

1 DAVIS H. FORSYTHE
 2 BRADLEY R. O'BRIEN
 3 Trial Attorneys
 4 Environmental Enforcement Section
 5 Environment and Natural Resources Division
 6 United States Department of Justice
 7 601 D. Street, N.W.
 8 Washington, D.C. 20004
 9 Tel.: (202)616-6528
 10 Fax: (202)514-2583
 11 MA Bar No.: 667115
 12 Email: davis.forsythe@usdoj.gov
 13 brad.obrien@usdoj.gov
 14 Attorneys for Plaintiff the United States

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **OAKLAND DIVISION**

)	
THE UNITED STATES OF AMERICA,)	Civil Action No. 4-09-CV-00437-PJH
)	
Plaintiff,)	STIPULATED AGREEMENT AND
)	[PROPOSED] ORDER
v.)	REGARDING DEFENDANT'S
)	DEMAND FOR JURY TRIAL
THE CALIFORNIA DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendant.)	
)	

22 1. On February 2, 2011, the Court requested that the United States and the California
 23 Department of Transportation ("Caltrans") (jointly "Parties") seek to reach agreement as to
 24 which issues should be tried before a jury and which issues should be decided by the Court. In
 25 response to the Court's request, the Parties stipulate as described below. By entering into this
 26 stipulation and by including the below abbreviated description of the issues to be tried, the
 27 Parties do not admit facts or issues in dispute but rely upon their papers filed with the Court.

1 2. The Parties individually filed cross-motions for summary judgment that would
2 resolve significant outstanding issues and at a minimum would reduce the scope of the issues to
3 be discussed in pre-trial briefing and determined at trial scheduled to begin on May 2, 2011. The
4 Court held oral argument on these motions on February 2, 2011. As set forth in their motions,
5 the Parties believe that there is no dispute of material fact for the issues raised in their respective
6 motions and thereby continue to request that the Court rule on the Parties' cross-motions for
7 summary judgment.

8 3. To the extent issues are not resolved by the Parties' cross-motions for summary
9 judgment, the Parties propose that the following issues be determined by a jury:

- 10 a. Whether Caltrans breached the 1938 Agreement as alleged in the United
11 States' Complaint, and any defenses related thereto as alleged in Caltrans'
12 Answer to the United States' Complaint.
- 13 b. A determination of compensable damages incurred by the United States as
14 a result of any such breach by Caltrans.

15 4. To the extent issues are not resolved by the Parties' cross-motions for summary
16 judgment, the Parties propose that the following issues be determined by the Court:

- 17 a. The United States' request for declaratory relief, including declaratory
18 judgment for future costs and liability associated with Mountain Lake, the
19 Overflow Pipeline, and Park Presidio Boulevard.
- 20 b. The United States' request for injunctive relief and the scope of such
21 injunctive relief relating to Mountain Lake, the Overflow Pipeline, and
22 Park Presidio Boulevard.
- 23 c. Specific Performance under the 1938 Agreement.
- 24 d. Interpretation and legal effect of the 1938 Agreement, to the extent such
25 issues arise.

26 5. To the extent issues arise that are not addressed by this Stipulation, the Parties
27 will seek further guidance from the Court.

28 6. The Parties hereby consent to entry of the foregoing Stipulation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: February 8, 2011 /s/ Davis H. Forsythe

Davis H. Forsythe
Bradley R. O'Brien
Trial Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
601 D Street, N.W.
Washington, D.C. 20004

FOR DEFENDANT THE CALIFORNIA DEPARTMENT OF TRANSPORTATION:

Date: February 8, 2011 /s/ Janet Wong

Janet Wong
Deputy Attorney
California Department of Transportation
595 Market Street, Suite 1700
San Francisco, CA 94105

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Date: 2/9/11

U.S. DISTRICT

