



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Central Valley Regional Water Quality Control Board

13 December 2016

Amy Gedney  
City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95685

**CERTIFIED MAIL**  
**91 7199 9991 7035 8359 5092**

via email: [agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)

***OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, CITY OF SUTTER CREEK, BADGER STREET BRIDGE REPLACEMENT PROJECT, SUTTER CREEK, AMADOR COUNTY, WDID 5S03C376811 AND 5B03CR00070***

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of alleged violations by the City of Sutter Creek (Discharger) of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) and the *Clean Water Act Section 401 Technically Conditioned Water Quality Certification* at the City's Badger Street Replacement Bridge Project (401 Water Quality Certification). As the owner of the Badger Street Bridge Replacement Project and the legally responsible person enrolled in the General Permit, the City of Sutter Creek (Discharger) is responsible for complying with all elements of the General Permit and the 401 Water Quality Certification and is strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer."

**This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of \$86,112 (eighty six thousand one hundred twelve dollars). Please read this letter carefully and respond no later than 13 January 2017.**

### Description of Violations

On 28 October 2016, Central Valley Water Board staff inspected the Discharger's construction site during a rain event. Staff observed the following violations of the General Permit and the 401 Water Quality Certification: (1) a lack of erosion control Best Management Practices (BMPs) throughout the project; (2) areas that required additional sediment control BMPs, (3) diversion dam failure and (4) sediment-laden runoff discharging from the site. Please see the enclosed 10 November 2016 Notice of Violation and 28 October 2016 Inspection Report for a full description of the violations. In addition, on 3 November 2016, Department of Fish and Wildlife (DFW) staff inspected the construction site and observed that construction work was causing a significant amount of sediment to be discharged to the creek, turbid water downstream of the site, and insufficient BMPs. Please see the enclosed 30 November 2016 DFW Notice of Violation.

### Statutory Liability

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is significantly over \$100,000 and the minimum liability is \$2,200.

### Proposed Settlement Offer

**The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$86,112.** This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection reports.

### Options for Responding to the Settlement Offer

#### **Option A: Accept the Offer**

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **13 January 2017** to the following address:

Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite A  
Rancho Cordova, CA 95670  
Attention: Wendy Wyels, Supervisor, Enforcement Section

**Important!** - Upon receipt of the *Acceptance and Waiver*, this settlement will be publically noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an order of

the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the \$86,112 administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

**Option B: Contest the Alleged Violations**

If the Discharger wishes to contest the violation(s) or the methodology used to calculate the proposed liability, it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the Central Valley Water Board no later than **13 January 2017**. The Central Valley Water Board Prosecution Team will evaluate the Discharger's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform the Discharger whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. The Discharger will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

**Option C: Reject Offer**

If the Discharger chooses to reject this Settlement Offer and/or does not complete and return the *Acceptance and Waiver*, the Discharger should expect that the Prosecution Team will conduct further investigation of the violation(s), issue an administrative civil liability complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this settlement offer, please contact Wendy Wyels at (916) 464-4835 or at [wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov).



ANDREW ALTEVOGT  
Assistant Executive Officer

Enclosures:

- Acceptance of Settlement Offer and Waiver of Right to a Hearing
- Water Board 10 November 2016 Notice of Violation
- Water Board 28 October 2016 Inspection Report
- Department of Fish and Wildlife 30 November 2016 Notice of Violation
- Penalty Calculation Methodology

cc: David Boyers, Assistant Chief Counsel, State Water Board Office of Enforcement  
Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho Cordova  
Andrew Deeringer, Office of Chief Counsel, State Water Board, Sacramento  
Carol Oz, Department of Fish and Wildlife, Rancho Cordova



*Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment

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

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

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

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

City of Sutter Creek

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
PAMELA C. CREEDON, Executive Officer

Date: \_\_\_\_\_

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## Central Valley Regional Water Quality Control Board

10 November 2016

Amy Gedney  
City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95685

**CERTIFIED MAIL**  
**91 7199 9991 7035 8365 4874**

***NOTICE OF VIOLATION, CITY OF SUTTER CREEK, BADGER STREET BRIDGE REPLACEMENT PROJECT, SUTTER CREEK, AMADOR COUNTY, WDIIDs 5S03C376811 and 5B03CR00070***

On 28 October 2016, Central Valley Water Board staff inspected the City of Sutter Creek, Badger Street Bridge Replacement project in Sutter Creek to evaluate compliance with the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (General Permit). As the owner of the Badger Street Bridge Replacement project and the legally responsible person enrolled in the General Permit for this project, the City of Sutter Creek is responsible for complying with all elements of the General Permit for this project. This construction project is a Risk Level 2 site under the terms of the General Permit. Board staff also assessed compliance with the project's 401 Water Quality Certification.

During the inspection, Water Board staff observed the lack of erosion control Best Management Practices (BMPs) throughout the project, areas that required additional sediment control BMPs, diversion dam failure, and sediment-laden runoff discharging from the site. Please see the enclosed inspection report and site photographs for more information.

### **General Permit Violations**

The City of Sutter Creek has failed to apply erosion control BMPs, failed install sediment control BMPs on portions of the project, and discharged turbid water from the project. Therefore, City of Sutter Creek is in violation of the following General Permit sections:

- Attachment D, Part E. Sediment Controls, which states in part:
  1. *Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*
  3. ***Additional Risk Level 2 Requirement:*** *Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.*

- Section V. Effluent Standards and Receiving Water Monitoring, part A. Narrative Effluent Limitations, which states in part:
  2. *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.*

### **Water Quality Certification Violations**

The City of Sutter Creek is also in violation of the following conditions of 401 Water Quality Certification WDID 5B03CR00070:

- Technical Certification Condition 5.a, which states in part:
  - a) *Activities shall not cause turbidity increases in surface water to exceed:*
    - i. *where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTUs;*
    - ii. *where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;*
    - iii. *where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;*
      - *where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs; and*
      - *where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.*

*Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTUs over background turbidity.*

- Technical Certification Condition 5.b., which states:
  - b) *Activities shall not cause settleable matter to exceed 0.1 mL/L in surface water as measured in surface waters within approximately 300 feet downstream of the Project.*
- Technical Certification Condition 6, which states:

*The City of Sutter Creek shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, or other water quality objectives are exceeded.*
- Technical Certification Condition 8, which states:

*An effective combination of erosion and sediment control Best Management Practices (BMPs) shall be implemented and adequately working during all phases of construction.*
- Technical Certification Condition 9, which states:

*All areas disturbed by Project activities shall be protected from washout or erosion.*

- Technical Certification Condition 12, which states in part:  
*...Construction, dewatering, and removal of temporary cofferdams shall not violate Technical Certification Condition 5of this Certification.*
- Storm Water Quality Condition 1.b., which states:  
*b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.*

## **Response**

In response to this Notice of Violation, the City of Sutter Creek must complete the following:

- Install an effective combination of erosion and sediment control BMPs throughout the site as required by the General Permit and 401 Water Quality Certification. This includes effectively stabilizing all disturbed soil areas and maintaining erosion and sediment control BMPs across the site.
- Ensure that site BMPs are effective and result in the reduction or elimination of pollutants in storm water discharges and authorized non-storm water discharges from construction activity to the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard.

In order to demonstrate compliance with the General Permit and 401 Water Quality Certification, Board staff requests that you submit the following documents using the site's SMARTS account by **30 November 2016**:

- A narrative description of the BMPs installed in response to the Notice of Violation.
- Copies of the Rain Event Action Plans (REAPs) for the 2016-2017 wet season. Include any photographs taken during the REAP inspections.
- An updated SWPPP map showing all BMPs installed across the project.

These violations of the have exposed the City of Sutter Creek to possible further enforcement action. Under Section 13385 of the California Water Code, the Central Valley Water Board can impose administrative civil liabilities (monetary fines) for violations of the General Permit and 401 Water Quality Certification. The maximum administrative civil liability for each violation is ten thousand dollars (\$10,000) per day and ten dollars per gallon of polluted storm water discharged in excess of 1,000 gallons.

If you have any questions, please contact Richard Muhl at (916) 464-4749  
or [Richard.Muhl@waterboards.ca.gov](mailto:Richard.Muhl@waterboards.ca.gov).



STEVE E. ROSENBAUM  
Chief, Storm Water Compliance and Enforcement Unit

Enclosures: Inspection report with site photographs  
401 Water Quality Certification Permit WDID 5B03CR00070

cc: Greg Gholson, U.S. Environmental Protection Agency, Region IX, San Francisco

## Storm Water Construction / 401 General Permit Inspection Report Central Valley Regional Water Quality Control Board

Insp. Date & Time:	10/28/2016	Inspected By:	Rich Muhl
WDID #	5S03C376811	Site County:	Amador
Operator Name:	City of Sutter Creek		
Facility Name:	Badger Street Bridge Replacement		
Facility Address:	Badger Street, Sutter Creek, CA 95685		
Facility Contact:	Amy Gedney (209) 267-5647		
Facility Staff Present:	Dave Koffman, QSD		

Inspection Type: <input checked="" type="checkbox"/> Compliance			
SWPPP on site?	Yes	SWPPP Implemented/Updated?	No
Photos Taken?	Yes	Appropriate Monitoring Program?	Yes
Weather: Rain		Evidence of SW or Non-SW Discharge?	Yes

### Inspection Summary / Comments:

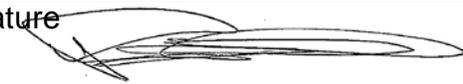
On 28 October 2016, Central Valley Regional Water Quality Control Board staff inspected the City of Sutter Creek, Badger Street Bridge Replacement project for compliance with the Construction Storm Water General Permit and the project's Water Quality Certification. The inspection was conducted during a significant rain event. Subsequent to the inspection, staff reviewed the Storm Water Pollution Prevention Plan (SWPPP) uploaded into the Storm Water Multiple Application & Report Tracking System (SMARTS).

Staff arrived at the project around 9:40 a.m., early in the rain event and prior to the water level in Sutter Creek breaching the project's diversion dam. The contractor was working to remove wood and other debris from the work area. An excavator was being used to remove sections of the falsework and carry out debris from the creek bed. The entire work area within the creek channel was disturbed with no best management practices (BMPs) installed. Staff observed that the contractor had installed four dewatering pumps to pump ponded water from the work area under the bridge to the creek downstream of the project. The water discharging from the sump pumps was turbid before the dam failed. The diversion dam consisted of an earthen berm covered with plastic sheeting and was constructed across the creek channel east and upstream of the work area. A large, black pipe was installed through the dam and down the creek channel through the work area to convey clean water past the construction area. The water exiting the diversion pipe was clean. No dam or other containment structure was installed downstream of the work area. Staff observed disturbed soil conditions extending from the diversion dam downstream the entire length and width of the work area (see inspection photographs 1 to 7).

Later during the inspection, the water level in the Sutter Creek overtopped the north end of the diversion dam and caused a portion of the dam to wash out. As the dam failed, water flooded the work area and carried the sediment from the dam and the work area downstream in the creek. Once the dam breached, turbidity in Sutter Creek increased significantly (see inspection photographs 8 to

13). Staff walked portions of the project with the QSD.

Signature



Date 11/03/2016

Date Entered: \_\_\_\_\_  
Entered By: \_\_\_\_\_  
Senior Review: \_\_\_\_\_



Photo 1. View of area under new bridge looking upstream. Black diversion pipe extended under bridge and through the project.



Photo 2. Clean water discharging downstream of the bridge project. Note: blue hoses used to dewater the construction area.



Photo 3. View of work area looking upstream. Note lack of storm water BMPs



Photo 4. View of the work area early in the inspection. The work area had an earthen surface without BMPs.



Photo 5. Sutter Creek immediately downstream of the bridge project.



Photo 6. Downstream flow early in the inspection prior to the creek breaching the diversion dam.



Photo 7. View of the plastic-covered diversion dam. Note: the area where water is seeping under or through the dam.



Photo 8. View of diversion dam as water was starting to overtop north end.



Photo 9. View looking north of the dam breaching and water from the creek flowing into the work area.



Photo 10. View of creek flow overtopping dam with significant amount of water flowing into the work area



Photo 9. Sediment flowing downstream as a result of the dam breach. Note lack of BMPs around the work site.



Photo 10. Another view of the downstream storm water discharge. Note: the turbid storm water discharging downstream.



Photo 11. View of the turbid water flowing downstream from the bridge deck.



Photo 12. Overview of the bridge project after the dam failure



Photo 13. View of the turbid water in Sutter Creek after the dam failure

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## Central Valley Regional Water Quality Control Board

1 April 2015

Ms. Amy Gedney  
City of Sutter  
18 Main Street  
Sutter, CA 95685

### **CLEAN WATER ACT § 401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; CITY OF SUTTER CREEK, BADGER STREET BRIDGE REPLACEMENT PROJECT (WDID #5B03CR00070), AMADOR COUNTY**

#### **ACTION:**

1.  Order for Standard Certification
2.  Order for Technically-conditioned Certification
3.  Order for Denial of Certification

#### **WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to § 13330 of the California Water Code and § 3867 of the California Code of Regulations (CCR).
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR § 3855(b) of the California Code of Regulations, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action shall be conditioned upon total payment of the full fee required § 3833 of the California Code of Regulations.
4. This Certification is no longer valid if the project (as described) is modified, or coverage under § 404 of the Clean Water Act has expired. The City of Sutter Creek shall notify the Central Valley Water Board within 7 days of the project completion.

**TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS:**

In addition to the above standard conditions, the City of Sutter Creek shall satisfy the following:

1. The City of Sutter Creek shall notify the Central Valley Regional Water Quality Control Board (Central Valley Water Board) in writing at least **seven (7) days** in advance of the start of any work within waters of the United States. The notification shall include the name of the project and the WDID number, and shall be sent to the Central Valley Water Board Contact indicated in this Certification.
2. Except for activities permitted by the U.S. Army Corps under § 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. The City of Sutter Creek shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed Project shall be adequately informed and trained regarding the conditions of this Certification.
4. The City of Sutter Creek shall perform surface water sampling:
  - a) when performing any in-water work;
  - b) in the event that project activities result in any materials reaching surface waters; or
  - c) when any activities result in the creation of a visible plume in surface waters.

The monitoring requirements in Table 1 shall be conducted upstream out of the influence of the Project, and approximately 300 feet downstream of the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1:**

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2,4)
Settleable Material	mL/L	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2)
Visible construction related pollutants <sup>(3)</sup>	Observations	Visual Inspections	Continuous throughout the construction period	—

<sup>(1)</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant.

- (2) Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.
- (3) A hand-held field meter may be used, provided that the meter utilizes a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring required by this Certification shall be maintained at the Project site.

As appropriate, (e.g. Lakes) Surface water monitoring shall occur at mid-depth. A surface water monitoring report shall be submitted to the Central Valley Water Board Contact indicated in this Certification within two weeks of initiation of sampling and every two weeks thereafter. In reporting the monitoring data, the City of Sutter Creek shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the Project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

If no monitoring is conducted, the City of Sutter Creek shall submit a written statement to the Central Valley Water Board Contact indicated in the Certification stating, "No monitoring was required." with the Notice of Completion.

5. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity and settleable matter limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:
  - a) Activities shall not cause turbidity increases in surface water to exceed:
    - i. where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTU;
    - ii. where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
    - iii. where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
    - iv. where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs;
    - v. where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTUs over background turbidity. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be used with prior approval of the Central Valley Water Board staff.

- b) Activities shall not cause settleable matter to exceed 0.1 mL/L in surface waters as measured in surface waters within approximately 300 feet downstream of the Project.
6. The City of Sutter Creek shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, or other water quality objectives are exceeded.
  7. The City of Sutter Creek shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the Project. The Plan must detail the Project elements, construction equipment types and location, access and staging and construction sequence. The Plan must also address the potential of responding to a spill or prevention of spills occurring within the Project site.
  8. An effective combination of erosion and sediment control Best Management Practices (BMPs) shall be implemented and adequately working during all phases of construction.
  9. All areas disturbed by Project activities shall be protected from washout or erosion.
  10. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
  11. If temporary surface water diversions and/or dewatering are anticipated, the City of Sutter Creek shall develop and maintain on-site a Surface Water Diversion and/or Dewatering Plan(s). The Plan(s) shall include the proposed method and duration of diversion activities. The Surface Water Diversion and/or Dewatering Plan(s) must be consistent with this Certification.
  12. When work in a flowing stream is unavoidable and any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream, to maintain beneficial uses of waters of the State below the dam. Construction, dewatering, and removal of temporary cofferdams shall not violate Technical Certification Condition 5 of this Certification.
  13. Any temporary dam or other artificial obstruction constructed shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation. Stream flow shall be temporarily diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses.
  14. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the receiving water. The City of Sutter Creek shall notify the Central Valley Water Board as soon as practicable of any spill of petroleum products or other organic or earthen materials with written follow up within 5 days.

15. The City of Sutter Creek shall apply for a name change or amendment to this Certification should any of the following occur:
  - a) a change in the ownership or all or any portion of the Project;
  - b) any change in the Project description;
  - c) any change involving discharge amounts, temporary impacts, and/or permanent impacts; and/or
  - d) amendments, modifications, revisions, extensions, and/or changes to the United States Army Corps of Engineers' Nationwide Permit #14, the United States Fish and Wildlife Service decision document(s), and/or the California Department of Fish and Wildlife Streambed Alteration Agreement.
  
16. The City of Sutter Creek shall submit a copy of the final, signed and dated Lake or Streambed Alteration Agreement issued by the California Department of Fish and Wildlife within 14 days of issuance to the Central Valley Water Board Contact indicated in this Certification.

The City of Sutter Creek shall comply with all California Department of Fish and Wildlife requirements, including but not limited to those requirements described in the Lake or Streambed Alteration Agreement.
  
17. The City of Sutter Creek shall comply with all United States Fish and Wildlife Service requirements, including but not limited to those requirements described in the Letter of Concurrence (08ESMF00-2014-I-0329), provided to the California Department of Transportation, dated 06 August 2014.
  
18. The City of Sutter Creek shall obtain coverage under an NPDES permit for dewatering activities that result in discharges into surface water and/or shall obtain Waste Discharge Requirements (WDRs) for dewatering activities that result in discharges to land from the Central Valley Water Board.
  
19. The Conditions in this water quality certification are based on the information contained in the City of Sutter Creek's application and in the attached "Project Information Sheet." If the Project, as described in the application and the attached Project Information Sheet, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
  
20. The City of Sutter Creek shall implement each of the mitigation measures specified in the approved Mitigated Negative Declaration for the Project, as they pertain to biology, hydrology and water quality impacts as required by § 21081.6 of the Public Resource Code and § 15097 of the California Code of Regulations.

21. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under the applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with water quality standards and other pertinent requirements incorporated into this certification.
- a) If the City of Sutter Creek or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Order, or falsifies any information provided in the monitoring reports, the City of Sutter Creek is subject to civil monetary liabilities, for each day of violation, or criminal liability.
  - b) In response to a suspected violation of any condition of this certification, Central Valley Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. (Water Code, §§ 1051, 13165, 13267 and 13383) In response to any violation of the conditions of this certification, the Central Valley Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
  - c) The City of Sutter Creek shall allow the staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the Project premises for inspection, including taking photographs and securing copies of Project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the Project.
22. The City of Sutter Creek shall provide evidence of all on-site and off-site compensatory mitigation requirements, including, but not limited to, the purchase of mitigation credits prior to commencing construction to the Central Valley Water Board.
- Compensatory mitigation must comply with the effective policy at the time of Certification, which ensures no overall net loss of wetlands for impacts to waters of the State.
23. Staff of the Central Valley Water Board has prepared total maximum daily load (TMDL) allocations that, once approved, would limit methylmercury in storm water discharges to the Sacramento-San Joaquin Delta. The Central Valley Water Board has scheduled these proposed allocations to be considered for adoption. When the Central Valley Water Board adopts the TMDL and once approved by the Environmental Protection Agency, the discharge of methylmercury may be limited from the proposed project. The purpose of this condition is to provide notice to (The City of Sutter Creek) that methylmercury discharge limitations and monitoring requirements may apply to this project in the future and also to provide notice of the Central Valley Water Board's TMDL process and that elements of the planned construction may be subject to a TMDL allocation.

### **STORM WATER QUALITY CONDITIONS:**

The City of Sutter Creek shall also satisfy the following additional storm water quality conditions:

1. During the construction phase, the City of Sutter Creek must employ strategies to minimize erosion and the introduction of pollutants into storm water runoff. These strategies must include the following:
  - a) the Storm Water Pollution Prevention Plan (SWPPP) must be prepared during the project planning and design phases and before construction;
  - b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.
2. The City of Sutter Creek must minimize the short and long-term impacts on receiving water quality from the Project by implementing the following post-construction storm water management practices:
  - a) minimize the amount of impervious surface;
  - b) reduce peak runoff flows;
  - c) provide treatment BMPs to reduce pollutants in runoff;
  - d) ensure existing waters of the State (e.g., wetlands, vernal pools, or creeks) are not used as pollutant source controls and/or treatment controls;
  - e) preserve and, where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones;
  - f) limit disturbances of natural water bodies and natural drainage systems caused by development (including development of roads, highways, and bridges);
  - g) use existing drainage master plans or studies to estimate increases in pollutant loads and flows resulting from projected future development and require incorporation of structural and non-structural BMPs to mitigate the projected pollutant load increases in surface water runoff;
  - h) identify and avoid development in areas that are particularly susceptible to erosion and sediment loss, or establish development guidance that protects areas from erosion/ sediment loss;
  - i) control post-development peak storm water run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.
3. The City of Sutter Creek shall provide the Central Valley Water Board Contact indicated in this Certification a Notice of Completion (NOC) no later than 30 days after the Project completion. The NOC shall demonstrate that the project has been carried out in accordance with the project description in the Certification and in any amendments approved. The NOC shall include a map of the project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation

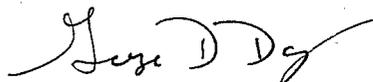
George Day, Senior Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
364 Knollcrest Drive, Suite 205, Redding, California 96002  
gday@waterboards.ca.gov  
(530) 224-4859

**WATER QUALITY CERTIFICATION:**

I hereby issue an Order certifying that any discharge from the City of Sutter Creek, Badger Street Bridge Replacement Project (WDID# 5B03CR00070) will comply with the applicable provisions of § 301 ("Effluent Limitations"), § 302 ("Water Quality Related Effluent Limitations"), §303 ("Water Quality Standards and Implementation Plans"), § 306 ("National Standards of Performance"), and § 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)."

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in compliance with conditions of this Certification, the City of Sutter Creek's application package, and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River*, Fourth Edition, revised October 2011 (Basin Plan).

Any person aggrieved by this action may petition the State Water Quality Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, title 23, § 2050 and following. The State Water Quality Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Quality Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.



(for) PAMELA C. CREEDON  
Executive Officer

DLW:lmw

Enclosure: Water Quality Order No. 2003-0017 DWQ

cc list see next page

cc w/o Mr. Will Ness, U.S. Army Corp of Engineers, Sacramento  
enclosures: Department of Fish and Wildlife, Region 2, Rancho Cordova  
U.S. Fish and Wildlife Service, Sacramento  
Mr. Bill Jennings, CALSPA, Stockton  
Mr. Gary Ghio, Weber, Ghio & Associated, Inc., San Andreas

cc w/o  
enclosures  
by email: U.S. EPA, Region 9, San Francisco  
Mr. Bill Orme, SWRCB, Certification Unit, Sacramento

R:\RB5\R5RSection\N Central Valley\Cross Section\Clerical\Storm\_water\DWerner\2015\401 5B03CR00070 Badger Street Bridge Replacement.doc

## PROJECT INFORMATION

**Application Date:** 5 November 2014

**Application Complete Date:** 30 March 2015

**Applicant:** City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95685

**Project Name:** City of Sutter Creek, Badger Street Bridge Replacement Project

**Application Number:** WDID No. 5B03CR00070

**Type of Project:** Bridge Replacement Project

**Project Location:** Section 7, Township 6 North, Range 11 East Latitude: 38.392° and Longitude: -120.808°

**County:** Amador County

**Receiving Water(s) (hydrologic unit):** Sutter Creek, which is tributary to the Mokelumne River. Middle Sierra Hydrologic Unit No. 532.00 - Sutter Creek HA (532.40)

**Water Body Type:** Wetland and Riparian

**Designated Beneficial Uses:** The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml).

**Project Description (purpose/goal):** The Badger Street Bridge Replacement is located in the City of Sutter Creek in Amador County. The project consists of replacing the Badger Street Bridge above Sutter Creek with a raised profile structure and improving the roadway approaches. Minor channelization in the streambed is required to improve hydraulic capacity. The modifications include construction of concrete wingwalls, relocating cut banks and will consist or removing remnant rubble and lowering exposed high spots in the stream bedrock. Cut banks will be hydroseeded and will have rock slope protection upon completion. The project will permanently impact 0.08 acre(s)/328 linear feet and/or temporarily impact 0.17 acre(s)/300 linear feet of waters of the United States.

**Preliminary Water Quality Concerns:** Construction activities including soil disturbance, excavation, cutting/filling, and grading activities could result in increased erosion and sedimentation and may impact surface waters with increased turbidity and settleable matter.

**Proposed Mitigation to Address Concerns:** The City of Sutter Creek will implement Best Management Practices (BMPs) to control sedimentation and erosion. All temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities. The City of Sutter Creek will conduct turbidity and settleable matter testing during in-water work, stopping work if Basin Plan criteria are exceeded or are observed.

**Fill/Excavation Area:** Approximately 510 cubic yards of native soil or other type of material will be excavated into 1.0 acres of waters of the United States.

Approximately 150 cubic yards of clean soil or other type of material will be placed into 1.0 acres of waters of the United States.

**California Integrated Water Quality System Impact Data:** The Project will permanently impact 0.08 acre/ 328 linear feet of wetland/stream bed from fill/excavation activities.

**Table 1: Impacts from Fill and/or Excavation Activities**

Fill Type	Permanent			Temporary		
	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
Wetlands						
Wetlands Total	<b>0.048</b>	NA		0.033	NA	
Stream Channel						
Stream Total						
Riparian Area						
Riparian Area Total	<b>0.033</b>	<b>70</b>		<b>0.140</b>	<b>150</b>	
<b>Total Impacts</b>	<b>0.081</b>			<b>0.173</b>	<b>150</b>	

Notes  
NA Not Applicable

**United States Army Corps of Engineers Permit Type:** Nationwide Permit #14 (Linear Transportation Projects)

**Department of Fish and Wildlife Lake or Streambed Alteration Agreement:** The Applicant applied for a Lake or Streambed Alteration Agreement on 9 October 2014.

**Possible Listed Species:** California Department of Fish & Wildlife (CDFW) species of special concern western pond turtle (*Actinemys marmorata*). California red-legged frog (*Rana draytonii*) is listed as threatened pursuant to the Federal Endangered Species Act.

**Status of CEQA Compliance:** The City of Sutter Creek is the Lead Agency responsible for compliance with the California Environmental Quality Act for the [insert name of project] Project pursuant to § 21000 et seq. of the Public Resources Code. The city of Sutter Creek approved the Negative Declaration on 16 June 2014. The City of Sutter Creek will file a Notice of Determination with the State Clearinghouse on 20 June 2014 (State Clearinghouse Number 2014042079).

**Compensatory Mitigation:** The Applicant will purchase mitigation credits totaling 0.09 acres of seasonal wetland acreage habitat from the Cosumnes Floodplain Mitigation Bank for \$13,500 to mitigate for 0.8 acres of impacts to waters of the United States. Evidence of this purchase and payment shall be provided to the Central Valley Water Board prior to proceeding with the activity authorized by this Certification.

**Application Fee Provided:** An application fee of \$4,412.00 was submitted on 5 November 2014. **An additional fee of \$4,066.00** must be submitted to the Central Valley Water Board as required by § 3833(b)(3)(A) and § 2200(a)(3) of the California Code of Regulations prior to the start of the project..



California Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670-4599  
916-358-2900  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN, Jr., Governor  
CHARLTON H. BONHAM, Director



CERTIFIED MAIL

NOV 30 2016

Date

Amy Gedney  
City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95685

Subject: Notice of Violation of Fish and Game Code Section 1602  
Streambed Alteration Agreement No. 1600-2014-0247-R2  
Badger St. Bridge Replacement on Sutter Creek, Sutter Creek, CA

Dear Ms. Gedney:

On April 20, 2016, the Department of Fish and Wildlife (Department) issued the City of Sutter Creek a Streambed Alteration Agreement (Agreement) No. 1600-2014-0247-R2 to replace the Badger St. Bridge over Sutter Creek. The Department granted a work variance to allow project work to continue past the original October 31, 2016 work window end date until November 17, 2016. On November 2, 2016, Department Senior Environmental Scientist (Specialist) Carol Oz received a report from the Regional Water Quality Control Board (RWQCB) regarding a sediment discharge to Sutter Creek in Sutter Creek, CA. The RWQCB inspection occurred during a rain event on October 28, 2016. Report photographs showed heavy equipment working in mud within the stream zone, and turbid water discharging from the construction site into the creek. On November 3, 2016, Ms. Oz visited the construction site and observed the following:

- Heavy equipment and construction work occurring in the wetted stream zone causing significant amount of sediment discharge into the creek;
- Turbid water and sediment pollution was documented downstream of the work site. Creek water quality upstream of the construction site was clear;
- Insufficient BMPs for settling, filtering, or otherwise treating silty and turbid water prior to discharge into the stream.

The Department has determined that the work described above was completed in violation of the Agreement and is subject to Fish and Game Code section 1602. The purpose of this letter is to describe the violation and to provide you an opportunity to correct it voluntarily.

Agreement 1600-2014-0247-R2 required the following:

- Agreement Measure 2.3- Work period in dry weather only.
- Agreement Measure 2.8- No heavy equipment shall operate in the portion of the stream where flowing water is present or anticipated during the term of this Agreement.

*Conserving California's Wildlife Since 1870*

- Agreement Measure 2.16- Minimize turbidity and siltation including use of BMPs for settling, filtering, or otherwise treating silty and turbid water prior to discharge into the stream.

Because heavy equipment and construction activities occurred in the stream zone and work was conducted during a rain event, BMPs were insufficient to prevent excessive sediment discharge. As a result, the project violates the requirement in Fish and Game Code section 1602 that a project be conducted in accordance with an approved Agreement. As per the Agreement, the Department reserves the right to require additional measures to protect fish and wildlife resources as a condition for granting the above-referenced work period variance.

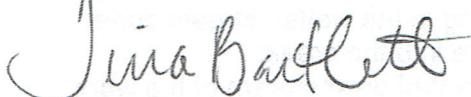
Department staff directed City of Sutter Creek to address the violation by either stabilizing the site and ceasing all work activity for the 2016 winter season, or to provide a detailed description of remaining work to be done and how that work would be implemented without harming the stream with excessive sediment discharge.

In response, the City of Sutter Creek ceased work and provided plans to the Department including corrective action to be implemented in order to complete the work. Staff approved the corrective action measures and work resumed. Follow-up site visits by Department staff confirmed no further turbid water discharge from project activities.

This notice documents the City of Sutter Creek's violation of FGC 1602, and corrective action that was implemented. Please inform the Department when work is completed and provide a final project report. At a minimum, the final report must include a description of how BMPs will be monitored and maintained hereon, photographs of upstream and downstream creek bed conditions, and water quality monitoring data.

If you have any questions regarding this letter, please contact Carol Oz at (916)-358-2918 or by email at [carol.oz@wildlife.ca.gov](mailto:carol.oz@wildlife.ca.gov).

Sincerely,



Tina Bartlett  
Regional Manager

cc: Isabel Baer  
Lake and Streambed Alteration Unit Supervisor  
[Isabel.Baer@wildlife.ca.gov](mailto:Isabel.Baer@wildlife.ca.gov)

Lt. Stacey LaFave  
CDFW Enforcement Division  
[Stacey.LaFave@wildlife.ca.gov](mailto:Stacey.LaFave@wildlife.ca.gov)

Eric Stitt  
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Chris Stabenfeldt  
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Paula Daneluk  
AICP Principle Planner  
[pmdaneluk@gmail.com](mailto:pmdaneluk@gmail.com)

**PENALTY CALCULATION METHODOLOGY  
FOR  
CITY OF SUTTER CREEK  
BADGER CREEK BRIDGE REPLACEMENT PROJECT  
AMADOR COUNTY**

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

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf).

Violation 1 – Failure to minimize or prevent pollutants in storm water discharges; Construction Storm Water General Permit.

During the site inspection on 28 October 2016, Central Valley Water Board staff observed the general lack of erosion control BMPs throughout the project, areas that required additional sediment control BMPs, and sediment-laden runoff discharging from the site. An inspection by the Department of Fish and Wildlife on 3 November 2016 found the same conditions. The Prosecution Team alleges the discharge of sediment-laden storm water runoff without installing BMPs that meet the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard is a violation of the General Permit. Attachment D, section A.1.b, Effluent Standards, in the General Permit states: *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.*

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Harm or potential for harm to beneficial uses	3	The Discharger's failure to install BMPs within the construction area above the creek bed allowed sediment laden water to be discharged directly into Sutter Creek. The discharge continued downstream for at least ½ mile. The beneficial uses of Sutter Creek include aquatic freshwater habitat, spawning, and migration. The discharge was reasonably expected to have a moderate impact to beneficial uses, but the impact is likely to attenuate without appreciable acute or chronic effects.
Physical, chemical, biological, or thermal characteristics of the discharge	2	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Susceptibility to cleanup or abatement	1	The sediment discharged was dispersed by storm water over a long distance and cleanup or abatement of 50% or more of the material would not be possible.
Per gallon and per day factor for discharge violations	0.22	The "Deviation from Requirement" is major because the Discharger essentially ignored several requirements of the General Permit rendering the permit's BAT/BCT effluent standard ineffective. The value of 0.22 was determined from Table 1 of the Enforcement Policy.
Volume discharged	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. If this matter goes to hearing, then the volume

PENALTY FACTOR	VALUE	DISCUSSION
		will be included in the penalty calculation.
Adjustment for high volume discharges	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. If this matter goes to hearing, then the volume will be included in the penalty calculation.
Days of discharge	2	Although there were probably additional days of discharge, Board staff and DFW staff only observed discharges on 28 October and 3 November 2016. If this matter goes to hearing, then additional days of violation may be alleged.
<b>Initial Liability for Violation #1</b>	\$4,400	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	The Discharger received coverage under both the Construction Stormwater General Permit and the Water Quality Certification for this project. The Discharger was well aware of the risks of working within the creek channel and the need to prevent impacts. The Discharger's project was delayed, and the Discharger choose to continue to work into the wet season instead of "buttoning up" the project prior to rain events and waiting until after the winter to finish construction.
Cleanup and Cooperation	1.2	Board staff met with the Discharger on 28 October to discuss the violations. The violations continued through DFW staff's inspection on 3 November, at which time the Discharger was ordered to stop work until the site was stabilized. Board staff sent the Discharger a Notice of Violation (NOV) on 10 November. US Postal Service records show that the NOV was delivered on 15 November. A response to the violations was required by 30 November; however, the Discharger has not responded to date.
History of Violations	1	There is no known history of violations.
<b>Total Base Liability for Violation #1</b>	\$6,336	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 2 – Failure to comply with Basin Plan turbidity limit; Water Quality Certification.

Condition 5a of the Water Quality Certification requires that construction activities not cause an increase in turbidity in Sutter Creek. Although neither the Discharger nor Board staff took turbidity samples during the 28 October 2016 discharge event, photographs show that water upstream of the diversion dam was relatively clear while water in Sutter Creek below the breached diversion dam was extremely turbid. Even before the dam was breached, the work in the creek channel caused the water discharged from the sump pumps to be turbid. For the 3 November inspection, it was noted that water upstream of the construction site was clear while construction in the stream channel caused the water downstream to be turbid with sediment pollution. The Discharger was required to collect samples from Sutter Creek and submit monitoring reports throughout the life of the project. However, only one partial monitoring report was submitted in November 2016, and staff's review finds that turbidity samples were only collected downstream. While the report contains several inconsistencies and a lack of complete monitoring, it does show that the turbidity downstream of the dam was elevated above Basin Plan limits. Based on the photographic evidence, staff's observations, and the incomplete single monitoring report, it is alleged that the Discharger violated the Basin Plan turbidity limit.

PENALTY FACTOR	VALUE	DISCUSSION
Harm or potential for harm to beneficial uses	3	The failure to install a diversion dam and culvert that were sized for storm events, as well as improper instream work and lack of BMPs resulted in this violation. Turbid water, including sediment, was discharged directly into Sutter Creek. The discharge continued downstream for at least ½ mile. The beneficial uses of Sutter Creek include aquatic freshwater habitat, spawning, and migration. The discharge was reasonably expected to have a moderate impact to beneficial uses, but the impact is likely to attenuate without appreciable acute or chronic effects.
Physical, chemical, biological, or thermal characteristics of the discharge	2	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Susceptibility to cleanup or abatement	1	The sediment discharged was dispersed by storm water over a long distance and cleanup or abatement of 50% or more of the material would not be possible.
Per gallon and per day factor for discharge violations	0.22	The "Deviation from Requirement" is major because the Discharger essentially ignored several requirements of the Water Quality Certification, including the requirement to limit the turbidity downstream of the construction area. The value of 0.22 was determined from Table 1 of the Enforcement Policy.
Volume discharged	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. If this matter goes to hearing, then the volume will be included in the penalty calculation.
Adjustment for high volume discharges	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. If this matter goes to hearing, then the volume will be included in the penalty calculation.
Days of discharge	2	Although there were probably additional days of discharge, Board staff and DFW staff only observed discharges on 28 October and 3 November 2016. If this matter goes to hearing, then additional days of violation may be alleged.
<b>Initial Liability for Violation #2</b>	\$4,400	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	See discussion for Violation 1.
Cleanup and Cooperation	1.2	See discussion for Violation 1.
History of Violations	1	See discussion for Violation 1.
<b>Total Base Liability for Violation #2</b>	\$6,336	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 3 – Failure to notify Water Board when turbidity and settleable solids objectives were exceeded; Water Quality Certification.

Condition 6 of the Water Quality Certification requires the Discharger to notify Water Board staff immediately if the turbidity and settleable solids objectives are exceeded. However, the Discharger did not notify staff for the exceedences on 28 October and 3 November 2016. In addition, the

Discharger did not submit the monitoring reports required by the Water Quality Certification or the Rain Event Action Plans required by the 10 November 2016 Notice of Violation. There may have been other days of violation, and if this matter proceeds to hearing, then Board staff will further investigate the Discharger's failure to comply with Condition 6 of the Water Quality Certification.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	major	The failure to notify Board staff of violations of the turbidity and settleable solids limits results in a major potential for harm. If staff had been notified, then the Discharger would have been told to determine the extent of the sediment plume and to take immediate actions to mitigate it. The lack of notification resulted in an uncontrolled discharge of sediment. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	major	The "Deviation from Requirement" is major because the Discharger disregarded the requirement.
Per day factor	0.85	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this action goes to hearing.
Days of violation	2	Violations were observed on 28 October 2016 and 3 November 2016. However, violations may have occurred on other days, and if this matter goes to hearing then staff will investigate further.
<b>Initial Liability for Violation #3</b>	\$17,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	See discussion for Violation 1.
Cleanup and Cooperation	1.2	See discussion for Violation 1.
History of Violations	1	See discussion for Violation 1.
<b>Total Base Liability for Violation #3</b>	\$24,480	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 4 – Failure to implement an effective combination of erosion and sediment control BMPs; Water Quality Certification.

Technical Condition 8 of the Water Quality Certification requires that an effective combination of erosion and sediment controls be implemented at the construction site. Staff's inspection on 28 October 2016 found that no BMPs were installed within the work area in the creek channel, and disturbed soil conditions extending from the diversion dam downstream and spanning the entire length and width of the work area. The DFW inspection on 3 November 2016 found "insufficient BMPs for settling, filtering, or otherwise treating silty and turbid water". The photographs taken during the 28 October inspection confirm the failure to install erosion and sediment control BMPs.

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	major	The failure to install sediment and erosion controls led to the discharge, or potential for discharge of sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	major	The "Deviation from Requirement" is major because the Discharger disregarded the requirement.
Per day factor	0.85	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this action goes to hearing.
Days of violation	2	Violations were observed on 28 October 2016 and 3 November 2016. However, violations may have occurred on other days, and if this matter goes to hearing then staff will investigate further.
<b>Initial Liability for Violation #4</b>	\$17,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	See discussion for Violation 1.
Cleanup and Cooperation	1.2	See discussion for Violation 1.
History of Violations	1	See discussion for Violation 1.
<b>Total Base Liability for Violation #4</b>	\$24,480	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 5 – Failure to protect construction site from washout; Water Quality Certification.

Condition 9 of the Water Quality Certification requires the Discharger to protect all disturbed areas from washout or erosion. However, the Discharger's diversion dam and bypass pipe were not properly sized to handle creek flows due to rain events. In addition, the Discharger did not have a contingency plan to implement in case the creek rose to the level of the dam. During the 28 October 2016 inspection, Board staff observed that water was seeping under or through the dam before the dam overtopped. A few minutes later, the water level in Sutter Creek overtopped the north end of the diversion dam and caused a portion of the dam to wash out. As the dam overtopped, water flooded the work area and carried sediment downstream, causing the turbidity in Sutter Creek to increase significantly. Staff note that there were additional rain events in early October 2016, and question whether or not the dam and bypass pipe were sufficient during these events. If this matter proceeds to hearing, then staff will investigate further. The Discharger also failed to protect disturbed areas from erosion, as documented in the 3 November 2016 inspection which states "Heavy equipment and construction work occurring in the wetted stream zone causing significant amount of sediment discharge into the creek."

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.

PENALTY FACTOR	VALUE	DISCUSSION
Potential for harm	major	The failure to install a diversion dam and bypass pipe that were sized for storm events, as well as the failure to protect against erosion, lead to a significant discharge of sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Deviation from requirement	major	The "Deviation from Requirement" is major because the Discharger essentially ignored this requirement of the Water Quality Certification by installing an undersized dam and bypass pipe.
Per day factor	0.85	Determined from Table 3 in the Enforcement Policy. The middle value was chosen, but could be increased if this action goes to hearing.
Days of violation	2	Violations were observed on 28 October 2016 and 3 November 2016. However, violations may have occurred on other days, and if this matter goes to hearing then staff will investigate further.
<b>Initial Liability for Violation #5</b>	\$17,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.2	See discussion for Violation 1.
Cleanup and Cooperation	1.2	See discussion for Violation 1.
History of Violations	1	See discussion for Violation 1.
<b>Total Base Liability for Violation #5</b>	\$24,480	The base liability is calculated as the initial liability multiplied by each of the above three factors.

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

<b>Total Base Liability for all violations: \$86,112</b>		
<b>Other Factor Considerations</b>		
Ability to pay and continue in business	No adjustment	The City of Sutter Creek is a public entity with the ability to raise funds as needed.
Economic benefit	\$2,000	The total avoided cost of stabilizing the site with temporary erosion control BMPs and maintaining an emergency bypass was estimated to be \$2,000. The avoided cost of properly installing and maintaining a high flow bypass or emergency spillway was estimated to be \$1,300. This estimate assumed \$900 for heavy weight filter fabric and \$400 for rock bags or other BMPs to secure the filter fabric and build a spillway. The avoided cost of stabilizing the site with temporary erosion control BMPs was estimated to be \$700. The cost for the temporary erosion control BMPs assumed \$600 for plastic sheeting and \$100 for straw or other temporary erosion control BMPs. (1,300 + 700 = 2,000)

Other factors as justice may require	No adjustment	The costs of investigation and enforcement are “other factors as justice may require”, and could be added to the liability amount. The Central Valley Water Board has incurred over \$5,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.
Maximum liability	Significantly over \$100,000	Based on California Water Code section 13385: \$10,000 per day per violation and \$10 per gallon. Note that staff has chosen to not calculate the gallons discharged, but will do so if this matter goes to hearing.
Minimum liability	\$2,200	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
<b>Final Liability</b>	<b>\$86,112</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.