

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0520
IN THE MATTER OF

CHRISTOPHER CORDES, EDDIE AXNER CONSTRUCTION, INC., AND EDDIE AXNER

ASSESSOR PARCEL 041-300-035-000
SHASTA COUNTY

This Administrative Civil Liability Complaint is issued to Christopher Cordes, Eddie Axner, and Eddie Axner Construction Inc. (hereafter collectively referred to as Dischargers) pursuant to California Water Code section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorized the Executive Officer to issue this Complaint. This Complaint is based on evidence that the Dischargers violated Water Code section 13376, federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1311) Section 301 and prohibitions established in *The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan), and seeks administrative civil liabilities pursuant to Water Code section 13385.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) hereby finds the following:

BACKGROUND

1. Mr. Christopher Cordes purchased the property located off of Baker Ridge road, Shasta County Assessor Parcel Number (APN) 041-300-035-000 (hereafter referred to as the Site) on May 21, 2013. As owner of the Site, Mr. Cordes is ultimately responsible for the condition of the property and discharges of waste from the property. Mr. Cordes developed the Site and used and/or leased the Site out for marijuana cultivation.
2. In June of 2013 Mr. Eddie Axner in his capacity of owner and responsible corporate officer of Eddie Axner Construction, Inc. entered into verbal agreements with Mr. Cordes to conduct grading operations on the Site on a per hour basis. Persons employed by Eddie Axner Construction, Inc. conducted approximately 3.8 acres of clearing, grading, excavation, and/or other land disturbance to construct two large native soil surfaced terraces, and to widen and lengthen the native soil surfaced road accessing the Site from Baker Ridge road. No erosion control measures were implemented by the Dischargers on the property during or after this grading and earthmoving activities were conducted, through the winter 2013/2014, and the Site remained unprotected until after Regional Water Board staff (hereafter referred to as "Staff") conducted their first Site inspection in October 2014.
3. The natural topography of the Site is steep with 30 to 50 percent slopes. Soils on site are coarse sandy loams and coarse sandy silts, which are highly friable and erodible when disturbed, interpreted to be decomposed granite. There are numerous Class III (intermittent) watercourses and at least one Class II (aquatic life bearing) watercourse which begin on or adjacent to the Site, that discharge to Doby or Duckett Creeks, perennial tributaries to North Fork Cottonwood Creek.
4. Mr. Eddie Axner as the owner and as a responsible corporate officer of Eddie Axner Construction, Inc. had the ability to control activities at the Site. Mr. Axner has over 25 years' experience in the construction industry and is a licensed general engineering contractor and

a licensed timber operator. Eddie Axner Construction, Inc. is also advertised as having expertise in erosion control measures. As the owner and responsible corporate officer of Axner Construction, Inc., Mr. Axner could have sought and obtained the necessary permits and installed the appropriate erosion control measures to prevent the discharges alleged herein.

5. In 2014 Mr. Cordes asserts that he leased the Site to an individual and that it is this individual who graded approximately 1.5 miles of native soil surfaced road to access more of the Site west of the terraces, presumably to support additional cultivation. In addition to grading for constructing the road, the individual created two un-culverted unarmored watercourse crossings. Mr. Cordes has refused to divulge the identity of the individual who leased the Site and conducted this additional roadwork and grading, and has claimed that he is willing to assume responsibility for the individual's activities. As discussed in more detail below in section 8, no erosion control measures were implemented by the Dischargers on the Site during or after this grading was conducted and the Site remained unprotected until after Staff conducted their first Site inspection.
6. On 7 October 2014, Mr. John Tomasello from the Shasta County Department of Resource Management alerted the Central Valley Water Board that a large grading project had been conducted without permits off of Baker Ridge Road, east of Rainbow Lake in Ono, Shasta County. The Central Valley Water Board was advised that this illegal grading, which included unpermitted road construction and terracing, was conducted to establish a large marijuana growing operation. Staff confirmed that a Construction General Permit had not been issued for the Site.
7. On 27 October 2014, Staff obtained an inspection warrant granting access to the Site to conduct an inspection. Copies of the warrant are provided as Attachment C – 28 October 2014 Baker Ridge Inspection Report, Appendix C.
8. On the morning of 28 October 2014, Eddie Axner Construction, Inc. began installing erosion control measures on the Site. Prior to this day no erosion control measures were in place and the 2014-2015 wet weather period had already begun. During the 19 November 2014 inspection Staff observed that all surfaces disturbed by grading had been straw mulched and seeded and riprap had been used to stabilize multiple areas and as energy dissipators. The Dischargers will need to implement more erosion control measures during the 2015 dry season to fully stabilize the site and prevent further erosion and discharges of sediment laden storm water.
9. On 28 October 2014, Staff conducted an inspection of the Site in accordance with the warrant issued on 27 October 2014. A second Site inspection was conducted by Staff on 19 November 2014 with permission from the landowner, Mr. Cordes. Copies of the inspection reports for both inspections are provided as Attachments B and C to this Administrative Civil Liability Complaint.

SITE INSPECTION OBSERVATIONS

10. **28 October 2014 Inspection.** On October 28, 2014 Staff inspected the Site in accordance with the Inspection warrant.

During the 28 October 2014 inspection Staff noted two locations where the majority of storm water runoff from surfaces graded by Eddie Axner Construction, Inc., on the Site discharged to the unnamed tributaries of North Fork Cottonwood Creek. The first storm water runoff discharge location was in the northwest corner of the Lower Terrace (See Attachment C - 28 October 2014 Baker Ridge Inspection Report, Appendix A, Way Point 100). The Lower Terrace was void of vegetation and had a surface area of approximately 30,000 square feet. Storm water runoff from the Lower Terrace surface discharges at the before mentioned location in the northwest corner.

Staff found and documented evidence of large scale rill erosion on the south and west fill/side slopes of the lower terrace. Staff found and documented evidence that sediment from the large scale rill erosion on the south and west fill/side slopes had reached the unnamed tributary of North Fork Cottonwood Creek. Staff also discovered more than 1,900 cubic feet of potting soil that had been dumped down the fill/side slope of the east northeast side of that terrace. The presence of easily identifiable perlite in the potting soil, Staff was able to find and document evidence that potting soil from the dump location had discharged to an unnamed tributary of North Fork Cottonwood Creek and had been transported off the Site.

The second storm water runoff discharge location noted by Staff during the 28 October 2014 inspection was on the upstream side of the watercourse crossing located at the entrance to the Site (See Attachment C - 28 October 2014 Baker Ridge Inspection Report, Appendix A, Way Point 118). Storm water runoff from the Access Road, which is approximately 1000 feet long, 12-16 feet wide, and has a surface area of approximately 14,000 square feet, flows via an inside ditch to the before mentioned discharge location on the upstream side of the watercourse crossing, where it discharges to an unnamed tributary of North Fork Cottonwood Creek. At the time of the inspection, the crossing's 24-inch culvert was more than 50 percent plugged and staff found and documented areas along the banks of the watercourse where sediment from the road had discharged to the watercourse and a layer of sediment within the watercourse, 34 inches thick, directly below the storm water discharge point (Attachment C - 28 October 2014 Baker Ridge Inspection Report, Appendix B, Photograph #14).

Prior to the 28 October 2014 inspection, there were no Erosion Control/Sediment Control Best Management Practices implemented to reduce erosion and storm water discharge from the Site at the two before mentioned discharge locations. The two discharge locations and the terrace surface and road surface from which storm water runoff discharges to tributaries of North Fork Cottonwood Creek through those two discharge locations, were created by Eddie Axner Construction, Inc. in June of 2013 in conjunction with all other earthwork conducted on the Site by Eddie Axner Construction, Inc.

The two storm water discharge violations associated with the lower terrace and the access road discussed above in this section are referred to collectively hereafter as Violation 1.

During the 28 October 2014 inspection Staff also found a recently or newly constructed section of road with an un-culverted, non-armored watercourse crossing that was constructed by placing more than 3,840 cubic feet of native rock and soil in the streambed and banks of an unnamed tributary of North Fork Cottonwood Creek (See Attachment C - 28 October 2014 Baker Ridge Inspection Report, Appendix A, Way Point 117). Both Mr. Axner and Mr. Cordes have asserted that this newly constructed section of road and crossing were constructed by an undisclosed third party at some date after Eddie Axner Construction, Inc., conducted earthwork on the Site. Staff found and documented evidence that fill material

from this watercourse crossing had discharged to the unnamed tributary of North Fork Cottonwood Creek below the crossing. Due to time constraints Staff was unable to fully travel and inspection this recently or newly constructed section of road during the October 2014 inspection.

11. **19 November 2014 inspection.** A second follow-up inspection was conducted by Staff on 19 November 2014 with permission from Mr. Cordes obtained through Eddie Axner and his consultant Mr. Will Bond of SHN Consulting Engineers & Geologist, Inc. During the 19 November 2014 inspection Staff inspected more of the newly constructed section of road that starts above the upper terrace and loops westward as shown in Attachment B - 19 November 2014 Baker Ridge Inspection Report, Appendix A.

Satellite imagery establishes that the newly constructed road was built sometime between September 2013 and July 2014. Based on statements made by Mr. Axner during the 19 November 2014 inspection and collaborating statements from Mr. Cordes, the newly constructed section of road was constructed in April or May of 2014 by an entity other than Eddie Axner Construction, Inc. Mr. Cordes has stated that the recent road work was completed by a lessee of the Site and that he is unwilling to identify that party.

During the 19 November 2014 inspection, Staff found a second un-culverted, non-armored watercourse crossing on the newly constructed section of road. This crossing was constructed by placing more than 4,680 cubic feet of native rock and soil into a streambed and banks of an unnamed tributary of North Fork Cottonwood Creek (Attachment B - 19 November 2014 Baker Ridge Inspection Report, Appendix A, Way Point 2). Staff found and documented evidence that fill material from this watercourse crossing had discharged to the unnamed tributary of North Fork Cottonwood Creek below the crossing (Attachment B - 19 November 2014 Baker Ridge Inspection Report, Appendix B, Photograph #5).

The discharge of fill material to unnamed tributaries of North Fork Cottonwood Creek in order to create the watercourse crossing on the newly constructed section of road are referred to collectively hereafter as Violation 2.

BENEFICIAL USES OF RECEIVING WATERS

12. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.

Surface water from unnamed tributaries on the Site discharge to Doby or Duckett Creeks, then to North Fork Cottonwood Creek, a tributary to Cottonwood Creek and the Sacramento River. North Fork Cottonwood Creek and the downstream waters are all navigable waters of the United States and are spawning habitat for anadromous fish.

Existing and potential beneficial uses for Cottonwood Creek include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Warm (WARM) & Cold (COLD) Freshwater Habitat; Migration of Aquatic Organisms (MIGR); Spawning (SPWN); and Wildlife Habitat (WILD). Beneficial uses

of any specifically identified water body generally apply to all of its tributaries. (Basin Plan, p. II-2.00)

STORM WATER DISCHARGE VOLUME ESTIMATES

13. Staff used a highly conservative method to estimate that 56,456 gallons of sediment laden storm water was discharged in association with Violation 1. The following paragraphs describe how the volume was determined.

Using the USDA Natural Resources Conservation Service - Conservation Engineering Division Technical Release 55 Method (USDA TR-55 Method) and based on characteristics of the site (Newly graded area with no vegetation, Hydrologic Soil Group B) Staff determined that precipitation events greater than 1/3 of an inch over 24 hours would generate runoff from the Site. Using precipitation data from a Dept. of Water Resources/Flood Management gauging station (OGO Ranger Station) located approximately 5 miles southwest of the Site, Staff identified seven days with more than 2/3 of an inch of precipitation over a 24 hour period, between 19 November 2013 and 29 March 2014. Staff used 2/3 of an inch, twice the amount calculated to generate runoff (1/3 of an inch), to conservatively develop storm water discharge volumes.

Discharge Event	Dates	Total Runoff Volume from Lower Terrace (gallons)	Total Runoff Volume from Access Road (gallons)	Total Runoff (gallons)	Total Subject to Penalties (Total - 1,000 gallons*)	Days of Violation Subject to Penalties
#1	19 Nov 2013	1,711	799	2,510	1,510	1
#2	8 Feb 2014	3,327	1,553	4,880	3,880	1
#3	9 Feb 2014	2,002	934	2,936	1,936	1
#4	26 Feb 2014	6,151	2,870	9,021	8,021	1
#5	3 March 2014	14,199	6,626	20,825	19,825	1
#6	5 March 2014	2,634	1,229	3,863	2,863	1
#7	28 March 2014	8,469	3,952	12,421	11,421	1
	Total	38,493	17,963	56,456	49,456	7

*Per Water Code

For the purposes of calculating volume of runoff, Staff is using a discharge volume of 56,456 gallons (of this amount, 49,456 gallons subject to penalties as described below in section 26).

VIOLATION 1 – STORM WATER DISCHARGE VIOLATIONS ASSOCIATED WITH WORK CONDUCTED BY EDDIE AXNER CONSTRUCTION, INC.

14. **Violation 1:** Dischargers are alleged to have violated section 301 of the Clean Water Act, Water Code section 13376, and Basin Plan prohibitions detailed below by discharging at least 56,458 gallons of sediment laden storm water without obtaining coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ, NPDES No. CAS000002 (General Permit) over a period

of 7 days during storm water runoff generating rain events that occurred between 9 November 2013 and 29 March 2014.

15. **Clean Water Act Violations:** The Clean Water Act prohibits certain discharges of storm water containing pollutants except in compliance with a National Pollution Discharge Elimination System (NPDES) permit. Discharges to surface waters comprised of storm water associated with construction activity, including clearing, grading, excavation, and other land disturbance activities (except operations that result in disturbance of less than one acre of total land area and which are not part of a larger common plan of development or sale), are required to obtain coverage under the General Permit. Section 301 of the CWA prohibits the discharge of pollutants except as in compliance with the applicable General Permit or CWA Section 404 permit.
16. **Water Code Violations:** Water Code section 13376 requires any person discharging, or proposing to discharge, pollutants or dredge or fill material into waters of the United States to file a report of waste discharge. The Dischargers violated Water Code section 13376 by discharging sediment from disturbed land surfaces into waters of the United States without first filing a report of waste discharge or obtaining coverage under the General Permit.
17. **Basin Plan Prohibition Violations.** The Basin Plan prohibits the discharge of sediment and settleable material into surface waters in a manner that causes nuisance or adversely affects beneficial uses. (Basin Plan, p. III-7.00.) The Basin Plan also prohibits the discharge of materials resulting in changes in turbidity that cause nuisance or adversely affect beneficial uses. (*Id.* at p. III-9.00.) The Dischargers violated these Basin Plan prohibitions by discharging sediment from disturbed land surfaces and changes in turbidity that adversely affected beneficial uses.
18. **Responsible Parties.** The Dischargers are all joint and severally liable for the storm water discharge violations. The sediment laden storm water discharged into unnamed tributaries of North Fork Cottonwood Creek were the result of grading and road building activities that Mr. Cordes hired Mr. Eddie Axner and Eddie Axner Construction, Inc. to conduct. Mr. Cordes is liable as the owner of the Site and the person who contracted for the work that resulted in the discharge. Mr. Eddie Axner and Eddie Axner Construction, Inc. are liable for conducting the work that caused the discharge of sediment laden storm water in violation of the provisions discussed above in paragraphs 15 through 17. Mr. Eddie Axner is a responsible corporate officer of Eddie Axner Construction, Inc. and can be held personally liable in accordance with the responsible corporate office doctrine because; (1) he is in a position of responsibility with Eddie Axner Construction, Inc. that allows him to influence company policies and activities; (2) there is a nexus between Mr. Axner's position and the violations in questions such that he could have influenced the company's unlawful actions; and (3) Mr. Axner took action that facilitated the violations and through inaction failed to prevent the violations. (See *People v. Roscoe* (2009) 169 Cal.App.4th 829, 831; *Tehama Market Associates, LLC* (RWQCB 2007) ACL Order No. R5-2007-0054, p. 3; *Original Sixteen to One Mine, Inc.* (SWRCB 2003) Order No. WQO 2003-0006, pp. 6-7; *Mr. Kelly Engineer/All Star Gas* (SWRCB 2002) Order No. WQO 2002-001, p. 5; *People v. Pacific Landmark* (2005) 129 Cal.App.4th 1203, 1213-1216.)

**VIOLATION 2 - UNAUTHORIZED DREDGE AND FILL VIOLATIONS TO UNNAMED
TRIBUTARIES OF DOBY & DUCKET CREEKS**

19. **Violation 2:** Mr. Cordes is alleged to have violated section 301 of the Clean Water Act, and the Basin Plan prohibitions detailed below by discharging fill materials into the unnamed tributaries of North Fork Cottonwood Creek.
20. **Clean Water Act Violations:** Clean Water Act section 404 requires any person proposing to discharge dredge or fill material into navigable waters of the United States to obtain a Section 404 permit prior to such discharge. Section 401 of the Clean Water Act requires that any person obtaining a Section 404 permit must obtain water quality certification from the State in which the discharge occurs.
21. **Basin Plan Prohibition Violations.** The Basin Plan prohibits the discharge of sediment and settleable material into surface waters in a manner that causes nuisance or adversely affects beneficial uses. (Basin Plan, p. III-7.00.) The Basin Plan also prohibits the discharge of materials resulting in changes in turbidity that cause nuisance or adversely affect beneficial uses. (*Id.* at p. III-9.00.) Mr. Cordes violated the Basin Plan prohibitions by discharging, or allowing to be discharged on his property, fill material into navigable waters of the United States to construct road crossings.
22. **Responsible Parties.** Mr. Cordes as the owner of the Site is ultimately responsible for the conditions of the Site and the fill activities that occurred on the property. While Mr. Cordes has asserted that he leased the property out for some undisclosed period of time and that it was the lessee who conducted the dredge and fill activities on the Site, Mr. Cordes has not been willing to provide the name of that party or any information concerning the terms of that lease. Mr. Cordes was aware of the activity taking place on his property that resulted in the discharge and had the legal ability to prevent the discharge. It is even likely that Mr. Cordes benefited from the marijuana cultivation activity taking place at the Site based on the fact that Mr. Cordes is the sole corporate officer of Pacific Biodynamics, a corporation established to "provide a means for facilitating and coordination transactions, between members of the corporation, in medical marijuana" (Attachment D). Accordingly, liability for the dredge and fill violations can be imposed on Mr. Cordes.

ADMINISTRATIVE CIVIL LIABILITY PROVISIONS

23. Water Code section 13350 states, in relevant part:
 - (a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)
 - (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

In the alternative:

24. Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376. ...

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) ...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

The violations alleged herein are subject to liability in accordance with Water Code section 13350 and Water Code section 13385 and the Central Valley Water Board in its discretion could elect to impose liability under either code section. Staff is recommending the proposed liability, as discussed in greater detail below, be imposed in accordance with Water Code section 13385.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385 FOR VIOLATION 1

25. **Maximum Civil Liability for Storm Water Discharges to Surface Waters:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day per violation, plus \$10 per gallon for each gallon of waste discharged but not cleaned up over 1,000 gallons. Staff conservatively estimated above in section 13 that in the period from 19 November 2013 until 29 March 2014 a total of 56,456 gallon of water and sediment discharging to surface waters over 7 days. Of the 56,456 gallons that were discharged, a total of 49,456 gallons were discharged in excess of 1,000 gallons per discharge event. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallons, and at \$10,000 per day for each day of the seven days of discharge, the maximum administrative civil liability that may be assessed pursuant to section 13385 for violation 1 is **five hundred and sixty four thousand five hundred forty dollars (\$564,540).**

26. **Minimum Civil Liability for Storm Water Discharges to Surface Waters:** Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The discharge violations associated with the work conducted by Eddie Axner Construction, Inc. were due to a failure to obtain and comply with the State of California's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ, including the failure to implement appropriate erosion and sediment control. Delayed and avoided costs associated with obtaining and complying with the necessary authorizations are estimate at \$72,278. Using US EPA's BEN model, the economic benefit gained by non-compliance is calculated to be approximately \$8,912, which becomes the minimum civil liability which must be assessed pursuant to section 13385 for Violation 1. In addition, the Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit ($\$8,912 + 10\% = \mathbf{\$9,803}$) so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385 FOR VIOLATION 2

27. **Maximum Civil Liability for Discharge of Fill Material to Surface Waters:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day per violation, plus \$10 per gallon for each gallon of waste discharged but not cleaned up over 1,000 gallons. Mr. Cordes, and/or his lessee, discharged approximately 8,520 cubic feet of fill material into waters of the United States at two locations on the Site in order to construct road crossings. Each cubic foot of fill is equal to approximately 7.48 gallons. Accordingly, Staff conservatively estimates the discharge volume of 63,730 gallons (of this amount, 61,730 gallons subject to penalties as described below). Each of the crossings, at a minimum, took a day to construct for a total of 2 days of violation. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallons, and at \$10,000 per day for each day of the two days of discharge, the maximum administrative civil liability that may be assessed pursuant to section 13385 is **six hundred thirty seven thousand three hundred dollars (\$637,300)**.
28. **Minimum Civil Liability for Discharge Fill Material to Surface Waters:** Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The discharge violations associated with the work conducted by Mr. Cordes and/or his lessee were due to a failure to obtain and comply with the State of California's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ and the unauthorized placement of fill without obtaining a Clean Water Act Section 404, Dredge and Fill Permit, and 401 Water Quality Certification. Delayed and avoided costs associated with obtaining and complying with the necessary authorizations are estimated at \$38,738. Using the US EPA's BEN model, the economic benefit gained by non-compliance is calculated to be approximately \$10,102, which becomes the minimum civil liability which must be assessed pursuant to section 13385 for violation 2. In addition, the Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit ($\$10,102 + 10\% = \mathbf{\$11,112}$) so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations.

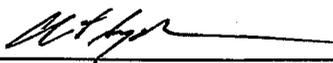
PROPOSED ADMINISTRATIVE CIVIL LIABILITY

29. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under section 13385, subdivision (c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
30. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf
31. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
32. As described above, the maximum penalty that can be imposed against **the Dischargers for Violation 1 is \$564,540** and the minimum penalty in accordance with the Enforcement Policy that would recover the economic benefit amount, plus 10%, is **\$9,803**. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Dischargers in the amount of **\$139,700** for Violation 1. The specific factors considered in this penalty are detailed in Attachment A to this Complaint.
33. As described above, the maximum penalty that can be imposed against **Mr. Cordes individually for Violation 2 is \$637,300** and the minimum penalty in accordance with the Enforcement Policy that would recover the economic benefit amount, plus 10%, is **\$11,112**. Based on consideration of the above facts, after applying the penalty methodology, and considering Mr. Cordes' ability to pay, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability for Violation 2 be imposed administratively on Mr. Cordes in the amount of **\$157,700**. The specific factors considered in this penalty are detailed in Attachment A to this Complaint.
34. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

35. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

CHRISTOPHER CORDES, EDDIE AXNER CONSTRUCTION, INC., AND EDDIE AXNER ARE HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Dischargers be jointly assessed an Administrative Civil Liability in the amount of **\$139,700** for storm water discharge violations (Violation 1) and that Mr. Cordes be separately assessed an additional Administrative Civil Liability in the amount of **\$157,700** for discharges of fill material (Violation 2). The amount of the proposed liabilities is based upon a review of the factors cited in Water Code sections 13327 and 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be held at a regularly scheduled Central Valley Water Board meeting on **4 and 5 June 2015**, unless one of the following occurs by **3 April 2015**:
 - a) The Dischargers waive the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the combined total proposed civil liability of **\$297,400**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Dischargers' request a delay by checking the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.



Clint E. Snyder, P.G.
Assistant Executive Officer

Date

- Attachment A: Penalty Calculations for Violation 1 and 2
- Attachment B: 19 November 2014 Baker Ridge Inspection Report
- Attachemnt C: 28 October 2014 Baker Ridge Inspection Report
- Attachment D: Secretary of State Filings for Pacific Biodynamics

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am Christopher Cordes, Eddie Axner, Eddie Axner Construction, Inc., or a duly authorized to represent thereof (hereafter Dischargers) in connection with Administrative Civil Liability Complaint R5-2015-0520 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Dischargers waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Dischargers may have to a hearing before the Central Valley Water Board.
- b. I certify that the Dischargers have remitted payment for the proposed civil liability in the full amount of **\$297,400** by check/s that references "ACL Complaint R5-2015-0520" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **3 April 2015**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger/s waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger/s may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger/s requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger/s may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

For Eddie Axner:

(Print Name and Title)

(Signature)

(Date)

For Eddie Axner Construction, Inc.:

(Print Name and Title)

(Signature)

(Date)

For Christopher Cordes:

(Print Name and Title)

(Signature)

(Date)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: TS

Incorp Services, Inc. (agent for service)
 Christopher Cordes
 Pacific Biodynamics
 5716 Corsa Ave., Suite 110
 Westlake Village, CA 91362-7354

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
X 

B. Received by (Printed Name) C. Date of Delivery
 MAURICE GIBSON 3/24/15

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

RECEIVED
 MAR 27 2015

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7013 0600 0002 4320 2466

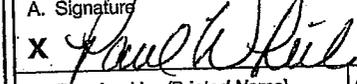
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: TS

Christopher Cordes
 101 South F Street
 Pensacola, FL 32502

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
X 

B. Received by (Printed Name) C. Date of Delivery
 PAUL F. WHITE 3-26-15

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

RECEIVED
 MAR 30 2015

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7013 0600 0002 4320 2459

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Eddie Axner
Eddie Axner Construction, Inc.
5429A Old Oregon Trail
Redding, CA 96002

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Print Name) Date of Delivery

D. Is delivery address different from item 1? Yes No

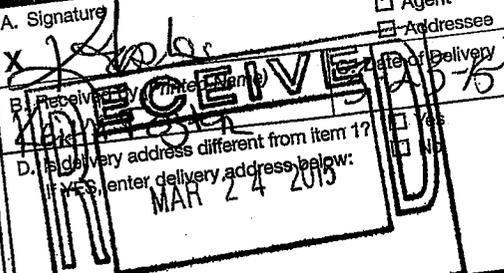
If Yes, enter delivery address below:

3. Service type Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

7012 3050 0001 3774 0916

Domestic Return Receipt



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

TS Postage \$
 Certified Fee
 Return Receipt Fee (Endorsement Required)
 Restricted Delivery Fee (Endorsement Required)
 Total Postage & Fees \$

In Crop Service, Inc Agent for service

Sent To
 Mr. Christopher Cordes/Pacific Biodynamics
 Street, Apt. No., or PO Box No. 5716 Corsa Ave., Ste 110
 City, State, ZIP+4 Westlake Village CA 91362-7354

PS Form 3800, August 2006 See Reverse for Instructions

9105 024 2000 0090 2012 7013 0600 0002 4320 5016

MAR 23 2015
 Postmark Here

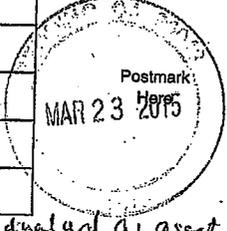
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>Lindee Adams</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Lindee Adams</i> C. Date of Delivery <i>5/6</i></p>
<p>1. Article Addressed to: <i>In Crop Service, Inc (agent for service)</i> <i>Mr. Christopher Cordes</i> <i>Pacific Biodynamics</i> <i>5716 Corsa Ave., Ste 110</i> <i>Westlake Village, CA 91362-7354</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>RECEIVED MAR 30 2015</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7013 0600 0002 4320 5016</p>

ET05 0234 2000 0090 ET02

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: *Eddie Axner (as individual and as agent for service of process) Eddie Axner Construction, Inc.*

Street, Apt. No., or PO Box No.: *5429 A Old Oregon Trail*

City, State, ZIP+4: *Redding, CA 96002*

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____</p> <p>C. Date of Delivery <i>3-24-15</i></p> <p>4. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If YES, enter delivery address below)</p> <div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>RECEIVED</p> <p>MAR 26 2015</p> </div> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>1. Article Addressed to:</p> <p><i>Mr. Eddie Axner (as individual and as agent for service of process) Eddie Axner Construction, Inc. 5429 A Old Oregon Trail Redding, CA 96002</i></p>	
<p>2. Article Number (Transfer from service label)</p> <p>7013 0600 0002 4320 5023</p>	

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

E052 02E4 0000 0090 E102

TS Postage	\$ 1.19
Certified Fee	330
Return Receipt Fee (Endorsement Required)	270
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.19



Sent To Christopher Corder
 Street, Apt. No., or PO Box No. 101 S. F. ST.
 City, State, ZIP+4 Pensacola, FL 32502

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Christopher Corder
101 S. F ST.
Pensacola, FL
32502

2. Article Number

(Transfer from service label)

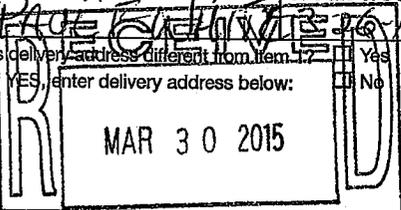
7013 0600 0002 4320 2503

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] Agent Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery MAR 26 2015

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:



3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes