

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO.
R2-2008-0064**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2008-0064 (Agreement) is made and entered into effective October 8, 2009 by and between the California Department of Transportation (Caltrans) and the Assistant Executive Officer and the Prosecution Team (Prosecution Team) of the Regional Water Quality Control Board, San Francisco Bay Region (Water Board) (collectively, the Parties) with reference to the following facts:

RECITALS:

- A. On or about September 19, 2008, the Water Board issued Administrative Civil Liability Complaint No. R2-2008-0064 (Complaint) against Caltrans alleging Caltrans violated its Statewide Permit and the Basin Plan by discharging 155,000 gallons of raw sewage and 18,000 gallons of sediment-laden water to the Guadalupe River. These are violations of the California Water Code (“CWC”) for which the Water Board may impose administrative civil liability against Caltrans pursuant to sections 13385(a)(2) and (4). The authority and process for imposing civil liability are set forth in CWC section 13323. The Assistant Executive Officer proposes civil liability be imposed on Caltrans in the amount of \$248,000 for the violations cited above.
- B. Caltrans denies and disputes the following allegations in the Complaint:
- 1) The Water Board’s allegations and characterization of what occurred at the emergency project site, including but not limited to:
 - i. Whether the emergency nature of the project required engineering plans, specifications, or local permits.
 - ii. Whether it was reasonable for Caltrans’ contractor to rely on representations of USA (Underground Service Alert) PG&E and the City of San Jose that there were no underground utilities within the areas of planned excavations.
 - iii. Whether information was available to Caltrans and should have been provided to its contractor, such that if used could have avoided the discharge.
 - iv. Whether appropriate industry standards of care were observed during work that ruptured the sewer.
 - v. Whether existing maps and plans were available but not used and/or provided to Caltrans contractor, and whether such would have resulted in the avoidance of the sewer line.
 - 2) The Water Board’s allegations and characterization of what Caltrans did in response to the discharge, including but not limited to:
 - i. Whether it was reasonable to believe that the unknown underground obstruction encountered was an abandoned sewer line.


- ii. Whether the initial flow rate emanating from the breached pipe was abnormal, and whether an unreasonable period of time elapsed before discovery that the pipe was a functioning gravity-fed sewer line.
 - iii. Whether Caltrans notified appropriate agencies of both the sewer discharge and the sediment discharge in a timely fashion.
 - iv. Whether the initial spill report was timely and adequately addressed the discharge.
 - v. Whether sampling and analytical reports were adequate.
- 3) The propriety of the Water Board's proposed civil liability of \$248,000, including but not limited to the Water Board's assessment of:
 - i. The nature, circumstances, extent, and gravity of the violation.
 - ii. Whether the discharge is susceptible to cleanup or abatement.
 - iii. The degree of toxicity of the discharge.
 - iv. Discharger's the ability to pay and the effect on ability to continue in business.
 - v. The value of voluntary cleanup efforts undertaken.
 - vi. The prior history of alleged violations.
 - vii. The degree of culpability.
 - viii. The economic benefit or savings, if any, resulting from the violation.
 - ix. Other such matters as justice may require.
- C. Caltrans enters into this Agreement without the admission of any fact or the adjudication of any issue in this matter, and by entering in this Agreement, Caltrans is not admitting to liability for any of the alleged violations.
- D. The Parties, through their respective representatives, have reached a settlement agreement that includes the issuance of an Administrative Civil Liability Order. This Agreement is a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint, or which could have been asserted by the Water Board based on the specific facts alleged in the Complaint, against Caltrans and its contractors, successors, assigns, and its officers, directors, employees, representative agents, and attorneys, as of the date the Water Board, or its delegee, issues an order approving the Agreement. The provisions of this paragraph are expressly conditioned on Caltrans' full satisfaction of all the obligations of the Agreement.
- E. The general terms of the proposed settlement are that Caltrans will pay, in exchange for a full and final release of the claims described in Paragraph A above, an administrative civil liability of **one hundred fifty thousand dollars [\$150,000.00]**, which shall be paid as set forth below. The Parties also executed a separate Memorandum of Understanding on October 8, 2009.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:


1. The Parties agree to support, advocate for, and promote the Agreement described above and the subsequent proposed Order adopting the Agreement.
2. The Parties covenant and agree that they will not contest the proposed Order before the Water Board, the State Water Resources Control Board, or any court.
3. The Parties understand that the obligations under the Agreement and the Memorandum of Understanding are effective only upon adoption by the Water Board or incorporation by reference into a Water Board order.
4. The aforementioned \$150,000.00 administrative civil liability shall be paid to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within thirty (30) days after the subsequent Order adopting this Agreement.
5. Performance of Paragraph 3 shall effect a mutual release and discharge of the Parties and their respective contractors, successors, assigns, and its officers, directors, employees, representative agents, and attorneys, from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Order or the Complaint.
6. 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.
7. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty or ambiguity shall not be interpreted against any one party.
8. This Agreement shall not be modified by any of the Parties by oral representations made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.
9. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

PROSECUTION TEAM

By: 
Thomas Mumley
Assistant Executive Officer

APPROVED AS TO FORM:


Mayumi E. Okamoto
Counsel to the Prosecution Team

**CALIFORNIA DEPARTMENT
OF TRANSPORTATION**

By: 
Bijan Sartipi
District Director, District 4

APPROVED AS TO FORM:


Derek D. Wong
Deputy Attorney
Department of Transportation