

1 DOWNEY BRAND LLP
2 MELISSA A. THORME (Bar No. 151278)
3 621 Capitol Mall, 18th Floor
4 Sacramento, CA 95814-4731
5 Telephone: (916) 444-1000
6 Facsimile: (916) 444-2100
7 mthorme@downeybrand.com

8 Attorneys for
9 S.D. DEACON OF CALIFORNIA

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
FOR THE CENTRAL VALLEY REGION

In the Matter of:

DONAHUE SCHRIBER ASSET
MANAGEMENT CORPORATION
FOR ROCKLIN CROSSINGS,
PLACER COUNTY, Administrative Civil
Liability Complaint No. R5-2013-0519

ACLC No. R5-2013-0519

**Declaration of Andy Van Veldhuizen in
support of S.D. Deacon's Submission of
Evidence and Policy Statements and
Designation of Witnesses**

I, Andy Van Veldhuizen, do hereby declare as follows:

1. I am a Senior Project Manager with S.D. Deacon of California and one of the people responsible for overseeing S.D. Deacon's role as general contractor for the Rocklin Crossings Project in Rocklin, California. I make this declaration in support of S.D. Deacon's Submission of Evidence and Policy Statements and Designation of Witnesses.

2. I am familiar with and have knowledge of the Rocklin Crossings project, including the circumstances surrounding the alleged violations contained in the Administrative Civil Liability Complaint No. R5-2013-0519. I am authorized and have personal knowledge of the matters set forth in this declaration, and if called upon to testify to these matters, I would and could so testify.

3. S.D. Deacon provides general contractor services to the Legally Responsible Person (LRP) and site owner Donahue Schriber Asset Management Corporation (Donahue

1 Schriber) for the Rocklin Crossings construction site in Rocklin, California. The Qualified
2 SWPPP Developer (QSD) for this site was Daniel Taylor of RSC Engineering and the Qualified
3 SWPPP Practitioner (QSP) for the site was Dave Clayson of Total Site Maintenance (TSM), who
4 was later assisted by an additional QSP, Scott Thorne. The QSD is responsible for the day-to-day
5 upkeep of the site's Storm Water Pollution Prevention Plan (SWPPP) and any required SWPPP
6 amendments; while the QSPs are responsible for observation and inspection activities, required
7 sampling, and providing sediment and erosion control recommendations.

8 4. Stormwater discharges from this site are regulated by the General Permit for Storm
9 Water Discharges Associated with Construction and Land Disturbance Activities, Order No.
10 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ, issued by the California State
11 Water Resources Control Board (hereinafter "Construction Stormwater General Permit").
12 Notices of Intent (NOIs) to be covered under the Construction Stormwater General Permit were
13 submitted by the LRP in mid-July of 2012. (*See* Prosecution Team Exhibits 27, 32, 50, 57, 59, 66,
14 83 and 84.) The original SWPPPs for this construction site, dated July 11, 2012, were prepared
15 by RSC Engineering. (*See* Prosecution Team Exhibits 31, 49, 67, and 82.) The SWPPPs were
16 submitted, as required by the Construction Stormwater General Permit, to the Regional Quality
17 Control Board for the Central Valley Region (Regional Board) via the Stormwater Multiple
18 Application and Reporting Tracking System (SMARTS). (*Id.*; *see also* Prosecution Team's
19 Evidence List, indicating these were "Documents located in SMARTS Database.")

20 5. The Rocklin Crossings construction site consists of approximately 50.4 acres and
21 is located on the southeast corner of Interstate 80 and Sierra College Boulevard in Rocklin,
22 California. The main project site is located approximately 1,000 feet north of Secret Ravine.
23 Prior to construction, storm water runoff generated from the site sheet-flowed into a number of
24 offsite ephemeral drainages that ultimately discharged into Secret Ravine.

25 6. Since the commencement of construction, the site was mass graded into two main
26 onsite watersheds, Shed A and Shed B (*See* Exhibit A attached to this Declaration (Site Map)).
27 Until mid-December 2012, Shed A sheet-flowed in a north to south direction, to numerous low
28 spots, where any accumulating water was then pumped to Basin A to allow for settlement prior to

1 discharge. Shed B also sheet-flowed to various low spots and then was captured, pumped and
2 transported to Basin A. Basin A then discharged indirectly to Secret Ravine.

3 7. Throughout the site, good housekeeping BMPs were deployed, such as those listed
4 below, and good housekeeping practices were followed to ensure storm water runoff did not come
5 into contact with waste or hazardous materials.

- 6 • A self-contained tire wash was installed at the entrance.
- 7 • All sanitation facilities were located away from watercourses and storm drains, and
8 were placed in a manner that they could not easily be knocked over by equipment or
9 vehicles.
- 10 • Waste disposal containers were covered.
- 11 • Hazardous and waste materials were stored in a manner that would eliminate the
12 potential for these materials to come into contact with storm water runoff.

13 8. In addition, other BMPs were in place including, among other things, sediment
14 control BMPs. The site had been inspected by Regional Board staff and S.D. Deacon was in
15 regular communication with Regional Board staff about activities and BMPs at the site. When
16 substantive modifications to the SWPPP were made or BMPs needed to be altered, revisions to
17 the SWPPP were uploaded to SMARTS. (*See e.g.*, Prosecution Team Exhibits 39-41, 43, and
18 70.)

19 9. Prior to the storm event at issue, Rain Event Action Plans (REAPs) were prepared.
20 (*See* Exhibit B attached to this Declaration.) The storm event in question took place on November
21 30th, 2012.

22 10. During the 23-hour period leading up to these events, beginning 8:00 AM on
23 November 28th and ending 7:00 AM on November 29th, the rain gauge present on the site
24 indicated that the site had received 0.75 inches of rain. (*See* Exhibit C (rain log).) During the
25 inspection that occurred the morning of November 29th, the BMPs implemented on the site were
26 effectively controlling the discharge of sediment from the site. BMP maintenance was performed
27 as necessary and continued pumping operations, removing water from low containment areas to
28 transport sediment laden water to Basin A.

11. During the 96-hour period, starting at 5:00 AM on November 30th through 7:00
AM December 2nd, the site received an additional approximately 6.25 inches of rain. (*See* Exhibit

1 C.) During an inspection that occurred at 5:30 AM on November 30, 2012, it was observed that
2 although heavy rain was occurring, the BMPs and runoff control measures on the site were
3 effectively managing storm water runoff and controlling the discharge of sediment.

4 12. By 8:00 AM, due to the continued very heavy rain and associated storm water
5 accumulation, there was one location, located near Basin A, where a constructed berm had been
6 breached, resulting in sediment laden water overwhelming a protected outlet culvert located on
7 the south side of the as yet to be constructed detention basin. Immediately upon the identification
8 of this issue, repairs to the berm were initiated and the culvert was plugged to prevent future
9 discharges.

10 13. While the berm breach was being addressed, the containment area located at the
11 west end of Dominguez Loop also began to become overwhelmed due to the severe rains the site
12 was experiencing, which we believe exceed the 5-year, 24-hour Compliance Storm Event size
13 identified in the Construction Stormwater General Permit. (See Exhibit C.) Normally, runoff
14 accumulating in the containment area was pumped into a water truck that then transported the
15 water to Basin A. However, due to the heavy amount of rainfall occurring in such a short period
16 of time, the containment area was overwhelmed resulting in the discharge of water that caused
17 eventual eroding of an earthen dike that had been constructed to prevent storm water runoff from
18 leaving the site. Immediate efforts were initiated to repair the dike, and the flow of storm water
19 runoff was partially stopped within 1.5 hours (by 10:00 a.m.) when the rock berm was
20 reconstructed and completely stopped just over an hour later at approximately 11:15 a.m. As a
21 temporary measure, the dike was immediately protected with Visquine. We had also immediately
22 contacted a subcontractor to request the instantaneous deployment of a dozer to re-grade the dike
23 higher and wider. Re-grading of the dike began at 11:00 AM. By the end of the day, on
24 November 30, 2012, the dike had been completely reconstructed.

25 14. Much of the sediment that left both parts of the site was stopped by heavy
26 vegetation prior to reaching Secret Ravine and, where accessible, this sediment was protected
27 with straw blankets, straw wattles, rock bags, and hydro-seeding.

28 15. In addition to the dike repair, we also ordered a 6-inch pump to be delivered the

1 following day (December 1, 2012). This larger pump was used to pump water from the
2 containment area, located within Dominguez Loop, to Basin A. The 6-inch pump was on site by
3 7:00 AM on December 1, 2012, the day after the incident. Pumping began by 9:30 AM and was
4 continued through the weekend.

5 16. To eliminate the potential for further discharges of sediment, we worked diligently
6 to implement additional BMPs on the site. Immediately after the event, a long term corrective
7 action strategy was developed and provided to Regional Board staff on December 10, 2012, that
8 included:

- 9 • The construction of an additional basin to increase storm water storage capacity.
- 10 • Placement of additional pumps and associated piping to transport water to the basin.
- 11 • The implementation of a phased grading plan to make the site more manageable in regards to management of storm water runoff.
- 12 • The application of additional erosion control measures.
- 13 • Construction of all-weather access roads.
- 14 • Obtaining additional support from storm water consultants (Supplemental QSP) as a QA/QC oversight of the contracted QSP and QSD to review and supplement the SWPPP.

15 17. In addition, on the day of the incident, November 30, 2012, we contacted Active
16 Treatment Systems, Inc. to provide an Active Treatment System (ATS) to treat storm water
17 generated from the site. Between December 5th and 10th, 2012, a second basin, Basin B, was
18 also constructed to provide additional onsite storage. Runoff was pumped to Basin B for holding
19 and then transferred to Basin A for treatment by the ATS. Active Treatment Systems, Inc.
20 prepared an ATS Plan that was submitted to the Regional Board for approval per the requirements
21 of the Construction Stormwater General Permit. The system described in the ATS Plan and
22 implemented on site was designed to accommodate a 10-year, 24-hour storm event (4 inches of
23 rain) and drain in less than 72-hours. The ATS Plan was uploaded to SMARTs on December 11,
24 2012 (Prosecution Team Exhibit 33) and approval of the plan was obtained from the Regional
25 Board on December 12, 2012. Deployment of the ATS began on December 10, 2012 and the
26 system was fully operational December 18, 2012. The ATS discharged indirectly to Secret
27 Ravine.
28

1 18. For the remainder of the 2012/13 storm season, storm water accumulating within
2 Dominguez Loop was pumped by the 6-inch pipe to either Basin A or Basin B. If Basin A had
3 capacity and was not in the process of actively treating storm water, water was pumped to Basin
4 A. If Basin A did not have capacity, water was pumped to Basin B and stored until such time that
5 the water was pumped to Basin A for pre-treatment and settlement. The chemical additive
6 Chitosan was added to the water in Basin A to aid in flocculation of the sediment particles. Once
7 the appropriate amount of flocculation had occurred, sediment settled out within the basin. Water
8 was then transferred to a series of baker tanks for additional ATS treatment and then was finally
9 processed through a series of sand filters that removed the remaining sediment and the chemical
10 additive prior to discharge.

11 19. For the end of last rain season, the treatment system worked as intended and in
12 compliance with the ATS requirements indicated in the Construction Stormwater General Permit.
13 (*See accord* Prosecution Team Exhibits 34-38, 42.) For the upcoming rain season, the large
14 permanent detention basin will be finalized and used to store any stormwater coming off of the
15 whole site.

16 20. Despite having many meetings with Regional Board staff and being very
17 cooperative and open, the Designated Parties in this action (i.e., Donahue Schriber and S.D.
18 Deacon) were unable to come to an acceptable settlement of this matter. S.D. Deacon's challenge
19 to this enforcement action mainly hinges on the ACL Complaint's inconsistency with the State
20 Water Board's Enforcement Policy and its requirements related to assessments of penalties on a
21 dollars per gallon basis. (*See Exhibit D (Enforcement Policy)* attached to this Declaration at p.
22 14.) Had the proposed penalty been more reasonable and consistent with the Enforcement Policy
23 and other ACLs in this region and statewide (*see Exhibits E-G (other ACLs)* attached to this
24 Declaration), S.D. Deacon would not have requested Designated Party status and this hearing
25 would not have been necessary.

26 21. Attached hereto is **Exhibit A**, which to the best of my knowledge is a true and
27 correct copy of a site map delineating the pre-incident SWPPP map into several sub-shed areas.

28 22. Attached hereto is **Exhibit B**, which to the best of my knowledge is a true and

1 correct copy of the Rain Event Action Plans (REAPs), which were prepared by TSM on
2 November 26-29, 2012 in preparation for the storm event discussed in the ACL Complaint.

3 23. Attached hereto is **Exhibit C**, which to the best of my knowledge is a true and
4 correct copy of the Rain Gauge Log Sheet for the Rocklin Crossings site for November 1, 2012 to
5 December 5, 2012, and information including a chart and a precipitation map on the duration and
6 frequency of storm events for the western Sierra Nevada Crest in Placer County.

7 24. Attached hereto is **Exhibit D**, which to the best of my knowledge is a true and
8 correct copy of the State Water Resources Control Board's Enforcement Policy adopted in 2009
9 and approved for state law purposes on May 20, 2010 (taken from SWRCB's website at
10 http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709
11 [.pdf](#) (last accessed on September 4, 2013), and for which S.D. Deacon requests official notice be
12 taken.

13 25. Attached hereto is **Exhibit E**, which to the best of my knowledge is a true and
14 correct copy of ACL Complaint No. R5-2013-0520 ACL issued by the Central Valley Regional
15 Water Quality Control Board to HBT of Saddle Ridge LLC for the Cascade Crossing construction
16 site on March 4, 2013, which was downloaded from the site:

17 www.swrcb.ca.gov/.../cascade_crossing/r5-2013-0520_enf.pdf and Attachment A from
18 downloaded from the site:

19 [http://www.swrcb.ca.gov/rwqcb5/board_decisions/tentative_orders/cascade_crossing/r5-2013-](http://www.swrcb.ca.gov/rwqcb5/board_decisions/tentative_orders/cascade_crossing/r5-2013-0520_att_a.pdf)
20 [0520_att_a.pdf](#) (last accessed on September 4, 2013), and for which S.D. Deacon requests
21 official notice be taken.

22 26. Attached hereto is **Exhibit F**, which to the best of my knowledge is a true and
23 correct copy of ACL Complaint No. R8-2010-0024 issued to the Placentia-Yorba Linda Unified
24 School District on June 10, 2010, which was downloaded from the following website:

25 http://www.swrcb.ca.gov/rwqcb8/board_decisions/adopted_orders/orders/2010/10_024_ACLC_P
26 [lacentia-Yorba_Linda_USD.pdf](#) (last accessed on September 4, 2013), and for which S.D.
27 Deacon requests official notice be taken.

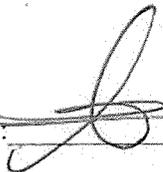
28 27. Attached hereto is **Exhibit G**, which to the best of my knowledge is a true and

1 correct copy of ACL Complaint No. R8-2010-0023 issued to EI-PLA 75, LLC on May 27, 2010,
2 which was downloaded from the following website:
3 http://www.waterboards.ca.gov/rwqcb8/board_decisions/adopted_orders/orders/2010/10_025_AC
4 [LC_EI-PLA75LLC.pdf](#) (last accessed on September 4, 2013), and for which S.D. Deacon
5 requests official notice be taken.

6 28. Attached hereto is **Exhibit H**, which to the best of my knowledge is a true and
7 correct copy of the complete version of Order No. 2009-0009-DWQ, amended by 2010-0014-
8 DWQ & 2012-0006-DWQ, located from
9 http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009
10 [0009_complete.pdf](#) (last accessed on September 4, 2013), and for which S.D. Deacon requests
11 official notice be taken.

12
13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing declaration is true and accurate.

15 Executed this 4th day of September, 2013, in Citrus Heights, California

16
17
18
19 By:  _____

20 Andy Van Veldhuizen

21 S.D. DEACON OF CALIFORNIA

22
23
24
25 1335335.1

26

27

28