

Attachment A – Specific Factors Considered

Administrative Civil Liability Complaint No. R1-2012-0112

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

California Water Code section 13385(e) factors, along with corresponding Enforcement Policy scores, are presented for each violation below. The penalty methodology first addresses violations of the Caltrans Storm Water Permit and then addresses violations of the 401 Certification.

I. Caltrans Storm Water Permit Violations – Discharge Violations

- A. General Discharge Prohibitions A.2, A.3, A.4, and A.6 – Discharge of approximately 75 cubic yards of soil to Copeland Creek and discharge of approximately 75 cubic yards of soil to the Laguna de Santa Rosa to construct temporary earthen dams and use of diversion bags containing silt and sand, thereby causing or threatening to cause a condition of pollution or nuisance, allowing for transport into waters of the State, in quantities which caused excess turbidity and threatened to cause deleterious bottom deposits or discoloration.

Step 1. Potential for Harm: 5 (final score)

- a. Harm or Potential Harm to Beneficial Uses: 3 (moderate)

The excavation of the riverbed walls and the placement of approximately 75 cubic yards of soil (equivalent to 15,000 gallons) in the middle of the water body at each work site resulted in elevated turbidity levels, the disturbance of which could have reasonably been expected to temporarily impact beneficial uses such as freshwater habitat; aquatic wildlife; spawning, reproduction, and/or early development; and non-contact water recreational activities.

The Project was constructed in the Russian River watershed, which is listed in its entirety as impaired for sediment pursuant to section 303(d) of the Clean Water Act. The Russian River is an important salmon and steelhead spawning and rearing area. Excessive sediment is among the factors known to contribute to the documented decline of these species. In addition to salmonids, the River provides habitat for an abundance of species, including juvenile fish and frogs.

- b. Physical, Chemical, Biological, or Thermal Characteristics of the Discharge: 2 (moderate)

The discharge consisted of soil and sediments of unknown particle size distribution and cleanliness. The excavation of the streambed walls and the placement of approximately 75 cubic yards of soil (equivalent to 15,000 gallons) in the middle of the water body at each work site resulted in elevated turbidity levels, which could have reasonably been expected to pose a moderate threat to potential receptors including freshwater habitat; aquatic wildlife; spawning, reproduction, and/or early development; and non-contact water recreational activities.

- c. Susceptibility to Cleanup or Abatement: 0
The Enforcement Policy assigns a score of zero (0) for this factor if 50% or more of the discharge is susceptible to cleanup and abatement, and a factor of one (1) if less than 50% is susceptible to cleanup and abatement. Following placement of soil in Copeland Creek and the Laguna de Santa Rosa as earthen dams, the Dischargers could and did remove the remainder of the dams. While the exact percentage of discharged soil recovered from the water bodies is unknown, it is estimated that the majority of the soil composing the dams was removed. Therefore, because 50% or more of the soil was susceptible to cleanup, a score of zero (0) was assigned.

Step 2. Assessments for Discharge Violations

- a. Deviation from Requirement: *major*.
The placement of soil was strictly prohibited under General Discharge Prohibitions A.2, A.3, A.4, and A.6. Therefore, because the requirements were rendered ineffective, the Dischargers' extent of deviation from requirements was determined to be major.

Step 3. *Not Applicable to Discharge Violations*

Step 4. Adjustment Factors

- a. Culpability – 1.3 (*see general discussion below*)
b. Cleanup and Cooperation: 1 (*see general discussion below*)
c. History of Violations – 1.3 (*see general discussion below*)

Step 5. Total Base Liability: $\$76,050$ each for A.2, A.3, A.4, and A.6 = $\$304,200$.
 $\{[0.15 \text{ (Per Gallon Factor)} \times 14,000 \text{ gal (15,000 gal - 1,000 gal)} \times \$10/\text{gal (statutory max)} \times 2 \text{ sites}] + [0.15 \text{ (Per Day Factor)} \times 2 \text{ sites} \times 1 \text{ day} \times \$10,000 \text{ per day (statutory max)}]\} \times 1.3 \text{ (culpability)} \times 1 \text{ (cleanup and cooperation)} \times 1.3 \text{ (history of violations)} = \$76,050$.

II. Caltrans Storm Water Permit Violations – Non-Discharge Violations

A. Sediment Controls E.3 – Failure to implement appropriate erosion control BMPs.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: *0.55*

- a. Potential for Harm: *moderate*.
BMPs are required to reduce contamination of stormwater by construction-related materials and to minimize erosion and subsequent deposition of soils and sediments in waters of the State. Failure to appropriately implement BMPs for exposed soil surfaces can result in the discharge of excessive quantities and concentrations of suspended and settleable materials, contribute to elevated turbidity levels in streams, and cause or contribute to adverse impacts to such

beneficial uses as freshwater habitat; aquatic wildlife; spawning, reproduction, and/or early development; and non-contact water recreational activities.

- b. Deviation from Requirement: *major*.
The BMPs were not in place at the commencement of Project activities that could result in the discharge of sediment to surface water. BMPs are ineffective until such time as they are properly installed and undamaged.

Step 4. Adjustment Factors

- a. Culpability – 1.3 (*see general discussion below*)
b. Cleanup and Cooperation: 1 (*see general discussion below*)
c. History of Violations – 1.3 (*see general discussion below*)

Step 5. Total Base Liability: \$18,590.

0.55 (Per Day Factor) \times 2 sites \times 1 day \times \$10,000 per day (statutory max) \times 1.3 (culpability) \times 1 (cleanup and cooperation) \times 1.3 (history of violations) = \$18,590.

III. 401 Certification Violations – Discharge Violations

- A. Condition 10 – Placement of approximately 75 cubic yards of soil to Copeland Creek and discharge of approximately 75 cubic yards of soil to the Laguna de Santa Rosa to construct temporary earthen dams and use of diversion bags containing silt and sand where they could be washed by rainfall into waters of the State.

Step 1. Potential for Harm: 5 (final score)

- a. Harm or Potential Harm to Beneficial Uses: 3 (moderate)
The placement of approximately 75 cubic yards of soil (equivalent to 15,000 gallons) in the middle of the water body at each work site resulted in elevated turbidity levels which could have reasonably been expected to impact beneficial uses such as freshwater habitat; aquatic wildlife; spawning, reproduction, and/or early development; and non-contact water recreational activities.
- b. Physical, Chemical, Biological, or Thermal Characteristics of the Discharge: 2 (moderate)
The discharge consisted of soil and sediments of unknown particle size distribution and cleanliness. The placement of approximately 75 cubic yards of soil (equivalent to 15,000 gallons) in the middle of the water body at each work site resulted in elevated turbidity levels which could have reasonably been expected to impact beneficial uses such as freshwater habitat; aquatic wildlife; spawning, reproduction, and/or early development; and non-contact water recreational activities.
- c. Susceptibility to Cleanup or Abatement: 0
The Enforcement Policy assigns a score of zero (0) for this factor if 50% or more of the discharge is susceptible to cleanup and abatement, and a factor of one (1) if less than 50% is susceptible to cleanup and abatement. Following placement of soil in Copeland Creek and the Laguna de Santa Rosa as earthen dams, the Dischargers could and did remove the remainder of the dams. While the exact

percentage of discharged soil recovered from the water bodies is unknown, it is estimated that the majority of the soil composing the dams was removed. Therefore, because 50% or more of the soil was susceptible to cleanup, a score of zero (0) was assigned.

Step 2. Assessments for Discharge Violations: *per day factor = 0.15*

- a. Deviation from Requirement: *major*.
The placement of soil was strictly prohibited under Condition 10.

Step 3. *Not Applicable to Discharge Violations*

Step 4. Adjustment Factors

- a. Culpability – 1.3 (*see general discussion below*)
b. Cleanup and Cooperation: 1 (*see general discussion below*)
c. History of Violations – 1.3 (*see general discussion below*)

Step 5. Total Base Liability: *\$76,050*.

$\{[0.15 \text{ (Per Gallon Factor)} \times 14,000 \text{ gal (15,000 gal - 1,000 gal)} \times \$10/\text{gal (statutory max)} \times 2 \text{ sites}] + [0.15 \text{ (Per Day Factor)} \times 2 \text{ sites} \times 1 \text{ day} \times \$10,000 \text{ per day (statutory max)}]\} \times 1.3 \text{ (culpability)} \times 1 \text{ (cleanup and cooperation)} \times 1.3 \text{ (history of violations)} = \$76,050$.

IV. 401 Certification Violations – Non-Discharge Violations

- A. Condition 4.a – Failure to complete proposed mitigation in strict accordance with Project description, by use of excavator in Copeland Creek and placement of pumps in Copeland Creek.

Step 1. Potential for Harm – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: *0.55*

- a. Potential for Harm: *moderate*
The violation at issue involves performing mitigation activities in-stream during a period when flows were higher than minimal in Laguna De Santa Rosa and Copeland Creek. As water had been increasing in the diversion area and the upstream end of the diversion was being overrun by the creek, the Dischargers attempted to conduct activities in-stream during the rainfall event to save the diversion. The Dischargers attempted to perform methods of mitigation such as placing pumps into each of the creeks, installing an excavator to excavate the bank of the creek and placing an earth dam downstream of the work area. Excavating the bank and installing the excavator in-stream had the potential to significantly impair and threaten beneficial uses such as the feeding and breeding habitat for aquatic life, including for communities of rare, threatened or endangered species.
- b. Deviation from Requirement: *major*.
The extent of deviation from the applicable requirements is major. A 401 Certification certifies that the Dischargers' activities comply with applicable

state water quality standards, limits and restrictions. Such requirements were rendered ineffective when the Dischargers conducted mitigation activities in a manner contrary to what was proposed in the 401 Certification application.

Step 4. Adjustment Factors

- a. Culpability – 1.3 (see general discussion below)
- b. Cleanup and Cooperation: 1 (see general discussion below)
- c. History of Violations – 1.3 (see general discussion below)

Step 5. Total Base Liability: \$37,180.

0.55 (Per Day Factor) \times 2 sites \times 2 days \times \$10,000 per day (statutory max) \times 1.3 (culpability) \times 1 (cleanup and cooperation) \times 1.3 (history of violations) = \$37,180.

B. Condition 4.b – Failure to comply with Basin Plan turbidity requirements by causing an increase of turbidity in excess of 20 percent.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

- a. Potential for Harm: *moderate*.

The amount of foam and raised turbidity levels substantially threatened non-contact recreational activities including the aesthetic enjoyment of the waterbodies in conjunction with hiking, boating, etc., while possibly causing temporary impacts to aquatic life.

- b. Deviation from Requirement: *major*.

The extent of deviation from the applicable requirements is major. Such mitigation activities created several hundred yards of foam downstream and excess turbidity levels well exceeding 20% of background levels. These methods of mitigation were not provided for in the Certification and posed a substantial potential for harm to beneficial uses. The Dischargers engaged in construction related activities that caused exceedances of the objectives for turbidity and floating material, thereby rendering the requirements ineffective.

Step 4. Adjustment Factors

- a. Culpability – 1.3 (see general discussion below)
- b. Cleanup and Cooperation: 1 (see general discussion below)
- c. History of Violations – 1.3 (see general discussion below)

Step 5. Total Base Liability: \$9,295.

0.55 (Per Day Factor) \times 1 site \times 1 day \times \$10,000 per day (statutory max) \times 1.3 (culpability) \times 1 (cleanup and cooperation) \times 1.3 (history of violations) = \$9,295.

C. Condition 9 – Failure to cease Project activities until adequate BMPs if unauthorized discharge.

Step 1. Potential for Harm for Discharge Violations – not applicable.

- Step 2. Assessment for Discharge Violations – not applicable.
- Step 3. Per Day Assessment for Non-Discharge Violations: *0.55*
- a. Potential for Harm: *moderate*.
Failing to cease Project activities until adequate BMPs were implemented created a substantial potential for harm to beneficial uses.
 - b. Deviation from Requirement: *major*.
The Dischargers continued Project activities after placing soil to create an earthen dam and continued even subsequent to the accumulation of foam and elevated turbidity levels from the diversion activities.
- Step 4. Adjustment Factors
- a. Culpability – 1.3 (*see general discussion below*)
 - b. Cleanup and Cooperation: 1 (*see general discussion below*)
 - c. History of Violations – 1.3 (*see general discussion below*)
- Step 5. Total Base Liability: *\$18,590*.
0.55 (Per Day Factor) X 1 site X 2 days X \$10,000 per day (statutory max) X 1.3 (culpability) X 1 (cleanup and cooperation) X 1.3 (history of violations) = \$18,590.

D. Condition 12 – Working in flowing or standing waters.

- Step 1. Potential for Harm for Discharge Violations – not applicable.
- Step 2. Assessment for Discharge Violations – not applicable.
- Step 3. Per Day Assessment for Non-Discharge Violations: *0.55*
- a. Potential for Harm: *moderate*.
Working in standing waters caused turbidity which had the potential to pose substantial harm to aquatic life from suspended sediment and settleable materials that may clog gills and cause deposition of sediments in spawning areas.
 - b. Deviation from Requirement: *major*.
The Certification prohibits working in flowing or standing waters and therefore the Dischargers' activities rendered the requirement ineffective.
- Step 4. Adjustment Factors
- a. Culpability – 1.3 (*see general discussion below*)
 - b. Cleanup and Cooperation: 1 (*see general discussion below*)
 - c. History of Violations – 1.3 (*see general discussion below*)
- Step 5. Total Base Liability: *\$27,885*.
0.55 (Per Day Factor) X 3 site-days X \$10,000 per day (statutory max) X 1.3 (culpability) X 1 (cleanup and cooperation) X 1.3 (history of violations) = \$27,885.

E. Condition 14 - Failure to appropriately implement BMPs for erosion and turbidity control.

- Step 1. Potential for Harm for Discharge Violations – not applicable.
- Step 2. Assessment for Discharge Violations – not applicable.
- Step 3. Per Day Assessment for Non-Discharge Violations: *0.55*
- a. Potential for Harm: *moderate*.
BMPs are required to reduce contamination of stormwater by construction-related materials and to minimize erosion and subsequent deposition of soils and sediments in waters of the State. Failure to appropriately implement BMPs for exposed soil surfaces can result in the discharge of excessive quantities and concentrations of suspended and settleable materials, contribute to elevated turbidity levels in streams, and cause or contribute to adverse impacts to such beneficial uses as freshwater habitat; aquatic wildlife; spawning, reproduction, and/or early development; and non-contact water recreational activities.

The Project was constructed in the Russian River watershed, which is listed in its entirety as impaired for sediment pursuant to section 303(d) of the Clean Water Act. The Russian River is an important salmon and steelhead spawning and rearing area. Excessive sediment is among the factors known to contribute to the documented decline of these species. In addition to salmonids, the River provides habitat for an abundance of species, including juvenile fish and frogs.

- b. Deviation from Requirement: *major*.
The BMPs were not in place at the commencement of project activities to control the erosion or discharge of sediment to surface water. BMPs are ineffective until such time as they are properly installed and undamaged.
- Step 4. Adjustment Factors
- a. Culpability – 1.3 (*see general discussion below*)
- b. Cleanup and Cooperation: 1 (*see general discussion below*)
- c. History of Violations – 1.3 (*see general discussion below*)
- Step 5. Total Base Liability: *\$18,590*.
0.55 (Per Day Factor) X 2 sites X 1 day X \$10,000 per day (statutory max) X 1.3 (culpability) X 1 (cleanup and cooperation) X 1.3 (history of violations) = \$18,590.

F. Condition 18 – Failure to timely submit monthly monitoring reports.

- Step 1. Potential for Harm for Discharge Violations – not applicable.
- Step 2. Assessment for Discharge Violations – not applicable.
- Step 3. Per Day Assessment for Non-Discharge Violations: *0.35*
- a. Potential for Harm: *minor*.
The failure to provide monthly monitoring reports undermines the Regional Water Board's authority to implement the water quality programs and prevents Regional Water Board staff from determining compliance with conditions of the NPDES Permit and Certification and timely responding to water quality impacts.

b. Deviation from Requirement: *major*.

The extent of deviation from the applicable requirements is major. To date, Regional Water Board staff have received only the June, July, and August 2011 and the September 2012 monitoring reports. However, with these exceptions, the Dischargers have failed to provide the monthly monitoring reports to the Regional Water Board. Therefore, the Dischargers completely disregarded the requirement, at least until receiving notification of the magnitude and impending nature of the fine proposed in this Complaint.

Step 4. Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that, for violations lasting more than 30 days, the Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The Dischargers have failed to comply with a condition of the Certification. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of submitting a report. Therefore, an adjustment can be made.

The Regional Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Using this approach, the total number of days is reduced from a total of 15,635 days late (as of October 15, 2012) to 705 days of violation. A table detailing the late reports and the number of days late for each report is provided below:

Report	Due Date	Received Date	Total Days Late	Collapsed Days Late
January 2010	15-Feb-2010	15-Oct-2012*	973	38
February 2010	15-Mar-2010	15-Oct-2012*	945	37
March 2010	15-Apr-2010	15-Oct-2012*	914	36
April 2010	15-May-2010	15-Oct-2012*	884	35
May 2010	15-Jun-2010	15-Oct-2012*	853	34
June 2010	15-Jul-2010	15-Oct-2012*	823	33
July 2010	15-Aug-2010	15-Oct-2012*	792	32
August 2010	15-Sep-2010	15-Oct-2012*	761	31
September 2010	15-Oct-2010	15-Oct-2012*	731	30
October 2010	15-Nov-2010	15-Oct-2012*	700	29
November 2010	15-Dec-2010	15-Oct-2012*	670	28
December 2010	15-Jan-2011	15-Oct-2012*	639	27
January 2011	15-Feb-2011	15-Oct-2012*	608	26

Report	Due Date	Received Date	Total Days Late	Collapsed Days Late	
February 2011	15-Mar-2011	15-Oct-2012*	580	25	
March 2011	15-Apr-2011	15-Oct-2012*	549	24	
April 2011	15-May-2011	15-Oct-2012*	519	23	
May 2011	15-Jun-2011	15-Oct-2012*	488	22	
June 2011	15-Jul-2011	17-May-2012	307	16	
July 2011	15-Aug-2011	17-May-2012	276	15	
August 2011	15-Sep-2011	17-May-2012	245	14	
September 2011	15-Oct-2011	15-Oct-2012*	366	18	
October 2011	15-Nov-2011	15-Oct-2012*	335	17	
November 2011	15-Dec-2011	15-Oct-2012*	305	16	
December 2011	15-Jan-2012	15-Oct-2012*	274	15	
January 2012	15-Feb-2012	15-Oct-2012*	243	14	
February 2012	15-Mar-2012	15-Oct-2012*	214	13	
March 2012	15-Apr-2012	15-Oct-2012*	183	12	
April 2012	15-May-2012	15-Oct-2012*	153	11	
May 2012	15-Jun-2012	15-Oct-2012*	122	10	
June 2012	15-Jul-2012	15-Oct-2012*	92	9	
July 2012	15-Aug-2012	15-Oct-2012*	61	8	
August 2012	15-Sep-2012	15-Oct-2012*	30	7	
September 2012	15-Oct-2012	12-Oct-2012	0	0	
*Report not received; 15-Oct-2012 is calculation cut-off date.			Totals:	15635	705

b. Culpability – 1.5

Even after repeated requests and reminders from Regional Water Board staff, the Dischargers disregarded Condition 18’s requirement to submit monthly monitoring reports. Therefore, Regional Water Board staff selected 1.5, which is the maximum culpability multiplier in the given range.

c. Cleanup and Cooperation: 1 (see general discussion below)

d. History of Violations – 1.3 (see general discussion below)

Step 5. Total Base Liability: \$4,811,625.
 0.35 (Per Day Factor) X 705 days (collapsed) X \$10,000 per day (statutory max) X 1.5 (culpability) X 1 (cleanup and cooperation) X 1.3 (history of violations) = \$4,811,625.

G. Condition 24 - Failure to report turbidity higher than 20%.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.35

a. Potential for Harm: *minor*.

The failure to provide promptly report elevated turbidity levels undermines the

Board's authority to implement the water quality programs and prevents Regional Water Board staff from determining compliance with conditions of the order and Certification. Additionally, failing to do so hindered Regional Water Board staff from appropriately responding to the field conditions in a timely manner and providing an appropriate response, including but not limited to timely notifying other agencies of the violations.

- b. Deviation from Requirement: *major*.
The extent of deviation from the applicable requirements is major. When prompted by Regional Water Board staff, the Dischargers provided the initial sample of upstream and downstream turbidity levels. However, no further samples were thereafter provided to the Regional Water Board. Therefore, the Dischargers completely disregarded the requirement.

Step 4. Adjustment Factors

- a. Culpability – 1.3 (*see general discussion below*)
- b. Cleanup and Cooperation: 1 (*see general discussion below*)
- c. History of Violations – 1.3 (*see general discussion below*)

Step 5. Total Base Liability: \$5,915.

0.35 (*Per Day Factor*) \times 1 site \times 1 day \times \$10,000 per day (*statutory max*) \times 1.3 (*culpability*) \times 1 (*cleanup and cooperation*) \times 1.3 (*history of violations*) = \$5,915.

H. Condition 28 - Failure to submit report after first rainfall event.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.35

- a. Potential for Harm: *minor*.
The failure to submit a report after the first rainfall impedes the Regional Water Board's ability to fully respond to water quality concerns in the regulated community. The Regional Water Board relies on Dischargers to self-report to ensure compliance conditions of its permits and certifications. Lack of self-reporting is thus a serious matter.
- b. Deviation from Requirement: *major*.
To date, Regional Water Board staff have yet to receive such a report from the first rainfall event. Therefore, the Dischargers completely disregarded the requirement.

Step 4. Adjustment Factors

- a. Multiple Day Violations
The Enforcement Policy provides that, for violations lasting more than 30 days, the Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The Discharger has failed to comply with a condition of the Certification. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of producing a report. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Using this approach, the total number of days is reduced from 904 days late (as of October 15, 2012) to 36 days of violation.

- b. Culpability – 1.3 (see general discussion below)
- c. Cleanup and Cooperation: 1 (see general discussion below)
- d. History of Violations – 1.3 (see general discussion below)

Step 5. Total Base Liability: \$212,940.

0.35 (Per Day Factor) \times 36 days (collapsed) \times \$10,000 per day (statutory max) \times 1.3 (culpability) \times 1 (cleanup and cooperation) \times 1.3 (history of violations) = \$212,940.

Adjustment Factors (unless otherwise specified above)

Culpability: The Dischargers have a high degree of culpability. Regional Water Board staff worked with the Dischargers on the Highway 101 Widening Project, attempting to ensure compliance with the Water Quality Certification and Storm Water Permit by clarifying requirements in the Application and Certification including the requirements to submit monthly monitoring reports, erosion control reports, and in-stream activity monitoring. To date, Regional Water Board staff have received only four monitoring reports. Regional Water Board staff have spent time providing guidance for compliance in meetings and via e-mail and have explained and reminded the Dischargers' water pollution control manager and Resident Engineer on at least two separate occasions of the requirements for conducting turbidity monitoring and submitting monitoring reports under the 401 Certification.

The Dischargers could have avoided many of the violations included in this Complaint had they provided the required monitoring reports, used adequate BMPs and understood the 401 Certification requirements. A reasonably prudent discharger would have acted in accordance with its permit conditions. The Dischargers should have refrained from engaging in activities that were unauthorized by the 401 Certification.

Therefore, Regional Water Board staff selected 1.3, which is a high culpability multiplier in the given range.

Cleanup and Cooperation: This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

The Dischargers only partially voluntarily cooperated in returning the site to compliance with the Caltrans Storm Water Permit and 401 Certification. For instance, after Regional Water Board staff warned the Dischargers, BMPs such as plastic sheeting were added to reduce the turbidity and foam. However, the earth dams were still in place at both locations and many of the surrounding BMPs were damaged and ineffective. Therefore, Regional Water Board staff selected a neutral multiplier value of 1.

History of Violations: Other relevant North Coast Region violations are noted below.

On November 1, 2005, the Regional Water Board issued a Cleanup and Abatement Order to Caltrans for the Dry Creek Bridge replacement project. Caltrans violated the Water Quality Certification issued for the Dry Creek project by allowing equipment staging, material stockpiles and refuse disposal within waters of the State without a permit. Staff discovered the violations of the Water Quality Certification from a citizen complaint. Caltrans had not reported the violations.

On December 28, 2005, the Regional Water Board issued an Administrative Civil Liability Complaint to Caltrans for violations of the Van Duzen River Bridge replacement project Water Quality Certification. The violations included turbid discharges to the Van Duzen River, inadequate BMPs to protect water quality, leaks and spills of petroleum products within waters of the State, the unauthorized discharge of fill materials to waters of the State, failure to comply with the authorized work schedule required to protect wildlife and endangered species, and failure to report these violations as required by the Water Quality Certification. Caltrans paid an administrative civil liability of \$101,000.

On April 7, 2006, the Regional Water Board issued a California Water Code section 13267 Order to Caltrans to require the submittal of information related to the disposal of landslide material into the South Fork Eel River at Confusion Hill. Caltrans failed to apply for a permit for these activities or notify the Regional Water Board of the discharges until staff discovered the sidcasting activities. The Regional Water Board received a complaint from a downstream water supply system that water quality monitoring revealed anomalous turbidity readings in the South Fork Eel River that may have been related to the sidcasting activities.

On March 6, 2008, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2008-0008 in the matter of Caltrans Confusion Hill project. The order assessed a total civil liability of \$20,000 for one day of discharge of 170 gallons of a sediment slurry to the River and four days of failure to submit a written report of the discharge.

On December 10, 2009, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2009-0115, in the matter of Caltrans Hardscrabble Creek Bridge Replacement Project. The order assessed a total civil liability of \$26,000 for two 1,000 gallon discharges, the failure to follow the project description and the failure to have adequate BMPs.

On March 15, 2012, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2012-0034, in the matter of Caltrans Confusion Hill Bypass Project. The order assessed a total civil liability of \$475,182 for ten discharge violations related to construction dewatering, four discharges related to leaky equipment, slag discharge violations, four discharges related to the unauthorized turbid discharge to the River, thirteen violations of insufficient turbidity measurements, five events of improper disposal of cement waste, five individual discharge events, and non-containment of the trestle deck.

On April 26, 2012, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2012-0054, with respect to the Caltrans Confusion Hill Bypass Project for reporting violations settled between Regional Water Board staff and Caltrans that allegedly occurred on the Confusion Hill Bypass Project. The order reflected the settlement agreement of a total civil liability of \$400,000.

Based on the timing of the previous violations relative to the enforcement action and the similarity of the violations to the violations alleged in the complaint, Regional Water Board staff selected a multiplier of 1.3.

Step 6 – Ability to Pay

According to the Caltrans web site (<http://www.dot.ca.gov/dist4/101centralproject/>, accessed August 16, 2012), the Highway 101 High Occupancy Vehicle Project cost \$55 million to construct. Regional Water Board staff have no information to indicate that the proposed administrative liability would jeopardize the Dischargers' ability to remain in business, or that it would be unable to pay the proposed administrative civil liability.

Step 7 – Other Factors as Justice May Require

The Enforcement Policy provides that if the Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express, findings are made. Additionally, the staff costs for investigating the violation and preparing the Complaint should be added to the liability amount.

The Water Board Prosecution Team staff time incurred to prepare this administrative civil liability complaint is estimated to be at a minimum of 120 hours. Based on an average cost to the state of \$150 per hour, the total Water Board staff cost is estimated to be \$25,000. Water Board staff costs will continue to accrue through settlement discussions and hearing until final resolution of this matter. On balance, Prosecution Team staff respectfully request that the Regional Water Board award it these costs of enforcement in addition to the proposed administrative civil liability.

Step 8 – Economic Benefit

Regional Water Board staff assume that the Dischargers received substantial economic benefit by failing to implement adequate BMPs and failing to submit the required reports, but believes that the proposed administrative civil liability amount will capture the benefit gained.

Step 9 – Maximum and Minimum Liability Amounts

Statutory Maximum

The Enforcement Policy directs the Regional Water Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

As described in Finding 53 of the Complaint, the maximum potential liability for the alleged violations is \$167,040,000.

Statutory Minimum

The Enforcement Policy requires the Regional Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case, the administrative civil liability is expected to capture the economic benefit amount plus ten percent.

Step 10- Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount was performed as follows:

$$(\text{Combined Total Base Liability Amount}) + (\text{Staff Costs}) + (\text{Adjustment for Other Factors as Justice May Require}) = (\text{Final Liability Amount})$$

Final Liability Amount = \$5,565,860

The table below summarizes the penalty amounts for each type of violation:

Permit	Requirement Violated	Maximum Liability	Proposed Liability
Storm Water	Prohibition A.2: No discharge of dredge or fill material to waters of the United States (1 day; 2 sites; 15,000 gal/site)	\$300,000	\$76,050
Storm Water	Prohibition A.3: No discharge of waste to waters of the state (1 day; 2 sites; 15,000 gal/site)	\$300,000	\$76,050
Storm Water	Prohibition A.4: No dumping, depositing or discharging into waters of the state (1 day; 2 sites; 15,000 gal/site)	\$300,000	\$76,050
Storm Water	Prohibition A.6: No sand, silt or earthen materials in waters of the State (1 day; 2 sites; 15,000 gal/site)	\$300,000	\$76,050
Storm Water	CGP Attachment D, Sediment Controls E.3: Erosion control BMPs (1 day, 2 sites)	\$20,000	\$18,590
Certification	Condition 4.a: Mitigation in strict compliance with 401 project description (2 days, 2 sites)	\$40,000	\$37,180
Certification	Condition 4.b: Actions compliant with Basin Plan (1 day, 1 site)	\$10,000	\$9,295
Certification	Condition 9: Project activities cease if unauthorized discharge and inadequate BMPs (2 days, 1 site)	\$20,000	\$18,590
Certification	Condition 10: No soil, sand, or earthen material placed where may be washed by rainfall into waters of the State (1 day; 2 sites; 15,000 gal/site)	\$300,000	\$76,050
Certification	Condition 12: No working in flowing or standing waters unless proposed in application and approved by Regional Water Board (2 days at Copeland Creek, 1 day at Laguna de Santa Rosa)	\$30,000	\$27,885
Certification	Condition 14: BMPs implemented (1 day, 2 sites)	\$20,000	\$18,590
Certification	Condition 18: Submittal of monthly monitoring reports (15,632 days late as of October 15, 2012)	\$156,350,000	\$4,811,625
Certification	Condition 24: 1 hour/24 hour reporting of turbidity measurements (1 day, 1 site)	\$10,000	\$5,915
Certification	Condition 28: First rainfall event report (904 days late as of October 15, 2012)	\$9,040,000	\$212,940
Violations Total		\$167,040,000	\$5,540,860
Staff Costs		--	\$25,000
FINAL LIABILITY		--	\$5,565,860