

NEWS

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SAN BERNARDINO COUNTY
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STATEMENT BY THE COUNTY OF SAN BERNARDINO REGARDING THE POSTMUS GUILTY PLEAS AND THE STATUS OF LITIGATION

The charges to which Bill Postmus has pled guilty constitute an unforgivable breach of trust and the most serious offense an elected official can commit against the people he was sworn and obligated to serve. The County condemns and is repulsed by his crimes. However, the County is pleased that Mr. Postmus has admitted wrongdoing and pledged to assist investigators.

It will take a month or more of analysis by the County's legal team and consultation with the Board of Supervisors to determine what course of action the County and District should follow regarding the County and Flood Control District's November 2006 settlement with Colonies Partners LLC. The County asks for the public to be patient as it sorts through this very complex legal matter, because the outcome could well be far-reaching in terms of time and expense.

This development has brought to light a common misunderstanding about the County and District's indemnity lawsuit against San Bernardino Associated Governments, the City of Upland, and Caltrans. Some parties have erroneously assumed the litigation is intended only to recover the settlement proceeds, and that if the settlement is called into question or voided, the litigation should be suspended or abandoned. This assumption constitutes a serious misunderstanding of the Colonies case and the role of SANBAG, Upland, and Caltrans.

SANBAG, Upland, and Caltrans's liability exists independent of the November 2006 settlement. Their liability existed before the settlement, and will exist in the event the settlement is voided. The County and District have been making this point since the dispute began. SANBAG, Upland, and Caltrans have been irresponsible in their attempts to avoid accountability, and it would be irresponsible of the County and District to abandon their effort to see that the defendants meet their obligations. SANBAG, Upland, and Caltrans should not make the County and District spend public money trying to force them to assume responsibility that is clearly theirs.

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The case is about any damages that have been caused by the massive discharge of storm water from the 20th Street Storm Drain onto private property. SANBAG, Upland, and Caltrans planned, developed, designed and constructed the 20th Street Storm Drain to protect the 210 Freeway from flooding by discharging massive amounts of storm water onto Colonies property without Colonies' consent.

Neither the County nor the Flood Control District had any role in the conception or design of the 20th Street Storm Drain. The **ONLY ROLE** played by the Flood Control District was that of construction manager for the City of Upland on behalf of and for the benefit of SANBAG. Upland asked the Flood Control District to serve as construction manager on the project because the city lacked the resources to perform that role, and the district agreed to do so – free of charge – as a public service to another government agency.

The facts establishing that SANBAG, Upland, and Caltrans are primarily responsible for the flooding, damaging and taking of Colonies' private property are overwhelming. For example, in a 2003 trial, Judge Peter Norell found that Caltrans controlled substantially all decisions regarding the design of the 20th Street Storm Drain. Indeed, Caltrans devoted an entire team of engineers to the design on a full time basis for a number of years and Caltrans' managing engineer confirmed that Caltrans contributed more to the planning and design of the 20th Street Storm Drain than any other agency. SANBAG controlled and made the decision to build the 20th Street Storm Drain and provided all of the funding for its design and construction. SANBAG's Board of Directors publicly acknowledged in unanimous votes on two separate occasions that the 20th Street Storm Drain is a "SANBAG responsibility." Similarly, Upland was deeply immersed in the planning, design, development and construction of the 20th Street Storm Drain. In fact, it was Upland's insistence on the below-grade design of the 210 Extension and rejection of other drainage alternatives that necessitated the 20th Street Storm Drain. SANBAG, Upland, and Caltrans made the decision to empty the 20th Street Storm Drain onto Colonies property before Upland asked the County Flood Control District to serve as construction manager.

When Colonies filed claims against the District and County in 2004, the District and County promptly demanded indemnity from SANBAG, Upland, and Caltrans, each of which refused the indemnity demands. Colonies did not sue any of these three entities. The District and County agreed to stay the indemnity matter while they concentrated on their defense in the Colonies' litigation, but always contended SANBAG, Upland, and Caltrans were primarily responsible for planning, developing, designing and constructing the 20th Street Storm Drain as part of the 210 Freeway project and were obligated to indemnify the county for any damages caused by the project.

SANBAG, Upland, and Caltrans have each attempted on multiple occasions to convince the court to dismiss the indemnity case. The court has rejected each and every attempt, including overruling four motions for summary adjudication/summary judgment – two by Caltrans, one by Upland, and three demurrers – one by each defendant. As the court recently stated in its most recent rejection of SANBAG's request for dismissal: "Evidence shows SANBAG exercised substantial control over the 20SSD project because of its involvement in the planning, design, and construction and its control over the purse strings. The project was built only because SANBAG agreed to fund it. SANBAG and Upland jointly determined the alignment of the drain and decided to include an extension of the drain. ..."

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The law allowed Colonies to collect damages from the District, and the law also allows the District to obtain reimbursement pro-rata from the parties responsible for the objectively proven damages – SANBAG, Upland, and Caltrans. That's the point of the Indemnity case. Once SANBAG, Upland, and Caltrans reimburse the County for their fair share of the objectively proven damages, they would be entitled to pro-rata reimbursement in the event that Colonies must return any settlement proceeds.

The County hopes SANBAG, Upland, and Caltrans can join with the County and directly pursue Colonies for reimbursement in the event that Colonies is found to have engaged in a Section 1090 violation and therefore must return all settlement funds. Short of that, the District and County have an obligation to the people of San Bernardino County to ensure those responsible for any damages are held accountable. And SANBAG, Upland, and Caltrans have an obligation to the people of San Bernardino County to assume the responsibility that is clearly theirs and therefore cease the continual expenditure of public money in their attempts to avoid this responsibility.