CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

MEETING OF AUGUST 30, 2023
APPLE VALLEY, CA

ITEM 5
PROPOSED ADMINISTRATIVE CIVIL LIABILITY SETTLEMENT AGREEMENT AND STIPULATED ORDER WITH PALISADES DEVELOPMENT, LLC FOR THE PALISADES AT SQUAW CONSTRUCTION PROJECT, PLACER COUNTY, ORDER NO. R6T-2023-0008

CHRONOLOGY	
March 6, 2017	Palisades Development, LLC (Palisades) submits a Notice of Intent to comply with the *NPDES General Permit for Storm Water Dischargers Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (Construction General Permit). The Notice of Intent describes the project as construction of a roadway and utilities with service stubs to 63 residential lots in Olympic Valley. The Notice of Intent does not contain any mention of vertical construction (i.e., building the homes).
June-October 2017	Palisades grades the site and begins installing roads and utilities.
May 2018	Palisades begins vertical construction.
July 2018	Palisades finishes grading, road construction, and utility installation.
June and August 2018	Lahontan Water Board staff inspect the site twice and note many BMP (best management practices) violations. Staff deny the request to terminate coverage under the Construction General Permit.
April 13, 2021	Lahontan Water Board staff receive a complaint that vertical construction is on-going without appropriate documents, inspections, or installation of BMPs, all of which are violations of the Construction General Permit.
April 29, 2021	Lahontan Water Board staff inspect the site
June 21, 2021	Lahontan Water Board staff issue a Notice of Violation.
June through October 2021	Lahontan Water Board staff complete three additional inspections. Palisades provides numerous documents.
March 2022	The Lahontan Water Board's Prosecution Team notifies Palisades of the upcoming enforcement action, and Palisades agrees to enter into confidential settlement negotiations.

CHRONOLOGY	
July 7, 2023	The proposed Settlement Agreement is signed by both Palisades and the Prosecution Team and is posted for a 30-day public comment period.
August 7, 2023	Public comment period ends.
December 2023	Palisades estimates that the last house will be constructed and sold.

BACKGROUND

Palisades Development, LLC owns the Palisades at Squaw residential development, which is located off Creek's End Court, at the eastern end of Olympic Valley, near Highway 89. The construction area is 19.9 acres, and includes 63 single family homes, associated infrastructure, roads, and landscaping. In March 2017, Palisades enrolled its project under the Construction General Permit.

Among other items, the Construction General Permit requires that a Discharger:

(a) prepare a Storm Water Pollution Prevention Plan (SWPPP) that describes the installation and maintenance of BMPs needed to control sediment and other pollutants;

(b) hire a Qualified SWPPP Practitioner (QSP) to conduct weekly inspections to ensure that appropriate BMPs are installed and maintained, prepare and implement Rain Event Action Plans (REAPs) for each forecasted rain event, and inspect a site prior to, during, and after certain rain events;

(c) install and maintain appropriate BMPs, and

(d) submit Annual Reports.

Palisades enrolled under the Construction General Permit for the grading/utilities phase of the project and retained a QSP for that phase of work. However, Lahontan Water Board staff's April 2021 inspection found that Palisades did not update its documents to reflect vertical construction, did not have a QSP under contract, and had not installed or maintained numerous BMPs across the construction site.

The Lahontan Water Board's Prosecution Team alleges that Palisades Development LLC has violated 11 requirements of the Construction General Permit:

1. Palisades failed to ensure that the SWPPP was revised by a Qualified SWPPP Developer (QSD) to reflect vertical construction activities from May 15, 2018, through July 29, 2021.
2. Palisades failed to employ a QSP to oversee implementation of BMPs from at least July 1, 2020 to May 10, 2021.
3. Palisades failed to ensure that a QSP perform weekly inspections to identify BMPs that were missing, need maintenance, or were ineffective between July 1, 2020, and May 10, 2021.

BACKGROUND

4. Palisades failed to ensure that a QSP develop REAPs 48 hours prior to any likely precipitation event between July 1, 2020, and May 10, 2021.
5. Palisades failed to ensure that a QSP inspect the site within two business days prior to, and two business days after, each qualifying rain event between July 1, 2020, and May 10, 2021.
6. Palisades failed to implement good housekeeping measures for construction materials for 23 days between April 29, 2021, and December 3, 2021.
7. Palisades failed to implement good housekeeping measures for waste management for 29 days between April 29, 2021, and December 3, 2021.
8. Palisades failed to implement good housekeeping measures for vehicle storage and maintenance for 12 days between April 29, 2021, and December 3, 2021.
9. Palisades failed to provide effective wind erosion control and/or provide effective soil cover for inactive areas and finished slopes for 30 days between April 29, 2021, and December 3, 2021.
10. Palisades failed to establish and maintain effective perimeter controls, apply linear sediment controls on slopes, prevent off-site tracking of sediment, protect drain inlets, and/or remove sediment from roadways for 37 days between April 29, 2021, and December 3, 2021.
11. Palisades failed to submit the 2018-2019 and 2019-2020 Annual Reports

The statutory maximum penalty for these violations is $18,394,000. The statutory minimum penalty is the economic benefit, which is calculated to be $65,069. Per the Enforcement Policy, the minimum penalty is the economic benefit plus 10%, which in this case is $71,576. Starting with the April 2021 inspection and continuing through the initiation of settlement discussions, the Water Board expended $24,988 in staff costs on this enforcement action.

After engaging in confidential settlement discussions, the Prosecution Team and Palisades Development, LLC have agreed to payment of $1,650,000 to settle the above alleged violations.

ISSUE

Should the Lahontan Water Board consider acceptance of a Settlement Agreement between the Prosecution Team and Palisades Development, LLC and adoption of a Stipulated Order?

DISCUSSION

The Prosecution Team and Palisades investigated the feasibility of including a Supplemental Environmental Project (SEP) as a component of settlement, but were unable to find a shovel-ready project that met the conditions of the State Water Board's 2017 *Policy on Supplemental Environmental Projects*.

PUBLIC OUTREACH/INPUT
The proposed Settlement Agreement was posted on the Lahontan Water Board website for a 30-day public comment period on July 7, 2023. The proposed Settlement Agreement was also sent to the Friends of Olympic Valley. Public comments were due August 7, 2023, and no written comments were received.

PRESENTERS
1. Wendy Wyels, Environmental Program Manager, Retired Annuitant, State Water Board Office of Enforcement 2. Shelby Barker, Senior Engineering Geologist (Specialist)/Enforcement Coordinator, Lahontan Water Board 3. David Boyers, Assistant Chief Counsel, State Water Board Office of Enforcement 4. Ben Letton, Assistant Executive Officer, Lahontan Water Board

ENCLOSURE	ITEM	BATES NUMBER
1	Proposed Settlement Agreement and Stipulated Order	5 – 5
2	Attachments A and B: Administrative Civil Liability Methodology and Economic Benefit Analysis	5 – 17

ENCLOSURE 1

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

In the matter of:	)	
	)	
The Palisades Development, LLC	)	**Order No. R6T-2023-0008**
Palisades at Squaw	**(Proposed))**	
	)	**Settlement Agreement and Stipulation for**
	)	**Entry of Order; Order (Proposed)**
Administrative Civil Liability	)	
	)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Lahontan Regional Water Quality Control Board (Regional Water Board) Prosecution Staff (Prosecution Team) and The Palisades Development, LLC (Discharger) (collectively, the Parties) and is presented to the Lahontan Regional Water Quality Control Board (Regional Water Board) for adoption as an Order (Order), by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger is the owner of the Palisades at Squaw residential development located off Creeks End Court, at the eastern edge of Olympic Valley, near Highway 89 in Placer County, California (Site). The total size of the construction area is 19.9 acres, and includes 63 single-family homes, associated infrastructure, access roads, and landscaping. The Site was enrolled on March 6, 2017, in coverage under the State Water Resources Control Board's General Permit to Discharge Storm Water Associated with Construction Activity, State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ (Construction General Permit). Storm water from the Site discharges to Squaw Creek, a tributary of the Truckee River, as well as the Truckee River itself, both waters of the United States.

2. **Violation 1:** The Prosecution Team alleges that the Discharger violated Construction General Permit section XIV.A by failing to ensure that the Storm Water Pollution Prevention Plan (SWPPP) for the Site was revised by a Qualified SWPPP Developer (QSD) to reflect vertical construction activities from May 15, 2018, through July 29, 2021, for a total of 1,172 days of alleged violation.

3. **Violation 2:** The Prosecution Team alleges that the Discharger violated Construction General Permit section VII.B.3 by failing to ensure that all best management practices (BMPs) required by the Permit were implemented by a Qualified

SWPPP Practitioner (QSP) from July 1, 2020, to May 10, 2021, for a total of 314 days of alleged violation.

4. **Violation 3:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section G.2 by failing to perform weekly inspections by a QSP, or person trained by a QSP, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. In addition, or in the alternative, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section I.10.a.ii by failing to conduct one visual inspection in each quarterly period: January-March, April-June, July-September, and October-December. From July 1, 2020, through May 10, 2021, the Prosecution Team alleges that the Discharger failed to complete 44 weekly inspections and three quarterly inspections. Since two of the quarterly inspections should have been completed concurrently with weekly inspections, a total of 45 days of violation are alleged.

5. **Violation 4:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section H by failing to ensure that a QSP developed a Rain Event Action Plan (REAP) 48 hours prior to any likely precipitation event. From July 1, 2020, through May 10, 2021, the Prosecution Team alleges there were 25 precipitation events requiring REAPS, for a total of 25 days of alleged violation.

6. **Violation 5:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section I.3(a), (e) and (g) by failing to ensure that a QSP visually observe (inspect) the Site within two business days (48 hours) after each qualifying rain event and inspect within two business days (48 hours) prior to each qualifying rain event. The post rain event inspections are to identify whether BMPs were adequately designed, implemented, and effective, and to identify additional BMPs needed and revise the SWPPP. In addition, or in the alternative, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section I.4 by failing to collect storm water grab samples from locations defined in Attachment E, section I.5, that were representative of the discharge, analyze the effluent samples, and electronically submit all sampling results to the State Water Board. From July 1, 2020, to May 10, 2021, the Prosecution Team alleges there were 18 qualifying rain events, each of which required a pre-storm, during storm, and post-storm inspection resulting in 54 inspections the Discharger allegedly failed to perform and may have required water quality sampling and analyses.

7. **Violation 6:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section B.1 by failing to implement good site management (housekeeping) measures for construction materials that could be a threat to water quality if discharged. From April 29, 2021, through December 3, 2021, this violation was observed during 23 inspections, for a total 23 days of alleged violation.

8. **Violation 7:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section B.2 by failing to implement good housekeeping measures for waste management. From April 29, 2021, through December 3, 2021, this violation was observed during 29 inspections, for a total of 29 days of alleged violation.

9. **Violation 8:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section B.3 by failing to implement good housekeeping measures for vehicle storage and maintenance. From April 29, 2021, through December 3, 2021, this violation was observed during 12 inspections, for a total of 12 days of alleged violation.

10. **Violation 9:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, sections D.1 and D.2 by failing to provide effective wind erosion control and effective soil cover for inactive areas and all finished slopes. From April 29, 2021, through December 3, 2021, this violation was observed during 30 inspections, for a total of 30 days of alleged violation.

11. **Violation 10:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, sections E.1, E.4, E.5, E.6, and E.7 by failing to:

a. Establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges,

b. Apply linear sediment controls on slopes,

c. Ensure traffic to and from the Site is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment,

d. Ensure that all storm drain inlets and perimeter controls, runoff control BMPs, and pollutant controls at entrances and exits are maintained and protected, and

e. Remove any sediment or other construction activity-related materials from roadways (by vacuuming or sweeping).

From April 29, 2021, through December 3, 2021, this violation was observed during 37 inspections, for a total of 37 days of alleged violation.

12. **Violation 11:** The Prosecution Team alleges that the Discharger violated Construction General Permit section XVI by failing to submit an Annual Report for the 2018-2019 and 2019-2020 reporting periods. Though this is an on-going violation

because the Annual Reports have still not been submitted, in the interest of justice, the Prosecution Team is alleging that each report is one year late for a total of 731 days of violation: 366 days for the 2018-2019 report (leap year), and 365 days for the 2019-2020 report.

13. These alleged acts constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c). The Prosecution Team could have alleged many of the violations described above within a violation category separately but have elected to combine them as described above for purposes of settlement.

14. To resolve by consent and without further administrative proceedings the alleged violations of the Construction General Permit, the Parties have agreed to the imposition of **$1,650,000** of liability against the Discharger, which includes $24,988 in staff costs. Payment to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

15. The amount of administrative civil liability imposed pursuant to this Stipulation and Order comports with the State Water Resources Control Board Water Quality Enforcement Policy methodology as discussed in Attachment A, the terms of which are incorporated herein by reference.

16. The Parties have engaged in settlement negotiations and agree to settle the matter without further administrative or civil litigation and by presenting this Stipulation and proposed Order to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged except as provided in this Stipulation, and that this Stipulation is in the best interests of the public.

Section III: Stipulations

The Parties stipulate to the following:

17. **Administrative Civil Liability:** Without admitting the truth of any violations alleged in this Stipulation, the Discharger hereby agrees to pay the administrative civil liability totaling $1,650,000 as set forth in Paragraph 14 of section II of this Stipulation. Payment of shall be due and payable by check to the State Water Resources Control Board Cleanup and Abatement Account due 30 days after the Order is signed and becomes final and mailed to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office, ACL Payment
1001 I Street, CA 95814

The check shall reference the Order number assigned to this Stipulation and the Order. The Discharger shall provide a copy of the check sent via mail and email at the time the payment is made to:

Shelby Barker, Enforcement Coordinator
Lahontan Regional Water Quality Control Board
15095 Amargosa Rd., Bldg. 2, Ste. 210
Victorville, CA 92394
Shelby.Barker@waterboards.ca.gov

The Discharger represents that it will not dissolve or file for bankruptcy before meeting its obligations in this Stipulation and Order, and further stipulates that the Regional Water Boards shall be entitled to payment from any affiliated entity such as a parent company should the Discharger become unable to meet its obligations in this Stipulation and Order.

18. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional administrative civil liability.

19. **Public Notice:** The Discharger understands that this Stipulation and proposed Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and proposed Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and proposed Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulation and proposed Order.

20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing to consider adoption of this Stipulation and proposed Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning

any such objections and may agree to revise or adjust the procedure for adoption of this Order as necessary or advisable under the circumstances.

21. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from such Party's own counsel in connection with the matters set forth herein.

22. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

23. **Modification:** This Stipulation and Order shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.

24. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation or the proposed Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

25. **No Admission of Liability:** In settling this matter, Discharger does not admit to any of the allegations herein, or that it has been or is in violation of the Water Code or any other federal, state, or local law or ordinance.

26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

27. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to file a petition for review of the adoption of the Order to the Regional Water Board for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

28. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

29. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulation and Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulation or Order.

30. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

31. **No Third-Party Beneficiaries:** This Stipulation and Order are not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.

32. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

33. **Counterpart Signatures:** This Stipulation and Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation and Order may be executed by electronic signature, and any such electronic signature shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature was an original signature.

34. **Effective Date**: This Stipulation and Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulation.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Lahontan Region

By: _____
Ben Letton, Assistant Executive Officer

Date: 7/5/2023

The Palisades Development, LLC

By: _____
Jon Corn, President, N4FL Development, Inc., Manager

Date: 6-30-23

Attachment A: Administrative Civil Liability Methodology Summary
Attachment B: Economic Benefit Analysis

Order of the Lahontan Regional Water Board

35. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.

36. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.

37. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

38. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Lahontan Region.

I, Michael Plaziak, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on August 30, 2023.

By: _____
Michael Plaziak
Executive Officer

Date: _____

ENCLOSURE 2

ATTACHMENT A
ALLEGED VIOLATIONS AND FACTORS IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2023-0008

THE PALISADES DEVELOPMENT, LLC
PALISADES AT SQUAW CONSTRUCTION SITE
PLACER COUNTY

This document provides details to support a discretionary monetary liability in response to The Palisades Development, LLC's (Discharger's) violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (Construction General Permit or Permit) at the Palisades at Squaw (Site) construction project. The Site is located at Creeks End Court in Olympic Valley, Placer County.

The Lahontan Regional Water Quality Control Board (Lahontan Water Board) Prosecution Team has derived the proposed administrative civil liability following the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy[1] (Enforcement Policy).

Application of the Enforcement Policy

The Enforcement Policy establishes a methodology for assessing administrative civil liability to address the factors required by California Water Code section 13385, subdivision (e), including "…the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." This document applies the methodology associated with the Enforcement Policy's steps, as discussed in detail below.

Palisades at Squaw Construction Project

On March 6, 2017, the Discharger submitted a Notice of Intent (NOI) for the Palisades at Squaw construction project. As required by the Construction General Permit, the NOI included a SWPPP (Storm Water Pollution Prevention Plan, dated March 3, 2015)

[1] https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

which described the project as construction of a roadway and utilities, with service stubs to 63 residential lots. The SWPPP did not include any reference to vertical construction. Construction of the roadway and utilities was scheduled to take place from June through October 2017.

Although vertical construction of the residential lots began in May 2018, the SWPPP was not revised and did not describe (a) the additional potential pollutants and additional non-storm water discharges due to vertical construction, (b) the need for additional Best Management Practices (BMPs) associated with vertical construction taking place over a multi-year period, or (c) the increased Risk Level. Vertical construction has been underway since May 2018 and as of May 2023, is continuing.

Lahontan Water Board staff received a confidential complaint in April 2021 that vertical construction at the Site was on-going, in violation of the Construction General Permit. Staff inspected the Site on April 29, 2021 and found that vertical construction was well underway, even though the SWPPP had not been amended to reflect this activity. Multiple additional violations were found, including the lack of a Qualified SWPPP Practitioner (QSP) to conduct required inspections and oversee installation and maintenance of BMPs, inadequate and missing BMPs, and lack of appropriate documents onsite. Lahontan Water Board staff subsequently issued a June 21, 2021 Notice of Violation which identifies 19 separate violations of the Permit.

Summary of Alleged Violations

This administrative civil liability addresses violations of the Construction General Permit which occurred from the start of vertical construction in May 2018 through December 3, 2021. The Lahontan Water Board Prosecution Team is using December 3, 2021 as the end of the violation period for this liability. Violations may have continued. The Lahontan Water Board reserves its right to allege additional violations that occurred prior to vertical construction or after December 3, 2021.

Table 1, below, summarizes the 12 violations that are the subject of this liability assessment, and the Enforcement Policy factors that were used to determine a liability. The remainder of this document contains a full description of each violation, a complete assessment of the factors used to determine the base liability for each violation, and a discussion of the additional five factors used to determine the final proposed liability. Table 1 also includes the page number for the beginning of each violation analysis in this document.

This proposed administrative liability reflects a significant and broad range of violations of basic Construction General Permit requirements. The Prosecution Team is proceeding with this collection of violations due to the apparent disregard for regulatory requirements while the Discharger undertook a significant construction project. Sometimes violations of fundamental BMPs can be a cost cutting measure, both in bidding the project and implementing the schedule. The Prosecution Team is not alleging every violation of the Construction General Permit observed but is emphasizing these types of BMP violations and the thoroughly inadequate response by the Discharger. No discharge violations are alleged in this enforcement action because the Discharger failed to adequately monitor the Site and, therefore, it is not possible to determine whether construction activity-related discharges occurred. Pursuing monetary enforcement remains discretionary for the Lahontan Water Board, and enforcement resources are limited. However, given the persistent nature of the violations, the failure to act quickly and to completely resolve such violations when specifically identified, and the lack of weekly inspections, which are designed to be a "first line" defense mechanism to protect against environmental harm, the Prosecution Team determined that pursuing an administrative civil liability was necessary.

Table 1: Summary of Violations and Liability Calculations

Summary of Violations	Potential for Harm and Deviation from Requirement	Days of Violation	Culpability	History of Violation	C/C[2]	Base Liability
(PAGE 7) 1. Failure to prepare and implement a SWPPP for vertical construction at the Site. *CGP Section XIV describes SWPPP content while CGP Information Sheet states that a SWPPP must be appropriate for the type and complexity of a project. Discharger did not have SWPPP describing vertical construction from May 15, 2018 to July 29, 2021.*	Harm = moderate Deviation (Dev) = minor Per Day Factor (PDF) = 0.25	1,172 days; reduce to 73 days	1.3	1.0	1.1	$260,975

[2] Cleanup and Cooperation

Summary of Violations	Potential for Harm and Deviation from Requirement	Days of Violation	Culpability	History of Violation	C/C[2]	Base Liability
(PAGE 13) 2. Failure to employ a Qualified SWPPP Practitioner (QSP) to oversee implementation of Best Management Practices. *CGP Section VII.B.3 states that BMP implementation must be overseen by a QSP. Discharger did not employ a QSP from at least July 1, 2020 and May 10, 2021.*	Harm = moderate Dev = major PDF = 0.55	314 days	1.3	1.0	1.0	$2,245,100 Reduced under "other factors" to $314,600
(PAGE 15) 3. Failure to perform weekly inspections and quarterly non-storm water inspections. *CGP Attach E, Section G.2 requires weekly inspections. CGP Attach E, Section I.10.a.ii requires quarterly inspections. Discharger did not complete 44 weekly inspections and 3 quarterly inspections between July 1, 2020 and May 10, 2021.*	Harm = moderate Dev = major PDF = 0.55	45 days	1.3	1.0	1.0	$321,750 Reduced under "other factors" to $235,950
(PAGE 18) 4. Failure to prepare Rain Event Action Plans (REAPs). *CGP Attach E, Section H requires that a QSP prepare a REAP prior to a likely precipitation event. Discharger failed to develop at least 25 REAPs from July 1, 2020 through May 10, 2021.*	Harm = moderate Dev = major PDF = 0.55	25 days	1.3	1.0	1.0	$178,750

Summary of Violations	Potential for Harm and Deviation from Requirement	Days of Violation	Culpability	History of Violation	C/C[2]	Base Liability
(PAGE 21) 5. Failure to complete pre-storm inspections, storm inspections, and post-storm inspections for qualifying storm events. *CGP Attach E, Sections G and I require a QSP to inspect Site before, during, and after storms. Discharger failed to conduct 54 storm-related inspections between July 1, 2020 and May 10, 2021.*	Harm = moderate Dev = major PDF = 0.55	54 days	1.3	1.0	1.0	$386,100 Reduced under "other factors" to $77,802
(PAGE 24) 6. Failure to implement Best Management Practices (BMPs) related to good housekeeping for construction materials. (*CGP Attach E, Section B.1). 51% of inspections found construction material violations (e.g., wood in a drainage, stockpiles not properly protected, trash not picked up) between April 29, 2021 and December 3, 2021.*	Harm = moderate Dev = moderate PDF = 0.35	23 days	1.3	1.0	1.3	$136,045
(PAGE 29) 7. Failure to implement BMPs related to good housekeeping for waste management. (*CGP Attach E, Section B.2). Failure to have a spill response plan, spill kit, and spill training; failure to clean up concrete spills for 29 days between April 29, 2021 and December 3, 2021*.	Harm = moderate Dev = moderate PDF = 0.35	29 days	1.3	1.0	1.1	$145,145

Summary of Violations	Potential for Harm and Deviation from Requirement	Days of Violation	Culpability	History of Violation	C/C[2]	Base Liability
(PAGE 33) 8. Failure to implement BMPs related to good housekeeping for vehicle storage and maintenance. *(CGP Attach E, Section B.3). 27% of inspections found vehicle storage violations (e.g., oil/grease/fuel leaks, improper fueling area) between April 29, 2021 and December 3, 2021.*	Harm = moderate Dev = moderate PDF = 0.35	12 days	1.3	1.0	1.1	$60,060
(PAGE 37) 9. Failure to implement BMPs related to erosion control. *(CGP Attach E, Section D). 66% of inspections found erosion control violations (e.g., missing, inappropriate, or unmaintained BMPs, fugitive dust) between April 29, 2021 and December 3, 2021.*	Harm = moderate Dev = moderate PDF = 0.35	30 days	1.3	1.0	1.3	$177,450
(PAGE 40) 10. Failure to implement BMPs related to sediment control. *(CGP Attach E, Section E). 82% of inspections found sediment control violations (e.g., missing, inappropriate, or unmaintained BMPs, entrance/exit not stabilized, sediment on roads) between April 29, 2021 and December 3, 2021.*	Harm = moderate Dev = moderate PDF = 0.35	37 days	1.3	1.0	1.4	$235,690
(PAGE 45) 11. Failure to submit Annual Reports as required by CGP Section XVI. *The 2018-2019 Annual Report was incomplete, while the 2019-2020 Annual Report was not submitted.*	Harm = moderate Dev = major PDF = 0.55	731 days; reduce to 92 days	1.3	1.0	1.0	$657,800 Reduced under "other factors" to $14,300

Summary of Violations	Potential for Harm and Deviation from Requirement	Days of Violation	Culpability	History of Violation	C/C[2]	Base Liability
(PAGE 49) Combined Base Liability:	$4,781,140 (this is before the “Other Factors” reductions)					
(PAGE 49) Ability to Pay and Continue in Business:	According to the Palisades at Squaw website, 60 of the 63 homes in this development have already been sold. Zillow shows that the homes sold for $1.1 to $2.7 million each, with the remaining three homes valued at $4.37 million each.					
(PAGE 49) Economic Benefit:	$65,069					
(PAGE 52) Other Factors as Justice May Require:	Staff costs = $24,988 Reduce base liability for Violations 2, 3, 4, 5, and 11 as shown above and described in text. The base liability amount after applying Other Factors becomes $1,861,755Litigation risk of 11.3% (reduce by $211,755).					
(PAGE 54) Maximum and Minimum Liability:	Maximum: $ 24,720,000 Minimum: $71,576					
Final Proposed Liability:	$1,650,000					

VIOLATION 1:
Lack of a Storm Water Pollution Prevention Plan (SWPPP) for Vertical Construction

The Construction General Permit requires that a discharger prepare, implement, and maintain onsite a Storm Water Pollution Prevention Plan (SWPPP) that (a) is designed to control all pollutants and their sources and (b) contains Best Management Practices (BMPs) designed to reduce or eliminate pollutants in storm water discharges.
For over three years, from May 15, 2018[3] through July 29, 2021[4], the Discharger conducted vertical construction at the Site without an appropriate SWPPP, in violation of Section XIV.A of the Construction General Permit.

> Section XIV.A states in part, "*The discharger shall ensure that the Storm Water Pollution Prevention Plans (SWPPPs) for all traditional project sites are developed and amended or revised by a QSD. The SWPPP shall be designed to address the following objectives: 1. All pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled; 2. Where not otherwise required to be under a Regional Water Board permit, all non-storm water discharges are identified and either eliminated, controlled, or treated; 3. 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 BAT/BCT standard; 4. Calculations and design details as well as BMP controls for site run-on are complete and correct, and 5. Stabilization BMPs installed to reduce or eliminate pollutants after construction are completed*."

Lahontan Water Board staff inspected the Site on April 29, 2021 and found that vertical construction was well underway. The only SWPPP associated with the Site was a document dated March 3, 2015 ("2015 SWPPP") that was clearly designed only for the construction of streets and utilities. The 2015 SWPPP describes the Palisades project as follows:

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[3] Both the October 12, 2021 Change of Information (COI) Amendment 2 and the Discharger's October 1, 2021 "Response to Lahontan RWQCB September 2, 2021 Request for Additional Information" state that vertical construction began in May 2018. Because an exact date has not been provided, the Prosecution Team has elected to use the mid-point of the month, i.e., May 15.

[4] Date that a revised SWPPP was uploaded to SMARTS. (Although the SWPPP is dated July 30, 2021, it was uploaded on July 29, 2021).

The project includes construction of approximately 2,700 linear feet of roadway. It will also include the construction of water, sewer, gas, electric, and communications utilities with service stubs to 63 lots. Construction activities are scheduled to be carried out straight through from start to finish in one building season.

The 2015 SWPPP does not contemplate vertical construction activities, does not describe the additional potential pollutants and additional non-storm water discharges, does not include additional BMPs and monitoring, and does not acknowledge the increased Risk Level associated with vertical construction taking place over a multi-year period. The failure to develop a SWPPP for vertical construction gives rise to other violations, including avoiding submitting Changes of Information to SMARTS, avoiding conducting training using the updated SWPPP, avoiding updating permit registration documents, and avoiding updating the Risk Assessment and paying a higher annual fee. The Prosecution Team has elected not to allege these additional violations in this enforcement case, these avoided actions and their associated costs have been included in the Economic Benefit analysis.

Step 1. Potential for Harm for Discharge Violations
This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations
This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations
The "per day" factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of deviation from the applicable requirements.

Potential for Harm: *Moderate*
The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Storm water from the northern portion of the Site flows to Squaw Creek, a tributary of the Truckee River. The beneficial uses of Squaw Creek, as described in the Water Quality Control Plan for the Lahontan Region (Basin Plan),[5] are municipal and domestic supply; agricultural supply; groundwater recharge; water contact recreation; noncontact

[5] https://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/docs/ch2_bu.pdf

water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; and spawning, reproduction, and development. Storm water from the remainder of the Site flows to the Truckee River. The beneficial uses of the Truckee River are the same as those for Squaw Creek, with the addition of industrial supply, freshwater replenishment, and hydropower generation.

In this case, the failure to prepare and implement a relevant SWPPP that included BMPs for vertical construction for over three years has resulted in the potential for water quality impacts. The Enforcement Policy states that most non-discharge violations should be considered to present a moderate potential for harm.

Deviation from Requirement: *Minor*
The Enforcement Policy requires determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A minor deviation from requirement is appropriate when the applicable requirement remains generally intact. Although the Discharger did not revise its SWPPP to reflect vertical construction for over three years, at least there was a SWPPP that had been prepared for the roads/utilities phase of construction. Therefore, the applicable SWPPP requirements of the Construction General Permit were partially intact.

Per Day Factor: *0.25*
Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

Step 4. Adjustment Factors

The Enforcement Policy states that three additional factors must be considered for potential modification of the liability amount: (a) the Discharger's degree of culpability, (b) the Discharger's prior history of violations, and (c) the Discharger's voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation. In addition, the Enforcement Policy states that the Lahontan Water Board may consider compressing the days of violation, contingent upon making at least one of three express findings.

Culpability: *1.3*
The Enforcement Policy states that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence.

The Discharger is fully responsible for failing to prepare an appropriate and adequate SWPPP. In March 2017, the Discharger enrolled under the Construction General Permit for a project which consisted only of the construction of roads and utilities. As required by the Permit, the Discharger hired a Qualified SWPPP Developer (QSD; Auerbach Engineering) to prepare the 2015 SWPPP and hired a Qualified SWPPP Practitioner (QSP; Hydro Restoration) to ensure that Best Management Practices (BMPs) were implemented for the construction of roads and utilities.

Section II.D of the Construction General Permit clearly lays out the conditions for termination of coverage, including final stabilization. After completion of the roads and utilities, the Discharger neither stabilized the Site nor applied for permit termination. Instead, the Discharger began vertical construction without updating the SWPPP.

Section 1.4 of the 2015 SWPPP, signed by both Auerbach Engineering and the Discharger, explains that the document shall be revised when there is (1) an increase in disturbed acreage, (2) a change in project duration, or (3) a change in construction or operation. All three conditions occurred without any SWPPP revisions. The disturbed acreage increased significantly when vertical construction began, the expected project end date changed from 2017 to 2023, and construction changed from grading to vertical construction.

Auerbach Engineering, the QSD who prepared the 2015 SWPPP for grading activities, also prepared the 2017 Final Drainage Report and the Site Improvement Plans for vertical construction for each of the 63 lots. Section 1.3 of the Final Drainage Report describes the development project as including 63 residential units; therefore, vertical construction was clearly envisioned. It is inexplicable why the 2015 SWPPP did not cover vertical construction when Auerbach Engineering was aware the project included much more than grading. It is also inexplicable why Auerbach Engineering did not revise the SWPPP when it prepared each of the 63 Improvement Plans, nor is it logical that Auerbach Engineering and the Discharger waited to revise the 2015 SWPPP until three years after vertical construction began, and only after the Water Board's April 29, 2021 inspection.

The Discharger's lack of a relevant SWPPP was not a case of accidental oversight. Both the Discharger and its consultant, Auerbach Engineering, knew that an updated SWPPP was required for vertical construction. However, the Discharger chose to begin vertical construction, and to continue that work for three years, without authorizing its QSD to update the SWPPP. A multiplier value of 1.3 is appropriate.

History of Violation: *1.0*

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.1*

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

Lahontan Water Board staff inspected the Site on April 29, 2021 and verbally told the Discharger that it must prepare a SWPPP that applied to vertical construction. The June 21, 2021 Notice of Violation reiterated this fact. Although the Discharger did not have an appropriate SWPPP to guide the installation and maintenance of BMPs designed to reduce or eliminate pollutants in storm water discharges, the Discharger continued construction activities. A reasonable and prudent response would have been to pause construction until an appropriate SWPPP had been prepared and/or prioritize preparation of the SWPPP. An appropriate SWPPP was not uploaded to SMARTS until July 29, 2021, over two months after Lahontan Water Board staff's initial verbal notice of noncompliance, and over three years after initiation of vertical construction. Due to the delay in preparing an appropriate SWPPP, and the continued construction in the meantime, a cleanup and cooperation multiplier of at least 1.1 is appropriate.

Days of Violation: *1,172 days, compressed to 73 days*

The 2015 SWPPP, prepared for the construction of roads and utilities, should have been revised prior to initiation of vertical construction on May 15, 2018. A revised SWPPP was not uploaded to SMARTS until July 29, 2021, resulting in 1,172 days of violation.

The Enforcement Policy provides that, for violations lasting more than 30 days, the Lahontan Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. To adjust the per-day basis, the Lahontan Water Board must make express findings that the violation: (a) is not causing daily detrimental impacts to the environment or the regulatory program; (b) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (c) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach may be used to calculate the liability for multiple day violations.

For this violation, the Prosecution Team contends that the SWPPP-related violations did not result in an economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation. Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: the first 30 days of violation, every fifth day of violation until the 60th day, and every 30 days thereafter. The 1,172 days of violation are compressed to 73 days by counting days 1-30, 35, 40, 45, 50, 55, 60, 90, 120, etc.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The Total Base Liability is determined by multiplying the following: the Per Day Factor, the number of days, the statutory maximum of $10,000 per day, the degree of culpability factor, the history of violations factor, and the cleanup and cooperation factor.

The statutory maximum liability is determined by multiplying the non-compressed number of days by the statutory maximum of $10,000/day.

Total Base Liability: Violation 1
0.25 x 73 days x $10,000/day x 1.3 x 1.0 x 1.1 = $260,975
Statutory Maximum: Violation 1
1,172 days x $10,000/day = $11,720,000

VIOLATION 2:
Failure to Employ a Qualified SWPPP Practitioner to Oversee Implementation of Best Management Practices

The Construction General Permit requires that a Discharger employ a Qualified Stormwater Pollution Prevention Plan (SWPPP) Practitioner to oversee implementation of Best Management Practices (BMPs) at a construction site. BMPs are designed to prevent or reduce the discharge of pollutants from a construction site, and include the scheduling of activities, prohibitions of certain actions, treatment requirements, maintenance and operating procedures, and other management practices.

The Discharger's 2020-2021 Annual Report states that a QSP was not employed from July 1, 2020 through May 10, 2021. The failure to employ a QSP is a violation of Section VII.B.3 of the Construction General Permit.

> Section VII.B.3 states, in part: "*The discharger shall ensure that all BMPs required by this General Permit are implemented by a Qualified SWPPP Practitioner (QSP).*

A QSP is a person responsible for non-storm water and storm water visual observations, sampling, and analysis…."

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to employ a QSP to oversee implementation of BMPs resulted in the potential for significant water quality impacts. Appropriately installed and maintained BMPs limit the potential for pollutants to discharge from the site. However, the Lahontan Water Board inspection on April 29, 2021 found that the few BMPs installed at the Site (e.g., fiber rolls, silt fencing) were damaged and/or disintegrating and not functioning as intended. In addition, many needed BMPs had not been installed. If a QSP had been employed, then it is reasonable to assume that the BMPs would have been installed and maintained. A potential for harm of at least moderate is warranted.

Deviation from Requirement: *Major*

The Construction General Permit requires that a QSP (a) oversee the implementation of the BMPs needed to protect water quality and (b) inspect, sample, and document discharges from a construction project. The Discharger's failure to employ a QSP rendered the Construction General Permit's QSP-related requirements ineffective in their essential functions. The deviation from requirement is appropriately characterized as major.

Per Day Factor: *0.55*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.55 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

The Construction General Permit clearly states that a QSP must oversee implementation of BMPs at construction sites. The Discharger had full knowledge of the need to retain a QSP. The 2015 SWPPP contains numerous references to the tasks that would be performed by a QSP. The Discharger appropriately retained Hydro Restoration as the QSP to oversee the construction of roads and utilities at the Site. However, there are no inspection reports reflecting vertical construction from any QSP

prior to May 10, 2021. At a minimum, a QSP was not employed from July 1, 2020 through May 10, 2021, as documented in the Discharger's 2020-2021 Annual Report.

The Discharger is fully culpable for the failure to hire a QSP for at least ten months. Although there was a change in the Discharger's management, the new management was informed by Katrina Smolen (the initial QSP) in July 2020 that the Discharger's contractor stated her services as a QSP should continue. However, the Discharger did not ensure her contract was renewed until May 11, 2021, after the Water Board's April 29, 2021 inspection.

The Discharger's failure to ensure a QSP was engaged is not a case of simple oversight. By having previously hired a QSP and then failing to ensure engagement by such a professional for at least ten months during vertical construction, the Discharger knowingly failed to comply with the Construction General Permit. A multiplier value of 1.3 is appropriate.

History of Violation: *1.0*
The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.0*
After Lahontan Water Board staff inspected the Site on April 29, 2021, the Discharger hired a QSP effective May 11, 2021, and has continued to employ a QSP through December 3, 2021 (the Prosecution Team's end date for this administrative civil liability). The Discharger's response of hiring a QSP following the inspection was timely. The Enforcement Policy states that a reasonable amount of cooperation should be considered baseline, and therefore a neutral multiplier of 1.0 is appropriate.

Days of Violation: *314 days*
The Discharger was in violation between from at least July 1, 2020 to May 10, 2021, for a total of 314 days. It is not possible to make one of the findings allowed by the Enforcement Policy to compress the days of violation because the lack of a QSP (a) had the potential to cause daily detrimental impacts to the environment; (b) resulted in an economic benefit from the illegal conduct that can be measured on a daily basis; and (c) occurred with the direct knowledge of the Discharger.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 2
0.55 x 314 days x $10,000/day x 1.3 x 1.0 x 1.0 = $2,245,100
Statutory Maximum: Violation 2
314 days x $10,000/day = $3,140,000

VIOLATION 3:
Failure to Perform Weekly and Quarterly Inspections

The Construction General Permit requires a discharger to perform weekly inspections and quarterly non-storm water inspections at a construction site. These inspections are to be performed or supervised by a QSP representing the discharger.

The Discharger's 2020-2021 Annual Report states that weekly inspections were not performed from July 1, 2020 through May 10, 2021, and that quarterly non-storm water inspections were not performed for the Third Quarter 2020 through the Second Quarter 2021. The Prosecution Team notes that there is no evidence that weekly inspections or quarterly inspections were performed from mid-2018 through May 10, 2021, but has elected to only allege the date range acknowledged in the Discharger's 2020-2021 Annual Report.

The failure to complete weekly and quarterly non-storm water inspections is a violation of Attachment E, Sections G and I, of the Construction General Permit.

> Attachment E, Section G.2 states "*Risk Level 3 dischargers shall perform weekly inspections and observations…"*
>
> Attachment E, Section I.10.a.ii states "*Risk Level 3 dischargers shall conduct one visual observation (inspection) quarterly in each of the following periods: January-March, April-June, July-September, and October-December…"*

Step 1. Potential for Harm for Discharge Violations
This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations
This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to conduct weekly inspections and quarterly non-storm water inspections resulted in the potential for significant water quality impacts. Regular inspections by a QSP ensure that all necessary BMPs are in place and in working order, thereby limiting the potential for pollutant discharge from the site. However, the Lahontan Water Board's inspection on April 29, 2021 found that the few BMPs installed at the Site (e.g., fiber rolls, silt fencing) were damaged and/or disintegrating and not functioning as intended. In addition, numerous BMPs were not installed. If the weekly and quarterly inspections had been conducted as required, then it is reasonable to assume that the BMPs would have been installed correctly and maintained, and that the Site conditions would be protective of water quality. Although the Discharger asserts that there were no storm water discharges from the site, the Discharger has been unable to provide the required inspection reports. The Prosecution Team cannot verify whether there were storm water discharges, and if there were, whether they caused any environmental impacts. A potential for harm of at least moderate is warranted.

Deviation from Requirement: *Major*

The Construction General Permit expressly requires that a discharger perform weekly inspections and quarterly non-storm water inspections. The Discharger failed to do so, rendering the Construction General Permit's inspection-related requirements ineffective in their essential function. The deviation from requirement is appropriately characterized as major.

Per Day Factor: *0.55*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.55 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

The Construction General Permit clearly states that weekly and quarterly inspections must be conducted by a QSP. The Discharger had full knowledge of the need to conduct these inspections. The 2015 SWPPP contains numerous references in Section 4 to the need for weekly inspections and documentation of the inspections. The SWPPP also contains an example inspection form that may be used for both weekly and quarterly inspections.

According to the Discharger's Annual Reports, inspections were conducted during 2017-2018. Annual Reports were not submitted or were incomplete for 2018-2019 and

2019-2020, so there is no information about inspections during those two years. However, the Discharger's 2020-2021 Annual Report clearly states that inspections were not conducted from July 1, 2020 through May 10, 2021. The Discharger hired a QSP to perform inspections after the Lahontan Water Board's April 29, 2021 inspection. The Discharger's failure to ensure a QSP was completing the weekly and quarterly inspections is not a case of simple oversight. Having performed the required inspections previously, and then ceasing inspections for at least ten months, the Discharger knowingly failed to comply with the Construction General Permit. A multiplier value of 1.3 is appropriate.

History of Violation: *1.0*
The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.0*
After Lahontan Water Board staff inspected the Site on April 29, 2021, the Discharger ensured a QSP was engaged to perform the weekly and quarterly inspections. Weekly inspections began on May 11, 2021 and continued through December 3, 2021 (the Prosecution Team's end date for this administrative civil liability). Quarterly non-storm water inspections began with the Third Quarter 2021. The Discharger exhibited a reasonable amount of cooperation by timely hiring a QSP and therefore a neutral multiplier of 1.0 is appropriate.

Days of Violation: *45 days*
The Discharger failed to perform 44 weekly inspections between July 1, 2020 and May 10, 2011[6]. In addition, the Discharger failed to perform three quarterly non-storm water inspections from the Third Quarter 2020 through the Second Quarter 2021. Quarterly inspections are routinely completed on the same day as a weekly inspection; therefore, the Prosecution Team has elected not to assess additional days of violation for the missing quarterly inspections, except for the Second Quarter 2021. A QSP was re-hired and began inspections on May 11, 2021 but did not perform a quarterly non-storm water inspection during the Second Quarter 2021. An additional day of violation has been assessed for the missing Second Quarter 2021 inspection, for a total of 45 days of violation.

It is not possible to make one of the findings allowed by the Enforcement Policy to compress the days of violation because the failure to perform inspections (a) had the potential to cause daily detrimental impacts to the environment; (b) resulted in an

[6] There are 44 weeks between these two dates (https://www.timeanddate.com/date/durationresult.html).

economic benefit from the illegal conduct that can be measured on a daily basis; and (c) occurred with the direct knowledge of the Discharger.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 3
0.55 x 45 days x $10,000/day x 1.3 x 1.0 x 1.0 = $321,750
Statutory Maximum: Violation 3
45 days x $10,000/day = $450,000

VIOLATION 4:
Failure to Prepare Rain Event Action Plans (REAPs)

The Construction General Permit requires that the discharger ensure that a Qualified SWPPP Practitioner (QSP) prepare a Rain Event Action Plan (REAP) 48 hours prior to a "likely precipitation event[7]".

As acknowledged in the Discharger's 2020-2021 Annual Report, REAPs were not prepared for precipitation events from July 1, 2020 through May 10, 2021. The Prosecution Team notes that there is no evidence that REAPs were consistently prepared from mid-2018 through May 10, 2021, but has elected to only allege the date range acknowledged in the Discharger's 2020-2021 Annual Report. The failure to prepare REAPs is a violation of Attachment E, Section H of the Construction General Permit.

> Attachment E, Section H.1 states, in part, *"… The discharger shall ensure a QSP [Qualified SWPPP Practitioner] develop a Rain Event Action Plan (REAP) 48 hours prior to any likely precipitation event…"*
>
> Attachment E, Section H.2, states, in part, "*…The discharger shall ensure a QSP develop the REAPs for all phases of construction…"*

[7] Defined in the Construction General Permit as a weather pattern forecast to have a 50% or greater probability of precipitation in the construction area (see Appendix 5, page 6).

Attachment E, Section H.5, states, in part, "*…The QSP shall develop additional REAPs for project sites where construction activities are indefinitely halted or postponed (Inactive Construction) …"*

Attachment E, Section H.6 states, in part, "*… The discharger shall ensure a QSP begin implementation and make the REAP available onsite no later than 24 hours prior to the likely precipitation event."*

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to prepare and implement REAPs resulted in potential water quality impacts. REAPs are written documents, specific for each rain event, designed to ensure that a discharger has adequate materials, staff, and time to implement erosion and sediment control measures to protect a site from predicted precipitation. The lack of a REAP results in a higher potential for sediment and other pollutants to leave a site during precipitation events. The Discharger's failure to prepare and implement REAPs has resulted in a potential for harm of at least moderate.

Deviation from Requirement: *Major*

The Construction General Permit expressly requires that a discharger ensure that a QSP develop REAPs prior to a likely precipitation event. The Discharger failed to do so, rendering the Construction General Permit's REAP-related requirements ineffective in their essential function. The deviation from requirement is therefore major.

Per Day Factor: *0.55*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.55 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

The Construction General Permit clearly states that REAPs shall be developed 48 hours prior to a likely rain event. The Discharger had full knowledge of the need to prepare REAPs. The 2015 SWPPP appropriately describes the need for REAPs and contains a REAP template (see Section 4.2). The Discharger ensured that a QSP prepared

REAPs during the roads/utilities phase of work, which was completed in mid-2018. The 2020-2021 Annual Report clearly states that REAPs were not prepared from July 1, 2020 through May 10, 2021. Preparation of REAPs did not re-occur until after the Lahontan Water Board's April 29, 2021 inspection. The Discharger's failure to ensure a QSP developed REAPs is not a case of simple oversight. Having prepared REAPs previously, and then failing to develop REAPs for a ten-month period, the Discharger knowingly failed to comply with the Construction General Permit. A multiplier value of 1.3 is appropriate.

History of Violation: *1.0*
The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.0*
After Lahontan Water Board staff inspected the Site on April 29, 2021, the Discharger ensured a QSP began inspecting the Site on May 11, 2021. The QSP appropriately developed and implemented REAPs after that date. The Discharger's response of hiring a QSP to prepare REAPs was timely and therefore a neutral multiplier of 1.0 is appropriate.

Days of Violation: *25 days*
The Discharger failed to develop at least 25 REAPs[8] between July 1, 2020 and May 10, 2021. One day of violation is assessed for each missing REAP. It is not possible to make one of the findings allowed by the Enforcement Policy to compress the days of violation because the failure to prepare REAPs (a) had the potential to cause daily detrimental impacts to the environment; (b) resulted in an economic benefit from the illegal conduct that can be measured on a daily basis; and (c) occurred with the direct knowledge of the Discharger.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

[8] The Prosecution Team's procedure for estimating the number of missing REAPs is described in the March 13, 2023 Memorandum titled "REAPs and Storm Event Monitoring".

Total Base Liability: Violation 4
0.55 x 25 days x $10,000/day x 1.3 x 1.0 x 1.0 = $178,750
Statutory Maximum: Violation 4
25 days x $10,000/day = $250,000

VIOLATION 5:
Failure to Complete Pre-Storm Inspections, Storm Monitoring, and Post-Storm Inspections

The Construction General Permit requires that a discharger employ a QSP to (a) inspect its construction site within 48 hours prior to a qualifying rain event[9], (b) inspect its construction site when there is 0.5 inch or more of rain, and if appropriate, collect storm water samples, and (c) complete a post-rain event inspection within 48 hours after a qualifying rain event. The pre-rain and post-rain inspections are to include an evaluation of whether BMPs are adequate and properly functioning, and whether additional BMPs are needed to protect water quality.

As acknowledged in the Discharger's 2020-2021 Annual Report, the Discharger did not conduct pre-storm, storm, or post-storm inspections from July 1, 2020 through May 10, 2021. The Prosecution Team notes that there is no evidence that storm inspections were conducted from mid-2018 through May 10, 2021, but has elected to only allege the date range acknowledged in the Discharger's 2020-2021 Annual Report. The failure to conduct storm-related inspections and sampling is a violation of Attachment E, Section I of the Construction General Permit, as follows:

Attachment E, Section I.3.e. states, in part, *"Within 2 business days (48 hours) prior to each qualifying rain event, Risk Level 3 dischargers shall visually observe (inspect): all storm water drainage areas…all BMPs…all storm water storage and containment areas…"*

> Attachment E, Section I.3.a. states *"Risk Level 3 dischargers shall visually observe (inspect) storm water discharges at all discharge locations within two business days (48 hours) after each qualifying rain event."*

[9] Defined in the Construction General Permit as any event that produces 0.5 inches or more precipitation, with a 48 hour or greater period between rain events (see Appendix 5, page 8).

Attachment E, Section I.4.a. states, in part, "*Risk Level 3 dischargers shall collect storm water grab samples…"*

Attachment E, Section I.3.g. states *"Within two business days (48 hours) after each qualifying rain event, Risk Level 3 dischargers shall conduct post rain event visual observations (inspections) to (1) identify whether BMPs were adequately designed, implemented, and effective, and (2) identify additional BMPs and revise the SWPPP accordingly."*

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to conduct pre-storm inspections, storm inspections and sampling, and post-storm inspections during at least a ten-month period resulted in the potential for significant water quality impacts. As described in the Construction General Permit's Fact Sheet, the goal of these inspections is to identify areas contributing to a storm water discharge, evaluate whether BMPs are adequate and properly functioning, and determine whether additional BMPs are needed to protect water quality. The Discharger's failure to employ a QSP to conduct these types of inspections and to collect samples of any storm water discharged from the Site resulted in a potential for harm of at least moderate.

Deviation from Requirement: *Major*

The Construction General Permit expressly requires that a discharger employ a QSP to conduct pre-storm inspections, storm inspections and sampling, and post-storm inspections. The Discharger failed to do so for at least a ten-month period, rendering the Construction General Permit's storm-related inspections and sampling requirements ineffective in their essential function. The deviation from requirement is appropriately characterized as major.

Per Day Factor: *0.55*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.55 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

The Construction General Permit clearly describes the need for pre-storm inspections, storm inspections and sampling, and post-storm inspections. The Discharger had full knowledge of the need to conduct inspections and collect storm water samples. The 2015 SWPPP appropriately describes what to inspect prior to a forecasted qualifying rain event, during an extended storm event, and following a qualifying rain event (see Section 7.6.2). The SWPPP also contains a separate Construction Site Monitoring Program (CSMP; a document required by the Construction General Permit) which provides additional details about how and where storm water samples are to be collected. In addition, the SWPPP contains template forms to be used to document the inspections and sampling.

Although the Discharger had hired a QSP to conduct pre-storm, storm, and post-storm inspections earlier in the construction project, the Discharger did not have a QSP conduct storm inspections starting at least July 1, 2020, and extending until after the Lahontan Water Board's April 29, 2021 inspection. The Discharger's failure to ensure a QSP was conducting storm inspections is not a case of simple oversight. Having inspected the Site during storms previously, and then failing to do so for at least a ten-month period, the Discharger knowingly failed to comply with the Construction General Permit. A multiplier value of 1.3 is appropriate.

History of Violation: *1.0*

The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.0*

After Lahontan Water Board staff inspected the Site on April 29, 2021, the Discharger ensured a QSP was engaged. The QSP appropriately completed storm inspections after that date. The Discharger's hiring of a QSP to complete the storm inspections was timely, and therefore a neutral multiplier of 1.0 is appropriate.

Days of Violation: *54 days*

At least 18 qualifying rain events[10] occurred between July 1, 2020 and May 10, 2021. For each of the 18 qualifying rain events, the Discharger failed to complete a pre-storm, during storm, and post-storm inspection. One day of violation is assessed for each missing inspection, for a total of 54 days of violation. It is not possible to make one of

[10]The Prosecution Team's procedure for estimating the number of missing inspections is described in the March 13, 2023 Memorandum titled "REAPs and Storm Event Monitoring".

the findings allowed by the Enforcement Policy to compress the days of violation because the failure to perform storm-related inspections (a) had the potential to cause daily detrimental impacts to the environment; (b) resulted in an economic benefit from the illegal conduct that can be measured on a daily basis; and (c) occurred with the direct knowledge of the Discharger.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 5
0.55 x 54 days x $10,000/day x 1.3 x 1.0 x 1.0 = $386,100
Statutory Maximum: Violation 5
54 days x $10,000/day = $540,000

VIOLATION 6:
Failure to Implement Best Management Practices for Construction Materials

The Construction General Permit requires that a discharger implement good housekeeping Best Management Practices (BMPs) for construction materials that could impact or threaten to impact water quality. Good housekeeping BMPs are designed to reduce or eliminate the addition of pollutants to storm water runoff from a construction site through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other similar activities.

The Discharger failed to implement good housekeeping Best Management Practices for construction materials on at least 31 instances over 23 days, as observed during three inspections conducted by Lahontan Water Board staff and 42 inspections conducted by the Discharger's Qualified SWPPP Practitioner (QSP) between April 29, 2021 and December 3, 2021.

The failure to implement good housekeeping BMPs for construction materials is a violation of Attachment E, Section B.1 of the Construction General Permit.

> Attachment E, Section B.1 states, in part, *"Risk Level 3 dischargers shall implement good site management (i.e., "housekeeping") measures for construction materials*

that could potentially be a threat to water quality if discharged. At a minimum, Risk Level 3 dischargers shall implement the following good housekeeping measures:

b. Cover and berm loose stockpiled construction materials that are not actively being used…

d. Minimize the exposure of construction materials to precipitation…

e. Implement BMPs to prevent the off-site tracking of loose construction and landscape materials."

The following violations related to construction materials were observed:

(1) On August 4, August 11, August 13, August 20, August 27, September 3, September 10, September 17, and September 24, 2021, the QSP or Lahontan Water Board staff inspected the Site and found that the Discharger stored construction material in the northern ephemeral drainage between lots 4 and 5, and/or on ground instead of an appropriate container. (Violation of B.1.)[11]

(2) On October 13, Lahontan Water Board staff found wood mulch placed in an ephemeral watercourse. (Violation of B.1.)

(3) On April 29, May 11, June 25, June 30, July 16, August 13, August 20, September 3, October 9, October 15, October 22, November 5, and November 23, 2021, the QSP or Lahontan Water Board staff inspected the Site and found that stockpiles of soil and construction materials were not properly protected with covers, berms, and/or perimeter controls. (Violation of B.1.b.)

(4) On May 17, June 4, June 18, June 25, June 30, August 20, September 3, and September 10, 2021, the QSP inspected the Site and found that the materials storage yard was not clean or organized, that materials were not stored properly, that litter and construction debris had not been picked up, that material had been tracked off-site, or that drainage modifications were required. (Violation of B.1.d and B.1.e.)

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

[11] This type of violation is found in the "Good Housekeeping for Waste Management" section of the QSP inspection reports, but it is more appropriate to include it as a Construction Material violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger properly manage construction materials to protect water quality. However, the Discharger failed to properly store construction material, failed to clean up work areas and materials storage areas, and failed to appropriately cover and protect stockpiles of soil and construction material. The Discharger's failure to properly store or manage construction materials resulted in the potential for these materials to be transported off-site in storm water or non-storm water discharges, which would negatively impact receiving waters and their beneficial uses. Woody debris will reduce dissolved oxygen in surface waters[12], soil can smother spawning grounds and destroy habitat[13], and treated wood contains chemicals which can adversely impact aquatic life[14].

The U.S. Environmental Protection Agency considers sediment to be the most common pollutant in rivers, streams, lakes, and reservoirs[15]. Storm water polluted with sediment degrades beneficial uses of surface waters as follows: (a) sediment clouds the water, preventing animals from seeing food, (b) cloudy, murky water prevents natural vegetation from growing, (c) sediment in stream beds disrupts the food chain by destroying habitat where the smallest aquatic organisms live, resulting in significant declines in fish populations; (d) sediment can clog fish gills, resulting in lowered growth rates, lowered resistance to disease, and altered egg and larvae development; (e) sediment increases the cost of treating drinking water and can cause taste and odor problems; (f) nutrients released by sediment can stimulate blue-green algae production, resulting in illness to swimmers, pets, and wildlife; and (g) sediment deposits in rivers can alter the flow of water and reduce water depth, making navigation difficult and leading to flooding. Based on the above, a moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement good housekeeping practices for construction materials that impact or threaten to impact

[12] https://extension.usu.edu/waterquality/pages_for_brian/dissolvedoxygen
[13] https://protectwiwaterways.org/learn-about-stormwater/cover-bare-soil/
[14] https://www.conradfp.com/pressure-treatment-cca-aquatic-study.php#:~:text=The%20copper%2C%20chromium%20and%20arsenic,fresh%20and%20salt%2Dwater%20environments.
[15] https://cfpub.epa.gov/npstbx/files/ksmo_sediment.pdf

water quality. Although the Discharger implemented some good housekeeping practices for construction materials between April and December 2021, the Discharger failed to consistently implement other expected good housekeeping practices. During times of rapid construction activity, the Discharger did not clean the materials storage area or properly store materials. The Discharger did not consistently protect stockpiles with covers, berms, and/or perimeter controls. For every inspection between August 4 and September 24, 2021, the QSP or Lahontan Water Board staff found that construction material was stored in the ephemeral drainage, a practice which could adversely impact water quality. The Discharger's failure to implement appropriate good housekeeping practices for construction materials on at least 31 instances for 23 days spanning a seven-month period partially compromised the intended effectiveness of the Construction General Permit's requirements related to construction materials. A moderate deviation from requirement is appropriate.

Per Day Factor: *0.35*
Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*
The Construction General Permit clearly describes the need to implement good housekeeping practices related to construction materials, as does the Discharger's 2015 and 2021 Storm Water Pollution Prevention Plans (SWPPPs). Section 3.3.2 of both SWPPPs state: "*Materials management control practices consist of implementing procedural and structural BMPs for handling, storing, and using construction materials to prevent the release of those materials into stormwater discharges*." The SWPPPs describe numerous best management practices to be used to manage construction materials. The Discharger was fully aware of the requirement to implement good housekeeping practices related to construction materials and incorporated relevant best management practices into its SWPPP, yet still failed to protect the Site.

The Discharger's failure to implement good housekeeping practices related to construction materials was discussed by Lahontan Water Board staff as early as the April 29, 2021 inspection and documented in the June 21, 2021 Notice of Violation. Within a few days of staff's inspection, the Discharger entered a new contract with a QSP, who began the required weekly inspections on May 11, 2021. A reasonable and prudent discharger would have ensured a QSP was retained through the entirety of the project, would have implemented the BMPs described in the SWPPP, and would have reviewed the QSP's inspection reports and implemented the recommendations in a

timely manner. Based on the continuing nature of violations, the Discharger's noncompliance is evidence of, at best, a negligent deviation from the standard of care. The fact that the Discharger initially complied with the Construction General Permit during the roads and utilities phase, then did not scomply during vertical construction until Lahontan Water Board staff inspected the Site indicates a higher level of culpability. Therefore, a multiplier value of 1.3 is appropriate.

History of Violation: *1.0*
The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.3*
The Discharger was first notified by the Lahontan Water Board during the inspection on April 29, 2021 of the failure to implement good housekeeping practices for construction materials. Following the inspection, the Discharger entered a new contract with a QSP who began weekly inspections on May 11, 2021. These weekly inspections found continued violations of good housekeeping practices for construction materials over a seven-month period. During this time, Lahontan Water Board staff re-inspected the Site twice and found similar violations. Despite the on-going notifications of violations, by both the QSP and Lahontan Water Board staff, the Discharger repeatedly failed to fully comply with the Construction General Permit's requirement to implement good housekeeping practices related to construction materials. Of the 45 inspections conducted during the seven-month period, 23 inspections (or 51%) found one or more violations of the good housekeeping practices related to construction materials. The Discharger's action is significantly less than what would be expected as a reasonable and prudent response and therefore a factor of 1.3 is appropriate.

Days of Violation: *23 days*
The Discharger failed to implement good housekeeping practices for construction materials on at least 31 instances over 23 days. The Enforcement Policy does not allow the days of violation to be compressed for violations less than 30 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 6
0.35 x 23 days x $10,000/day x 1.3 x 1.0 x 1.3 = $136,045
Statutory Maximum: Violation 6
23 days x $10,000/day = $230,000

VIOLATION 7:
Failure to Implement Best Management Practices for Waste Management

The Construction General Permit requires that a discharger implement good housekeeping Best Management Practices (BMPs) for waste management. Waste management consists of implementing procedural and structural BMPs for handling, storing, and cleaning up spills, and ensuring proper disposal of wastes to prevent their release into stormwater. Such wastes may include solid waste, hazardous waste, contaminated soil, concrete wash-out, and sanitary-septic.

The Discharger failed to implement good housekeeping BMPs for waste management for at least 29 days, as observed during three inspections conducted by Lahontan Water Board staff and 42 inspections conducted by the Discharger's Qualified SWPPP Practitioner (QSP) between April 29, 2021 and December 3, 2021.

The failure to implement good housekeeping BMPs for waste management is a violation of Attachment E, Section B.2 of the Construction General Permit.

> Attachment E, Section B.2 states, in part, *"Risk Level 3 dischargers shall implement good housekeeping measures for waste management materials, which at a minimum, shall consist of the following:*
>
> *b. Ensure the containment of sanitation facilities (e.g. portable toilets) to prevent discharges of pollutants to the storm water drainage system…*
>
> *h. Develop a spill response and implementation element of the SWPPP prior to commencement of construction activities. The SWPPP shall require that:*
>
> *i. Equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly; and*
>
> *ii. Appropriate spill response personnel are assigned and trained.*

i. Ensure containment of concrete washout areas…so there is no discharge into the underlying soil and onto surrounding areas."

The following violations related to waste management were observed:

(1) On April 29, 2021, Lahontan Water Board staff inspected the Site and found that the Discharger did not have a spill response plan, a spill cleanup kit, or on-Site personnel trained to respond to spills. The Discharger responded to the inspection by developing a spill response plan which became available at the Site on May 3, buying a spill response kit which was delivered to the Site on or about May 18, and training on-Site personnel to respond to spills by mid-May. (Violation of Section B.2.h from April 29 through May 18; a total of 20 days.)

(2) On June 25, June 30, October 1, October 8, October 9, October 10, October 11, October 13, and October 15, 2021, the QSP inspected the Site and found (a) evidence of concrete spills and washout on the ground or (b) failure to maintain concrete washouts. (Violation of Section B.2.i.)

(3) On October 8 and October 11, 2021, the QSP inspected the site and found that the portable toilet needed to be away from the on-site drainage (Violation of Section B.2.b)

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to prepare for spills, as well as the failure to clean up spills, has the potential to harm beneficial uses. A discharger should strive to prevent spills of construction materials and wastes; however, spills and leaks will occur even with the best prevention efforts. The Construction General Permit requires that a discharger have a spill response plan, a spill response kit, and on-site trained personnel that are ready to respond to spills quickly and effectively. At this Site, many of the spills and leaks were of petroleum products, as described in Violation 8. Petroleum products contain heavy metals such as zinc, lead, and cadmium, and volatile organic compounds such as benzene, toluene, and xylenes. These compounds are so toxic that just a small amount of petroleum will adversely affect the beneficial uses of a large volume of surface water,

ground water, or drinking water[16]. In addition to petroleum spills, the Discharger also spilled concrete and concrete washout water to the ground. Concrete waste has a high pH, which can percolate through the soil and alter soil chemistry, inhibit plant growth, and contaminate the groundwater[17]. The high pH can also increase the toxicity of other substances in surface waters and soils.

When spills and leaks are not cleaned up immediately, there is the potential for these materials to be transported off-site in storm water or non-storm water discharges and then impact beneficial uses and receiving waters. Therefore, a moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*
The Construction General Permit requires that a discharger implement good housekeeping practices related to waste management. Although the Discharger implemented some BMPs for waste materials between April and December 2021, the Discharger did not consistently comply with the Permit. The Discharger failed to have a spill response plan, a spill response kit, and trained personnel to respond to spills. This violation occurred for some unknown time prior to the Lahontan Water Board inspection on April 29, 2021 and continued through May 18, 2021. The Discharger also failed to consistently clean up spills of concrete waste. The Discharger's failure to implement appropriate good housekeeping practices for waste management on at least 29 days partially compromised the intended effectiveness of the Construction General Permit's requirements related to waste management. A moderate deviation from requirement is appropriate.

Per Day Factor: *0.35*
Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*
The Construction General Permit clearly describes the need to implement good housekeeping practices related to construction waste, as does the Discharger's 2015 and 2021 Storm Water Pollution Prevention Plans (SWPPPs). Section 3.3.2 of both SWPPPs describes numerous BMPs to be used to manage construction waste, including training personnel in the proper use and handing of all materials, training personnel in procedures that prevent spills, using perimeter controls to contain spills,

[16] https://cfpub.epa.gov/npstbx/files/KSMO_oil.pdf
[17] https://www3.epa.gov/npdes/pubs/concretewashout.pdf

and using dedicated concrete washout areas. The Discharger was fully aware of the requirement to implement good housekeeping practices related to waste management, including the need prepare for and clean up spills. The Discharger incorporated relevant BMPs into its SWPPP, yet still failed to implement these practices to protect the Site.

The Discharger's failure to have a spill response plan, a spill response kit, and trained on-Site personnel to respond to spills began at some unknown time prior to the Lahontan Water Board inspection on April 29, 2021 and continued through May 18, 2021. The Discharger also failed to consistently clean up spills of concrete waste and failed to maintain its concrete washout area. The Discharger's failure to implement good housekeeping practices related to waste management was discussed by Lahontan Water Board staff as early as the April 29, 2021 inspection and documented in the June 21, 2021 Notice of Violation. Within a few days of staff's inspection, the Discharger entered a new contract with a QSP, who began the required weekly inspections on May 11, 2021. A reasonable and prudent discharger would have ensured a QSP was retained through the entirety of the project, would have implemented the BMPs described in the SWPPP, and would have reviewed the QSP's inspection reports and implemented the recommendations in a timely manner. Based on the continuing nature of violations, the Discharger's noncompliance is evidence of, at best, a negligent deviation from the standard of care. The fact that the Discharger initially complied with the Construction General Permit during the roads and utilities phase, then did not comply during vertical construction until Lahontan Water Board staff inspected the Site indicates a higher level of culpability. Therefore, a multiplier value of 1.3 is appropriate.

History of Violation: *1.0*

The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.1*

The Discharger was notified during the Lahontan Water Board inspection on April 29, 2021 of the failure to have to have a spill response plan, a spill response kit, and personnel trained to respond to spills on Site. Within 20 days of the inspection, the Discharger developed a spill response plan, obtained a spill response kit, and trained its personnel to respond to spills. Since that date, the Discharger has complied with this Permit requirement. While the Discharger's response to the spill response plan/spill kit/spill training issue was reasonable, the Discharger's actions regarding concrete washout were significantly less than what is expected. In particular, there were seven QSP inspections between October 1 and October 15, 2021, and for each of those

inspections, the QSP noted that the Discharger needed to address the concrete washout area. A reasonable and prudent Discharger would have responded and rectified this issue in a timely manner. After considering the Discharger's response to the two types of violations, the Prosecution Team has determined that an average multiplier of 1.1 is appropriate.

Days of Violation: *29 days*
The Discharger failed to implement good housekeeping BMPs for waste materials on at least 29 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 7
0.35 x 29 days x $10,000/day x 1.3 x 1.0 x 1.1 = $145,145
Statutory Maximum: Violation 7
29 days x $10,000/day = $290,000

VIOLATION 8:
Failure to Implement Best Management Practices for Vehicle Storage, Fueling, and Maintenance

The Construction General Permit requires that a discharger implement good housekeeping Best Management Practices (BMPs) for vehicle storage, fueling, and maintenance. The Permit states that if a spill or leak occurs, a discharger shall immediately clean it up and appropriately dispose of the cleaning material.

The Discharger failed to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance for at least 12 days, as observed during three inspections conducted by Lahontan Water Board staff and 42 inspections conducted by the Discharger's Qualified Storm Water SWPPP Practitioner (QSP) between April 29, 2021 and December 3, 2021.

The failure to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance is a violation of Attachment E, Section B.3 of the Construction General Permit.

Attachment E, Section B.3 states, in part, *"Risk Level 3 dischargers shall implement good housekeeping for vehicle storage and maintenance, which at a minimum, shall consist of the following:*

a. Prevent oil, grease, or fuel to leak in to [sic] the ground, storm drains or surface waters.

b. Place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.

c. Clean leaks immediately…"

The following violations related to vehicle storage, fueling, and maintenance were observed:

(1) On June 11, June 23, June 25, June 30, August 11, September 10, and November 19, 2021, the QSP or Lahontan Water Board staff inspected the Site and found evidence of oil, grease, or fuel drips and leaks on the street. (Violation of B.3.a. and B.3.c.)

(2) On May 11, 2021, the QSP inspected the Site and found that vehicles were not being fueled in a designated area fitted with appropriate Best Management Practices. (Violation of B.3 from May 11-12.)

(3) On October 9, October 13, and October 15, 2021, the QSP inspected the Site and found that storm drain BMPs needed to be repaired to prevent oil, grease, or fuel from leaking into storm drains. (Violation of B.3.a).

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to implement adequate vehicle storage and maintenance good housekeeping BMPs poses a substantial potential for harm. Vehicle fluids contain petroleum and oil byproducts, which contain toxic constituents such as metals and volatile organic compounds. When not cleaned up, vehicle fluid spills will be directly transported into receiving waters by storm water runoff or indirectly transported when

they attach to sediment that is mobilized by storm water runoff. Storm water runoff polluted with vehicle fluids is harmful to beneficial uses in the receiving water ecosystem because, among other items, it is toxic, it smothers plants and wildlife, and it bioaccumulates[18]. Therefore, a moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*
The Construction General Permit requires that a discharger implement good housekeeping BMPs related to vehicle storage, fueling, and maintenance. Although the Discharger implemented some of these good housekeeping practices between April and December 2021, the Discharger failed to consistently implement other expected good housekeeping practices. For example, the Discharger did not consistently prevent petroleum spills and did not immediately clean up the spills. The Discharger's failure to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance on at least 12 days partially compromised the intended effectiveness of the Construction General Permit's requirements related to vehicle storage and maintenance. A moderate deviation from requirement is appropriate.

Per Day Factor: *0.35*
Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*
The Construction General Permit clearly describes the need to implement best management practices related to vehicle storage, fueling, and maintenance, as does the Discharger's 2015 and 2021 Storm Water Pollution Prevention Plans (SWPPPs). Section 3.3.1 of both SWPPPs describes BMPs to be used during these activities, including a dedicated fueling area that is protected from storm water run-on and run-off and equipped with a spill response kit such that spills may be cleaned up immediately. The Discharger was fully aware of the requirement to implement good housekeeping practices related to vehicle storage, fueling, and maintenance and incorporated relevant BMPs into its SWPPP, yet still failed to implement these practices to protect the Site.

The May 11, 2021 report for this inspection notified the Discharger that it needed to have a dedicated fueling area with appropriate best management practices. Although this report was the first known written notice of this violation, the Discharger's two SWPPPs were clear that a dedicated fueling area was required. In addition, the Discharger did not consistently prevent its equipment from leaking or spilling. For

[18] https://cfpub.epa.gov/npstbx/files/KSMO_oil.pdf

example, four of the five inspections (80%) conducted between June 11 and June 30, 2021 state "New leaking evident on street". A reasonable and prudent discharger would have implemented the best management practices described in the SWPPP, would have reviewed the QSP's inspection reports, and would have implemented the recommendations in a timely manner. Based on the continuing nature of violations, the Discharger's noncompliance is evidence of, at best, a negligent deviation from the standard of care. The fact that the Discharger received reminders of the need to comply with the Construction General Permit and received inspection reports from the QSP that identified violations, but the Discharger continued not to comply, indicates a higher level of culpability. Therefore, a multiplier value of 1.3 is appropriate.

History of Violation: *1.0*
The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.1*
The Discharger constructed a dedicated fueling area within several days of notification by the QSP that such an area was required. This was a reasonable response to the violation. However, the QSP found multiple spills of oil, grease, or fuel on the Site's streets, and the need to protect storm drains from such spills, between June and November, 2021. Of the 45 inspections conducted during the seven-month period, 12 inspections (or 27%) found violations of the BMPs for vehicle storage, fueling, and maintenance. A reasonably prudent person would have reviewed the inspection reports and implemented measures to prevent these spills. A factor of 1.1 is appropriate.

Days of Violation: *12 days*
The Discharger failed to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance for at least 12 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 8
0.35 x 12 days x $10,000/day x 1.3 x 1.0 x 1.1 = $60,060
Statutory Maximum: Violation 8
12 days x $10,000/day = $120,000

VIOLATION 9:
Failure to Control Erosion

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control, also referred to as soil stabilization, is designed to prevent soil particles from detaching and becoming transported in stormwater runoff[19]. Erosion control measures protect the soil surface by covering and/or binding soil particles and include disturbing as little of the land as possible, preserving existing vegetation where feasible, re-vegetating disturbed areas as soon as possible after disturbance, and temporary soil stabilization measures such as hydroseed, soil stabilizers, binders, fiber, geotextile mats, and hydraulic, straw, or wood mulch.

The Discharger failed to install and maintain erosion control measures on at least 48 instances during 30 days of violation, as observed during three inspections conducted by Lahontan Water Board staff and 42 inspections conducted by the Discharger's Qualified SWPPP Practitioner (QSP) between April 29, 2021 and December 3, 2021.

The failure to install and maintain erosion control measures is a violation of Attachment E, Section D of the Construction General Permit.

Attachment E, Section D states, in part, *"Erosion Control*

1. *Risk Level 3 dischargers shall implement effective wind erosion control.*
2. *Risk Level 3 dischargers shall provide effective soil cover for inactive areas[20] and all finished slopes, open space, utility backfill, and completed lots…."*

The following violations related to the lack of erosion control were observed:

(1) On May 14, June 23, June 25, June 30, July 30, August 4, August 20, and September 3, 2021, the QSP inspected the Site and found that BMPs were needed to control dust. (Violation of D.1.)

(2) On June 4, June 25, June 30, July 2, July 9, July 16, July 30, August 4, August 13, August 20, August 27, and September 3, 2021, the QSP inspected the Site found that the landscape berms were too steep for the erosion control BMPs that

[19] Discharger's July 30, 2021 Stormwater Pollution Prevention Plan (SWPPP), Section 3.2.1.
[20] Inactive areas are those areas which have been disturbed by construction activity and are not scheduled to be re-disturbed for at least 14 days.

had been installed. (Violation of D.2.)

(3) On June 4, June 11, June 18, June 25, June 30, July 2, and July 9, 2021, the QSP inspected the Site and found that old stockpiles, spoils and side cast needed to be removed or protected. (Violation of D.2.)

(4) On April 29, May 11, May 14, May 17, May 20, May 24, July 16, July 30, August 4, August 13, August 20, September 3, September 10, September 17, September 24, October 8, October 9, October 10, October 11, October 13, and October 15, 2021 the QSP or Lahontan Water Board staff inspected the Site and found that erosion control BMPs (other than those listed in items #1-3) were improperly installed, were missing, and/or that inactive areas were not protected. (Violation of D.2)

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control measures are necessary to prevent soil particles from detaching during rain or wind events and being transported to surface waters via stormwater runoff. The Discharger's failure to implement erosion control BMPs poses a substantial potential for harm to beneficial uses if storm water or other runoff flows through the Site and transports sediment to receiving waters. Storm water runoff polluted with sediment is harmful to beneficial uses of the receiving water ecosystem because, among other items, it can contain material that is toxic to aquatic organisms, it can smother plants and wildlife, bury fish eggs, clog fish gills, and can contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat (see expanded discussion regarding sediment impacts for Violation 6). Therefore, a moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger install and maintain erosion control measures. Although the Discharger installed some erosion control measures, many were either installed incorrectly (e.g., geotextiles on steep slopes), did not receive

the necessary maintenance, were ineffective (e.g., using leaf blowers to remove sediment from streets), or were inappropriate for the location (e.g., wood chips on steep slopes). The Discharger's failure to control erosion on at least 48 instances for 30 days partially compromised the intended effectiveness of the Construction General Permit's requirements related to erosion control. A moderate deviation from requirement is appropriate.

Per Day Factor: *0.35*
Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*
The Construction General Permit clearly describes the need to implement actions to control erosion, as does the Discharger's 2015 and 2021 Storm Water Pollution Prevention Plans (SWPPPs). Section 3.2.1 of both SWPPPs contains a discussion of erosion control BMPs that will be implemented at the Site, including preserving existing vegetation; use of hydroseed, geotextiles, mats, and wood mulching; and installation of earth dikes, drainage swales, and velocity dissipation devices. The Discharger was fully aware of the requirement to control erosion at the Site and incorporated relevant BMPs into its SWPPP, yet still failed to implement these practices to protect the Site.

The Discharger's failure to appropriately implement erosion control measures was discussed by Lahontan Water Board staff as early as the April 29, 2021 inspection and documented in the June 21, 2021 Notice of Violation. Within a few days of staff's inspection, the Discharger ensured a QSP was engaged, who began the required weekly inspections on May 11, 2021. A reasonable and prudent discharger would have ensured a QSP was retained through the entirety of the project, would have implemented the BMPs described in the SWPPP, and would have reviewed the QSP's inspection reports and implemented the recommendations in a timely manner. However, the Discharger did not modify its practices to come into compliance with the Permit. In particular, the Discharger did not install erosion control BMPs on inactive areas, did not conduct the necessary maintenance on geotextiles, did not install erosion control measures beneath the driplines of roofs, and used inappropriate erosion control (e.g., wood chips on steep slopes) for some areas. These violations continued throughout the 2021 construction season. Based on the continuing nature of violations, the Discharger's noncompliance is evidence of, at best, a negligent deviation from the standard of care. The fact that the Discharger initially complied with the Construction General Permit during the roads and utilities phase, then chose not to comply during

vertical construction until Lahontan Water Board staff inspected the Site indicates a higher level of culpability. Therefore, a multiplier value of 1.3 is appropriate.

History of Violation: *1.0*
The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.3*
The Discharger was notified during the Lahontan Water Board inspection on April 29, 2021 of the failure to implement erosion control BMPs. Following the inspection, the Discharger entered a new contract with a QSP who began weekly inspections on May 11, 2021. These weekly inspections showed continued violations of erosion control BMPs. During this time, Lahontan Water Board staff re-inspected the Site and observed the continuing violations. Despite the on-going notifications of violations, by both the QSP and Lahontan Water Board staff, the Discharger repeatedly failed to install and maintain sufficient erosion control measures to fully comply with the Construction General Permit. Of the 45 inspections conducted during the seven-month period, 30 inspections (or 66%) found one or more violations of erosion control BMPs. The Discharger's action is significantly less than what would be expected as a reasonable and prudent response and therefore a factor of 1.3 is appropriate.

Days of Violation: *30 days*
The Discharger failed to install and maintain sufficient erosion measures for at least 48 instances over 30 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 9
0.35 x 30 days x $10,000/day x 1.3 x 1.0 x 1.3 = $177,450
Statutory Maximum: Violation 9
30 days x $10,000/day = $300,000

VIOLATION 10:
Failure to Control Sediment

The Construction General Permit requires that a discharger implement actions to control sediment. Sediment controls are designed to intercept and settle out soil particles that

have been detached and subsequently transported by water[21]. These temporary or permanent measures are to complement the site's erosion control measures and can include silt fencing, fiber rolls, sediment basins, storm drain inlet protection, and street sweeping.

The Discharger failed to install and maintain sufficient sediment control measures for at least 77 instances over 37 days of violation, as observed during three inspections conducted by Lahontan Water Board staff and 42 inspections conducted by the Discharger's Qualified SWPPP Practitioner (QSP) between April 29, 2021 and December 3, 2021.

The failure to install and maintain sediment control measures is a violation of Attachment E, Section E of the Construction General Permit.

Attachment E, Section E states, in part, *"Sediment Control*

1. *Risk Level 3 dischargers shall implement and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*

4. *…Risk Level 3 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1.*

5. *…Risk Level 3 dischargers shall ensure that construction activity traffic to and from the project is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment.*

6. *…Risk Level 3 dischargers shall ensure that all storm drain inlets and perimeter controls, runoff control BMPs, and pollutant controls at entrances and exits…are maintained and protected from activities that reduce their effectiveness.*

7. *…Risk Level 3 dischargers shall inspect on a daily basis all immediate access roads daily. At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping)."*

The following violations related to sediment control were observed:

(1) On April 29, May 20, May 24, June 4, June 11, June 18, June 25, June 30, August 11, August 13, August 20, September 3, September 10, October 1, and

[21] Discharger's July 30, 2021 Stormwater Pollution Prevention Plan (SWPPP), Section 3.2.2.

October 22, 2021, the QSP or Lahontan Water Board staff inspected the Site and found that perimeter sediment control BMPs needed maintenance, were improperly installed, or were missing. (Violation of E.1.)

(2) On May 11, May 14, and May 17, 2021, the QSP inspected the Site and found that sediment controls along the steep slope between lots were missing. (Violation of E.4.)

(3) On May 11, May 14, May 17, May 20, May 24, June 4, June 18, June 25, June 30, July 2, July 16, July 30, August 4, August 11, August 13, August 20, September 3, September 10, September 17, October 26, November 12, November 23, and December 3, 2021, the QSP or Lahontan Water Board staff inspected the Site and found that the entrance/exit to the Site or individual lots was not stabilized or needed maintenance. (Violation of E.1 and E.5.)

(4) On May 11, May 14, May 17, June 4, June 11, June 25, June 30, July 2, July 9, July 16, July 30, August 4, August 13, August 20, September 3, September 10, September 17, September 24, October 1, October 8, October 9, October 10, October 11, October 13, and October 15, 2021, the QSP inspected the Site and found that storm drains needed to be cleaned or maintained, or that BMPs had not been installed around storm drains. (Violation of E.6.)

(5) On May 20, June 25, August 11, August 13, August 20, September 3, October 1, October 22, November 5, November 23, and December 3, 2021, the QSP or Lahontan Water Board staff inspected the Site and found sediment on roadways. (Violation of E.7)

(6) On May 11, May 14, June 23, and June 25, 2021, the QSP found that the Discharger was using ineffective leaf blowers instead of street sweeping to remove sediment. (Violation of E.7.)

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger control and/or prevent the movement of sediment into surface waters. Sediment control measures are to be designed to complement a site's erosion control measures. The Discharger's failure to implement appropriate sediment control BMPs poses a substantial potential for harm to beneficial uses if storm water or other runoff flows through the Site and transports sediment to receiving waters. Storm water runoff polluted with sediment is harmful to beneficial uses of the receiving water ecosystem because, among other items, it can contain material that is toxic to aquatic organisms, it can smother plants and wildlife, bury fish eggs, clog fish gills, and can contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat (see expanded discussion regarding sediment impacts for Violation 6). The Discharger failed to implement adequate sediment control BMPs for at least 77 instances over 37 days, threatening existing and beneficial uses of surface waters. Therefore, a moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement sediment control measures during active construction. Although the Discharger installed some sediment control measures, many were either installed incorrectly (e.g., fiber rolls were not staked, anchored, or overlapped), did not receive the necessary maintenance (e.g., silt fences were torn), or were missing (e.g., on steep slopes between lots). In addition, the Discharger consistently failed to install or maintain an adequate entrance/exit to the Site and the individual lots, thereby allowing sediment to be tracked onto streets. The Discharger also failed to consistently remove the sediment on the streets and persisted in using un-permitted leaf blowers instead of vacuuming or sweeping the streets. The Discharger's failure to implement appropriate sediment controls for at least 77 instances over 37 days partially compromised the intended effectiveness of the Construction General Permit's requirements related to sediment control. A moderate deviation from requirement is appropriate.

Per Day Factor: *0.35*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

The Construction General Permit clearly describes the need to implement actions to control discharges of sediment, as does the Discharger's 2015 and 2021 Storm Water Pollution Prevention Plans (SWPPPs). Section 3.2.2 of both SWPPPs contains a discussion of sediment control BMPs that will be implemented at the Site, including installation of silt fences, fiber rolls, and gravel bag berms; construction of sediment basins; protection of storm drain inlets; and stabilization of construction entrances and exits. The Discharger was fully aware of the requirement to control sediment at the Site and incorporated relevant BMPs into its SWPPP, yet still failed to implement these practices to protect the Site.

The Discharger's failure to appropriately implement sediment control measures was discussed by Lahontan Water Board staff as early as the April 29, 2021 inspection and documented in the June 21, 2021 Notice of Violation. Within a few days of staff's inspection, the Discharger entered a new contract with a QSP, who began the required weekly inspections on May 11, 2021. A reasonable and prudent discharger would have ensured a QSP was retained through the entirety of the project, would have implemented the BMPs described in the SWPPP, and would have reviewed the QSP's inspection reports and implemented the recommendations in a timely manner. However, the Discharger did not modify its practices to come into compliance with the Permit. In particular, the Discharger did not maintain the silt fences and fiber rolls used for perimeter sediment control, failed to maintain the construction entrances/exits, and all together failed to install sediment controls in some areas. Based on the continuing nature of violations, the Discharger's noncompliance is evidence of, at best, a negligent deviation from the standard of care. The fact that the Discharger initially complied with the Construction General Permit during the roads and utilities phase, then did not to comply during vertical construction until Lahontan Water Board staff inspected the Site indicates a higher level of culpability. Therefore, a multiplier value of 1.3 is appropriate.

History of Violation: *1.0*

The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: *1.4*

The Discharger was notified during the Lahontan Water Board inspection on April 29, 2021 of the failure to implement sediment control BMPs. Following the inspection, the Discharger entered a new contract with a QSP who began weekly inspections on May 11, 2021. These weekly inspections found continued violations of sediment control

BMPs for over seven months, continuing through the Prosecution Team's last day for violations related to this matter. During this time, Lahontan Water Board staff re-inspected the Site twice and found violations similar to those found by the QSP. Despite the on-going notifications of violations, by both the QSP and Lahontan Water Board staff, the Discharger repeatedly failed to fully comply with the Construction General Permit's requirement to implement sediment control BMPs. For example, the Discharger continued to use a leaf blower to remove sediment from the roadways, despite (a) the QSP's reports stating that this was an ineffective method for cleaning the street and (b) the Construction General Permit's specific language that sediment deposited on roads must be removed by vacuuming or sweeping. Of the 45 inspections conducted during the seven-month period, 37 inspections (or 82%) found one or more violations of the sediment control BMPs. The Discharger's action is significantly less than what would be expected as a reasonable and prudent response. The Discharger's disregard for both the Construction General Permit's requirements, as well as the disregard for repeated notices from Lahontan Water Board staff and the Qualified SWPPP Practitioner over the entire seven-month period, results in a factor of 1.4.

Days of Violation: *37 days*

The Discharger failed to control sediment for at least 77 instances over 37 days. It is not possible to make one of the findings allowed by the Enforcement Policy to compress the days of violation because the failure to install and maintain sediment control BMPs (a) had the potential to cause daily detrimental impacts to the environment; (b) resulted in an economic benefit from the illegal conduct that can be measured on a daily basis[22]; and (c) occurred with the direct knowledge of the Discharger.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1.

Total Base Liability: Violation 10

0.35 x 37 days x $10,000/day x 1.3 x 1.0 x 1.4 = $235,690

Statutory Maximum: Violation 10

37 days x $10,000/day = $370,000

[22] See Step 7, Economic Benefit.

VIOLATION 11:
Failure to Submit 2018-2019 Annual Report and Failure to Submit 2019-2020 Annual Report

The Construction General Permit requires that an Annual Report be prepared, certified, and submitted electronically to the Stormwater Multiple Application and Report Tracking System (SMARTS) database by September 1 each year. The Prosecution Team's review of the SMARTS database finds that:

1. Although a document titled "2018-2019 Annual Report" was submitted on August 30, 2019, it does not contain any of the information required by Section XVI of the Construction General Permit. The document only provides the Discharger's name and address and the Site's name and address. Due to the substantive deficiencies, the 2018-2019 Annual Report is wholly inadequate and does not satisfy the requirements of the Construction General Permit.

2. The Discharger did not submit the 2019-2020 Annual Report.

The failure to submit Annual Reports is a violation of Section XVI of the Construction General Permit.

> Section XVI.A states "*All dischargers shall prepare and electronically submit an Annual Report no later than September 1 of each year.*"
>
> Section XVI.D states, in part, "*The discharger shall include storm water monitoring information in the Annual Report consisting of…"* the results of all storm water monitoring, including laboratory data sheets; a summary of all corrective actions taken during the year; identification of any compliance actions that were not taken; a summary of all violations of the Construction General Permit; the names of individuals who performed facility inspections, sampling, and visual observations; detailed information regarding facility inspections; visual observation and sample collection exception records; and documentation of training of individuals responsible for all aspects of compliance with the Construction General Permit.
>
> Section XVI.E states, in part, "*The discharger shall provide training information in the Annual Report consisting of…"* documentation of all training for: individuals responsible for all activities associated with compliance; individuals responsible for BMP installation, inspection, maintenance, and repair; and individuals responsible

for overseeing, revising, and amending the SWPPP.

Step 1. Potential for Harm for Discharge Violations
This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations
This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations
The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of deviation from the applicable requirements.

Potential for Harm: *Moderate*
Annual Reports provide, among other items, summaries and evaluations of sampling and analyses, corrective actions taken or not taken, violations, and training that occurred during the year. The failure to submit two Annual Monitoring Reports prevented Lahontan Water Board staff from evaluating the Discharger's compliance with the permit and determining the extent and severity of the water quality impacts posed by the Discharger's ongoing vertical construction during the two years that the reports were not submitted. The failure to submit the Annual Reports also concealed the Discharger's failure to ensure a QSP was overseeing implementation of BMPs. The failure to submit the two reports has substantially impaired the Lahontan Water Board's ability to perform its statutory and regulatory functions and therefore a value of moderate is warranted.

Deviation from Requirement: *Major*
The Construction General Permit expressly requires dischargers to submit Annual Reports for each year that a project is active. The Discharger failed to do so for two years, rendering the Construction General Permit's annual reporting requirements ineffective in their essential function. The deviation from requirement is appropriately characterized as major.

Per Day Factor: *0.55*
Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.55 is assigned.

Step 4. Adjustment Factors

Culpability: 1.3
The Construction General Permit clearly sets forth the requirement to prepare and submit Annual Reports. The Discharger had full knowledge of the need to submit annual reports. Section 1.7 of the 2015 SWPPP describes the requirement to submit

annual reports. The State Water Board's website[23] includes multiple pages related to the Construction General Permit, including "Construction Help Guides" that contain step-by-step instructions describing how to submit an annual report using the template document.

The Discharger knew and understood the requirement to submit Annual Reports, as evidenced by its submittal of the 2016-2017 Annual Report as well as the 2017-2018. For the 2018-2019 Annual Report, the Discharger submitted the form with only the general information filled out instead of an actual report. The Discharger did not submit the 2019-2020 Annual Report at all. The Prosecution Team notes that there is no evidence that the Discharger employed a QSP or complied with the Construction General Permit during the period covered by the missing 2018-2019 and 2019-2020 Annual Reports. A Culpability factor of 1.3 is appropriate.

History of Violation: 1.0

The Discharger does not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: 1.0

After Lahontan Water Board staff inspected the Site on April 29, 2021, the Discharger entered a new contract with a QSP who, among other tasks, prepared the 2020-2021 Annual Report. The Discharger submitted the document by the September 1, 2021 due date. The report appears to accurately reflect the items that were completed after the new QSP contract was entered on May 1, 2021, but clearly states that Permit-required items were not completed prior to the new QSP contract (e.g., Rain Event Action Plans were not prepared, site inspections were not conducted, monitoring was not conducted during Qualifying Storm Events). It is appropriate to use a Cleanup and Cooperation multiplier of 1.0.

Days of Violation: *731 days, compressed to 92 days*

The 2018-2019 Annual Report was due by September 1, 2019, while the 2019-2020 Annual Report was due by September 1, 2020. The Discharger cannot recreate adequate Annual Reports and therefore these violations cannot be cured. However, the Prosecution Team recommends that the days of violation equal the number of days between the due date of each Annual Report. With this approach, there are 366 days (leap year) of violation for the 2018-2019 Annual Report and 365 days of violation for the 2019-2020 Annual Report, for a total of 731 days of violation.

[23] https://www.waterboards.ca.gov/water_issues/programs/stormwater/smarts/construction/const_help_guides.html

The Prosecution Team finds that the failure to submit the two Annual Reports did not cause daily detrimental impact to the environment or regulatory program and did not result in an economic benefit that can be measured on a daily basis. The Prosecution Team recommends compressing the days of violation using the method described in the Enforcement Policy. The 366 days of violation for the 2018-2019 Annual Report are compressed to 46 days, and the 365 days of violation for the 2019-2020 Annual Report are compressed to 46 days. Therefore, the total days of violation for the two missing reports is 92 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Violation 1. The days of violation are not compressed when calculating the statutory maximum penalty.

Total Base Liability: Violation 11
0.55 x 92 days x $10,000/day x 1.3 x 1.0 x 1.0 = $657,800
Statutory Maximum: Violation 11
731 days x $10,000/day = $7,310,000

Combined Total Base Liability for All Violations

The combined Total Base Liability for Violations 1 through 11 is determined by adding the base liability amount of each violation, as shown on Table 1 (page 3). The combined Total Base Liability is $4,804,865.

Step 6. Ability to Pay and Continue in Business

The Water Code and the Enforcement Policy require the Water Boards to consider a discharger's ability to pay when imposing administrative civil liabilities (ACLs). These liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance. The Lahontan Water Board is under no obligation to ensure that a discharger has the ability to pay an ACL amount; instead, the Lahontan Water Board must only consider these factors when imposing a civil liability. If staff makes an initial showing that a discharger has sufficient income or net worth to pay the proposed ACL,

then the burden of proof on this factor shifts to the discharger to produce sufficient evidence that it lacks an ability to pay.

In this matter, the Prosecution Team analyzed publicly available information and determined that the Discharger has sufficient funds to satisfy the proposed ACL amount. According to Palisades at Squaw[24] website, the Discharger will build a total of 63 residential homes at this development. Sixty of the 63 homes have already been sold at prices ranging between $1.1 million and $2.7 million[25]. The remaining three homes will be constructed in 2022-2024 and have an estimated value of $4.37 million each. The net value of the homes far exceeds the proposed liability. Based on the currently available information, the Prosecution Team has determined the Discharger is able to pay the proposed ACL and continue in business.

Step 7. Economic Benefit

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The violations described in the three Lahontan Water Board inspection reports and Notice of Violation, as well as the Qualified SWPPP Practitioner's weekly inspection reports, identify avoided and delayed expenses that have benefited the Discharger.

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN) liability and financial modeling program. Economic benefit was calculated using BEN Version 2022.0.0. Using standard economic principles such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes. The following paragraphs summarize the violations, assumptions, and BEN results. The full analysis is found in the economic benefit document dated February 17, 2023.

Violation 1 (lack of a Storm Water Pollution Prevention Plan (SWPPP) for vertical construction). The cost associated with this action is considered delayed, as the SWPPP was updated after the Lahontan Water Board inspection on April 29, 2021. Because the Discharger did not update the SWPPP, the Discharger also avoided submitting Changes of Information to SMARTS, avoided conducting training using the

[24] https://palisadesatsquaw.com/. The text of the website has recently changed to refer to the development as "The Palisades at Olympic Valley". However, the documents in SMARTS still refer to the development to "Palisades at Squaw". (Website last accessed on January 21, 2021).
[25] https://www.zillow.com/homes/olympic-valley-ca_rb/

updated SWPPP, avoided updating permit registration documents, and avoided updating the Risk Assessment. The costs for these actions were determined from invoices submitted by Auerbach Engineering and Hydro Restoration. Using the BEN model, the benefit of non-compliance for this violation is estimated to be $1,453.

Violation 2 (failure to employ a QSP to oversee implementation of BMPs). This avoided cost was obtained from the April 29, 2021 Hydro Restoration Scope of Work. Using the BEN model, the benefit of non-compliance for this violation is estimated to be $18,157.

Violation 3 (failure to perform weekly and quarterly inspections). This avoided cost for a single inspection was obtained from the April 29, 2021 Hydro Restoration Scope of Work. Using the BEN model, the benefit of non-compliance for this violation is estimated to be $7,985.

Violation 4 (failure to prepare Rain Event Action Plans [REAPs]). The avoided cost for an individual REAP and weather monitoring event was obtained from the April 29, 2021 Hydro Restoration Scope of Work. The Prosecution Team reviewed historical weather data and estimated that the Discharger avoided preparing at least 25 REAPs during the non-compliant period. Using the BEN model, the benefit of non-compliance for this violation is estimated to be $15,038.

Violation 5 (failure to perform pre-storm inspections, storm monitoring, and post-storm inspections). The avoided cost for a single storm monitoring event (including pre-storm, during storm, and post-storm) was obtained from the April 29, 2021 Hydro Restoration Scope of Work. The Prosecution Team reviewed historical weather data and estimated that there were at least 18 storm events during the non-compliant period. Using the BEN model, the benefit of non-compliance for this violation is estimated to be $12,438.

Violation 6 (failure to implement BMPs for construction materials). Costs associated with compliance actions for this violation are minimal and considered negligible for this analysis.

Violation 7 (failure to have a spill response plan, spill response kit, and conduct spill response training). It is assumed that the cost to prepare a spill response plan is included with the SWPPP costs, and the cost to prepare spill response training is included in SWPPP training costs. The delayed cost of the spill kit was provided by the

Discharger in its October 1, 2021 letter to the Lahontan Water Board. Using the BEN model, the benefit of non-compliance for this violation is estimated to be $48.

Violation 8 (failure to implement BMPs for vehicle storage and maintenance). Costs associated with compliance actions for this violation are minimal and considered negligible for this analysis.

Violations 9 and 10 (failure to apply effective erosion and sediment control). Compliance actions associated with these violations include slope stabilization, perimeter control maintenance around the site, perimeter control maintenance around stockpiles and drain inlets, and street sweeping. The Discharger ultimately complied with the requirement to implement slope stabilization, resulting in no economic benefit. For sediment control, the Discharger avoided the cost of maintaining perimeter control and performing street sweeping effectively to prevent track out, resulting in avoided costs and an economic benefit of $7,543 for maintenance on perimeter control around the site, $141 for maintenance on perimeter control around stockpiles and drain inlets, and $549 for street sweeping.

Violation 11a (failure to submit the 2018-2019 Annual Report). The cost to produce an Annual Report is $1,160, as found in the April 29, 2021 Hydro Restoration Scope of Work. Using the BEN model, the benefit of non-compliance for this avoided cost is $879.

Violation 11b (failure to submit the 2019-2020 Annual Report). The cost to produce an Annual Report is $1,160, as found in the April 29, 2021 Hydro Restoration Scope of Work. Using the BEN model, the benefit of non-compliance for this avoided cost is $838.

For calculation purposes, the liability payment date is assumed to be June 30, 2023. Changes to this date will affect the economic benefit calculation. Based on information provided by the Discharger, in addition to standard accounting assumptions, the BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above. The economic benefit is approximately $65,069.

Step 8. Other Factors as Justice May Require

The Enforcement Policy states that if the Water Board believes that the amount determined using the above factors is inappropriate, then the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this adjustment. The Lahontan Water Board Prosecution Team asserts that the base liability for Violations 2, 3, 4, 5, and 11 have resulted in a liability

disproportionate to the nature of the violations, and disproportionate to the base liability calculated for other violations within this administrative civil liability methodology.

Violation 2 (failure to employ a QSP to oversee implementation of best management practices at the Site). The Prosecution Team asserts that Violation 2 is more egregious than Violation 1 (the failure to prepare a SWPPP for vertical construction) for at least the following reasons:

(a) After the Lahontan Water Board's inspection on April 29, 2021, the Discharger immediately entered a new contract with a QSP. Even though the SWPPP was not completed for two more months, the QSP influenced and encouraged the Discharger to implement standard BMPs prior to completion of the SWPPP. If the Discharger had employed a QSP from at least July 1, 2020, then the Prosecution Team believes that BMPs would have been implemented and maintained even in the absence of a SWPPP, resulting in a lower potential for water quality impacts.

(b) The Discharger realized a monetary savings every day it did not employ a QSP, both in the cost of paying for the QSP and in not implementing and maintaining appropriate BMPs.

Based on the above, the Prosecution Team asserts that the liability for Violation 2 should be higher than for Violation 1. However, use of the Enforcement Policy methodology results in a liability that is almost ten times higher for Violation 2, which the Prosecution Team considers excessive. The Prosecution Team is using its discretion to adjust the base liability of Violation 2 to a comparable amount as if days were compressed using the Enforcement Policy procedure. Therefore, the 314 days of violation are compressed to 44 days, resulting in a liability of $314,600. This liability is a reasonable amount higher than the liability for Violation 1.

Violation 3 (failure to perform weekly and quarterly inspections). This violation does not meet the Enforcement Policy's criteria for compressing days, resulting in 45 days of violation and a base liability of $321,750. The Prosecution Team asserts that this liability is inappropriately large. The Prosecution Team is using its discretion to adjust the base liability of Violation 3 to a comparable amount as if days were compressed using the Enforcement Policy procedure. Therefore, the 45 days of violation are compressed to 33 days, resulting in a liability of $235,950.

Violation 5 (failure to complete pre-storm inspections, storm monitoring, and post-storm inspections). This violation does not meet the Enforcement Policy's criteria for compressing days, resulting in 54 days of violation and a base liability of

$386,100. The Prosecution Team asserts that this liability is inappropriately large and should be less than the liability for Violation 3 because (a) if the Discharger had ensured a QSP was engaged they would have likely made some of the inspections, and (b) some of the weekly inspections would have also counted as storm inspections. Therefore, the Prosecution Team is using its discretion to adjust the base liability of Violation 5 to approximately one-third that of Violation 3, with a resulting liability of $77,802.

Violation 11 (failure to submit two Annual Reports). This violation met the Enforcement Policy's criteria to compress the 731 days of violation, resulting in 92 days of violation and a base liability of $657,800. However, the Prosecution Team asserts that this liability is inappropriately large in comparison with the other violations and with the type of violation itself. Therefore, the Prosecution Team is using its discretion to allege only two days of violation, and to use the two days with the Enforcement Policy factors derived in the Violation 11 discussion (i.e., a moderate Harm, a major Deviation, and a Culpability of 1.3). This results in a liability of $14,300.

The Enforcement Policy also provides under "other factors as justice may require" that the cost of investigation and enforcement should be added to the liability amount. From April 29, 2021 through December 15, 2021, an Engineering Geologist with the Lahontan Water Board invested 40 hours, and an Environmental Program Manager, Retired Annuitant, with the State Water Board Office of Enforcement invested 130 hours, to investigate and develop enforcement documents. Following the Enforcement Policy guidance, and based on the staff's position and overhead, these hours were converted into a staff cost of $24,988. The staff costs do not include the costs accrued by Lahontan Water Board management or by Water Board attorneys. The Prosecution Team finds that it is appropriate to increase the Total Base Liability amount by $24,988 in consideration of these investigation and enforcement costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate deterrent against future violations.

The Prosecution Team has elected to reduce the liability by 11.3% ($211,755) for uncertainty inherent in an administrative enforcement proceeding and potential litigation.

Step 9. Maximum and Minimum Liability Amounts

Statutory Maximum: The maximum liability is found in Water Code section 13385(c) and is $10,000 per day per violation. The maximum liability for each violation is shown at the end of each violation description; the combined total maximum liability for all 11 violations is $24,720,000.

Statutory Minimum: Water Code section 13385(e) requires that, at a minimum, the economic benefit derived from the violations be recovered. The Enforcement Policy states that the Water Board should strive to impose civil liabilities 10 percent greater than the economic benefit to the violator. The economic benefit derived from the violations addressed in this matter is $65,069. Adding 10 percent to the statutory minimum brings the minimum liability for these violations to $71,576.

Step 10. Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amount is within the statutory minimum and statutory maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed Administrative Civil Liability is **$1,650,000.**

ATTACHMENT B

ECONOMIC BENEFIT ANALYSIS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2023-0008

Economic Benefit Analysis

Palisades Development at Squaw

Compliance Action	One-Time Non-Depreciable Expenditure				Annual Cost			Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Amount	Basis	Date					
Violation 1 - Preparing and Implmenting SWPPP	$ 8,827	ECI	4/29/2021	Y				5/15/2018	7/29/2021	5/31/2022	7.30%	925
Violation 2 - QSP Project Management and BMP Implementation					$ 30,415	ECI	4/29/2021	7/31/2018	5/1/2021	5/31/2022	7.30%	59,230
Violation 3 - Weekly Inspections					$ 13,000	ECI	4/29/2021	7/31/2018	5/10/2021	5/31/2022	7.30%	25,526
Violation 4 - REAPs and Weather Tracking					$ 24,483	ECI	4/29/2021	7/31/2018	5/10/2021	5/31/2022	7.30%	48,074
Violation 5 - Pre-storm, Storm Monitoring, and Post-storm Inspections					$ 20,250	ECI	4/29/2021	7/31/2018	5/10/2021	5/31/2022	7.30%	39,762
Violation 6a - Site Perimeter Control Maintenance					$ 22,136	CCI	1/1/2019	4/29/2021	10/22/2021	5/31/2022	6.60%	7,247
Violation 6b - Stockpile/Drain Inlet Perimeter Control Maintenance					$ 412	CCI	1/1/2019	4/29/2021	11/23/2021	5/31/2022	6.60%	159
Violation 6c - Road Sweeping	$ 9,100	CCI	1/1/2019	N				5/11/2021		5/31/2022	6.60%	6,208
Violation 6d - Slope Stabilization	$ 407	CCI	1/1/2019	Y				4/29/2021	8/13/2021	5/31/2022	6.60%	3
Violation 7 - Spill Response	$ 483	GDP	5/1/2021	Y				7/31/2018	5/18/2021	5/31/2022	7.30%	53
Violation 8a - 2018/2019 Annual Report	$ 1,160	ECI	4/29/2021	N				9/1/2019		5/31/2022	7.00%	823
Violation 8b - 2019/2020 Annual Report	$ 1,160	ECI	4/29/2021	N				9/1/2020		5/31/2022	6.60%	782

Income Tax Schedule: For-Profit (Other than C-Corporation)

Total Benefit: $ 188,794

USEPA BEN Model Version: Version 2021.0.0 (April 2021)

Analyst: Robo Okumo and German Myers

Date/Time of Analysis: 1/21/22 12:45

Assumptions: **See Appendix A**

Attachment B

Palisades Development at Squaw – R6

Breakdown and Assumptions

Analysis by: Robo Okumo & German Myers

The following provides the breakdown and assumptions for the economic benefit analysis of Palisades Development at Squaw (Site or Discharger). The economic benefit elements are based on the requirements of the Construction General Permit (CGP), information provided by the Lahontan Regional Water Quality Control Board (Regional Board), and documents submitted to the Storm Water Multiple Application & Report Tracking System (SMARTS), including the Site's SWPPP and documents submitted by the Discharger and qualified SWPPP practitioner (QSP), and Regional Board inspection reports.

General Assumptions:

- Penalty payment date: May 31, 2022
- Palisades Development at Squaw operates as a for-profit entity

For the purpose of this economic benefit analysis, eight violations are assessed and are summarized below.

Violation 1: Failure to prepare and implement a SWPPP

- Costs associated with the violation are considered delayed costs
- Employment cost index (ECI) and one-time expenditures are used as the cost basis
- Non-compliance date: May 15, 2018 (when vertical construction began)
- Compliance date: July 29, 2021 (when documents were submitted)
- The total cost to prepare and implement a SWPPP is $8,826.50[1]

Violation 2: Failure to employ a QSP for project management and implementation of BMPs

- Costs associated with the violation are considered avoided
- Employment cost index (ECI) and annual costs are used as the cost basis
- Non-compliance date: July 31, 2018 (last documented date that a QSP worked at site prior to May 2021)
- Compliance date: May 1, 2021 (when the QSP was contracted)
- The cost of a QSP is $83.33/day[2]
- The annual cost of having a QSP is $30,415.45
    - $83.33/day * 365 days/year = $30,415.45

Violation 3: Failure to perform weekly and quarterly non-stormwater inspections

- Costs associated with the violation are considered avoided
- Quarterly non-stormwater inspections are assumed to be performed during the weekly inspections
- Employment cost index (ECI) and annual costs are used as the cost basis

[1] Source: Invoice from Auerbach Engineering Corp on September 29, 2021

- Non-compliance date: July 31, 2018 (last documented date that a QSP worked at site prior to May 2021)
- Compliance date: May 10, 2021 (when the QSP begun the inspections)
- The cost of each inspection is $250[2]
- The annual cost of weekly inspections is $13,000
    - $250/inspection * 52 weeks/year = $13,000

Violation 4: Failure to prepare Rain Event Action Plans (REAPs) and perform weather tracking and reporting

- Costs associated with the violation are considered avoided
- Employment cost index (ECI) and annual costs are used as the cost basis
- Non-compliance date: July 31, 2018 (last documented date that a QSP worked at site prior to May 2021)
- Compliance date: May 10, 2021 (when the QSP begun the inspections)
- On average, there are 25 storms each year that require a REAP (based on analysis done by the Regional Board)
- The cost of preparing a REAP is $725/REAP[3]
- The cost of weather monitoring and reporting is $17.42/day[3]
- The annual cost of preparing REAPs and weather tracking and reporting is $24,483.30
    - ($725/REAP * 25 REAPs/year) + (365 days/year * $17.42/day) = $24,483.30

Violation 5: Failure to complete pre-storm inspections, storm monitoring, and post-storm inspections

- Costs associated with the violation are considered avoided
- Employment cost index (ECI) and annual costs are used as the cost basis
- Non-compliance date: July 31, 2018 (last documented date that a QSP worked at site prior to May 2021)
- Compliance date: May 10, 2021 (when the QSP begun the inspections)
- On average, there are 18 storms each year that require storm monitoring, as well as pre-storm and post-storm inspections (based on analysis done by the Regional Board)
- The cost of storm event monitoring is $1,125/event[3]
- The annual cost of storm event monitoring, as well as pre-storm and post-storm inspections is $20,250
    - $1,125/event * 18 events/year = $20,250

Violation 6a: Failure to maintain perimeter control BMPs around site

- Costs associated with the violation are considered avoided
- Construction cost index (CCI) and annual costs are used as the cost basis
- Non-compliance date: April 29, 2021 (based on photo evidence)
- Compliance date: October 22, 2021 (no further photo evidence of violation past this date)
- Assumption: Fibers rolls and silt fences are required around the site perimeter
- Assumption: Perimeter controls around the site have been installed at the appropriate time but were not properly maintained during the non-compliance period

[2] Source: April 29, 2021 Scope of Work from the QSP

- Assumption: Maintenance costs are 10% of installation costs per month
- The total linear feet (L.F.) around the site that required perimeter control is approximately 6,211 L.F (based on 90% Design Construction Plan by Auerbach Engineering Corp)
    - 3,940 L.F. for the eastern side
    - 2,271 L.F. for the western side
- The installation costs for fiber rolls and silt fences are $1.04/L.F.[3] and $1.93/L.F.[4], respectively
- The total annual cost of perimeter control BMP maintenance around the site is $22,136
    - 6,211 L.F. * ($1.04/L.F. of fiber roll + $1.93/L.F. of silt fence) * 10% * 12 months/year = $22,136

Violation 6b: Failure to maintain perimeter control BMPs around stockpile and drain inlets

- Costs associated with the violation are considered avoided
- Construction Cost index (CCI) and annual costs are used as the cost basis
- Non-compliance date: April 29, 2021 (based on photo evidence)
- Compliance date: November 23, 2021 (no further photo evidence of violation past this date)
- Assumption: The discharger failed to maintain perimeter BMPs around stockpiles and drain inlets during the non-compliance period
- Assumption: Maintenance costs are 10% of installation costs per month
- Assumption: Stockpiles and drain inlets require only fiber rolls around their respective perimeters
- The total L.F. around the stockpiles and drain inlets is approximately 330 L.F. (based on inspection photos)
- The installation cost for fiber rolls is $1.04/L.F.[3]
- The total annual cost of perimeter control BMP maintenance around the stockpiles and drain inlets is $34.28.
    - 330 L.F. * ($1.04/L.F. of fiber roll) *10% * 12 months/year = $411.84

Violation 6c: Failure to sweep site sufficiently

- Costs associated with the violation are considered avoided
- Construction cost index (CCI) and one-time expenditures are used as the cost basis
- Non-compliance date: May 11, 2021 (based on photo evidence)
- Compliance date: December 3, 2021 (no further photo evidence of violation past this date)
- Assumption: Discharger required a road sweeper instead of sweeping by hand or by leaf blower
- The cost of renting a road sweeper daily is $650/day[5]
- There are 14 documented days of ineffective sweeping
    - The total avoided cost of sweeping is $9,100
    - 14 days * $650/day = $9,100

Violation 6d: Failure to apply effective slope stabilization

[3] Source: CASQA BMP Handbook 2019
[4] Source: RSMeans 2019
[5] Source: CASQA BMP Handbook 2019

- Costs associated with the violation are considered delayed
- Construction cost index (CCI) and one-time expenditures are used as the cost basis
- Non-compliance date: April 29, 2021 (based on photo evidence)
- Compliance date: August 13, 2021 (no further photo evidence of violation past this date)
- Assumption: Instances of delayed temporary stabilization required geotextile mats
- Assumption: Instances of delayed final stabilization required geotextile mats and hydroseeding
- The costs of geotextile applications and hydroseeding per square foot (S.F.) are $0.18/S.F.[6] and $0.06/S.F.[6], respectively
- There were 445 S.F. and 1,360 S.F. of land needed for temporary and final stabilization, respectively (based on inspection photos)
- The total cost of stabilization is $406.50
    - (445 SF * $0.18/S.F.) + (1,360 S.F. * ($0.18/S.F. + $0.06/S.F.)) = $406.50

Violation 7: Failure to prepare and implement a spill response plan

- Cost associated with the violation are considered delayed
- Gross domestic product GDP) and one-time expenditures are used as the cost basis
- Non-compliance date: July 31, 2018 (last documented date that a QSP worked at site prior to May 2021)
- Compliance date: May 18, 2021 (date spill kit arrived onsite)
- The cost to prepare a spill response plan is assumed to be included in the SWPPP costs
- The cost of the spill kit is $482.62[6]
- The cost of spill response training is assumed to be included in the CGP training costs

Violation 8a: Failure to submit the 2018/2019 annual report

- Cost associated with the violation are considered avoided
- Employment cost index (ECI) and one-time expenditures are used as the cost basis
- Non-compliance date: September 1, 2019 (2018/2019 annual report)
- There is no compliance date associated with the violation
- The cost to produce an annual report is $1,160[7]

Violation 8b: Failure to submit the 2019/2020 annual report

- Cost associated with the violation are considered avoided
- Employment cost index (ECI) and one-time expenditures are used as the cost basis
- Non-compliance date: September 1, 2020 (2019/2020 annual report)
- There is no compliance date associated with the violation
- The cost to produce an annual report is $1,160[8]

[6] Source: Invoiced submitted by the Discharger
[7] Source: April 29, 2021 Scope of Work from the QSP
[8] Source: April 29, 2021 Scope of Work from the QSP