

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

**PROPOSED NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R1-2012-0112**

ISSUED TO
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

SCHEDULED FOR JANUARY 24, 2013

Overview

On November 5, 2012, the Assistant Executive Officer of the North Coast Regional Water Quality Control Board (Regional Water Board) issued Administrative Civil Liability (ACL) Complaint No. R1-2012-0112 pursuant to California Water Code (Water Code) section 13323 to the California Department of Transportation (Caltrans) and Ghilotti Construction Company, Inc. (GCC) (Contractor) (collectively hereinafter Dischargers). The Complaint alleges failure to submit required reports and unauthorized activities and discharges to Copeland Creek and the Laguna de Santa Rosa on June 28 and 29, 2011 that violated Clean Water Act section 401, the Discharger's Water Quality Certification, and the Caltrans Storm Water Permit.

The Complaint proposes that the Regional Water Board impose administrative civil liability in the amount of \$5,565,860 pursuant to Water Code section 13385. Unless the Dischargers pay the proposed liability, a hearing will be held before the Regional Water Board during its **January 24, 2013** meeting.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Water Board will consider whether to adopt, modify, or reject the proposed assessment, or whether to postpone the matter to a future Board meeting.

The public hearing will be held on **January 24, 2013** and will commence no earlier than 8:30 a.m. or at a time as soon thereafter as practical. The meeting will be held at the North Coast Regional Board office located at

5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Water Board's web page at:

www.waterboards.ca.gov/northcoast.

Hearing Participation

Participants in this proceeding are designated as either “Designated Parties” or “Interested Persons.” Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Regional Water Board, staff or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

- Regional Water Board Prosecution Team
- California Department of Transportation
- Ghilotti Construction Company

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party, and not already listed above, shall request Designated Party status by submitting a request in writing (with copies to the Designated Parties) no later than 5:00 p.m. on **November 13, 2012**, to Samantha Olson and David Rice, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812. The request shall include an explanation of the basis for status as a Designated Party (*e.g.*, how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person) and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. Any opposition to the request must be submitted by 5:00 p.m. on **November 19, 2012**. The parties will be notified by 5:00 p.m. on **November 26, 2012**, as to whether the request has been granted or denied.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Water Board (Advisory Team) prior to and during the hearing. Members of the Advisory Team are: Samantha Olson, Senior Staff Counsel; David Rice, Staff Counsel; and Matthias St. John, Executive Officer. Members of the Prosecution Team are: Julie Macedo, Senior Staff Counsel; Vanessa Young, Staff Counsel; David Leland, Supervising Water Resource Control Engineer; Mona Dougherty, Senior Water Resource Control Engineer; and Melissa Hall, Senior Water Resource Control Engineer.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Other members of the Prosecution Team may act or have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. The Prosecution Team is subject to all applicable rules and regulations as any other party to this proceeding, including the prohibition on *ex parte* communications.

All submittals and communications to the Advisory Team shall be sent to:

Matthias St. John
Executive Officer
Regional Water Quality Control Board,
North Coast Region
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
mstjohn@waterboards.ca.gov

Samantha Olson, Senior Staff Counsel
David Rice, Staff Counsel
State Water Resource Control Board,
Office of Chief Counsel
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
(916) 327-8235 [Samantha Olson]
solson@waterboards.ca.gov
(916) 341-5182 [David Rice]
drrice@waterboards.ca.gov

Any substantive communication to the Advisory Team must also be sent to the parties listed below.

Ex Parte Communications

The Designated Parties and Interested Persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a Designated Party or Interested Party on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the Designated Parties and Interested Persons themselves are not *ex parte* contacts.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Regional Water Board may be found at Title 23 of the California Code of Regulations, § 648 *et seq.*, and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

**THIS NOTICE MAY BE AMENDED BY THE ADVISORY TEAM AS NECESSARY.
FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN
MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

Any objections to the procedure set forth in this Notice must be submitted to Samantha Olson or David Rice at the address indicated above by **November 13, 2012**.

Designated Parties**Prosecution Team**

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Caltrans

Robert Finney
 Deputy District Director – Construction
 California Department of Transportation,
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 111 Grand Avenue [94612]
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Ghilotti

Richard Ghilotti, Owner/President
Ghilotti Construction Company
246 Ghilotti Avenue
Santa Rosa, CA 95707

Sean K. Hungerford
Harrison Temblador Hungerford & Johnson
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Sacramento, CA 95814
(916) 382-4377
shungerford@hthjilaw.com

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have 60 minutes to testify, present evidence, and cross-examine witnesses, and 5 minutes for closing statements, and each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument require extra time, and why it could not have been provided in writing by the applicable deadline.

Written Evidence, Exhibits, and Policy Statements

Designated Parties shall submit in writing one paper copy and an electronic file (*e.g.*, pdf via email or CD) of the following information to Samantha Olson and David Rice, at the above listed address and 9 paper copies and an electronic file to Matthias St. John, Executive Officer, at the above listed addresses, no later than 5:00 p.m. on **December 14, 2012** as described herein:

1. All documentary evidence and exhibits proposed to be offered at the hearing.
2. All legal and technical arguments or analysis.
3. The name of each fact and/or expert witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. Alternatively, the testimony of any witness may be presented by declaration, so long as that witness will be available for cross-examination at the hearing. *Include the qualifications of any expert witness.*

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under item 3 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Regional Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit

this rebuttal information so that it is received by the deadline listed under “Important Deadlines” below. “Rebuttal” means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under “Important Deadlines” to be included in the Board’s agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

For every evidentiary deadline, each Designated Party shall send one electronic copy of the above materials to each of the other Designated Parties at the address or addresses provided above by 5:00 p.m. on the deadline described above.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the North Coast Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team and all Designated Parties by 5:00 p.m. on **January 22, 2013** for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-Hearing Conference

A Designated Party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other Designated Parties, as early as practicable.

Evidentiary Objections

A Designated Party objecting to evidence proposed by another party must submit a written objection by 5:00 p.m. on **December 21, 2012**, to Samantha Olson and David Rice, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, and in electronic format to solson@waterboards.ca.gov and drrice@waterboards.ca.gov and a copy to all other Designated Parties. The Advisory Team will notify the parties about further action to be taken on such objections.

Questions

Questions concerning this proceeding may be addressed to Samantha Olson and David Rice, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812; tel. (916) 327-8235 and (916) 341-5182, respectively, or by electronic mail, as indicated above.

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

November 5, 2012	<ul style="list-style-type: none"> • Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials
November 13, 2012	<ul style="list-style-type: none"> • Objections due on Hearing Procedure • Deadline to request Designated Party status
November 19, 2012	<ul style="list-style-type: none"> • Deadline to submit opposition to requests for Designated Party status
November 21, 2012	<ul style="list-style-type: none"> • Discharger's deadline to submit <i>90-Day Hearing Waiver Form</i>
November 26, 2012	<ul style="list-style-type: none"> • Advisory Team issues decision on Designated Party status requests • Advisory Team issues decision on Hearing Procedure objections
December 5, 2012	<ul style="list-style-type: none"> • Prosecution Team's deadline for submission of information required under "Written Evidence, Exhibits, and Policy Statements", above
December 14, 2012	<ul style="list-style-type: none"> • Remaining Designated Parties' (including Discharger's) deadline to submit information required under "Written Evidence, Exhibits, and Policy Statements", above. This includes all written comments regarding the ACL Complaint. • Interested Persons' deadline to submit comments
December 21, 2012	<ul style="list-style-type: none"> • Deadline for all Designated Parties to submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections • Deadline to submit requests for additional time • If rebuttal evidence is submitted, all requests for additional time to respond to the rebuttal at the hearing must be made within 3 working days of <i>this</i> deadline.
January 4, 2013	<ul style="list-style-type: none"> • Advisory Team issues decision(s) on evidentiary objections, if any.
January 22, 2013	<ul style="list-style-type: none"> • Designated Parties' deadline for submitting PowerPoint presentation files (2 days before hearing)
January 24, 2013	<ul style="list-style-type: none"> • Hearing