

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made as of February 11, 2005, by and between the California Department of Transportation (“CalTrans”) and the Central Coast Regional Water Quality Control Board (“Regional Board”). CalTrans and the Regional Board are each described herein as “Party” and collectively as “Parties.”

RECITALS

1. State Water Resources Control Board Order No. 99-06-DWQ establishes the National Pollutant Discharge Elimination System Permit for Storm Water Discharges from CalTrans’ Properties, Facilities, and Activities (hereafter “Permit”).
2. Regional Board Administrative Civil Liability Complaint No. R3-2003-0078 alleges that CalTrans violated provisions of the Permit, for which the Regional Water Quality Control Board (Regional Board) may impose civil liability pursuant to Section 13385 of the Water Code.
3. On January 26, 2001, the California Department of Transportation filed a Notice of Construction for the “101/156 Interchange,” Expenditure Account (EA) Number 0161U (“Project”), for permit coverage pursuant to the Permit.
4. CalTrans denies that it violated the Permit. Without an admission of liability, CalTrans agrees to pay the sums and conduct the workshops specified below.
5. The Settlement described in this Agreement is intended to resolve the allegations of the Complaint, as well as any alleged violation of the Permit for acts or omissions at the Project site that could have been asserted in the Complaint.

6. The California Administrative Procedures Act in Government Code §11415.60 provides that an agency, including the Regional Board, may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Section 11415.60 also states that the settlement may not be contrary to statute or regulation, except the settlement may include sanctions the agency would otherwise lack power to impose.

AGREEMENT

NOW THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement, and for other valuable consideration, and intending to be bound by this Agreement, CalTrans and the Regional Board agree as follows:

1. Recitals: Each of the Recitals set forth above is hereby specifically incorporated into the Settlement Agreement.

2. CalTrans Payment: Following the Regional Board's adoption of the Stipulated Order attached to this Agreement as Exhibit A ("Stipulated Order"), and incorporated herein by this reference, CalTrans shall pay Regional Board staff costs of Seven Thousand Five Hundred Dollars (\$7,500). The check shall be made payable to the State Water Resources Control Board and delivered to the Regional Board, attention Jennifer Bitting, within 30 days after the date the Regional Board adopts the Stipulated Order.

3. CalTrans Workshops: CalTrans shall conduct the workshops described in the Stipulated Order.

4. Failure to Comply with Order: If CalTrans fails to make the payment required by Paragraph 2 or to complete the fifteen workshops required by Paragraph 3 in accordance with the terms of the Stipulated Order, the Executive Officer shall reissue the Complaint. CalTrans may

assert any defenses it now has to the Complaint other than any defenses based on a statute of limitations or laches, which defenses CalTrans hereby waives. Any payment or partial performance by CalTrans shall not be considered in determining the amount of liability under the reissued complaint, nor shall payment or partial performance be treated as complete or partial satisfaction of any order issued in response to such complaint.

5. Conditions Precedent: This Settlement Agreement is expressly conditioned upon, and shall not become effective in whole or in part, until after all of the following have occurred:

- a. There has been a thirty day public comment period on the Settlement Agreement;
and
- b. The Regional Board has adopted an Administrative Civil Liability Order in a form substantially the same as the Stipulated Order.

6. Regional Board's Reservation of Rights: This Agreement relates only to alleged Permit violations at the Project site. The Regional Board and its Executive Officer reserve all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders, for past, ongoing or future violations of the Permit at or related to any other CalTrans construction site or municipal separate stormwater system within the Central Coast Region covered by the Permit.

7. Party Authorizations: Each Party represents and warrants to the other Party that the Party has taken, or has agreed to take, all action on its part necessary for the authorization, execution and delivery of the Settlement Agreement.

8. No Admissibility: The Parties agree that the terms of this Settlement Agreement shall not be admissible in any pending or future proceeding involving the Parties, except in a proceeding to enforce the terms of the Settlement Agreement.
9. Successors: This Agreement shall be binding upon and for the benefit of the Parties released herein, as well as their respective successors, devisees, trustees, receivers, executors, representatives and assigns, and each of them.
10. Notice: If any Party to this Agreement is required to, or elects to, give written notice, he, she or it shall do so in the manner set forth in this paragraph. Any written notice shall be sent by both facsimile transmission and first-class mail to each of the following representatives of the Parties. Notice shall be deemed to be given on the date received by facsimile transmission, if such notice is given by facsimile transmission to all recipients between 9:00 a.m. and 5:00 p.m. on a weekday. If notice is given by facsimile transmission after 5:00 p.m. on a weekday or on a weekend day, notice shall be deemed received on the next succeeding weekday.

The persons who are authorized to receive notice are as follows:

For CalTrans:

[CalTrans to insert]

For Central Coast Regional Water Quality Control Board:

Roger W. Briggs

Executive Officer

Central Coast Regional Water Quality Control Board

895 Aerovista Place, Suite 101

San Luis Obispo, California 93401

Facsimile: (805) 543-0397

11. Effective Date: The Effective Date of the Settlement Agreement is the first calendar date on which all conditions precedent are satisfied.
12. Governing Law: This Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California.
13. Counterparts: The Parties may execute and deliver this Settlement Agreement in any number of counterparts or copies, and each counterpart shall be deemed an original and taken together shall be considered to be the entire Settlement Agreement.
14. Entire Agreement: This Settlement Agreement constitutes the entire agreement of the Parties with respect to the matters stated herein, and may not be modified, amended or waived except in a written instrument duly executed by all Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement by their duly authorized representatives.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: _____

[Name]

[Title]

Date signed: _____

CENTRAL COAST REGIONAL WATER QUALITY
CONTROL BOARD

By: _____

Roger W. Briggs

Executive Officer

Date signed _____