

1 DAVID M. BOYERS, Supervising Senior Staff Counsel (SBN 199934)
2 MAYUMI E. OKAMOTO, Staff Counsel (SBN 253243)
3 Office of Enforcement
4 State Water Resources Control Board
5 1001 I Street, 16th Floor
6 Sacramento, California 95814
7 Telephone: 916-341-5276
8 Fax: 916-341-5896
9 E-mail: david.boyers@waterboards.ca.gov

10 Attorneys for Prosecution Team

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BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

11 In the Matter of:)
12)
13 Donahue Schriber Asset Management) **Prosecution Team Rebuttal to**
14 Corporation; Rocklin Crossings, Placer) **Evidence and Argument Submitted**
15 County) **by Donahue Schriber Corporation**
16) **and S.D. Deacon**
17 Administrative Civil Liability Complaint)
18 No. R5-2013-0519)

19 The Prosecution Team submits the following rebuttal to the evidence and argument
20 submitted by Donahue Schriber Asset Management Corporation (Donahue Schriber) and S.D.
21 Deacon (Collectively "Dischargers"). This rebuttal responds to the two main contentions made by
22 the Dischargers in their evidence and argument submittals: (1) that the use of \$10 per gallon to
23 calculate the base liability amount proposed in the Administrative Civil Liability (ACL) Complaint is
24 inequitable and inconsistent with the State Water Resources Control Board's (State Water Board)
25 Water Quality Enforcement Policy, as amended by State Water Board Resolution No. 2009-0083
26 and made effective May 20, 2010 (Enforcement Policy); and (2) that the discharge resulted in
27 only minor harm or potential for harm to beneficial uses.

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I. **THE USE OF \$10.00 PER GALLON IS APPROPRIATE TO DETERMINE THE**
BASE LIABILITY AMOUNT FOR THE DISCHARGE VIOLATION

1 Water Code section 13385 subdivision (c) states, in relevant part, that civil liability may be
2 imposed administratively by the regional board in an amount not to exceed the sum of ten
3 thousand dollars (\$10,000) for each day in which the violation occurs and ten dollars (\$10)
4 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds
5 1,000 gallons.¹ Subdivision (e) of Water Code section 13385 specifies a number of factors that
6 the regional board shall consider in determining the appropriate amount of liability, including the
7 nature, circumstances, extent, and gravity of the violation(s), whether the discharge is susceptible
8 to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator,
9 the ability to pay, the effect on the violator's ability to continue in business, any voluntary cleanup
10 efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or
11 savings, if any, resulting from the violation, and any other matters that justice may require. The
12 Enforcement Policy establishes a methodology for assessing administrative civil liability using the
13 factors outlined in Water Code section 13385(e).

14 **A. The use of \$10.00 per gallon to calculate the initial liability amount in the ACL**
15 **Complaint is consistent with the plain language in the Enforcement Policy**

16 The Dischargers both vehemently contend that the Enforcement Policy *mandates* that the
17 Central Valley Regional Water Quality Control Board (Central Valley Water Board) calculate the
18 base liability amount for the stormwater discharge violation alleged in ACL Complaint No. 2013-
19 0519 using a maximum of \$2.00 per gallon rather than the statutory maximum penalty of \$10.00
20 per gallon. More generally, the Dischargers contend that, regardless of volume, *all* discharges of
21 sewage and stormwater are subject to a maximum liability of \$2.00 per gallon and that the per
22 gallon liability may not be increased unless the discharge was a dry weather sewage discharge or
23 the discharge resulted in a measurable impact to beneficial uses. These contentions are without
24 merit.

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26 _____
27 ¹ The regional board may also request that the Attorney General seek civil liability imposed judicially in an amount not to
28 exceed \$25,000 for each day in which the violation occurs and \$25 multiplied by the number of gallons by which the
volume discharged but not cleaned up exceeds 1,000 gallons. (Wat. Code, § 13385, subd. (b).)

1 The plain language of the Enforcement Policy provides that the default maximum liability
2 that should be applied when determining the base liability amount for any discharge violations is
3 \$10.00 per gallon. The exception cited by the Dischargers applies *only if* the discharge is
4 determined to be “high volume.” Where the plain language of the Policy is clear and
5 unambiguous, it must be followed. (See Barnhart v. Walton (2002) 535 U.S. 212; Witt Home
6 Ranch Inc. v, County of Sonoma (2008) 165 Cal.App.4th 543.)

7 The Enforcement Policy states, “[e]xcept for certain high-volume discharges discussed
8 below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of
9 gallons [discharged] subject to penalty multiplied by *the maximum per gallon penalty amount*
10 *allowed under the California Water Code.*” (Exhibit 87, p. 13, emphasis added.) Using the
11 maximum per gallon penalty of \$10.00 as the default base volume liability assessment is
12 reiterated later in the Enforcement Policy; “[t]he Water Boards *shall* apply the above per gallon
13 factor to the *maximum per gallon amounts allowed under the statute for the violations involved.*”
14 (Id., at 14, emphasis added.) Again, the exception to this general rule is where the discharge is
15 “high volume.” The State Water Board provided for this exception in a section of the Enforcement
16 Policy it entitled, “High Volume Discharges.” That section provides in its entirety:

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18 ***High Volume Discharges***

19 The Water Boards shall apply the above per gallon factor to the maximum per
20 gallon amounts allowed under the statute for the violations involved. Since the
21 volume of sewage spills and releases of stormwater from construction sites and
22 municipalities can be very large for sewage spills and releases of municipal
23 stormwater or stormwater from construction sites, a maximum amount of \$2.00
24 per gallon should be used with the above factor to determine the per gallon
25 amount for sewage spills and stormwater. Similarly, for releases of recycled
26 water that has been treated for reuse, a maximum of \$1.00 per gallon should be
27 used with the above factor. Where reducing these maximum amounts results in
28 an inappropriately small penalty, such as dry weather discharges or small volume
discharges that impact beneficial uses, a higher amount, up to the maximum per
gallon amount may be used. (Id.)

 The phrase, “[s]ince the volume of sewage spills and releases of stormwater from
construction sites and municipalities *can be very large* [..]” clearly recognizes that, in some
instances, sewage spills and releases of stormwater from construction sites and municipalities

1 *may not be* very large. Only in those cases where the discharge *is* very large, i.e. where the
2 discharge is considered “high volume”, should the base liability be calculated using a maximum of
3 \$2.00 per gallon. If the discharge is not determined to be “high volume” then the base liability
4 amount should be calculated using \$10.00 per gallon.² This interpretation is consistent with
5 previous language cited above which assigns “*the maximum per gallon penalty amount allowed*
6 *under the California Water Code*” for discharges “*except for certain high-volume discharges*”
7 discussed in the “High Volume Discharges” section.

8 The Discharger’s interpretation impermissibly ignores critical qualifying language in the
9 Enforcement Policy, and turns the entire meaning of the “Per Gallon Assessments for Discharge
10 Violations” and the “High Volume Discharge” sections of the Enforcement Policy on their heads by
11 suggesting that penalties for *all* discharges of sewage and stormwater that give rise to
12 administrative civil liability should be calculated using a reduced maximum of \$2.00 per gallon
13 regardless of volume. If the State Water Board had intended that *all* sewage spills and stormwater
14 discharges be calculated using \$2.00 per gallon, regardless of size, it could have easily provided
15 for that in the Enforcement Policy. It did not. It created a section whereby liability for “high
16 volume” discharges only is calculated using a maximum of \$2.00 per gallon.

17 **B. The use of \$10.00 per gallon is consistent with the manner in which the Central**
18 **Valley Regional Board and other Regional Water Boards have applied the**
19 **Enforcement Policy.**

20 Since the Enforcement Policy became effective on May 20, 2010, the Prosecution Team
21 identified only twelve ACL Complaints or Stipulated ACL Orders that have been issued throughout
22 the state where liability has been proposed for construction stormwater violations.³ Of these, only
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24 ² The Enforcement Policy does not define “high volume” so the Regional Board may use its discretion in deciding
25 whether a discharge volume qualifies as a high volume discharge. The Prosecution Team recommends that the board
26 find that the amount discharged in this case, 76,613 gallons, was not a high volume discharge.

27 ³ (1) ACL Complaint No R8-2010-0024 (S.D. Deacon Exhibit F);

28 (2) ACL Complaint No. R8-2010-0025 (S.D. Deacon Exhibit G);

(3) ACL Complaint No R2-2010-0094 (Exhibit 88);

(4) ACL Complaint No. R2-2010-0071 (Exhibit 89);

[Footnote continued on next page.]

1 four (not including the ACL Complaint issued in this case) alleged discharges of sediment laden
2 stormwater where liability was proposed on a per gallon basis. Thus, the pool of analogous cases
3 from which the Central Valley may draw from for guidance in this matter is extremely small. Each
4 of the four analogous cases is discussed below.

5 In its brief, S.D. Deacon contends that “[e]very construction stormwater ACL penalty found
6 in California that was imposed after adoption of the 2010 Enforcement Policy, except one [in the
7 Santa Ana Region], has used \$2.00 per gallon as the starting point for calculating base liability.”
8 (S.D. Deacon’s Submission of Evidence & Argument, p. 13.) This statement is simply false. On 3
9 May 2011, the San Francisco Regional Water Quality Control Board adopted Order No. R2-2011-
10 0071, imposing \$381,450 in liability against the California Department of Transportation
11 (CalTrans) for construction stormwater violations, including discharge violations similar to those at
12 issue here where the base liability amount was calculated using \$10.00 per gallon discharged.
13 (Exhibit 89.) In that case, the ACL Complaint alleged that CalTrans had failed to implement
14 appropriate BMPs, failed to timely prepare and submit a required SWPPP amendment, and
15 discharged 64,000 gallons of turbid water and sediment. To calculate the base liability for the

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17 (5) ACL Complaint No. R9-2010-0084 (Accessed from
http://www.waterboards.ca.gov/rwqcb9/board_info/agendas/2011/Oct/item8/Supporting_Doc_2.pdf and for which the
Prosecution Team request official notice be taken);

18 (6) ACL Complaint No. R8-2010-0050 (Accessed from
http://www.waterboards.ca.gov/rwqcb8/board_decisions/adopted_orders/orders/2010/10_050_ACLC_CALTRANS_MC_MCONSTRUCTION_SKANSKAUSA.pdf and for which the Prosecution Team request official notice be taken);

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20 (7) ACL Complaint No. R4-2011-0188 (Accessed from
http://www.waterboards.ca.gov/losangeles/water_issues/programs/enforcement/acl_docs/2011/Complaint%20No.%20R4-2011-0188.pdf and for which the Prosecution Team request official notice be taken);

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22 (8) ACL Complaint No. R5-2012-0500 (Accessed from
http://www.swrcb.ca.gov/rwqcb5/board_decisions/adopted_orders/nevada/r5-2012-0500_aclc.pdf and for which the
Prosecution Team request official notice be taken);

23 (9) ACL Complaint No. R6V-2012-0049 (Accessed from
http://www.waterboards.ca.gov/rwqcb6/board_decisions/adopted_orders/2012/docs/r6v_2012_0049.pdf and for which
the Prosecution Team request official notice be taken);

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25 (10) Stipulated ACL Order No. R2-2011-0054 (Accessed from
http://www.swrcb.ca.gov/rwqcb2/board_decisions/adopted_orders/2011/R2-2011-0054.pdf and for which the
Prosecution Team request official notice be taken);

26 (11) ACL Complaint No. R5-2013-0521 (Accessed from
http://www.swrcb.ca.gov/rwqcb5/board_decisions/adopted_orders/placer/r5-2013-0521_enf.pdf and for which the
Prosecution Team request official notice be taken); and

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28 (12) ACL Complaint No. R5-2013-0520 (S.D. Deacon Exhibit E)

1 64,000 gallon discharge, a maximum per gallon liability amount of \$10.00 was used. The volume
2 discharged in that case, as in this case, is relatively low; therefore, the liability was assessed using
3 the maximum per gallon amount of \$10.00 rather than the \$2.00 per gallon amount for high
4 volume discharges.

5 The Dischargers also contend that the ACL Complaint issued in this matter is inconsistent
6 with ACL Complaint No. R5-2013-0520 issued to HBT of Saddle Ridge, LLC for discharges of
7 stormwater associated with construction activity at the Cascade Crossing construction site.
8 Specifically, the Dischargers claim that Central Valley Water Board calculated the base liability
9 amount using \$2.00 per gallon for a discharge of 37,500 gallons. The Dischargers are mistaken.
10 In the ACL Complaint issued for the Cascade Crossing site, there were two discharges that
11 occurred which gave rise to liability. The first discharge of 193,500 gallons occurred on 30
12 November 2012; the second discharge of 37,500 gallons occurred on 2 December 2012. Both
13 discharges occurred during a single qualifying rain event, which is defined in the Construction
14 General Permit as “any event that produces 0.5 inches or more precipitation with a 48 hour or
15 greater period between rain events.” Because the discharges occurred during a single qualifying
16 rain event, the amounts discharged were added and the cumulative amount of 230,500 gallons
17 was considered a “high volume” discharge that qualified for the reduced base liability amount of
18 \$2.00 per gallon in the Enforcement Policy. The discharge at the Cascade Crossing construction
19 site was over three times higher in volume than the discharge at issue in this case, which is much
20 closer in volume to the 64,000 gallons that was not considered high volume in the CalTrans case.

21 Finally, the Dischargers cite to two construction stormwater enforcement actions from the
22 Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) to support their
23 contention that using \$10.00 per gallon to calculate the base liability amount for construction
24 stormwater discharges is unprecedented. In the first case, an ACL Complaint was issued to ELI-
25 PLA proposing a liability amount of \$3.00 per gallon for a discharge of 101,631 gallons of
26 sediment laden stormwater. No analysis was provided by the Santa Ana Water Board as to
27 whether the discharge event was considered high volume or not. It is reasonable, however, to
28 assume that, given the language in the Enforcement Policy, the Santa Ana Region determined

1 that the 101,631 gallon discharge was a high volume discharge but that imposing liability based
2 on a per gallon assessment of \$2.00 per gallon would have resulted in an inappropriately small
3 penalty. Thus, the per gallon liability was raised to \$3.00. Because the Santa Ana Water Board
4 did not outline its rationale for using a base liability amount of \$3.00 per gallon, the case is of
5 limited value. In any event, the ELI-PLA case is not inconsistent with the Prosecution Team's
6 reading of the Enforcement Policy.

7 The other Santa Ana Water Board case that the Dischargers rely on also does not provide
8 any substantive analysis regarding the language at issue in the Enforcement Policy and cannot be
9 relied on to serve as meaningful guidance in this case. In that case, an ACL Complaint was
10 issued to the Placentia-Yorba Linda Unified School District proposing that administrative civil
11 liability be imposed for, among other things, the discharge of 55,887 gallons of sediment laden
12 stormwater at a construction site using a maximum per gallon liability amount of \$2.00. The ACL
13 Complaint failed to provide any rationale for the determination that using \$2.00 per gallon as the
14 maximum per gallon base liability amount was appropriate under the Enforcement Policy. As with
15 the ELI-PLA case, the Placentia-Yorba Linda case is of limited value and it does not bind the
16 Central Valley Regional Board, or any other Regional Water Board, in its consideration of the
17 appropriate interpretation of the High Volume section in the Enforcement Policy.

18 Each of the cases discussed above may be considered by the Central Valley Water Board
19 in its analysis of the Enforcement Policy; however, the cases are not precedential. It is important
20 to remember that Central Valley Water Board has broad discretion to use the per gallon liability
21 amount, as well as all of the other factors outlined in the Enforcement Policy, in its determination
22 of what the ultimate appropriate liability should be.

23 **C. The Prosecution Team's interpretation of the Enforcement Policy will not create**
24 **an incentive For Dischargers to allow spills and releases to continue**

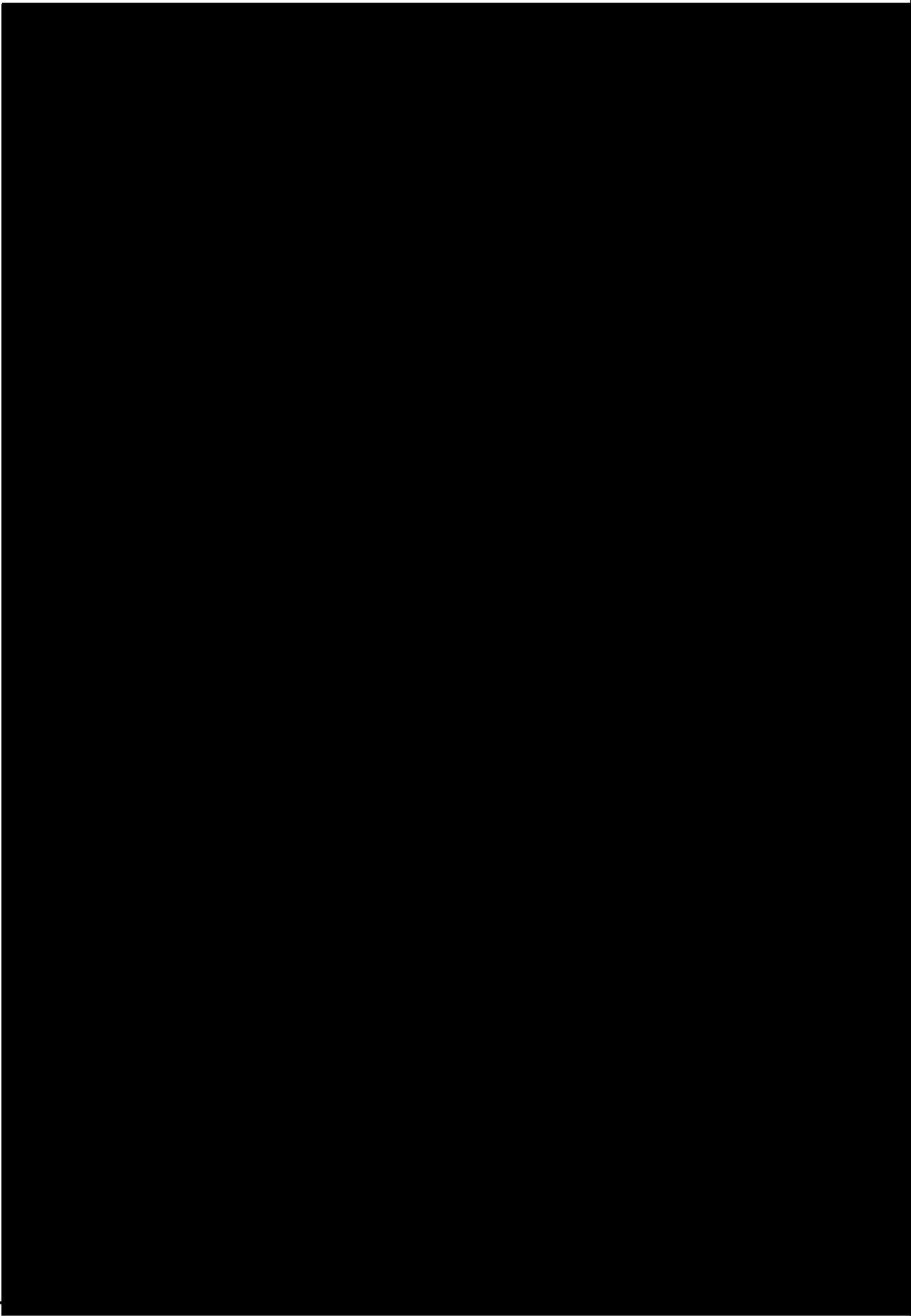
25 Donahue Schriber contends that the Prosecution Team's interpretation of the High Volume
26 provisions of the Enforcement Policy create an "incentive for future dischargers to ensure that any
27 accidental discharges are large enough to clear the undefined 'large volume' hurdle..." (Donahue
28 Schriber's Submission of Evidence & Argument, p. 6.) To make its point, Donahue Schriber

1 argues that had it not worked diligently to minimize the discharge, the penalty proposed would
2 have been less because the volume discharged would have been greater. This assumption is
3 grossly simplistic and ignores the fact that there are a number of factors in the Enforcement Policy
4 which take into account the conduct of the discharger, such as culpability, in establishing an
5 appropriate liability. If it were discovered that a discharger acted in a manner to allow a discharge
6 to continue in order to benefit from the high volume reduction, this conduct would be a factor the
7 Central Valley Water Board could consider in assessing a higher liability amount under the factors
8 that evaluate the discharger's specific actions in relation to the alleged violation.

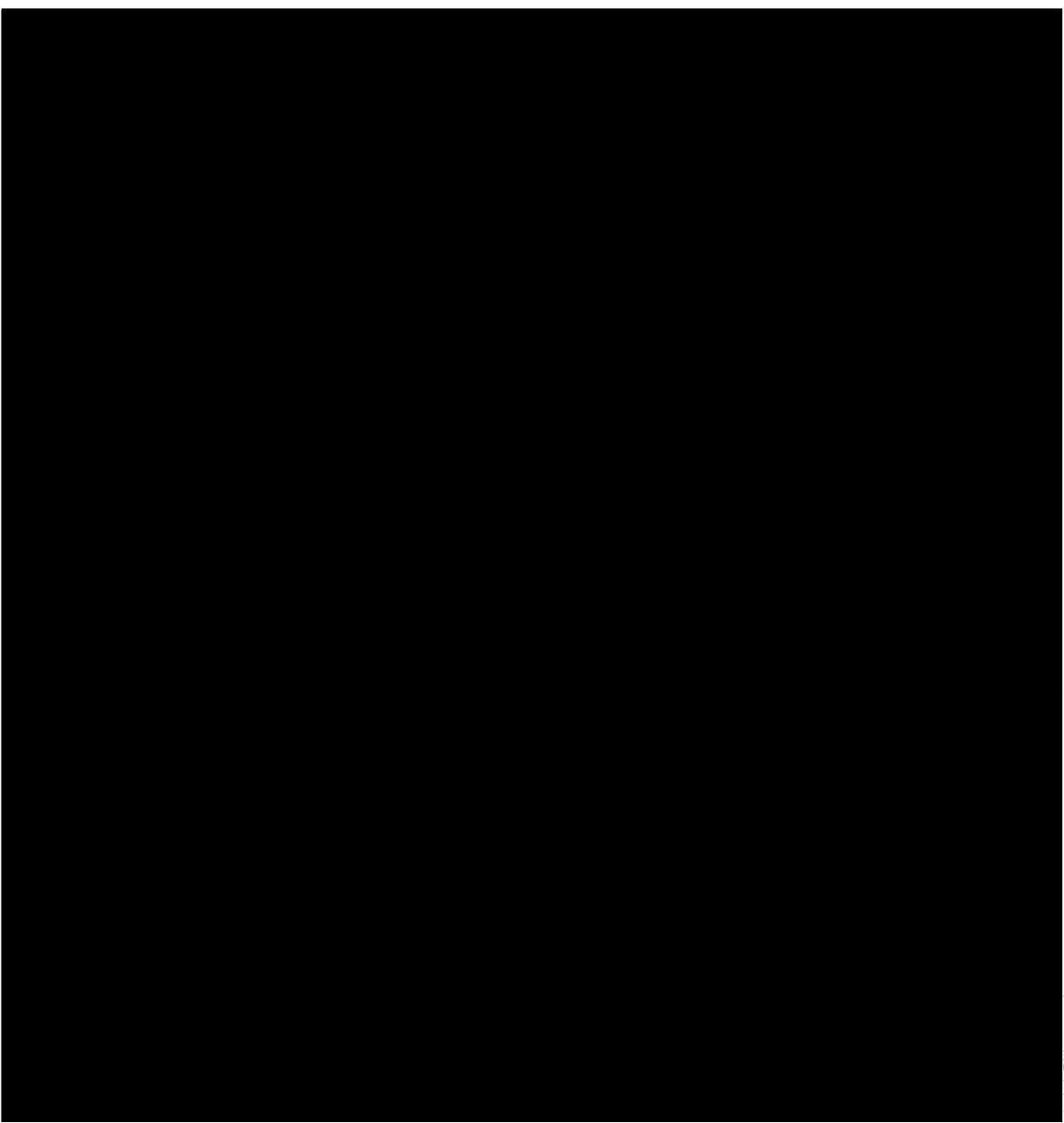
9 The Enforcement Policy allows the Water Boards to increase the base liability by a factor
10 of up to 1.5 for culpability if it was determined that the discharger acted intentionally or even
11 negligently in allowing a discharge to continue for an illicit purpose. (Exhibit 87, p. 17.) Moreover if
12 it were known that a discharger acted to allow a discharge to continue in order to benefit from the
13 high volume reduction, this conduct would be a factor the board could consider in assessing a
14 higher liability amount under the very section the discharger contends would mandate a lesser
15 penalty. The High Volume provisions of the Enforcement Policy allow the Water Boards to adjust
16 the per gallon liability assessed from \$2.00 up to \$10.00 if calculating the liability at \$2.00 per
17 gallon results in an "inappropriately small penalty." (Id. at 14) The Water Boards have the
18 discretion to find that a discharger who *allows* a violation to continue should not benefit from the
19 high volume reduction. Finally, the Water Boards have the discretion using "other factors as
20 justice may require" to adjust the proposed penalty, either up or down, based on other factors
21 which may not fit neatly into one of the enumerated factors and/or multipliers in the Enforcement
22 Policy's Penalty Calculation Methodology. (Id. at 19.)

23 In summary, the Water Boards have broad discretion, supported by various provisions in
24 the Enforcement Policy, to assess a significant liability against a discharger who intentionally puts
25 beneficial uses at risk and allows a discharge to continue for the sole purpose of qualifying for the
26 reduced maximum of \$2.00 per gallon base liability amount provided for in the High Volume
27 section of the Enforcement Policy.

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E. Interpreting the Enforcement Policy in the manner suggested by the Prosecution Team would not result in a violation of the Equal Protection clause of the U.S. Constitution

Without providing any authority other than a general citation to the Fourteenth Amendment to the U.S. Constitution, the Dischargers claim that the imposition of the liability proposed based on the Prosecution Team’s interpretation of the Enforcement Policy would violate principles of due process and equal protection. The failure to plead a cognizable due process and equal protection

1 claim makes it impossible for the Prosecution Team to provide adequate rebuttal and the
2 Discharger's claims in this regard should therefore be ignored.

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4 **II. THE CENTRAL VALLEY WATER BOARD SHOULD FIND THAT THE**
5 **DISCHARGE VIOLATION RESULTED IN A MODERATE POTENTIAL FOR**
6 **HARM TO BENEFICIAL USES**

7 Surface water drainage from the Rocklin Crossings construction site flows to Secret
8 Ravine, a tributary to Miner's Ravine, which is tributary to Dry Creek, and ultimately flows to the
9 Sacramento River between Colusa Drain and the I Street Bridge. Out of the existing and potential
10 beneficial uses listed in the Water Quality Control Plan for the Sacramento River and San Joaquin
11 River Basins, Fourth Edition (Basin Plan), warm and cold freshwater aquatic habitat, warm and
12 cold fish migration habitat, warm and cold spawning habitat, and wildlife habitat are the beneficial
13 uses that are particularly threatened by the discharge of sediment-laden stormwater that occurred
14 from the Rocklin Crossings construction site.

15 Pursuant to the Enforcement Policy, an evaluation of the "Potential for Harm" is the first
16 step to determine an appropriate liability amount for discharge violations. This step requires
17 consideration of three factors, but for purposes of this rebuttal brief, the discussion will focus on
18 "Factor 1: Harm or Potential Harm to Beneficial Uses." The Enforcement Policy states, in relevant
19 part, "[t]he potential harm to beneficial uses factor considers the harm that may result from
20 exposure to the pollutants or contaminants in the illegal discharge." (Exhibit 87, p. 12.) Further,
21 this factor "evaluates direct or indirect harm or *potential for harm* from the violation." (*Id.*, emphasis
22 added.) A "moderate" threat to beneficial may be assigned where "impacts are observed or
23 *reasonably expected* and impacts to beneficial uses are moderate and likely to attenuate without
24 appreciable acute or chronic effects." (*Id.*, emphasis added.)

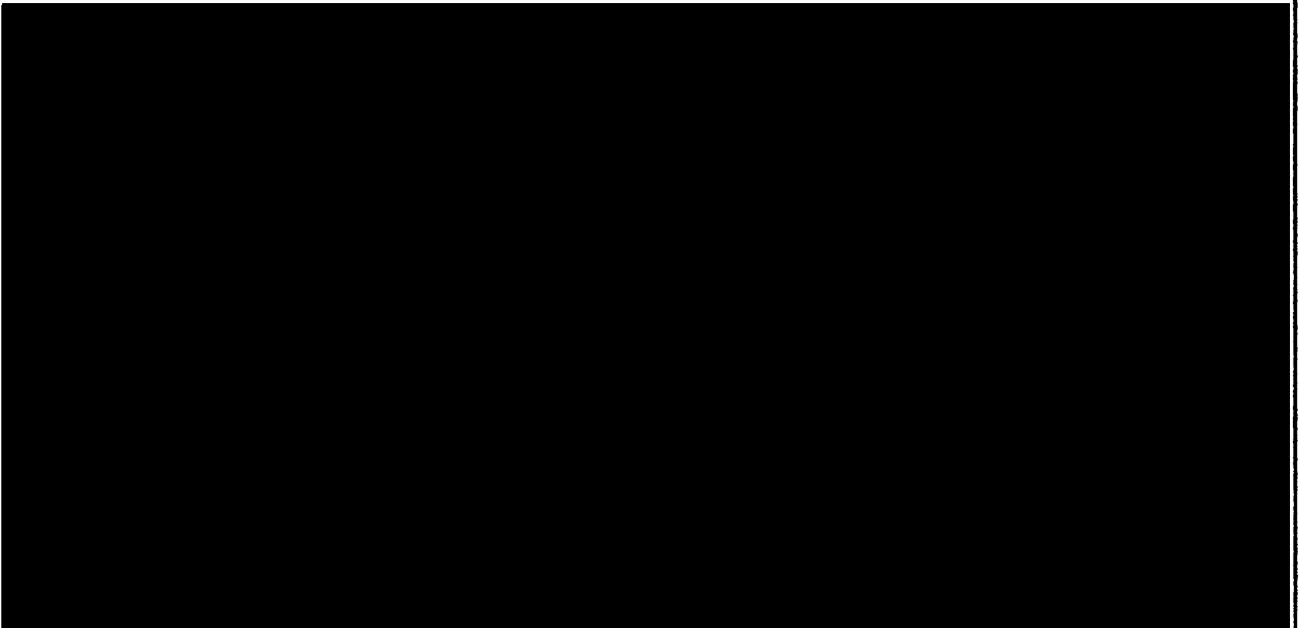
25 The particular pollutants of concern in the sediment-laden stormwater discharge that
26 occurred at the Rocklin Crossings construction site are turbidity, pH, settleable solids, and
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1 suspended solids. In the Discharger's own Final Environmental Impact Report⁴ (EIR) for this
2 project, potential impacts to beneficial uses in Secret Ravine were noted, "[u]ncontrolled soil
3 erosion generated during project construction could indirectly affect fish habitat and benthic
4 macroinvertebrates by degrading water quality within Secret Ravine Creek." (Exhibit 92, Appendix
5 A, p. 13.) Additionally, the Draft EIR's in depth analysis on the project's "Potential for Short-Tem
6 Construction-Related Water Quality Degradation" in Impact 4.10-2 states, "[f]urther, areas of
7 exposed or stockpiled soils could be subject to sheet erosion during rain events. This impact
8 would be considered potentially significant." (Exhibit 21, p. 4.10-14.) To minimize or eliminate this
9 potential harm to beneficial uses, both the Draft EIR and Final EIR suggest preparing and
10 implementing an erosion control plan and Stormwater Pollution Prevention Plan (SWPPP) and
11 installing appropriate sediment and erosion control best management practices (BMPs) as the
12 identified mitigation measure 4.10-2. However, because the Discharger failed to implement
13 appropriate erosion control BMPs prior to the 28 November to 5 December 2012 rain event, and
14 given the Prosecution Staff's professional experience observing numerous sediment-laden
15 stormwater discharges in the field, the Prosecution Staff reasonably expected potential moderate
16 impacts to beneficial uses given that the Discharger's own Draft and Final EIR anticipated
17 "potentially significant" environmental impacts from exposed soils without adequate erosion and
18 sediment control BMPs in place.

19 The Discharger's expert witness, Mr. Michael Bryan, contends that the harm or potential
20 for harm to the aquatic life beneficial uses of Secret Ravine that may have resulted from sediment-
21 laden stormwater discharges was "minor" pursuant to the Enforcement Policy. A particularly
22 alarming component of this conclusion is the discussion relating to the current water quality
23 condition of Secret Ravine. Mr. Bryan implies that the additional contribution of sand and silt from
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25 ⁴ Despite the Discharger's contention that the Final EIR for the Rocklin Crossings project was not "placed into evidence
26 by the Prosecution Team," it should be noted that the citation and electronic path to this publicly available document was
27 provided in Attachment A to the ACL Complaint prior to the deadline for the submission of evidence and policy
28 statements. For convenience and ease of reference, this item will be referred to as Exhibit 92.
http://www.rocklin.ca.us/depts/develop/planning/publications_n_maps/rocklin_crossings_environmental_impact_report/final.asp

1 the stormwater discharge represents a negligible load to the creek particularly when the
2 discharges occurred at a reach of Secret Ravine that is already dominated by sand substrates.
3 Mr. Bryan argues that this discharge of sediment-laden stormwater would not result any
4 appreciable harm given that the watershed and the creek already have preexisting sand and
5 siltation issues. However, the Prosecution Team argues that additional loading of sand and silt,
6 particularly to a habitat that is of "poor to moderate quality" already (see Exhibit 92, Appendix A, p.
7 2) is precisely what the Construction General Permit seeks to avoid. Logic dictates that increased
8 loading of sand and silt to a biologically sensitive reach with preexisting sand and siltation issues
9 would increase the potential for harm to beneficial uses, not lower the potential for harm to
10 beneficial uses.



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21 **III. CONCLUSION**

22 The Discharger's argument that the Central Valley Water Board is required to use \$2.00
23 per gallon to determine the base liability amount for the discharge violations is not supported by
24 the plain language in the Enforcement Policy and impermissibly highlights language helpful to its
25 case, while ignoring other important provisions. Use of \$10.00 per gallon to calculate the base
26 liability amount for the discharge violation in this case would not result in an inconsistency with
27 other construction stormwater enforcement cases brought in the Central Valley Region or other
28 Regions and would not create an incentive for dischargers to allow a higher volume of discharge.

1 Even if the Central Valley Water Board accepts the Dischargers' argument that use of \$2.00 per
2 gallon is appropriate to determine the base liability amount for the discharge violation, other
3 factors and evidence and the discretion provided in the Enforcement Policy warrant a finding that
4 the proposed liability amount of \$211,038 is appropriate. Furthermore, the Prosecution Team
5 recommends that the Central Valley Water Board find that the discharges of sediment-laden
6 stormwater to Secret Ravine had a moderate potential for harm to beneficial uses. This
7 recommendation is based on the comprehensive analysis of anticipated environmental impacts
8 conducted in the Draft and Final EIR for the construction project, the staff's reasonable
9 expectation for a moderate potential for harm, [REDACTED]

10 [REDACTED]
11 [REDACTED] For the foregoing reasons, the Prosecution Team respectfully requests that the Central
12 Valley Regional Board impose the proposed administrative civil liability amount of \$221,038 for the
13 violations cited in the ACL Complaint.

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15 Executed this 12th day of September, 2013, at Sacramento, California.

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18 David Boyers
19 David M. Boyers
20 SUPERVISING SENIOR STAFF COUNSEL
21 OFFICE OF ENFORCEMENT
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