent above background.

The Basin Plan contains an objective for floating material in inland surface waters that "*[w]aters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses [p. 3-3.00]*." The excess

foam observed on June 28, 2011 in Copeland Creek, extending from the Project work area to a distance approximately 700 feet downstream, violated the Basin Plan's Floating Material objective.

The maximum potential administrative civil liability in violation of the 401 Certification is $10,000.

46. The Certification requires, at Condition 9, that "*[i]f, at any time, there is an unauthorized discharge to surface water (including wetlands, rivers or streams), or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented*" and that "*[t]he Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises*."

At the time of rerouting creek water and allowing for an unauthorized discharge back into Copeland Creek, the Dischargers failed to immediately cease Project activities, implement adequate best management practices, and promptly notify on June 28 and 29, 2011 the Regional Water Board of the unauthorized discharge and water quality problems described herein, in violation of Condition 9.

The maximum potential administrative civil liability in violation of the 401 Certification is $10,000/day x 1 site x 2 days = $20,000.

47. The Certification requires, at Condition 10, that "*[n]o debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized [by the Certification], shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State*."

The Dischargers placed approximately 75 cubic yards of soil in Copeland Creek as an earthen dam, an additional 75 cubic yards of soil in the Laguna de Santa Rosa, also as an earthen dam, and placed diversion bags containing silt and sand (as opposed to clean gravel) in both Copeland Creek and the Laguna de Santa Rosa. The earthen dams and sand- and silt-containing bags were both allowed to enter into, and were placed into waters of the State where it was susceptible to be washed by rainfall and where it was actually washed by rainfall into, waters of the State, in violation of Condition 10, for June 28 and 29, 2011.

The maximum potential administrative civil liability in violation of the 401 Certification is $280,000 [$10 x 14,000 gallons (15,000 gallons -1,000 gallons) x 2 sites]
+ $20,000 [($10,000) x 2 sites] = $300,000.

48. The Certification prohibits, at Condition 12, "*[w]ork in flowing or standing surface waters, unless otherwise proposed in the application and approved by the Regional Water Board*." Condition 12 further requires, if construction dewatering is found to be necessary, that the Dischargers use a disposal method other than discharge to surface water, or else apply for,

and receive notice of coverage under, the General Construction Dewatering Permit, prior to the discharge.

The excavation work performed in Copeland Creek and the Laguna de Santa Rosa on June 28, 2011, while diversions were failing and these surface waters were flowing, was neither proposed in the Certification application nor approved by the Regional Water Board, and was therefore performed contrary to Condition 12 of the Certification. In addition, the Dischargers' installation and use of pumps in Copeland Creek on June 28 and 29, 2011 for the purpose of dewatering Copeland Creek with disposal to Copeland Creek without authorization, or even application for authorization, was also performed contrary to Condition 12.

The maximum potential administrative civil liability in violation of the 401 Certification is
$20,000 [$10,000/day x 2 days at Copeland Creek]
+ $10,000 [$10,000/day x 1 day at the Laguna de Santa Rosa) = $30,000.

49. The Certification requires, at Condition 14, that best management practices for erosion, sediment, and turbidity control be implemented and in place at commencement of, during, and after any project activities that could result in erosion or sediment discharges to surface water.

The Dischargers placed approximately 75 cubic yards of soil in Copeland Creek as an earthen dam, an additional 75 cubic yards of soil in the Laguna de Santa Rosa, also as an earthen dam, and placed diversion bags containing silt and sand (as opposed to clean gravel) in both Copeland Creek and the Laguna de Santa Rosa. The installation of the earthen dams and sand- and silt-containing bags constitute project activities that could result in erosion or sediment discharges to surface water. Best management practices were still being installed during the June 28, 2011 inspection and were not in place at the commencement of these activities, contrary to Condition 14.

The maximum potential administrative civil liability in violation of the 401 Certification is $10,000/day x 2 sites x 1 day = $20,000.

50. The Certification requires, at Condition 18, the submittal of monthly monitoring reports containing a summary of discharges, corrective actions taken, pictures, all field sampling results, project status, biological monitoring reports, and changes to the SWPPP to the appropriate Regional Water Board staff by the fifteenth of each month once work on the project has been initiated.

Work on the Project commenced in late January 2010. As of the date of issuance of this Complaint, no monthly monitoring reports have been received for the Project, excepting the June, July, and August 2011 monitoring reports, which were received May 17, 2012, and the September 2012 monitoring report, which was received October 12, 2012, following notification to the Dischargers of the impending issuance of this Complaint. The

first month for which a monitoring report was due was the month in which the Project began, in January 2010. As of October 15, 2012, the monthly monitoring reports that have yet to be submitted are a total of 15,635 days late. An itemization of the late reports is provided in Attachment A. Because the reports required by Conditions 18 and 24 have not been received, it is unclear how many additional violations of Conditions 22, 23, and 24 have also occurred.

The maximum potential administrative civil liability in violation of the 401 Certification is $10,000/day x 15,635 days = $156,350,000.

51. The Certification requires, at Condition 24, that within one hour of taking any turbidity measurement higher than 20 percent above background at a point 100 feet or more downstream of the source(s), the results shall be reported by telephone to the appropriate Regional Water Board staff person. Condition 24 further requires that pictures of Copeland Creek and/or the Laguna de Santa Rosa upstream, downstream, and within the working and/or disturbed area shall be taken and submitted to the appropriate Regional Water Board staff via e-mail or fax within 24 hours of the incident.

    During the June 28, 2011 inspection of the Project by Regional Water Board staff, the Dischargers' WPCM informed Regional Water Board staff that he had sampled Copeland Creek and found the upstream turbidity to be 20 NTU and the downstream turbidity to be 175 NTU—an increase of 775 percent above background. No photographs have been received by Regional Water Board staff as of the date of this Complaint. If there are additional reports required under this condition that have not been received by the Regional Water Board, additional violations of Conditions 23 and 24 may have also occurred.

    The maximum potential administrative civil liability in violation of the 401 Certification is $10,000/day x 1 site x 1 day = $10,000.

52. The Certification requires, at Condition 28, that the Dischargers take photographs of all areas disturbed by project activities, including all excess materials disposal areas, after the first rainfall event that generates visible runoff from these areas and to submit a report containing these photographs within 60 days of that event.

    Based on data collected for Santa Rosa station KCASANTA15, from February 2010 through April 2012, there have been 305 days on which measureable precipitation occurred. Of these, there were 87 days on which 0.25 inch or more of rain fell, with 50 of those days receiving 0.50 inch or greater.

    It is expected that some of these rainfall events generated visible runoff from the areas disturbed by Project activities. Nevertheless, no reports containing the required photographs have been received by the Regional Water Board as of the date of this Complaint. Conservatively assuming that the date of the first rainfall event generating

visible runoff was February 24, 2010, with its two-day precipitation total of 3.49 inches, the report was due April 25, 2010. As of October 15, 2012, this report is 904 days late.

The maximum potential administrative civil liability in violation of the 401 Certification is $10,000/day x 904 days = $9,040,000.

53. The maximum potential administrative civil liability for violations of the Caltrans Storm Water Permit and 401 Certification is $167,040,000.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

54. Based on consideration of the above facts, the applicable law, and after applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Dischargers in the amount of five million five hundred sixty-five thousand eight hundred and sixty dollars ($5,565,860).

55. Notwithstanding the issuance of this Complaint, the Regional Water Board retains the authority to assess additional penalties for violations of the requirements of the Caltrans' NPDES permit and water quality certification for which penalties have not yet been assessed or for violations that may subsequently occur.

56. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resource Code section 21000, *et seq.*) pursuant to title 14, California Code of Regulations, sections 15308 and 15321(a)(2).

Luis Rivera, Assistant Executive Officer
Regional Water Board Prosecution Team

November 5, 2012
DATE