

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

ACL COMPLAINT NO. R3-2003-0078

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF
CALIFORNIA DEPARTMENT OF TRANSPORTATION
HIGHWAY 101/156 INTERCHANGE
PRUNEDALE
MONTEREY COUNTY

ISSUED TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION – DISTRICT 5
YOU ARE HEREBY GIVEN NOTICE THAT:

1. The California Department of Transportation (hereafter Discharger or Caltrans) is alleged to have violated provisions of law, and provisions of an order of the State Water Resource Control Board (State Board), for which the Regional Water Quality Control Board (Regional Board) may impose civil liability pursuant to Section 13385 of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board on September 12, 2003, in Salinas, California. The Discharger and/or its authorized representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. An agenda will be mailed to you separately, not less than ten days before the hearing date. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

REGULATORY AND PERMIT REQUIREMENTS

4. The Discharger owns the property located at the Highway 101 and Route 156 interchange in Prunedale, Monterey County (site). The Discharger is constructing an interchange between Highway 101 and Highway 156 in the town of Prunedale. The project is subject to Regional Board regulation under conditions specified in waste discharge requirements specified by State Water Resources Control Board Order No. 99-06-DWQ. 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 (hereinafter referred to as the Caltrans Permit).
5. On January 26, 2001, the California Department of Transportation filed a Notice of Construction for the "101/156 Interchange", Expenditure Account (EA) Number 0161U, for permit coverage pursuant to the Caltrans Permit. Included in the Caltrans Permit are the following discharge prohibitions and requirements:
 - a. "...The discharge of runoff from Caltrans owned rights-of-way or Caltrans properties, facilities, and activities to waters of the United States which have not been reduced to the MEP (Maximum Extent Practicable) is prohibited. The discharge of runoff from

construction sites containing pollutants which have not been reduced using BAT (Best Available Technology) for toxic pollutants and BCT (Best Conventional Technology) for conventional pollutants to waters of the United States is prohibited.” (Section A.1.)

- b. “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.” (Section A.2.)
- c. “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.” (Section A.3.)
- d. “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.” (Section A.6.)
- e. “A site specific SWPPP (Storm Water Pollution Prevention Plan) shall be developed and implemented for each construction project... The SWPPP shall contain a BMP program that meets the performance standards of BAT/BCT. ... The SWPPP shall contain all of the elements required by the Construction General Permit. Caltrans is responsible for having an effective SWPPP at all times and for implementing the SWPPP at an appropriate level through the entire year.” (Section H.8.b.) RWQCBs (Regional Water Quality Control Boards) may enforce provisions of SWPPPs. (Section D.2.)
- f. “The resident engineer shall approve the SWPPP prior to construction and ensure that the SWPPP is effectively implemented. The SWPPP shall contain all of the elements required by the Construction General Permit. Caltrans is responsible for having an effective SWPPP at all times and for implementing the SWPPP at an appropriate level through the entire year.” (Section H.8.b.)
- g. “In order to meet the federal requirements contained in the CWA and the corresponding regulations contained in the 40 CFR 122.26, Caltrans shall: Maintain and implement an effective SWMP... For the Construction Management Program, the SWMP shall identify and describe BMPs used to control or reduce pollutants to waters of the United States that meet BAT/BCT... The SWMP shall reflect the principles that storm water management is to be a year-round proactive program to eliminate or control pollutants at their source or to reduce them from the discharge by either structural or nonstructural means when elimination at the source is not possible.” (Section E.1.) “Caltrans shall implement the program specified in the SWMP.” (Section H.)
- h. “The Construction Management Program shall be in compliance with requirements of the NPDES General Permit for Construction Activities (General Permit) not including NOI filing.” (Section H. 2.) The current General Permit is SWRCB Board Order 99-08-DWQ.

6. State Water Resources Control Board Order No. 99-08-DWQ establishes the National Pollutant Discharge Elimination System permit for storm water discharges associated with construction activity (hereinafter referred to as the General Permit). Included in the General Permit are the following requirements:
 - a. "All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard." (Provision C.2., General Permit)
 - b. "At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season. These disturbed areas include rough graded roadways, slopes, and building pads. Until permanent vegetation is established, soil cover is the most cost-effective and expeditious method to protect soil particles from detachment and transport by rainfall. Temporary soil stabilization can be the single-most important factor in reducing erosion at construction sites. The discharger shall consider measures such as: covering with mulch, temporary seeding, soil stabilizers, binders, fiber rolls or blankets, temporary vegetation, permanent seeding, and a variety of other measures." (Section A.6., General Permit)
 - c. "During the non-rainy season, the discharger is responsible for ensuring that adequate sediment control materials are available to control sediment discharges at the downgrade perimeter and operational inlets in the event of a predicted storm." (Section A.8., General Permit)
 - d. If the discharger chooses to rely on sediment basins for treatment purposes, sediment basins shall, at a minimum, be designed and maintained as follows: (four Options are described in detail in the General Permit but omitted here for brevity)...A sediment basin shall have a means for dewatering within 7-calendar days following a storm event. Sediment basins may be fenced if safety (worker or public) is a concern. (Section A.8, General Permit).
7. Caltrans Permit Section H states, "Caltrans shall implement the program specified in the SWMP." The Caltrans April 2002 Statewide Storm Water Management Plan (SWMP) identifies how the Discharger will comply with the provisions of the Caltrans Permit. The SWMP includes the following requirements and guidelines:
 - a. "Storm water pollution control requirements are intended to be implemented on a year-round basis at an appropriate level...Appropriate water pollution control includes the implementation of an effective combination of both erosion and sediment controls." (Section 4.3, lines 26 - 33)
 - b. The rainy season in Northern and Central California Area is from October 15 through April 15. (Appendix C, Figure C-1)
 - c. "Desilting Basin - Sediment-laden runoff is directed to a designed temporary basin that allows sediment to settle out before the runoff is discharged...To address the SWRCB (State Water Resources Control Board) and RWQCB's (Regional Water Quality Control

Board) concerns with the use of these basin, the Department will not use desilting basins as stand-alone systems and will only allow the basin to receive runoff from disturbed areas of the site.” (Appendix B)

- d. “Sediment Basin – A sediment basin is a temporary designed basin sized in accordance with specifications of the General Permit...The General Permit establishes minimum design criteria for these basins, and the Department will use these criteria at construction sites where sediment basins are the only control measures proposed from the site.” (Appendix B)
 - e. “Dewatering Operations - ...the discharge of accumulated precipitation (storm water) to a water body or storm drain is subject to the requirements of Caltrans NPDES permit...Sediment control and other appropriate BMPs must be employed when this water is discharged.” (Appendix B)
8. The Discharger wrote a site-specific Storm Water Pollution Prevention Plan (SWPPP) as required by the Caltrans Permit (refer to paragraphs 5.e of this Complaint). The SWPPP (Revision 2) requires that the project will implement “effective temporary and final soil stabilization during construction” (also known as erosion control BMPs). The type of soil stabilization required by the site’s SWPPP is a choice of hydroseeding, straw mulch, and/or soil binders for all “non-active” disturbed soil, and dewatering BMPs in areas of standing water.
 9. “Pollution” is defined by CWC Section 13050(l)(1) as, “an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses; (B) Facilities which serve these beneficial uses.”
 10. Runoff from the site flows to an unnamed stream, locally referred to as Prunedale Creek. Prunedale Creek flows to Tembledaro Slough, which flows to the Old Salinas River, then to Monterey Bay. These water bodies are Waters of the State and Waters of the United States. Tembledaro Slough and all unnamed surface water bodies (including tributaries), have beneficial uses assigned to them, as listed in Table 2 -1 of the Water Quality Control Plan, Central Coast Region (Basin Plan).
 11. Prunedale Creek is not listed as a surface water body in the Basin Plan. Surface water bodies within the Region that do not have beneficial uses designated for them in Table 2-1 of the Basin Plan are assigned the following designations: Municipal and Domestic Water Supply (MUN), and protection of both recreation and aquatic life.
 12. The beneficial uses of the Tembledaro Slough are listed in the Basin Plan Table 2-1 and include: water contact recreation (REC-1); non-contact water recreation (REC-2); Warm Fresh Water Habitat (WARM); wildlife habitat (WILD); spawning, reproduction, and development (SPWN); rare, threatened, and endangered species (RARE); commercial and sportfishing (COMM); shellfish harvesting (SHELL); and Estuarine Habitat (EST). Storm water discharges from the project contain sediments. Increases in sediment can create conditions that potentially 1) result in increased treatment costs for downstream water suppliers that depend upon the river for their supply (MUN); 2) discourage the public from using the water for contact recreation (REC-1); 3) affect aesthetic enjoyment of the river (REC-2); 4) impact stream invertebrate habitat through the deposition of silts (WARM, EST), which are a food source for fish and

other higher aquatic organisms (WILD, EST); 5) kill fish eggs or have other adverse effects on aquatic life development (SPWN, EST); and 6) impact sportfishing and shell fish harvesting opportunities (COMM, SHELL).

The discharges of sediment from the project to surface waters may adversely affect the above beneficial uses and cause or threaten to cause pollution.

SITE DESCRIPTION

13. The triangular shaped site is approximately 29 acres, and is bordered by Highway 101 on the east, Highway 101-Route 156 westbound connector on the north, and Highway 101-Route 156 eastbound connector on the south (Figure 1). An unnamed stream, locally referred to as Prunedale Creek, flows from the northeast portion of the site through a culvert beneath the property, and exits near the south-central section of the site (Figure 1). Storm water runoff from surrounding roads is directed into the site. All of the runoff exiting the site enters Prunedale Creek at the downstream site-border. Prunedale Creek flows to Tembledaro slough.
14. The site is graded into four interconnected basins. The upper basin contains a storm drain inlet that was not connected to the storm drain system at the time of this investigation. Prunedale Creek culvert underlies the upper basin. The central basin (Figure 1) receives runoff from the upper basin, site parking-area, and surrounding roads. Runoff from the central basin flows to the lower basin along with adjacent roadway water. The lower basin contains the only functioning storm drain inlet for the site at the time of the investigation. This storm drain inlet flows under Highway 156 and into a temporary basin formed by a line of straw bales. The temporary basin receives all water flowing from the site, as well as additional adjacent road water.

ALLEGATIONS

15. Regional Board staff reviewed the site's SWPPP in the spring of 2002, and again in December, 2002. The SWPPP (Revision 2) requires that the project will implement "effective temporary and final soil stabilization during construction" (also known as erosion control BMPs). The type of soil stabilization required by the site's SWPPP is a choice of hydroseeding, straw mulch, and/or soil binders for all "non-active" disturbed soil, and dewatering BMPs in areas of standing water.
16. On September 30, 2002, Regional Board staff inspected the site. At the time of the inspection, there were approximately 20 acres of site disturbance. No erosion controls were in place or on site. The Resident Engineer elected not to install erosion control BMP's in preparation for the rainy season (October 15), which violates the Discharger's SWPPP (refer to Paragraph 8 of this Complaint), the Caltrans Permit (refer to Paragraphs 5.e, 5.h, and 6.b of this Complaint) and the Caltrans SWMP (refer to Paragraphs 7.a of this Complaint).
17. Regional Board staff discussed with the Caltrans Resident Engineer at the site, the requirement that sediment and erosion controls are in place during the rainy season (refer to Paragraphs 5.e, 5.h, 6.b. and 8 of this Complaint). On October 17, 2002, the Regional Board sent the

Discharger a letter, which reminded the Discharger that erosion controls are required at construction sites.

18. On November 8, 2002, sediment discharge to Prunedale Creek occurred when construction crews were instructed to cut a hole in the Prunedale Creek culvert to allow surface water from the site to drain to the creek. Storm water falling directly onto the site, and runoff from adjacent roadways flowed across approximately four acres of unprotected, open-graded slopes. This runoff water contained significant amounts of sediment because there was no erosion control on the site's slopes. The site conditions on November 8, 2002 included several violations, summarized as follows:
 - a. Storm water runoff was draining from unprotected slopes. The lack of erosion and sediment control is a violation of the Caltrans Permit (refer to Paragraph 5.f, 5.g., 5.h., 6.a and 6.b. of this Complaint).
 - b. Cutting a hole in Prunedale Creek culvert to drain storm water from the site is not a Caltrans approved dewatering method because it lacks any BMPs (meeting Best Conventional Technology (BCT), or otherwise) to reduce pollutant discharge to the maximum Extent Practicable (MEP), and violates the SWMP (refer to Paragraph 7.e of this Complaint), and violates the Caltrans Permit (refer to Paragraph 5.a., and 6.d. of this Complaint).
 - c. Allowing sediment-laden storm water discharge into Prunedale Creek, a Water of the State, violates the Caltrans Permit (refer to Paragraphs 5.a 5.b, and 5.d. of this Complaint).
19. On December 13, 2002, a straw bale was placed over the cut hole in the Prunedale Creek culvert as a means of filtering the water; however, this means of filtration was only marginally effective, due to the very fine nature of the sediment (silt and clay, particle size 0.074 mm) in the storm water. The hole in the culvert was subsequently repaired and the culvert reburied by December 23, 2002 (Regional Board staff does not know the exact repair date). Using a straw bale as a filter for sediment-laden water draining into Waters of the State is not considered BCT (Best Conventional Technology) because the suspended sediment grain sizes of 0.074mm or less (silt-clay size range) cannot be filtered out by a straw bale; the straw bale has visible spaces between the strands of straw which are exceedingly larger than the silt-clay sediment size, and violates the Caltrans Permit (refer to Paragraphs 5.a., 5.b, 5.d., and 5.g. of this Complaint).
20. The site's Resident Engineer depended upon the site's natural topographic features for use as a sediment basin or desilting basin. The intent was to contain storm water, and settle sediment prior to discharging storm water to Prunedale Creek. No calculations were made to determine the detention time or volume of water that could be detained at one time in the natural basin. The flaw in the plan (using natural basins to settle sediments), is that the detention time, basin shape, and basin outflow design are crucial to determining whether sediment will have sufficient time to settle out of the water before the water is released; basin shape and outflow design determine whether sediment will be re-suspended and carried out with out-flowing water. Utilizing non-engineered basins as the primary sediment control BMP violates the SWMP (refer to Paragraph 7.c, and 7.d of this Complaint), and violates the Caltrans Permit (refer to Paragraphs 5.h and 6.d of this Complaint).

21. From October 15, 2002 (official start of the rainy season), through December 12, 2002, no erosion control measures were deployed on the approximately twenty (20) acres of graded surfaces as required by the site's SWPPP and the Caltrans SWMP. During a rainstorm on December 13, 2002, "emergency" erosion control measures (visqueen plastic covering the slopes) were applied to the slopes to curb ongoing erosion during the storm. Plastic was applied to the site's steepest slopes, but much of the site remained exposed. The lack of erosion control prior to the rainy season, use of emergency plastic sheeting, and failure to implement the SWPPP violates the Caltrans Permit (refer to Paragraph 5.e., 5.f., and 5.g., 5.h., and 6.b. of this Complaint), and Caltrans SWMP (refer to Paragraph 7.a and 7.b of this Complaint), and the site's SWPPP (refer to Paragraph 8 of this Complaint).
22. On December 16, 2002, a strong storm was predicted, and materialized, in the California central coast region. On December 19, 2002, Regional Board staff inspected Highway 101/156 interchange during a heavy rain storm, and found the following conditions at the site:
 - a. Plastic sheeting had been placed only on the site's steepest slopes (see Paragraph 21, above). Erosion control was lacking over much of the sites' open-graded slopes and all of the basin bottoms prior to the beginning of the storm. Because the site lacked adequate erosion control BMPs, significant erosion continued to occur from unprotected areas, and areas receiving concentrated flow. Failure to implement soil stabilization, as required by the SWPPP (refer to Paragraph 8 of this Complaint), is a violation of the Caltrans Permit (refer to Paragraph 5.f., 5.g, 5.h., 6.a and 6.b of this Complaint), and violates the Caltrans SWMP (refer to Paragraph 7.a and 7.b.).
 - b. The site's basins contained significant amounts of very turbid storm water from this and previous storms. In addition to storm water from the site, storm water from surrounding roadways was directed to the basins, violating the Caltrans SWMP (refer to Paragraph 7.C of this Complaint).
 - c. The site's sediment and erosion control best management practices were overwhelmed; turbid, sediment-laden storm water filled the sites' basins, and overtopped most straw bale check dams within the basins. The straw bale check dams were intended to catch and filter water, but were inadequately sized to contain or filter expected runoff. Consequently, unfiltered, sediment-laden water exited the basin and entered a storm drain inlet, and discharged to Prunedale Creek via overland flow in multiple locations. Turbid discharge violates the Caltrans Permit (refer to Paragraph 5.a, and 5.d. of this Complaint).
23. During the rainy December 19, 2002 inspection, Regional Board staff observed ineffective efforts to clean up the discharge of sediment, or to minimize sediment discharges from the temporary basin, violating the Caltrans Permit (refer to Paragraph 5.a, 5.g., 5.h., and 6.a. of this Complaint), and violates the Caltrans SWMP (refer to Paragraph 7.a and 7.b.).
24. The Discharger claims in a January 9, 2003 letter to the Regional Board, that additional BMPs to contain and filter storm water (Baker tanks), and erosion control were installed across the site by December 29-30th. Regional Board staff conducted a site investigation on January 24, 2003, and found that the Baker tanks were unable to remove much of the sediment from the site's storm water; sediment-laden water continued to discharge from the site at that time. Caltrans employees indicated that they knew the Baker tanks had been, and still were ineffective at

removing sediment from discharging water, and that they were working with vendors to improve the system. Regional Board staff understood from conversations with Caltrans' staff, and from observing the layout of the dewatering system, that turbid storm water discharged continuously from the site between the observed discharge dates of December 19, 2002 through January 24, 2003 (40 days). Turbid discharge into Prunedale Creek violates the Caltrans Permit (refer to Paragraph 5.a and 5.d. of this Complaint) because there was no effective filtration system during that time. The actual days of discharge is likely greater, because a successful filtration system was not installed until after January 24, 2004.

25. The California Department of Fish and Game granted permission to manually remove the sediment deposited within the creek. The sediment was reportedly removed by January 15, 2003 (Caltrans January 9, 2003 letter to Regional Board).
26. Caltrans violated the Caltrans Permit continuously for a period of one hundred seventeen (117) days from September 30, 2002 through January 24, 2003. Liability is alleged in this Complaint based on one violation per day regardless of the number of violations per day.

PROPOSED CIVIL LIABILITY

27. Administrative Civil Liability may be assessed under Water Code section 13385 for violation of waste discharge requirements that are NPDES Permits. The Caltrans Permit is an NPDES Permit. Water Code Section 13385(c) states that,

"Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 ... of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation 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."

In this matter, the maximum civil liability is \$1,170,000 under Section 13385 for one hundred seventeen (117) days of violations.

28. When imposing civil liability, California Water Code (CWC) Section 13385, subdivision (e) requires the Regional Board to consider the nature, circumstance, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. California Water Code section 13385 also requires the Regional Board to consider the violator's ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts, any prior history of violations, the degree of culpability, economic benefit or savings, and other matters as justice may require. At a minimum, the Regional Board must assess liability at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Executive Officer of the Regional Board considered the following factors set out in Section 13385(e) of the CWC in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

The violations included the Discharger's continuous failure to comply with the requirements of the Caltrans Permit, before and during most of the rainy season of 2002-2003 by failing to implement timely, adequate BMPs required by the site's SWPPP and the Discharger's SWMP. Failure to implement a SWPPP is defined as a "priority violation" in the State Water Resources Control Board Water Quality Enforcement Policy, February 19, 2002. This failure caused repeated discharges of sediment to Waters of the United States. Sediment discharges were so extensive that they threatened the beneficial uses of Prunedale Creek and Tembladero Slough. The nature, circumstances, extent and gravity of the violations is described in Paragraphs 15 through 24 of this Complaint.

Despite the fact that violations continued over a long period of time, and there were multiple sediment-laden storm water discharges to Waters of the United States in violation of the Caltrans Permit, these violations were not as severe as the full range of violations that are covered by the maximum liability provided in Water Code Section 13385.

Consideration of this factor supports liability that is less than maximum.

- b. Whether the discharge is susceptible to cleanup or abatement;

Pollutants released in storm water runoff are impossible to cleanup completely, due to the mobility of the medium (storm water). The Discharger removed some of the sediment from Prunedale Creek, however the Discharger could only realistically remove sediment pollution that was deposited in concentrated amounts, and was located near the site boundary. Some of the suspended sediment was carried downstream and never cleaned up by the Discharger.

Because only a portion of the discharge can be cleaned up, consideration of this factor does not support liability that is less than maximum.

- c. Toxicity of the Discharge

There is no evidence that any toxic constituents were discharged with the sediment, however sediment itself can smother aquatic species, thus producing a toxic effect.

Consideration of this factor supports liability that is less than maximum.

- d. Ability to pay and continue in business;

The Discharger has not provided financial data to the Regional Board to show inability to pay. Discharger is a state agency and so ability to continue in business is not a factor.

Consideration of this factor does not affect assessment of liability in this case.

- e. Any voluntary clean up efforts undertaken by the violator;

On or about January 15, 2003, the Discharger manually removed sediment deposited into Prunedale Creek, as approved by the California Department of Fish and Game. The Discharger voluntarily cleaned up the sediment; however California Department of Fish and Game personnel verified that they would have ordered the cleanup had the Discharger not performed it.

Discharger voluntarily cleaned what sediment it could but failed to take adequate actions to prevent the continued discharges throughout most of the rainy season.

Consideration of this factor does not support liability that is less than maximum.

- f. Prior History of Violations;

There is no history of other violations by Caltrans in Region 3. Caltrans has committed similar violations in other Regions as follows:

The Discharger received Cleanup and Abatement Order R9-2003-0230 for discharging sediment, gravel, and sediment-laden water to waters of the state, and for failing to implement effective sediment and erosion control BMPs.

The Discharger received Administrative Civil Liability R6T-2002-0026 for violating Permit Sections A.2, A.3, and A.4. The ACL alleged the Discharger had not installed erosion control, had failed to maintain sediment control BMPs which created a threatened discharge within the floodplain of the Truckee River.

The Discharger received an Administrative Civil Liability R6T-2002-0018 for violating Permit Sections A.2, A.3, and A.4. The ACL alleged the Discharger inadvertently allowed sediment-laden storm water to be pumped from a Baker tank to the Truckee River.

Because Discharger has no previous violations in Region 3, consideration of this factor supports liability that is less than maximum.

- g. Degree of culpability;

As the permitted party for the Highway 101/156 Interchange, the Discharger is responsible for the actions of its employees, and its contractors. Caltrans is responsible for compliance with all provisions of the Caltrans Permit.

Caltrans has a very high level of culpability in this case. Only a few weeks before the rainy season, the Discharger had not implemented erosion control BMPs. The Discharger failed to install erosion control measures until after the site began eroding, and late into the rainy season. Caltrans failed to take necessary erosion and sediment control measures, and then intentionally initiated a sediment-laden storm water discharge into Prunedale Creek by cutting a hole in the culvert containing the creek. Caltrans' violations were intentional because Caltrans had ample and repeated warnings and requests to

comply from Regional Board staff. Caltrans has been notified of these violations at this site, and of equivalent violations at a nearby Caltrans construction site on Prunedale Creek. Notices are as follows:

- i. Regional Board October 17, 2002 letter described the need for erosion control and increased sediment controls at this site, per Caltrans Permit requirements.*
- ii. Regional Board staff sent nine (9) letters to the Discharger for violations at a nearby Caltrans Region 5 site also located on Prunedale Creek. The letters informed the Discharger of multiple, ongoing violations including sediment discharge to storm drains, and to Prunedale Creek, insufficient or no erosion and sediment control, placement of fine material in areas receiving storm water runoff (causing or threatening to cause pollution), and a letter requesting mitigation for Caltrans Permit violations. Letters describing non-compliance issues were sent by the Regional Board to the Discharger on December 15, 2000, February 7, 2001, September 20, 2001, November 2, 2001, November 30, 2001, January 29, 2002, February 28, 2002, and October 17, 2002. On April 10, 2002, the Regional Board sent a Request for Mitigation letter to the Discharger following Caltrans Permit violations at this nearby site. The Discharger did voluntarily comply with the mitigation request and conducted acceptable mitigation work.*

Consideration of this factor supports maximum liability.

- h. Economic savings resulting from the violation;*

Section 13385 of the California Water Code states, in part, "(e)... 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."

The Discharger gained an economic benefit by delaying spending time on erosion control BMP installation prior to the discharge, and delaying spending money for a full suite of BMPs needed to filter sediment-laden storm water discharge at the onset of the discharge to Prunedale Creek. However staff does not have adequate information to prove the exact amount of savings due to delayed implementation of BMPs. Because the amount of proposed liability is \$940 per day (\$110,000 for 117 days of violation), it is unlikely that economic benefits or savings, measured as interest that could be earned during delays, are greater than \$940 per day.

- i. Other matters as justice may require.*

Regional Board staff have spent time responding to the incident and preparing the administrative civil liability. Estimated staff costs for preparation of this complaint, including technical, legal, and administrative costs, are \$10,000. Staff considered the guidelines established in the State Water Resources Control Board Water Quality Enforcement Policy, February 19, 2002, when determining the penalty amounts discussed in this ACL.

29. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14 of the California Code of Regulations.

PROPOSED CIVIL LIABILITY

30. The maximum potential administrative civil liability that may be imposed is **\$1,170,000** (one million one hundred seventy thousand dollars). The Executive Officer of the Regional Board considered the above factors and proposes that administrative civil liability be imposed by the Regional Board in the amount of **\$110,000** (one hundred ten thousand dollars), pursuant to Section 13385 of the Water Code.

RW Madley E. Hageman
Roger W. Briggs, Executive Officer

8/7/03
Date

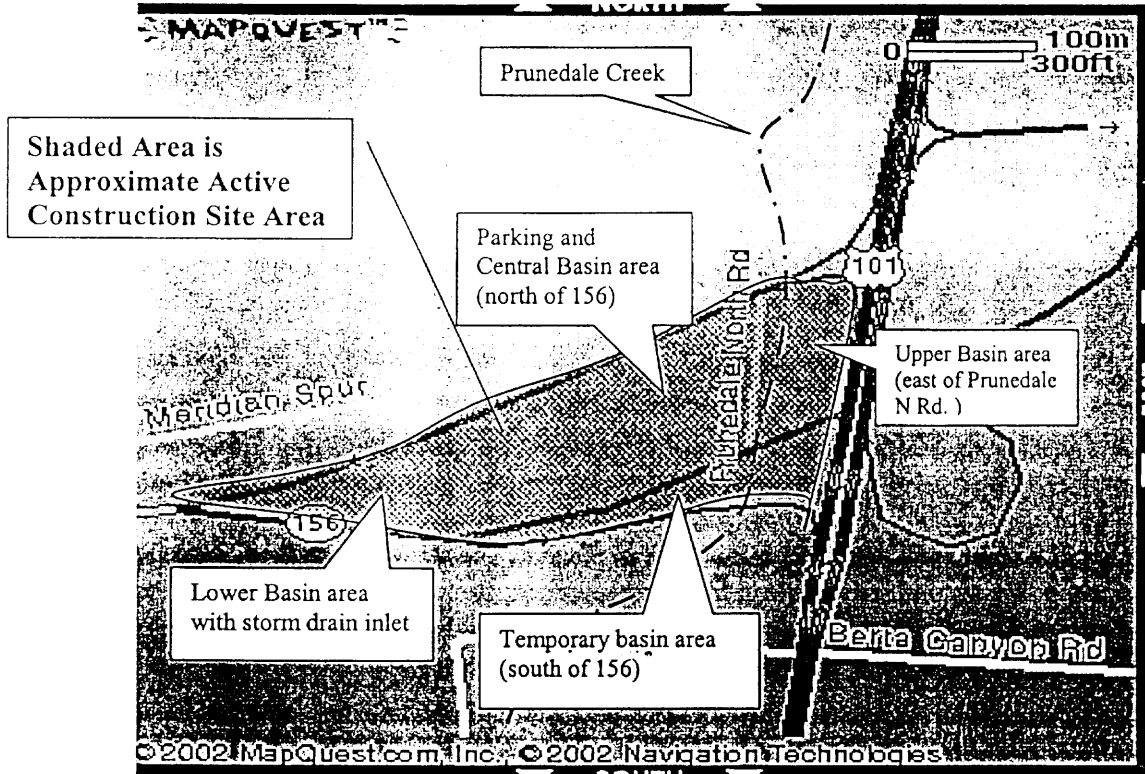


Figure 1 – Site Map showing basins