
Central Valley Regional Water Quality Control Board

6 January 2017

Craig Pedro
County of Tuolumne
2 South Green Street
Sonora, CA 95370

CERTIFIED MAIL
91 7199 9991 7035 8359 5504

Via email: cpedro@co.tuolumne.ca.us

***OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, COUNTY OF TUOLUMNE,
TUOLUMNE COUNTY JAIL ACCESS ROAD, TUOLUMNE COUNTY, WDID 5S55C377713***

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 County of Tuolumne of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at 12879 Justice Center Drive in Sonora. As the owner of the Tuolumne County Jail Access Road project and the legally responsible person enrolled in the General Permit, the County of Tuolumne (Discharger) is responsible for complying with all elements of the General Permit and 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 \$131,464 (one hundred thirty one thousand four hundred sixty four dollars). Please read this letter carefully and respond no later than 6 February 2017.

Description of Violations

On 8 December 2016, Central Valley Water Board staff inspected the Discharger's construction site during a rain event. The Discharger's Rain Event Action Plan (REAP) showed a 90% chance of rain. However, staff observed that the 5-acre project was not prepared for the rain event. Staff observed no erosion control BMPs in active or inactive areas, no sediment control BMPs on most of the slopes and a failure to establish and maintain effective perimeter controls. Staff observed a turbid storm water discharge in excess of 1000 NTUs discharging into Sullivan Creek. The Discharger was in violation several sections of the General Permit, as described in the 20 December 2016 Notice of Violation. Please see the 8 December 2016 Inspection Report for a full description of the violations.

On 15 December 2016, Central Valley Water Board staff conducted a second inspection during a significant rain event. During the follow-up inspection, staff observed that the contractor had added BMPs to some areas and modified both basins. However, the majority of the project had no erosion control BMPs. Sediment control BMPs were not installed in many areas and the perimeter control BMPs were ineffective. In addition, staff observed that a sediment laden discharge in excess of 1,000 NTUs was discharging under the silt fence and over the fiber rolls

in multiple areas. The discharge flowed through vegetation and into an intermittent channel which discharged into Sullivan Creek. The turbidity of the water upstream in Sullivan Creek was 100 NTUs and the discharge from the intermittent channel was 1,600 NTUs. The Discharger was in violation several sections of the General Permit, as described in the 20 December 2016 Notice of Violation. Please see the 15 December 2016 Inspection Report for a full description of the violations.

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 over \$190,000 and the minimum liability is \$19,470.

Proposed Settlement Offer

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$131,464. 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 **6 February 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 **\$131,464** 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 **6 February 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.



ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures and cc's: see next page

Enclosures:

- Acceptance of Conditional Resolution and Waiver of Right to a Hearing
- 20 December 2016 Notice of Violation, including the 8 December 2016 and 15 December 2016 Inspection Reports
- Penalty Calculation Methodology

cc w/enc: David Boyers, Assistant Chief Counsel, State Water Board Office of Enforcement
Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho Cordova
Adam Laputz, Assistant Executive Officer, Central Valley Water Board, Rancho Cordova
Andrew Deeringer, Office of Chief Counsel, State Water Board, Sacramento

ORDER NO. R5-[]¹
ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
COUNTY OF TUOLUMNE
TUOLUMNE COUNTY JAIL ACCESS ROAD
TUOLUMNE COUNTY

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the Central Valley Water Board, the County of Tuolumne (Discharger) hereby accepts the Settlement Offer described in the letter dated 6 January 2017 and titled *Offer to Settle Administrative Civil Liability, County of Tuolumne, Tuolumne County Jail Access Road, Tuolumne County, WDID 5S55C377713* and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of \$131,464 (one hundred thirty one thousand four hundred sixty four dollars) by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the construction site at 12879 Justice Center Drive, Sonora.

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned 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

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of an NPDES permit. Accordingly, this *Acceptance and*

¹ Order number to be added after endorsement

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*.

COUNTY OF TUOLUMNE

By: _____

Title: _____

Date: _____

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

By: _____
Pamela Creedon, Executive Officer

Date: _____

Central Valley Regional Water Quality Control Board

20 December 2016

Craig Pedro
County of Tuolumne
2 South Green Street
Sonora, CA 95370

CERTIFIED MAIL
91 7199 9991 7035 8365 4829

NOTICE OF VIOLATION, COUNTY OF TUOLUMNE, TUOLUMNE COUNTY JAIL ACCESS ROAD, TUOLUMNE COUNTY, W DID # 5S55C37713

On 8 December 2016 and again on 15 December 2016, Central Valley Water Board staff inspected the Tuolumne County Jail Access Road project at 12879 Justice Center Drive in Sonora 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 Tuolumne County Jail Access Road and Transit Center project and the legally responsible person enrolled in the General Permit for this project, the County of Tuolumne (Discharger) 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.

During the inspections, Water Board staff observed a lack of erosion control Best Management Practices (BMPs) throughout the project, areas that required additional sediment control BMPs, and sediment-laden runoff in excess of 1,000 Nephelometric Turbidity Units (NTUs) discharging from the site. Please see the enclosed inspection reports and site photographs for more information.

Violations

The County of Tuolumne has failed to apply erosion control BMPs, failed to install sediment control BMPs on much of the project, and discharged turbid water from the project. Therefore, the County of Tuolumne 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.*

Response

In response to this Notice of Violation, the County of Tuolumne must complete the following:

- Immediately install an effective combination of erosion and sediment control BMPs throughout the site as required by the General Permit. 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, Board staff requests that you submit the following documents using the site's SMARTS account by **13 January 2017**:

- An updated SWPPP map showing all BMPs installed across the project.
- Copies of the Rain Event Action Plans (REAPs) for the 2016-2017 wet season. Include any photographs taken during the REAP inspections.
- Copies of all pre- and post-qualifying storm event visual monitoring (inspection) reports and all storm water discharge sampling and analysis records for October, November, and December 2016. These reports should include the applicable information specified in General Permit Attachment D., Section I., subsection 14, Risk Level 2 – Records.

These violations of the General Permit have exposed Tuolumne County 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. 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. Please note that coming into compliance does not resolve the violations identified in this document, but may have bearing upon the magnitude of further enforcement actions.

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



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

Enclosures: 12/08/2016 Inspection report with site photographs
12/15/2016 Inspection report with site photographs
Water pollution control drawings C-3.1 and C-4.0 from project SWPPP

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

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

Insp. Date & Time:	12/08/2016	Inspected By:	Rich Muhl
WDID #	5S55C377713	Site County:	Tuolumne
Operator Name:	County of Tuolumne (Discharger)		
Facility Name:	Tuolumne County Jail Access Road and Transit Center		
Facility Address:	12879 Justice Center Drive, Sonora, CA 95370		
Facility Contact:	Brendan Corbett (209) 331-6686		
Facility Staff Present:	Brendan Corbett		

Inspection Type: X Compliance			
SWPPP on site?	Yes	SWPPP Implemented/Updated?	No
Photos Taken?	Yes	Appropriate Monitoring Program?	Yes
Weather:	Moderate rain event	Evidence of SW or Non-SW Discharge?	Yes

Inspection Summary / Comments:

On 8 December 2016, Central Valley Regional Water Quality Control Board staff inspected the Tuolumne County Jail Access Road and Transit Center project. The project is located at 12879 Justice Center Drive in Sonora. Staff did not review the onsite Storm Water Pollution Prevention Plan (SWPPP) in detail. Subsequent to the inspection, staff reviewed the SWPPP uploaded into the Storm Water Multiple Application and Report Tracking System (SMARTS). The SWPPP was complete and generally complied with permit requirements. However, staff identified that the Discharger failed to implement erosion and sediment control BMPs identified in the SWPPP and required by the Construction Storm Water General Permit (CGP). The SWPPP called for temporary mulch and fiber rolls (linear sediment controls) on disturbed slopes if left inactive over 14 days and prior to rain events as needed. The SWPPP also called for the construction of temporary holding basins to prevent discharge from the site. The mulch and fiber roll BMPs were generally absent and the basins were discharging turbid water (see attached site maps). The inspection was conducted during a predicted rain event. The Rain Event Action Plan (REAP) showed a 90% chance of rain. Staff met with the Project Manager, Brendan Corbett.

During the inspection, staff observed that the 5-acre project was not prepared for the rain event. Staff observed no erosion control BMPs in active or inactive areas, no sediment control BMPs on most of the slopes and a failure to establish and maintain effective perimeter controls. Staff observed a turbid storm water discharge in excess of 1000 NTUs discharging into Sullivan Creek.

Western portion of the project - Staff observed that no erosion or sediment control BMPs were installed on the western portion of the project. Most of the slopes were completed and the roadway had been compacted. Staff observed sediment-laden storm water flowing throughout the unprotected roadways and adjacent areas (see inspection photographs #1 to #3).

Small detention basin (near Basin A on SWPPP site maps) - A small sediment basin was

constructed near the north end of the east side of the project. Storm water was discharging through an outlet from the basin to an outfall located mid-slope on the eastern side of the project. The contractor had not installed BMPs around the outfall area. The concentrated flow of storm water from the outlet pipe was eroding the slope. The contractor had just connected the basin to the storm drain system the previous day (see inspection photographs #4 and #5).

Linear sediment control and perimeter control BMPs - Staff observed that the discharger had installed fiber rolls on some of the slopes but not on other slopes. Some of the fiber rolls previously used on slopes for linear sediment control were recently removed to facilitate construction activity. The fiber rolls should have been re-installed prior to the predicted rain event. Staff observed that the Discharger had installed a single row of silt fence on the east side of the project. The silt fence was installed on a slope and storm water had washed under the silt fence in multiple locations. Turbid storm water was flowing into the adjacent vegetation and down the adjacent hill (see inspection photographs #6 to #10).

Erosion control BMPs and rilling on slopes - Staff observed that the contractor failed to install erosion control BMPs on the project. Erosion control BMPs were not applied to active areas, inactive areas, or on slopes. The entire project had bare soil conditions. Staff observed major rilling on multiple slopes throughout the project. The rilling was extensive in areas of concentrated flow. The SWPPP and the General Permit require erosion control BMPs in active and inactive areas (see inspection photographs #11 to #14).

Rock rip-rap basin (Basin B on SWPPP site maps) - staff observed a sediment basin built with rock rip-rap on the south end of the east side of the project. The basin was constructed of cobble- to boulder-sized angular rock. The basin received storm water from drain inlets on the roadway. Staff observed turbid storm water flowing into and out of the basin. The water appeared to be flowing directly through the basin without significant retention. The basin was ineffective at preventing turbid discharges. In addition, discharge from the basin created a concentrated flow which flowed under the perimeter control BMPs (see inspection photographs #15 to #18).

Discharge into Sullivan Creek - Staff observed a discharge from the project in two major areas. Turbid storm water was discharging under the silt fence below the rock rip-rap basin and at the northern end of the project. The turbid storm water was primarily associated with concentrated flow from the basins. However, additional turbid flow was generated on the steep slopes with bare soil conditions. Storm water was flowing under the silt fence through the adjacent vegetation and into a small intermittent creek channel. The creek channel was conveying the storm water down the slope a considerable distance into Sullivan Creek. The discharge was measured at greater than 1000 Nephelometric Turbidity Units (NTUs) (see inspection photographs #19 to #24).

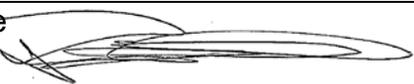
Signature 	Date 12/12/2016	Date Entered: _____ Entered By: _____ Senior Review: _____
---	-----------------	--



Photo 1. A view of the northwest portion of the project looking east. No erosion or sediment control BMPs were installed in this area.



Photo 2. Another view of the western portion of the project. Finished slopes were not protected with erosion or sediment control BMPs.



Photo 3. Another view of the same area. Note: the sediment laden storm water flowing down the road.



Photo 4. Small basin constructed on the northern portion of the project. Storm water was discharging from the basin to the site's storm drain system.



Photo 5. Overview of the eastern portion of the project looking south. Linear sediment controls were not installed on all slopes. Erosion control BMPs were absent. Arrow at location of the outfall from the basin shown in photo #4.



Photo 6. Turbid storm water discharging under the silt fence in the central portion of the facility. Note: fiber rolls in the photograph were previously used as linear sediment controls.



Photo 7. Another view of turbid storm water discharging under the silt fence. Storm water flow was coming from the unprotected slopes and the basin shown in photograph #4



Photo 8. Another view of the discharge under the silt fence. Arrow at sediment deposited downhill beyond the silt fence.



Photo 9. Sediment laden storm water flowing under the silt fence in another area on east side of project.



Photo 10. Lack of erosion control BMPs. Fiber rolls or other linear sediment controls not installed on slopes.



Photo 11. View of rilling on one of the slopes. No erosion control or fiber rolls on the steep slope.



Photo 12. Erosion control BMPs and fiber rolls not installed on southeast portion of the project.



Photo 13. Rilling on one of the slopes. Note: the long slope length without fiber rolls or other linear sediment controls.



Photo 14. South end of roadway on eastern portion on the project, looking north, without erosion control BMPs.



Photo 15. An active storm drain inlet which discharges to the rock rip-rap basin on the southeast side of the project. Note lack of erosion control BMPs.



Photo 16. Rock rip-rap basin on southeast side of project. The outfall into the basin is from the drain inlet shown in photo #15



Photo 17. Immediately downslope of the rip-rap basin. Note: storm water discharge flowed directly through the rocks.



Photo 18. Discharge from the basin. The basin was discharging a concentrated flow of turbid storm water. Storm water flowed under the silt fence and offsite down the hill.



Photo 19. Turbid storm water discharging from the project. Arrow notes project location.



Photo 20. Turbid storm water flowing in the intermittent stream channel downstream from project.



Photo 21. Turbid storm water in the riparian area adjacent to Sullivan Creek.



Photo 22. Turbid storm water directly adjacent to Sullivan Creek. View is looking upstream.



Photo 23. Turbid storm water mixing with water in the creek.

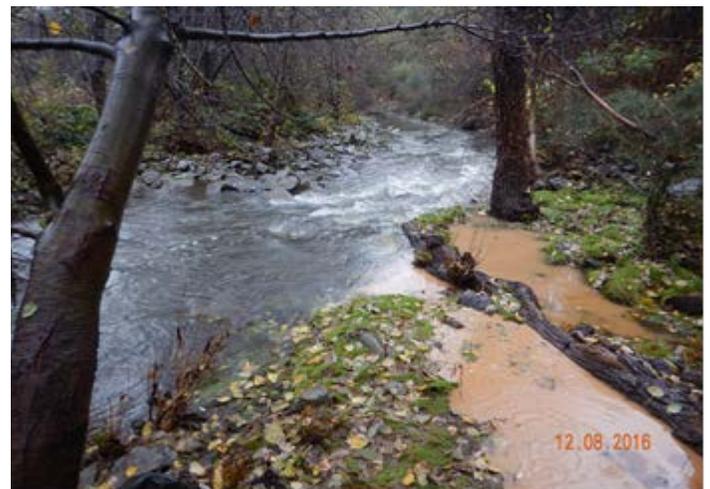


Photo 24. Downstream view of the turbid storm water from project flowing into Sullivan Creek.

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

Insp. Date & Time:	12/15/2016	Inspected By:	Rich Muhl
WDID #	5S55C377713	Site County:	Tuolumne
Operator Name:	County of Tuolumne		
Facility Name:	Tuolumne County Jail Access Road and Transit Center		
Facility Address:	12879 Justice Center Drive, Sonora, CA 95370		
Facility Contact:	Brendan Corbett (209) 331-6686		
Facility Staff Present:	Brendan Corbett		

Inspection Type: <input checked="" type="checkbox"/> Enforcement follow-up			
SWPPP on site?	Yes	SWPPP Implemented/Updated?	Yes
Photos Taken?	Yes	Appropriate Monitoring Program?	Yes
Weather:	Rain	Evidence of SW or Non-SW Discharge?	Yes

Inspection Summary / Comments:

On 15 December 2016, Central Valley Regional Water Quality Control Board staff inspected the Tuolumne County Jail Access Road and Transit Center project. The project is located at 12879 Justice Center Drive in Sonora. Staff did not review the Storm Water Pollution Prevention Plan (SWPPP). Staff met with the project manager, Brendan Corbett. The inspection was a follow-up to an inspection conducted on 8 December 2016. During that inspection, Board staff observed that there were no erosion control Best Management Practices (BMPs) in active or inactive areas, no sediment control BMPs on most of the slopes, and a failure to establish and maintain effective perimeter controls. Additionally, staff observed a turbid storm water discharge in excess of 1,000 NTUs discharging into Sullivan Creek.

The follow-up inspection was conducted during a significant rain event. Staff inspected the project with the contractor and the Qualified SWPPP Developer (QSD) who was conducting sampling. During the follow-up inspection, staff observed that the contractor had added BMPs to some areas and modified both basins. The contractor had installed: plastic on some of the slopes on the western side of the project; installed plastic and jute netting on the slopes on the eastern portion of the project; installed fiber rolls and rock bags in some of the concentrated flow areas; installed additional perimeter control BMPs; re-constructed the smaller basin and placed geo-textile fabric in the bottom of the rock basin. However, the majority of the project had no erosion control BMPs. Sediment control BMPs were not installed in many areas and the perimeter control BMPs were ineffective (see inspection photographs #1 to #15).

Staff observed that a sediment laden discharge in excess of 1,000 NTUs was discharging under the silt fence and over the fiber rolls in multiple areas. The discharge flowed through vegetation and into an intermittent channel which discharged into Sullivan Creek. The QSD collected samples and determined that the water upstream in Sullivan Creek was 100 NTUs and the discharge from the intermittent channel was 1,600 NTUs (see inspection photographs #16 to #23).

Signature 	Date 12/19/2016	Date Entered: _____ Entered By: _____ Senior Review: _____
---	-----------------	--



Photo 1. Roadway on the western portion of the project looking west. Sediment laden runoff from the roadway flowing to the west. No erosion control BMPs on the roadway and surrounding area



Photo 2. West side of north end of the project looking east. Note the lack of erosion control BMPs on the roadway and surrounding area



Photo 3. A concentrated flow of turbid storm water flowing to the east on the northwestern portion of the project.



Photo 4. Check dams installed in a concentrated flow area on the northwestern side of the project.



Photo 5. Another view of the area on the north central area of the project, looking east. Note: the lack of any erosion control BMPs.



Photo 6. Northeast area of the project looking west from the small basin. Note: the lack of any erosion control BMPs.



Photo 7. View of the small basin on the northeast portion of the project.



Photo 8. View of the roadway on the eastern side of the project looking south from the basin shown in photo #7. Note: the contractor had installed plastic on some slopes.



Photo 9. View of the same roadway from the southern side of the project. The contractor had installed fiber rolls and rock bags in some concentrated flow areas.



Photo 10. View of the south portion of the project looking west. Note: the bare soil conditions and the sediment laden storm water flowing into the storm drain (at arrow).



Photo 11. View of the southern portion of the project looking east. Note: the lack of erosion control BMPs and the concentrated flow on the slopes.



Photo 12. BMPs installed on the eastern slope of the project. Note: view looking north



Photo 13. Filter fabric installed in the rock basin



Photo 14. Turbid storm water discharging under the silt fence directly below the rock basin



Photo 15. Base of graded area on east slope where turbid storm water was discharging under plastic installed on the slope, under the silt fence, and over the fiber rolls.



Photo 16. View of the flow of turbid storm water flowing through the grass and into the intermittent channel directly below the project.

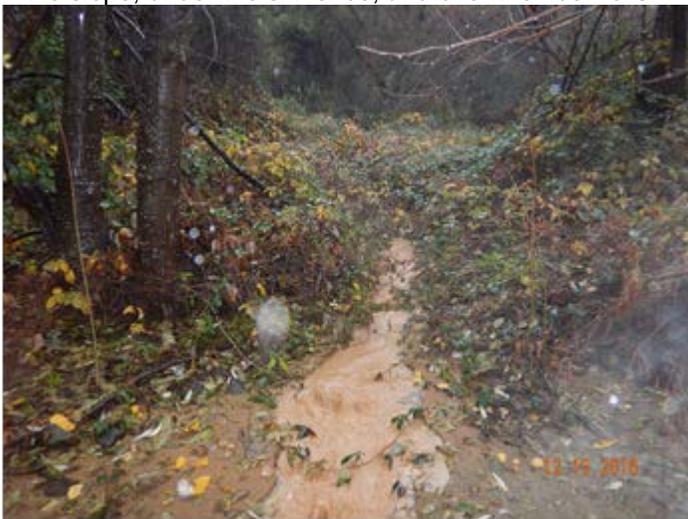


Photo 17. View of the turbid storm water from the project flowing into the riparian area adjacent to Sullivan Creek.

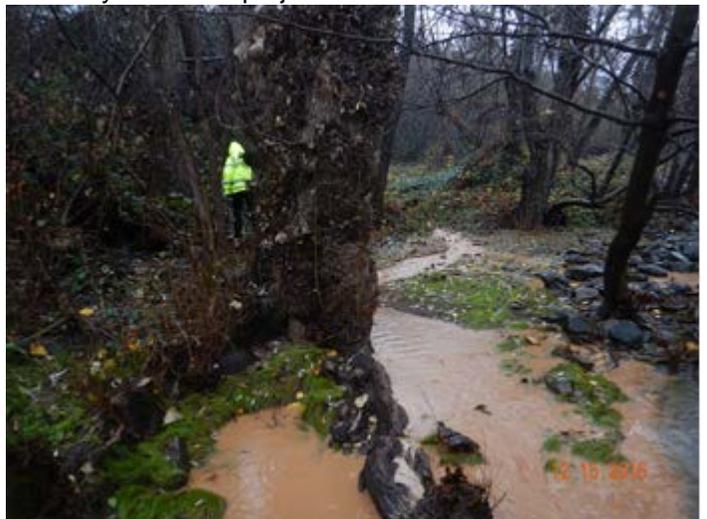


Photo 18. View of the turbid storm water flowing into the area adjacent to Sullivan Creek.



Photo 19. View of turbid storm water from the project flowing into Sullivan Creek.



Photo 20. Turbid storm water from project mixing with the water in Sullivan Creek.



Photo 21. View of the water flowing into the creek.



Photo 22. View of turbid storm water from the project flowing into Sullivan Creek. Note extent of turbidity on right bank of Sullivan Creek.



Photo 23. Qualified SWPPP Developer (QSD) taking a sample upstream of the discharge area

1. BMPS SHOWN ON THIS SHEET ARE FOR THE INITIAL GRADING PHASE
2. DRAWINGS ARE TO UPDATED REGULARLY TO KEEP CURRENT WITH SITE CONDITIONS AS GRADING PROGRESSES TO ENSURE THAT AN ADEQUATE COMBINATION OF EROSION AND SEDIMENTS CONTROLS ARE IMPLEMENTED IN PREPARATION OF RAIN EVENTS.
3. THE QSP SHALL NOTIFY THE QSD IF ANY PLAN CHANGES ARE NEEDED.

Implement NS-3 for all paving and grinding operations, typical.

Implement NS-12 and WM-8 for all concrete curing operations, typical.

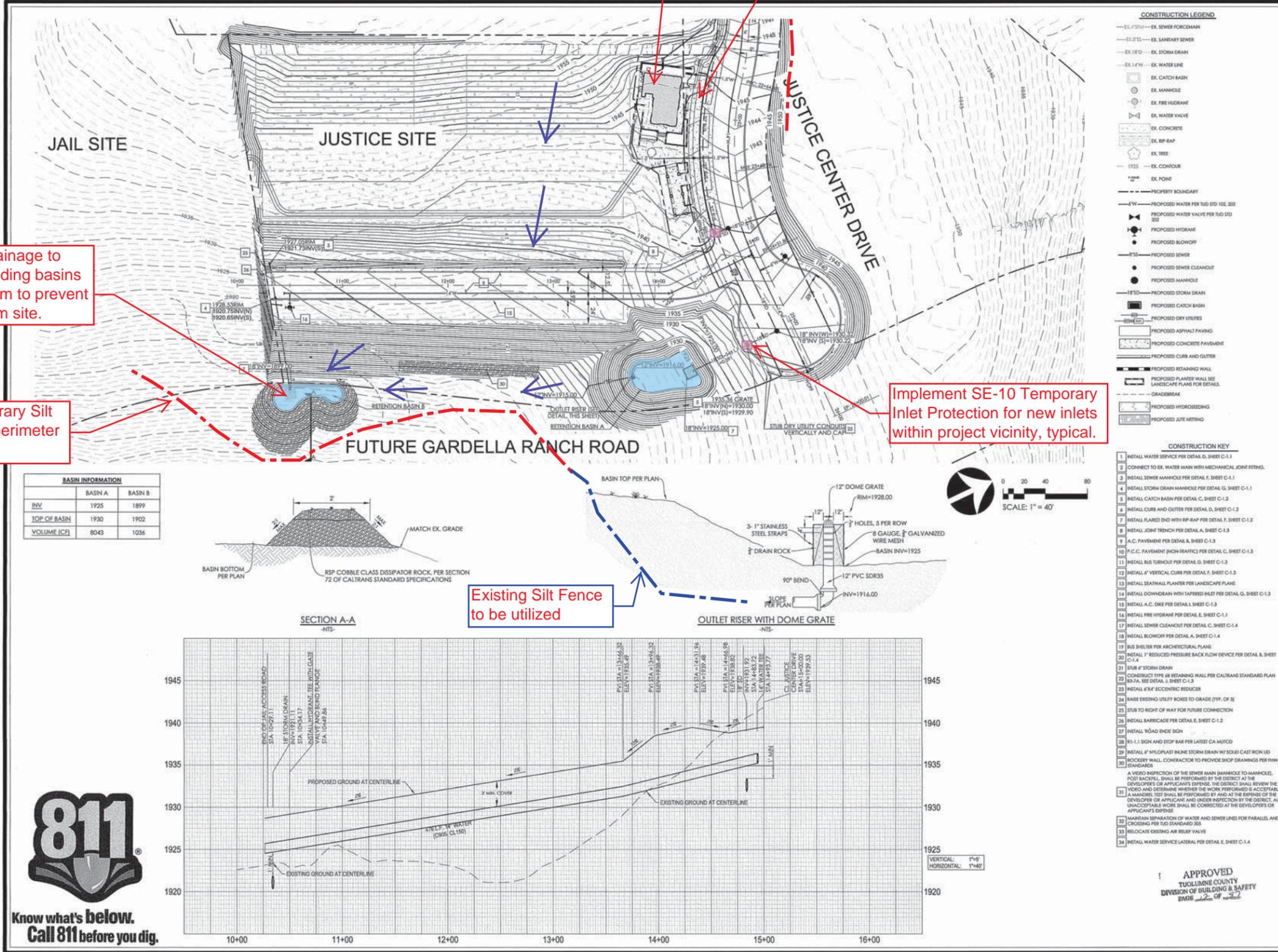
Water Pollution Control Drawings
Tully Consulting Group
9-27-16

Grade site drainage to temporary holding basins with earth berm to prevent discharge from site.

Implement Temporary Silt Fence (SE-1) for perimeter controls, typical.

Implement SE-10 Temporary Inlet Protection for new inlets within project vicinity, typical.

Existing Silt Fence to be utilized



TUOLUMNE
TRANSIT CENTER -
ROAD EXTENSION
PLAN & PROFILE -
JAIL ACCESS ROAD

NO.	REVISION	DATE

PROJECT MANAGER
WIS

DRAWN BY
JJC/JJP

CHECKED BY
WIS

DATE
MAY 26, 2016

CAD FILE
0046-01-IN15-GR.dwg

JOB NUMBER
0046-01-IN15

SHEET
C-3.1

APPROVED
TUOLUMNE COUNTY
DIVISION OF BUILDING & SAFETY
DATE 5-26-16

Original Erosion Control Plan to be implemented for a later phase of construction.

Monitoring Location 01DL01 at Existing Drainage Inlets

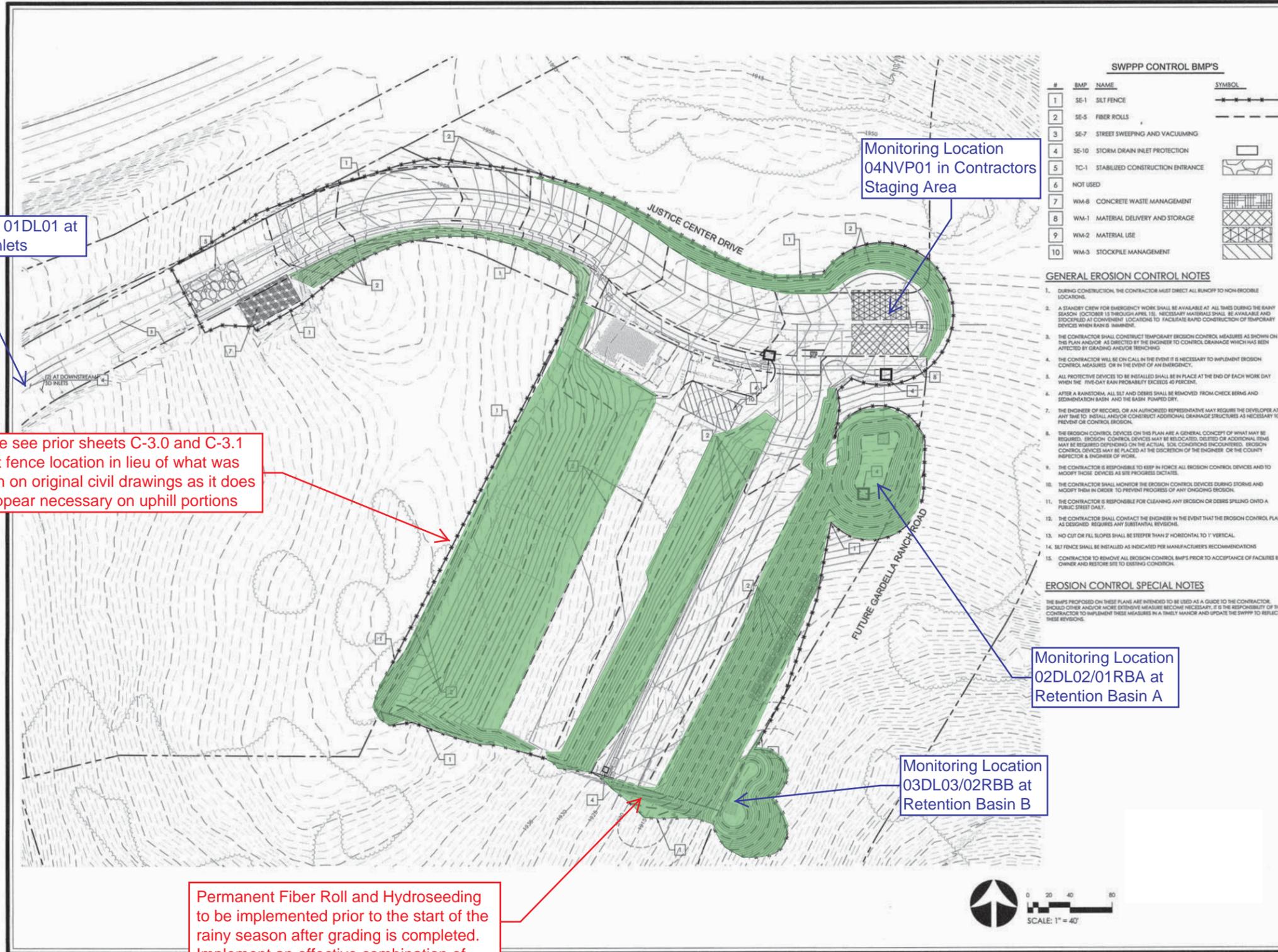
Monitoring Location 04NVP01 in Contractors Staging Area

Please see prior sheets C-3.0 and C-3.1 for silt fence location in lieu of what was shown on original civil drawings as it does not appear necessary on uphill portions

Monitoring Location 02DL02/01RBA at Retention Basin A

Monitoring Location 03DL03/02RBB at Retention Basin B

Permanent Fiber Roll and Hydroseeding to be implemented prior to the start of the rainy season after grading is completed. Implement an effective combination of Temporary Fiber Rolls (SE-5) and / or Temporary Hydraulic Mulch (SS-3) on disturbed areas if left inactive over 14 days and prior to rain events as needed.



#	BMP NAME	SYMBOL
1	SE-1 SILT FENCE	[Symbol]
2	SE-5 FIBER ROLLS	[Symbol]
3	SE-7 STREET SWEEPING AND VACUUMING	[Symbol]
4	SE-10 STORM DRAIN INLET PROTECTION	[Symbol]
5	TC-1 STABILIZED CONSTRUCTION ENTRANCE	[Symbol]
6	NOT USED	[Symbol]
7	WM-8 CONCRETE WASTE MANAGEMENT	[Symbol]
8	WM-1 MATERIAL DELIVERY AND STORAGE	[Symbol]
9	WM-2 MATERIAL USE	[Symbol]
10	WM-3 STOCKPILE MANAGEMENT	[Symbol]

- GENERAL EROSION CONTROL NOTES**
- DURING CONSTRUCTION, THE CONTRACTOR MUST DIRECT ALL RUNOFF TO NON-ERODIBLE LOCATIONS.
 - A STANDBY CREW FOR EMERGENCY WORK SHALL BE AVAILABLE AT ALL TIMES DURING THE EARLY SEASON (OCTOBER 15 THROUGH APRIL 15). NECESSARY MATERIALS SHALL BE AVAILABLE AND STOCKPILED AT CONVENIENT LOCATIONS TO FACILITATE RAPID CONSTRUCTION OF TEMPORARY DEVICES WHEN RAINS OCCUR.
 - THE CONTRACTOR SHALL CONSTRUCT TEMPORARY EROSION CONTROL MEASURES AS SHOWN ON THIS PLAN AND/OR AS DIRECTED BY THE ENGINEER TO CONTROL DRAINAGE WHICH HAS BEEN AFFECTED BY GRADING AND/OR TRENCHING.
 - THE CONTRACTOR WILL BE ON CALL IN THE EVENT IT IS NECESSARY TO IMPLEMENT EROSION CONTROL MEASURES OR IN THE EVENT OF AN EMERGENCY.
 - ALL PROMOTIVE DEVICES TO BE INSTALLED SHALL BE IN PLACE AT THE END OF EACH WORK DAY WHEN THE FIVE-DAY RAIN PROBABILITY EXCEEDS 40 PERCENT.
 - AFTER A RAINSTORM, ALL SILT AND DEBRIS SHALL BE REMOVED FROM CHECK BASINS AND SEDIMENTATION BASIN AND THE BASIN PUMPED DRY.
 - THE ENGINEER OF RECORD, OR AN AUTHORIZED REPRESENTATIVE MAY REQUIRE THE DEVELOPER AT ANY TIME TO INSTALL AND/OR CONSTRUCT ADDITIONAL DRAINAGE STRUCTURES AS NECESSARY TO PREVENT OR CONTROL EROSION.
 - THE EROSION CONTROL DEVICES ON THIS PLAN ARE A GENERAL CONCEPT OF WHAT MAY BE REQUIRED. EROSION CONTROL DEVICES MAY BE RELOCATED, DELETED OR ADDITIONAL ITEMS MAY BE REQUIRED DEPENDING ON THE ACTUAL SOIL CONDITIONS ENCOUNTERED. EROSION CONTROL DEVICES MAY BE PLACED AT THE DISCRETION OF THE ENGINEER, OR THE COUNTY INSPECTOR & ENGINEER OF WORK.
 - THE CONTRACTOR IS RESPONSIBLE TO KEEP IN FORCE ALL EROSION CONTROL DEVICES AND TO MODIFY THESE DEVICES AS SITE PROGRESS DICTATES.
 - THE CONTRACTOR SHALL MONITOR THE EROSION CONTROL DEVICES DURING STORMS AND MODIFY THEM IN ORDER TO PREVENT PROGRESS OF ANY ONGOING EROSION.
 - THE CONTRACTOR IS RESPONSIBLE FOR CLEANING ANY EROSION OR DEBRIS SPILLING ONTO A PUBLIC STREET DAILY.
 - THE CONTRACTOR SHALL CONTACT THE ENGINEER IN THE EVENT THAT THE EROSION CONTROL PLAN AS DESIGNED REQUIRES ANY SUBSTANTIAL REVISION.
 - NO CUT OR FILL SLOPES SHALL BE STEEPER THAN 2' HORIZONTAL TO 1' VERTICAL.
 - SILT FENCE SHALL BE INSTALLED AS INDICATED PER MANUFACTURER'S RECOMMENDATIONS.
 - CONTRACTOR TO REMOVE ALL EROSION CONTROL BMP'S PRIOR TO ACCEPTANCE OF FACILITIES BY OWNER AND RESTORE SITE TO ORIGINAL CONDITION.

EROSION CONTROL SPECIAL NOTES

THE BMP'S PROPOSED ON THESE PLANS ARE INTENDED TO BE USED AS A GUIDE TO THE CONTRACTOR. SHOULD OTHER AND/OR MORE EXTENSIVE MEASURES BECOME NECESSARY, IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMPLEMENT THESE MEASURES IN A TIMELY MANNER AND UPDATE THE SWPPP TO REFLECT THESE REVISIONS.



TUOLUMNE
TRANSIT CENTER -
ROAD EXTENSION
EROSION CONTROL PLAN

NO.	REVISION	DATE

PROJECT MANAGER
WIS

DRAWN BY: JJC/JP CHECKED BY: WIS

DATE: MAY 6, 2016

CAD FILE: 0046-01-IN15-EC.dwg

JOB NUMBER: 0046-01-IN15

SHEET: C-4.0

I:\2016\04\01-15\Tuolumne County Transit Center Road Extension\Drawings\0246-01-IN15-EC.dwg, C-4.0, May 06, 2016, 1:33pm, L:\rhh

**PENALTY CALCULATION METHODOLOGY
FOR
COUNTY OF TUOLUMNE
TUOLUMNE COUNTY JAIL ACCESS ROAD
TUOLUMNE 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.

Violation 1 – Failure to minimize or prevent pollutants in storm water discharges

During site inspections on 8 December and 15 December 2016, Central Valley Water Board staff observed that the 5-acre project was not prepared for rain events. Staff observed no erosion control BMPs in active or inactive areas, no sediment control BMPs on most of the slopes, discharges of turbid storm water from sediment basins, and a failure to establish and maintain effective perimeter controls. During both inspections, staff observed a turbid storm water discharge in excess of 1,000 NTUs discharging into Sullivan Creek. 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 Attachment D, section A.1.b, Effluent Standards, of the General Permit, which 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.*

PENALTY FACTOR	VALUE	DISCUSSION
Harm or potential for harm to beneficial uses	3	Sediment laden water discharged into an intermittent channel and riparian area which flow into Sullivan Creek, a tributary to New Don Pedro Reservoir. Staff's photos from 8 December show the turbid water from the construction site flowing into the clear water of Sullivan Creek. On 15 December, the water upstream in Sullivan Creek was 100 NTUs while the discharge from the construction site had a turbidity of 1,600 NTUs. The beneficial uses of Sullivan Creek include warm and cold aquatic freshwater habitat. Given the multiple days of discharge and the close proximity of the construction site to the creek, the sediment was expected to have an moderate threat to beneficial uses (i.e., impacts are reasonably expected and 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	0.22	The "Deviation from Requirement" is major because the Discharger essentially ignored several requirements of the General Permit,

PENALTY FACTOR	VALUE	DISCUSSION
violations		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 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	4	Staff observed discharges on 8 December and 15 December 2016, during rain events. According to the CDEC Telegraph Hill rain gauge, rain also fell on 9 and 10 December. Because sufficient BMPs had not been installed by 15 December, it is reasonable to assume that discharges also occurred during the storms on 9-10 December. Rain also occurred before and after the period from 8 to 15 December 2016. If this matter goes to hearing, additional days of violation may be alleged.
Initial Liability for Violation #1	\$8,800	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.4	The Discharger is fully aware of the General Permit and its requirements. Each year, Board staff holds a class for the Discharger's staff regarding the General Permit requirements. The class includes field inspections. The Discharger inspects grading projects throughout the County, and has accompanied Board staff on many inspections of sites covered under the General Permit, including the CalTrans Sonora Bypass project which received a substantial penalty for General Permit violations. The Discharger was aware of the problems at this construction site, and issued multiple verbal warnings to its contractor. However, the Discharger did not take any enforcement action against the contractor, such as a stop work order or withholding payment.
Cleanup and Cooperation	1.2	Minimal improvements were observed during staff's second inspection. However, the majority of the project still had no erosion control BMPs and sediment was discharging from the site at multiple locations.
History of Violations	1	There is no known history of violations.
Total Base Liability for Violation #1	\$14,784	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 2 – Failure to establish and maintain effective soil cover on inactive areas

During the site inspections on 8 December and 15 December 2016, Board staff found that there were no erosion control BMPs in active or inactive areas, and no sediment control BMPs on most of the slopes. Inactive areas are defined in the General Permit as areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days. The Prosecution Team alleges that failure to establish and maintain effective soil cover on inactive areas is a violation of Attachment D, section D.2, of the General Permit which states: *Risk Level 2 dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.*

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install effective slope cover 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 did not comply with the requirement to establish and maintain effective soil cover, reducing the intended effectiveness of the requirement.
Per day factor	0.55	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	4	Violations occurred on 8,9,10, and 15 December 2016 because rainfall occurred on each of these days and Water Board staff observed deficient BMPs on 8 December 2016 and 15 December 2016.
Initial Liability for Violation #2	\$22,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.4	The Discharger is fully aware of the General Permit and its requirements. Each year, Board staff holds a class for the Discharger's staff regarding the General Permit requirements. The class includes field inspections. The Discharger inspects grading projects throughout the County, and has accompanied Board staff on many inspections of sites covered under the General Permit, including the CalTrans Sonora Bypass project which received a substantial penalty for General Permit violations. The Discharger was aware of the problems at this construction site, and issued multiple verbal warnings to its contractor. However, the Discharger did not take any enforcement action against the contractor, such as a stop work order or withholding payment.
Cleanup and Cooperation	1.2	Minimal improvements were observed during staff's second inspection. However, the majority of the project still had no erosion control BMPs and sediment was discharging from the site at multiple locations.
History of Violations	1	There is no known history of violations.
Total Base Liability for Violation #2	\$36,960	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 3 – Failure to implement appropriate erosion and sediment control BMPs on active areas

During site inspections on 8 December and 15 December 2016, Central Valley Water Board staff observed that there were no erosion control BMPs in active or inactive areas, and no sediment control BMPs on most of the slopes. The Prosecution Team alleges that failure to implement appropriate erosion control BMPs is a violation of Attachment D, section E.3, of the General Permit, which states in part: *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. Areas under active construction are defined in the General Permit as areas undergoing land surface disturbance, including construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage.

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install appropriate erosion and sediment 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 essentially ignored this requirement by not installing erosion control BMPs on all disturbed soil areas prior to a storm event rendering this requirement ineffective.
Per day factor	0.55	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	4	Violations occurred on 8,9,10, and 15 December 2016 because rainfall occurred on each of these days and Water Board staff observed deficient BMPs on 8 December 2016 and 15 December 2016.
Initial Liability for Violation #3	\$22,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.4	The Discharger is fully aware of the General Permit and its requirements. Each year, Board staff holds a class for the Discharger's staff regarding the General Permit requirements. The class includes field inspections. The Discharger inspects grading projects throughout the County, and has accompanied Board staff on many inspections of sites covered under the General Permit, including the CalTrans Sonora Bypass project which received a substantial penalty for General Permit violations. The Discharger was aware of the problems at this construction site, and issued multiple verbal warnings to its contractor. However, the Discharger did not take any enforcement action against the contractor, such as a stop work order or withholding payment.
Cleanup and Cooperation	1.2	Minimal improvements were observed during staff's second inspection. However, the majority of the project still had no erosion control BMPs and sediment was discharging from the site at multiple locations.
History of Violations	1	There is no known history of violations.
Total Base Liability for Violation #3	\$36,960	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 4 – Failure to install linear sediment controls

During the inspection on 8 December 2016, staff observed that the Discharger had installed fiber rolls on some of the slopes but not on other slopes. Some of the fiber rolls previously used on slopes for linear sediment control had been recently removed to facilitate construction activity. The fiber rolls should have been re-installed prior to the predicted rain event. Staff observed that the Discharger had installed a single row of silt fence on the east side of the project. The silt fence was installed on a slope and storm water had washed under the silt fence in multiple locations. Turbid storm water was flowing into the adjacent vegetation and down the adjacent hill. The Prosecution Team alleges that failure to apply linear sediment control BMPs is a violation of Attachment D, section E.4 of the General Permit, which states in part: *Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.*

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install linear sediment 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	moderate	The "Deviation from Requirement" is moderate because the Discharger had installed fiber rolls on some of the slopes but not all.
Per day factor	0.35	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	1	Violations were observed on 8 December 2016. If this matter goes to hearing, then additional days of violation may be alleged.
Initial Liability for Violation #4	\$3,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		
Culpability	1.4	The Discharger is fully aware of the General Permit and its requirements. Each year, Board staff holds a class for the Discharger's staff regarding the General Permit requirements. The class includes field inspections. The Discharger inspects grading projects throughout the County, and has accompanied Board staff on many inspections of sites covered under the General Permit, including the CalTrans Sonora Bypass project which received a substantial penalty for General Permit violations. The Discharger was aware of the problems at this construction site, and issued multiple verbal warnings to its contractor. However, the Discharger did not take any enforcement action against the contractor, such as a stop work order or withholding payment.
Cleanup and Cooperation	1.2	Minimal improvements were observed during staff's second inspection. However, the majority of the project still had no erosion control BMPs and sediment was discharging from the site at multiple locations.
History of Violations	1	There is no known history of violations.

PENALTY FACTOR	VALUE	DISCUSSION
Total Base Liability for Violation #4	\$5,800	The base liability is calculated as the initial liability multiplied by each of the above three factors.

Violation 5 – Failure to design an appropriate sediment basin

The Discharger’s SWPPP also called for the construction of temporary holding basins to prevent discharge from the site. Basin B was built with rock rip-rap and constructed of cobble- to boulder-sized angular rock. The basin received storm water from drain inlets on the roadway. Staff observed turbid storm water flowing into and out of the basin. The water appeared to be flowing directly through the basin without significant retention. The basin was ineffective at preventing turbid discharges. In addition, discharge from the basin created a concentrated flow which flowed under the perimeter control BMPs. The Prosecution Team alleges that failure to design an appropriate sediment basin is a violation of Attachment D, section E.2 of the General Permit, which states: *On sites where sediment basins are to be used, Risk Level 2 dischargers shall, at minimum, design sediment basins according to the method provided in CASQA’s Construction BMP Guidance Handbook.*

PENALTY FACTOR	VALUE	DISCUSSION
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.
Potential for harm	moderate	The failure to install linear sediment 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 built a sediment “basin” of large size cobbles which are ineffective at holding water. The Discharger did not follow the CASQA guidance, rendering this requirement ineffective.
Per day factor	0.55	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	4	Violations occurred on 8,9,10, and 15 December 2016 because rainfall occurred on each of these days and Water Board staff observed deficient BMPs on 8 December 2016 and 15 December 2016.
Initial Liability for Violation #5	\$22,000	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000/day).
Adjustments for Discharger Conduct		

PENALTY FACTOR	VALUE	DISCUSSION
Culpability	1.4	The Discharger is fully aware of the General Permit and its requirements. Each year, Board staff holds a class for the Discharger's staff regarding the General Permit requirements. The class includes field inspections. The Discharger inspects grading projects throughout the County, and has accompanied Board staff on many inspections of sites covered under the General Permit, including the CalTrans Sonora Bypass project which received a substantial penalty for General Permit violations. The Discharger was aware of the problems at this construction site, and issued multiple verbal warnings to its contractor. However, the Discharger did not take any enforcement action against the contractor, such as a stop work order or withholding payment.
Cleanup and Cooperation	1.2	Minimal improvements were observed during staff's second inspection. However, the majority of the project still had no erosion control BMPs and sediment was discharging from the site at multiple locations.
History of Violations	1	There is no known history of violations.
	\$36,960	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.

Total Base Liability for all violations: \$131,464		
Other Factor Considerations		
Ability to pay and continue in business	No adjustment	Tuolumne County is a public entity with the ability to raise revenue.
Economic benefit	\$17,700	The avoided cost of properly stabilizing the site with linear sediment control BMPs and temporary erosion control BMPs is estimated to be \$17,700. Estimated costs are from the November 2009 CASQA Storm Water Best Management Practice Handbook for Construction. The cost for linear control BMPs is based on an assumed 800 linear feet of fiber rolls needed to meet the sediment control BMP requirement at the cost of \$1.50/linear foot (800*\$1.50 = \$1,200). The labor cost to re-install the fiber rolls that were removed and stored at the base of the slope is estimated to be \$500. The cost of erosion control BMPs is based on the application of Bonded Fiber Matrix on an assumed 4 acres of disturbed soil at a cost of \$4,000 per acre. (4*\$4,000). The total cost estimated cost is \$1200+\$500+\$16,000=\$17,700.
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	Over \$190,000	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 or to assess penalties for the days in which violations were not observed, but will do so if this matter goes to hearing.
Minimum liability	\$19,470	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%.
Final Liability	\$131,464	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.