

**ORDER NO. R5-2023-0504**  
**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING**  
**FOR**  
**ENCLAVE AT FOLSOM RANCH, LLC**  
**PARCEL 85A FOLSOM RANCH MEDICAL CENTER**  
**SACRAMENTO COUNTY**

By signing below and returning this Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Water Board, Enclave at Folsom Ranch, LLC (Discharger) hereby accepts the Settlement Offer described in the letter dated 24 January 2023 and titled Offer to Settle Administrative Civil Liability, Enclave at Folsom Ranch, LLC, Parcel 85A Folsom Ranch Medical Center, Sacramento County, WDID 5S34C393767 and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of one hundred twenty-eight thousand one hundred twelve dollars (\$128,112) by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (Construction General Permit) at the Parcel 85A Folsom Ranch Medical Center construction project.

The Discharger understands that by signing this Acceptance and Waiver, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this Acceptance and Waiver does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to the following address:

Central Valley Regional Water Quality Control Board  
Attention: Kari Holmes, Supervisor, Enforcement Section  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of an NPDES permit. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

ENCLAVE AT FOLSOM RANCH, LLC

By: Originally Signed by Jim Galovan

Title: Authorized Signer

Date: 1 February 2023

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: PATRICK PULUPA, Executive Officer

**Attachment A - PENALTY CALCULATION METHODOLOGY  
FOR  
ENCLAVE AT FOLSOM RANCH, LLC  
PARCEL 85A FOLSOM RANCH MEDICAL CENTER  
SACRAMENTO COUNTY**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The [Enforcement Policy](#) can be found at:

([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf))

**Background**

Central Valley Regional Water Quality Control Board (Board) conducted a pre-winter inspection on 15 October 2021. At that time, a winterization plan was presented to Board staff. The winterization plan proposed to stabilize the construction site through the winter season by on 15 November 2021. Board staff expressed concerns with the date shown in the plan as it would miss the impending storm that started on 18 October 2021. Board staff conducted a follow up inspection to document site conditions on 22 October 2021 during a storm event. As a result of the observations documented during that inspection, Board staff issued a verbal warning for stormwater discharges that did not meet the BAT/BCT standard of the Construction General Permit, and for the lack of erosion control best management practices (BMPs). The Project received coverage under the State Water Resources Control Board's Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities, Order 2009-009-DWQ, as amended by Orders 2010-2014-DWQ and 2012-006-DWQ (Construction General Permit) on 2 September 2021.

On 23 December 2021, Board staff conducted a follow-up inspection of the Enclave at Folsom Ranch, LLC (Discharger) Parcel 85A Folsom Ranch Medical Center project (Project). The inspection was conducted during a storm event that produced over 4 inches of rain between 21 and 30 December 2021. During the inspection, Board staff observed that several areas of disturbed soil had no or ineffective erosion control BMPs resulting in a discharge of turbid storm water with a turbidity measured by Board Staff of 838 Nephelometric Turbidity Units (NTU). The Numeric Action Level contained in the Construction General Permit is 250 NTU. Section V.B.2 of the Construction General Permit Order. The implementation of BMPs observed during the inspection did not meet the BAT/BCT standard.

Following the 23 December 2021 inspection, the Central Valley Water Board issued a Notice of Violation (NOV). The NOV required that Enclave at Folsom Ranch, LLC (Discharger) to upload all inspection reports conducted by the Project's QSP leading up to the December 2021 storm event as well as documentation of corrective actions taken following the storm events. Review of the inspection reports and accompanying photos showed that the Project did not have BMPs that met the BAT/BCT requirement, or that complied with the Construction General Permit's requirement for erosion control requirement between storm events that

occurred from 18 October 2021 through 10 January 2022. Based on the photographs provided in the response to the NOV, the Project returned to compliance on 11 January 2022. The photographs show a robust cover of erosion control BMPs.

**Violation 1 – Failure to minimize or prevent pollutants in storm water discharges in Violation of Construction General Permit**

Pursuant to Construction General Permit, dischargers are required to minimize or prevent pollutants in storm water using controls, structures and management practices that achieve best available technology economically achievable (BAT) for toxic pollutants and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants, also referred as the BAT/BCT standard.

There were twenty days of precipitation between 22 October 2021 and 11 January 2022, ten of which produced greater than 0.5 inches of rain. The Prosecution Team alleges that storm water discharged from the Project on days with greater than 0.5 inches of precipitation and that based on reports from the Project’s QSP, on seven of the ten days, the BMPs installed did not meet the BAT/BCT standard. During those seven days, the Project was in violation of the General Permit. Attachment D, section A.1.b, Effluent Standards, in the General Permit states: *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.*

PENALTY FACTOR	VALUE	DISCUSSION
Step 1, Factor 1: The degree of Toxicity of the Discharge (physical, chemical, biological, or thermal characteristics of the discharge)	2	Discharges of turbidity, such as those described herein, cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Step 1, Factor 2: Actual Harm or Potential harm to beneficial uses (harm or potential for harm to beneficial uses)	2	Discharges from the Project flow to a tributary to Alder Creek which flows to the American River below the Folsom dam. The American River Watershed from Folsom Dam to the Sacramento River is designated by the State Water Board as a high receiving water risk watershed. The beneficial uses of the American River include aquatic freshwater habitat and wildlife habitat. Photographs during days of precipitation and discharge, and turbidity samples collected during the 23 December 2021 and the 29 December 2021 inspections show turbid discharges from the Project.

PENALTY FACTOR	VALUE	DISCUSSION
		Due to the dilution expected between the discharge locations and water bodies with beneficial uses, the discharge was expected to have a below moderate impact to beneficial uses, likely to cause harm in the short term but not appreciable harm in the long term.
Step 1, Factor 3: Susceptibility to Cleanup or Abatement	1	The sediment from the turbid discharge was deposited over a long distance and cleanup or abatement of 50% or more of the material would not be possible.
Step 1, Final Score: Potential for Harm	5	The Potential for Harm score is the sum of Factors 1 through 3 of Step 1, shown above. The Total Potential for Harm score is $2+2+1 = 5$
Step 2: Per Gallon and per Day factor for Discharge Violations	0.15	The “Deviation from Requirement” is major because the Discharger did not implement or maintain required erosion and sediment control BMPs, rendering the permit’s BAT/BCT effluent standard ineffective. The Potential for Harm from step one of five, and the Major Deviation was used to determine both the per gallon and per day factors of 0.15 from Tables 1 and 2 of the Enforcement Policy.
Step 2: Volume discharged	n/a	The Prosecution Team did not to calculate the discharge volume at this time. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing.
Step 2: Adjustment for high volume discharges	n/a	The Prosecution Team chose not to calculate the discharge volume at this time. The Prosecution Team reserves the right to assess penalties for the volume discharged should this matter proceed to hearing.
Step 2: Days of discharge considered	7	According to rainfall data from station “CA-SA-7, Folsom 1.2SSE”, there were a total of twenty days of rainfall, ten of which had rainfall over $\frac{1}{2}$ ” between 22 October 2021 and when the project came into compliance on 11 January 2022. The Prosecution Team alleges that on seven of those ten days (on three of those ten days, the Project QSP did not

PENALTY FACTOR	VALUE	DISCUSSION
		observe any issues during the inspection and the samples collected were below the Numeric Action Level for turbidity), runoff was generated and discharged from the Project when BMPs did not meet the Construction General Permit's BAT/BCT standard.
<b>Step 2: Initial Liability for Violation #1</b>	<b>\$10,500</b>	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (0.15 x 7 x \$10,000/day = \$10,500).
Step 3: Per Day Assessments for Non-Discharge Violations	N/A	This step does not apply to this violation as it is a discharge violation
Step 4: Adjustments for Discharger Conduct: Culpability	1.0	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed to meet the requirements of the Construction General Permit. Board staff inspected the Project on 15 October 2021, prior to the forecasted storm event and communicated to the Discharger compliance concerns with the winterization plan presented during that inspection because the plan's implementation date would take effect after the forecasted storm. In addition, Board staff issued a verbal warning two months prior to the issuance of the NOV alerting the Discharger to the same violations which are now being enforced upon. However, run-on contributed significantly to the turbid discharges. Therefore, an adjustment factor of 1.0 was deemed appropriate
Step 4: Adjustments for Discharger Conduct: History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger; therefore, Board Staff assigned a neutral History of Violations adjustment factor of 1.0 to this violation.
Step 4: Adjustments for Discharger Conduct:	1.0	Following the 23 December 2021 inspection and Notice of Violation, the Discharger exhibited the

PENALTY FACTOR	VALUE	DISCUSSION
Cleanup and Cooperation		level of cleanup and installation of BMPs expected. Therefore, a neutral factor of 1.0 is appropriate.
<b>Step 1-4: Total Base Liability for Violation #1</b>	<b>\$10,500</b>	The base liability is calculated as the initial liability multiplied by each of the above three factors (\$10,500 x 1.0 x 1 x 1 = \$10,500).

**Violation 2 – Failure to implement erosion control BMPs on active areas**

During the site inspection on 23 December 2021, Board staff observed that the Risk Level 2 Project had large areas of disturbed soil without erosion control BMPs during several storm events. Attachment D, section E.3, Sediment Control, in the General Permit states: *Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.* Board Staff alleges that the Discharger was in violation of this requirement for a period twenty days.

PENALTY FACTOR	VALUE	DISCUSSION
Step 1: Actual Harm or Potential for Harm for Discharge Violations	N/A	This step is not applicable because the violation is not a discharge violation.
Step 2: Per Gallon and Per Day Assessments for Discharge Violations	N/A	This step is not applicable because the violation is not a discharge violation.
Step 3, Non - Discharge Violations: Potential for harm	Moderate	The failure to install appropriate erosion controls led to the discharge of turbid, sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Step 3, Non-Discharge Violations: Deviation from Requirement	Major	The “Deviation from Requirement” is major because the Discharger did not implement required erosion control BMPs for disturbed areas prior to multiple forecasted storms event on disturbed soil areas of the Project, rendering the permit requirement ineffective.

PENALTY FACTOR	VALUE	DISCUSSION
Step 3, Non-discharge Violations: Per day Factor	0.55	The value of 0.55 was determined from Table 3 in the Enforcement Policy. The middle value was chosen at this time.
Step 3 Non-Discharge Violation, Days of Violation	20	The Discharger is required to implement erosion control BMPs on all disturbed soil areas prior to all rain events. The Prosecution Team alleges that the Discharger was in violation of the erosion control BMP requirement on all days with greater than 0.1 inches of precipitation. During the period between 22 October 2021 and 11 January 2022 there were twenty days of rainfall with greater than 0.1 inches of rain. The Project was considered in compliance on 11 January 2022, when site conditions were photographed, and these showed substantial erosion control cover.
<b>Step 3 Initial Liability for Violation #2</b>	\$110,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (0.55 x 20 days x \$10,000/day = \$110,000).
Step 4 Adjustments for Discharger Conduct Culpability	1.0	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed to meet the requirements of the Construction General Permit. Board staff inspected the Project on 15 October 2021, prior to the forecasted storm event and communicated to the Discharger compliance concerns with the winterization plan presented during that inspection because the plan's implementation date would take effect after the forecasted storm. In addition, Board staff issued a verbal warning two months prior to the issuance of the NOV alerting the Discharger to the same violations which are now being enforced upon. However, the onset of the storm came on too fast, not allowing the discharger the time to effectively implement an erosion control plan. Therefore, an adjustment factor of 1.0 was deemed appropriate
Step 4 Adjustments for Discharger Conduct Culpability: History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger; therefore, a neutral History of Violations adjustment factor of 1.0 to this violation is appropriate.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Step 4 Adjustments for Discharger Conduct Cleanup and Cooperation	1.0	Following the 23 December 2021 inspection and Notice of Violation, the Discharger exhibited the level of cleanup and installation of BMPs expected. Therefore, a neutral cooperation adjustment factor of 1.0 to this violation is appropriate.
<b>Total Base Liability for Violation #2</b>	\$110,000	The base liability is calculated as the initial liability multiplied by each of the above three factors ( $\$110,000 \times 1.0 \times 1.0 \times 1.0$ ) = \$110,000

**Other Factor Considerations**

**Total Base Liability for all violations is \$120,500 (\$10,500 for Violation # 1 + \$110,000 for Violation # 2 = \$120,500).** The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

<b>OTHER FACTORS</b>	<b>VALUE</b>	<b>CONSIDERATIONS</b>
Step 6: Ability to pay and continue in business	No adjustment	Board staff does not have information suggesting that the Discharger cannot pay the proposed penalty and continue in business.
Step 7: Economic Benefit	\$805	Board staff estimated the economic benefit for each violation. The cost of installing BMPs which would have avoided the violations were estimated at \$118,112. Since these BMPs were installed following the violations, this cost was considered a delayed cost. The economic benefit of delaying these costs was estimated using the EPA's BEN model. Calculations showing the estimated Economic Benefit are included as Attachment A.
Step 8: Other factors as Justice may Require	\$7,612	The costs of investigation and enforcement are "other factors as justice may require" and are added to the liability amount. The Central Valley Water Board has incurred approximately \$7,612 in staff costs associated with the investigation and enforcement of the alleged violations. The estimated staff costs used in Step 8 are included as Attachment B.
Maximum liability	\$270,000	Based on California Water Code section 13385, the maximum liability is \$10,000 per day per violation and \$10 per gallon. The maximum penalty of \$270,000 is calculated using only days of violation (27 days x \$10,000 per day) and does not include gallons discharged as the Prosecution Team has not estimated the discharged volume. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing. In addition, the

OTHER FACTORS	VALUE	CONSIDERATIONS
		Prosecution Team reserves the right to assess penalties for other violations observed during the 25 October 2021 storm event that were not included in this settlement if this matter proceeds to hearing.
Minimum liability	\$886	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
<b>Final Liability</b>	<b>\$128,112</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability but cannot exceed the maximum liability. The Final Liability is $\$120,500 + \$7,612 = 128,112$

- Attachments:
- A. Economic Benefit Calculation
  - B. Staff Cost Estimate

<b>Economic Benefit Analysis</b>									
<b>Parcel 85A</b>									
Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
Hydromulch with Tackifier	\$ 117,612	CCI	10/6/2021	Y	10/22/2021	1/11/2022	12/25/2022	7.50%	802
Mobilization of BMP Installer	\$ 500	CCI	10/6/2021	Y	10/22/2021	1/11/2022	12/25/2022	7.50%	3
<b>Income Tax Schedule:</b> Corporation								<b>Total Benefit: \$ 805</b>	
<b>USEPA BEN Model Version:</b> Version 2022.0.0 (June 2022)									
<b>Analyst:</b> Jennifer McGovern, Valaree St. Mary									
<b>Date/Time of Analysis:</b> 9/28/22 11:56									
<b>Assumptions:</b>									
<ul style="list-style-type: none"> <li>○ Cost estimates and compliance actions provided by Regional Board Staff</li> <li>○ Failure to implement construction BMPs which included hydromulch with tackifier and mobilization of BMP installer was delayed, not avoided</li> <li>○ Approximately 60 acres were disturbed according to Regional Board Staff</li> <li>○ BMP installation adjusted using the construction cost index (CCI)</li> <li>○ Non-compliance and compliance dates for each compliance action provided by Regional Board Staff</li> <li>○ The penalty payment date is assumed to be 3 months from the date of analysis</li> <li>○ The discharger is assumed to operate as a for-profit entity</li> </ul>									

Table 1. Staff Cost Summary

	Quantity	Unit Cost	Total Cost
Inspections	3	\$ 295.41	\$ 886.23
Inspection Reports	3	\$ 549.82	\$ 1,649.47
Notice of Violations	1	\$ 390.67	\$ 390.67
ACL Prep	1	\$ 4,685.79	\$ 4,685.79
<b>Total Staff Costs</b>		<b>\$ 7,612.16</b>	

Table 2. Staff Cost Calculation

	Hours <sup>1</sup>	Ave Cost/Hour <sup>2</sup>	Cost
<b>Inspection</b>			
Water Resource Control Engineer	2.5	\$ 118.16	\$ 295.41
Senior Environmental Scientist	0	\$ 154.34	\$ -
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Inspection</b>			<b>\$ 295.41</b>
<b>Inspection Report</b>			
Water Resource Control Engineer	4	\$ 118.16	\$ 472.65
Senior Environmental Scientist	0.5	\$ 154.34	\$ 77.17
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Inspection Report</b>			<b>\$ 549.82</b>
<b>Notice of Violation</b>			
Water Resource Control Engineer	2	\$ 118.16	\$ 236.33
Senior Environmental Scientist	1	\$ 154.34	\$ 154.34
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Notice of Violation</b>			<b>\$ 390.67</b>
<b>ACL Preparation</b>			
Water Resource Control Engineer	20	\$ 118.16	\$ 2,363.27
Senior Environmental Scientist	8	\$ 154.34	\$ 1,234.72
Supervising Water Resources Control Engineer	4	\$ 179.32	\$ 717.28
Assistant Executive Officer	2	\$ 185.26	\$ 370.52
<b>Cost per Notice of Violation</b>			<b>\$ 4,685.79</b>

## Notes:

- 1 Inspection Time includes in-office pre-inspection research and drive time.
- 2 Hourly costs from SWRCB Office of Enforcement Fiscal Year 2020-2021 Billing Costs Summary, mid range salary used.