

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:)	
)	Order No. R1-2018-0009
California Department of)	Administrative Civil Liability
Transportation)	
)	Settlement Agreement and Stipulation for
Willits Bypass)	Entry of Order; Order
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the North Coast Regional Water Quality Control Board Prosecution Staff (“Prosecution Staff”) and the California Department of Transportation (“Caltrans” or “Settling Respondent”) (collectively “Parties”) and is presented to the North Coast Regional Water Quality Control Board (“Regional Water Board”), or its delegee, for adoption as an order by settlement, pursuant to California Government Code section 11415.60.

Section II: Recitals

1. Caltrans constructed a four-lane freeway segment of U.S. 101 in Mendocino County, near the City of Willits. The proposed freeway will bypass the City of Willits with several bridges spanning across creeks (Haehl, Baechtel, Broaduss, and Mill/Willits Creek), a floodway viaduct spanning Little Lake Valley, and interchanges at both ends of the bypass and will span approximately 5.5 miles in length. (“Project”)
2. On March 1, 2010, Settling Respondent submitted an application to the Regional Water Board requesting federal Clean Water Act, section 401, water quality certification to construct the bypass. The Regional Water Board issued a 401 Certification for the project on August 6, 2010. In November 30, 2012 the Settling Respondent submitted a Notice of Intent seeking coverage under the General Permit to Discharge Storm Water Associated with Construction Activity (Water Quality Order No. 2009-0009-DWQ) (“Construction General Permit” or “CGP”) and Caltrans shortly thereafter received coverage under the CGP.
3. The Project is within the Eel River watershed which is listed on the Clean Water Act section 303(d) list as impaired for sediment and temperature. In 2004, the U.S. Environmental Protection Agency established sediment TMDLs for the Upper Main Eel River and tributaries. Roads are a significant source of sediment in the watershed. In

addition, activities that impact the riparian zone and reduce riparian vegetation are identified as sources contributing to increases in stream temperatures.

4. The Project is subject to the requirements set forth in federal Clean Water Act sections 301 and 401 (33 U.S.C. §§ 1311, 1341), California Water Code section 13376, and waste discharge prohibitions specified by the Water Quality Control Plan for the North Coast Region ("Basin Plan"). Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits the discharge of any pollutant by any person except in compliance with the law.

5. The Settling Respondent is alleged to have violated provisions of the 401 Certification and the Construction General Permit. Specifically, Violation #1 alleges the unauthorized discharge of storm water runoff from the Project during three storm events occurring in 2014: February 5 through 10, February 12 to 19, and March 25 to April 4. In total, Caltrans estimated approximately 3,443,280 million gallons of project area storm water entered Haehl Creek between water quality monitoring stations WQ-01 and WQ-03. Violation #2 alleges that the sediment basins were not designed in accordance with the CASQA Construction BMP Guidance Handbook pursuant to the 401 Certification and Caltrans did not submit a proposal for a non-standard BMP to the Regional Water Board prior to implementation pursuant to the CGP. A total of 37 days was calculated for the time period of this violation, starting from November 1, 2013 through December 7, 2013. Violation #3 alleges that Caltrans inadequately employed erosion control BMPs prior to the storm events occurring in 2014 from February 5 through 10, February 12 to 19, and March 25 to April 4. The Regional Water Board is authorized to impose administrative civil liability for these violations pursuant to Water Code section 13385, subdivisions (a)(2) and (a)(4).

6. The liability amount was determined using a factors analysis consistent with Water Code section 13385 and the State Water Resources Control Board Water Quality Enforcement Policy (May 2010) ("Enforcement Policy"). The Prosecution Staff considered the methodology set forth in the Enforcement Policy and calculated a liability of \$2,383,075 as detailed in Attachment A. Attachment A is attached hereto and incorporated by reference as though fully set forth herein.

7. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation by presenting this Settlement Agreement to the North Coast Water Board, or its delegee, for adoption as an Order by settlement pursuant to Government Code section 11415.60.

8. To resolve by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$1,999,999 in liability. This liability amount is less than the liability amount of \$2,383,075 calculated by Prosecution Staff using the Enforcement Policy as shown in Attachment A. The imposition of a lesser liability amount takes into consideration settlement considerations specified in the Enforcement Policy and the specific factors required to be considered in Water Code section 13385, subdivision (e). The liability amount agreed to by the Parties is justified considering the risks associated

with proceeding to a hearing before the Regional Board which is consistent with the range of settlement considerations specified in the Enforcement Policy that may reduce the calculated liability. The Prosecution Staff believes the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objections. No further action is warranted concerning the alleged violations, except as provided in this Settlement Agreement, and this Settlement Agreement is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to entry of this settlement as set forth below, and recommend that the North Coast Regional Board issue an order to effectuate the settlement.

9. Administrative Civil Liability

Caltrans hereby agrees to the imposition of administrative civil liability totaling \$1,999,999 as set forth in Paragraph 8 of Section II herein. Caltrans agrees that \$45,000.00 of this administrative civil liability shall be suspended pending completion of a SEP as set forth in Paragraphs 9 and 11 of Section III herein.

9.1. Paid Liability

Within thirty (30) days of the effective date of the Order, the Settling Respondent agrees to remit, by check, \$1,954,999.00 payable to the *State Water Resources Control Board Cleanup and Abatement Account (CAA)*, and shall indicate on the check the number of this Stipulation and Order. The Settling Respondent shall send the original signed check to Shin-Roei Lee, North Coast Regional Water Quality Control Board, 5550 North Skylane Blvd., Suite A, Santa Rosa, California, 95403 with a copy sent to: Matthew Buffleben, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, California 95812.

9.2. Supplemental Environmental Project

Against the total liability of \$1,999,999, Caltrans shall be credited \$45,000.00 ("SEP Amount") for the costs incurred for a Supplemental Environmental Project described in this section and Attachment B (the "SEP").

9.2.1. Description of the SEP

A full project description is provided in Attachment B.

9.2.2. SEP Definitions

- a. "Designated North Coast Regional Board Representative" – the representative from the North Coast Regional Board responsible for oversight of the SEP. That individual is:

Brendan Thompson
Environmental Scientist
Regional Water Quality Control Board
North Coast Region
5550 North Skylane Blvd., Suite A
Santa Rosa, California, 95403
Telephone: (707) 576-2699
Email: Brendan.Thompson@waterboards.ca.gov

- b. "SEP Completion Date" – The date in which the SEP will be completed in its entirety. The SEP Completion Date is 12 months (365 days) from the effective date of this Stipulation. Upon a showing of good cause and upon written agreement of the Parties, the Regional Water Board, or its delegee, may extend the SEP Completion Date.
- c. "Implementing Party" – an independent third party(ies) with whom the Settling Respondent has contracted or otherwise engaged to implement the SEP. The San Francisco Estuary Institute ("SFEI") will serve as the Implementing Party for the SEP.

9.2.3. Settling Respondent Agrees to Implement the SEP

Settling Respondent understands that its promise to implement the SEP outlined in this paragraph and Attachment B is a material condition of this Stipulation. Settling Respondent represents the following: (1) that the Settling Respondent (or the Implementing Party) shall utilize the funds provided to it to implement the SEP in accordance with the Project Tasks and Budget set forth in Attachment B; (2) Settling Respondent (or the Implementing Party) shall provide written reports certified under penalty of perjury to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) the Settling Respondent will guarantee implementation of the SEP identified in Attachment B by remaining liable for the SEP Amount until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Settling Respondent agrees that the Regional Water Board has the right to require an independent audit, to be paid for by Settling Respondent, of the funds expended by Settling Respondent to implement the SEP.

9.2.4. Publicity Associated with SEP

Whenever the Settling Respondent publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being, or has been,

undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Settling Respondent.

9.2.5. Monthly Progress Reports

Settling Respondent and/or the Implementing Party shall provide monthly progress reports to the Regional Water Board contact in Paragraph 12 commencing 30 days after the effective date of this Stipulation and continuing through the submittal of the certified statement of SEP completion. If no activity occurred during a particular month, a monthly report so stating shall be submitted. Monthly reports are due on the 15th day of the following month.

9.2.6. Certified Statement of SEP Completion

Within 30 days of the SEP Completion Date, the Settling Respondent shall submit a certified statement of SEP completion ("Certification of Completion"). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under California Law to the Designated Regional Water Board contact in Paragraph 12. The Certification of Completion shall include the following:

9.2.6.1. Certification of Expenditures

The Settling Respondent shall submit a certified statement documenting the expenditures by Settling Respondent and the Implementing Party during the completion period for the SEP. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. Settling Respondent shall provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify Settling Respondent's SEP expenditures.

9.2.6.2. Certification of Performance of Work

The Settling Respondent shall provide certification that the SEP has been completed in accordance with the terms of this Stipulation including Attachment B. Documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and the costs incurred by the Settling Respondent.

9.2.7. Third Party Audit

If the Regional Water Board staff obtains information that causes it to reasonably believe that Settling Respondent or Implementing Party has not expended money

in the amounts claimed by Settling Respondent or Implementing Party, or has not adequately completed any of the work in the SEP, Regional Water Board staff may require, and Settling Respondent shall submit, at its sole cost, a report prepared by an independent third party acceptable to Regional Water Board staff providing such party's professional opinion that Settling Respondent and/or the Implementing Party has expended money in the amounts claimed by Settling Respondent. In the event of such an audit, Settling Respondent and the Implementing Party agree that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to Regional Water Board staff within three months of the completion of Settling Respondent's SEP obligations.

9.2.8. Regional Water Board Acceptance of Completed SEP

Upon the Settling Respondent's satisfaction of its obligations under this Stipulation and Order including the completion of the SEP and any audits, Regional Water Board staff will issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Respondent and/or the Implementing Party under this Stipulated Order.

9.2.9. Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP

In the event that the Settling Respondent is not able to demonstrate to the reasonable satisfaction of Regional Water Board staff that it and/or the implementing party has spent the entire SEP Amount for the completed SEP, the Settling Respondent shall pay the difference between the SEP Amount and the amount the Settling Respondent can demonstrate was actually spent on the completed SEP ("the Difference"), as an administrative civil liability. Regional Water Board staff shall issue a "Notice of Violation" that will required the Difference to be paid to the State Water Pollution Cleanup and Abatement Account within 30 days pursuant to the procedures identified in Paragraph 9.1 of this Stipulation. Payment of the Difference will satisfy Settling Respondent's obligation to implement the SEP. Upon confirmation of payment, the Regional Water Board will issue a Satisfaction of Order.

9.2. Failure to Complete the SEP

All four Project Tasks identified in Attachment B shall be completed in order for the SEP to be deemed fully implemented. If the SEP is not fully implemented by the SEP Completion Date, then Settling Respondent shall be liable to pay the entire SEP Amount. Regional Water Board staff shall issue a "Notice of Violation" that will require the SEP Amount to be paid to the State Water Pollution Cleanup and Abatement Account within 30 days pursuant to the procedures identified in Paragraph 9.1 of this Stipulation. Payment of the SEP Amount will satisfy Settling

Respondent's obligation to implement the SEP. Upon confirmation of payment, Regional Water Board staff will issue a Satisfaction of Order.

10. Regional Water Board is Not Liable

Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent or the Implementing Party's directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

11. Compliance with Applicable Laws: The Settling Respondent 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 continuing violations of the type alleged herein may subject Caltrans to further enforcement, including additional administrative civil liability.

12. Party Contacts for Communications related to this Stipulated Order:

For the North Coast Regional Board:

Brendan Thompson
Regional Water Quality Control Board
North Coast Region
5550 North Skylane Blvd., Suite A
Santa Rosa, California, 95403

For the Settling Respondent:

Matthew K. Brady
District Director
Caltrans District 1
1656 Union Street
Eureka, CA 95501

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

14. Matters Addressed by Stipulation: Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims against the Settling Respondent and its agents, contractors, officers and employees, for violations, or causes of action alleged herein

based on the specific facts alleged in this Stipulation and Order that are in any way connected with or resulting from the Project ("Covered Matters"). The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability specified in Section III, Paragraph 9.1, and the Settling Respondent's full satisfaction of the obligations described in Section III, Paragraph 9.2.

15. **No Admission of Liability:** This is a settlement of a disputed claim. In settling the Covered Matters, the Settling Respondent does not admit to any of the findings or allegations contained herein or in Attachment A or that it has been or is in violation of the Water Code or any other federal, state or local law or ordinance. However, the Settling Respondent recognizes that this Stipulated Order may be used as evidence of a prior enforcement action to show a history of violations pursuant to the considerations provided in Water Code section 13327 or section 13385, subdivision (e).

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

17. **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 and Order by the public is lawful and adequate. In the event procedural objections are raised 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 as necessary or advisable under the circumstances.

18. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the Regional Water Board, or its delegee, to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or of the Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and Order.

19. **Effect of Order:** Except as expressly provided in this Stipulation and Order, nothing in this Stipulation is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

20. **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 Settling Respondent is represented by counsel in this matter.

21. **Modification:** This Stipulation and Order shall not be modified by any 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 delegee.

22. **If Order Does Not Take Effect:** In the event that an order does not take effect because it is not approved by the Regional Water Board, or its delegee, 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 violations, 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 Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on 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.

2. **Waiver of Hearing:** The Settling Respondent 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.

3. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order 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.

4. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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 covered by this Stipulation and Order.

5. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling

Respondent 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 Settling Respondent of its obligation to obtain any final written approval required by this Stipulation and Order.

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

7. Effective Date: The obligations under this Stipulation are effective and binding on the Parties only upon the entry of an order by the Regional Water Board which incorporates the terms of this Stipulation.

8. Severability: This Stipulation is severable; should any provision be found invalid the remainder shall remain in full force and effect.

9. Counterpart Signatures: This Stipulation 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.

IT IS SO STIPULATED.


California Regional Water Quality Control Board Prosecution Staff
North Coast Region


Digitally signed by Joshua Curtis
Date: 2018.01.26 11:33:23
Water Board

By: _____
Joshua Curtis, Assistant Executive Officer

Date: January 26, 2018

California Department of Transportation

By: 
For Matthew K. Brady, District Director

Date: 1-8-2018


Order of the Regional Water Board

10. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the North Coast Regional Water Board.

11. In accepting the foregoing Settlement Agreement and Stipulation for Entry of Order, 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 Regional Water Board staff in investigating the allegations contained herein.

12. 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.

Pursuant to Water Code sections 13323 and 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California North Coast Regional Water Quality Control Board.



Matthias St. John
Executive Officer

Date: March 20, 2018

Attachments:

- A – Administrative Civil Liability Methodology for Discharge Violation
- B – Supplemental Environmental Project Proposal

ATTACHMENT A

Willits Bypass

This document provides details to support recommendations for enforcement in response to construction storm water discharges that occurred at the Haehl Creek Interchange of the Willits bypass construction site, operated and owned by the California Department of Transportation (Caltrans).

Application of Water Board's Enforcement Policy¹

On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code sections 13385(e) and 13327, which requires the Regional Water Board to consider several factors when determining the amount of civil liability to impose, including "...the nature, circumstances, 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."

The administrative civil liability has been developed based on the methodology in the Enforcement Policy:

Violation #1: Unauthorized Discharges in Violation of Condition 33 of the 401 Certification and Discharge Prohibition III.B. of the Construction General Permit (CGP)

Event Description:

This violation covers unauthorized storm water discharges during three storm events occurring in 2014: February 5 through 10, February 12 to 19, and March 25 to April 4. The total reported precipitation was estimated at 6.09, 1.21, and 5.98 inches for each respective storm event. In response to a Section 13267 Investigative Order, Caltrans provided discharge estimates from the project area for each storm. In total, Caltrans estimated that a maximum of 3,443,280 gallons of project area storm water entered Haehl Creek. The volume considered for the calculation of this penalty for all three storm events is 3,439,000 gallons. The majority of this volume was associated with the first and third storm, approximately 2.127 million gallons (MG) and 1.168 MG, respectively.

Alleged Violation:

The Caltrans Storm Water Permit was re-issued (Order No. 2012-0011-DWQ) and became effective on July 1, 2013. The re-issued Caltrans Storm Water Permit requires Caltrans to file for separate coverage for each construction project under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, currently Order 2009-0009-DWQ amended by 2010-0014-DWQ and 2012-0006-DWQ (NPDES No. CAS000002) (CGP).

The CGP requires dischargers to assess the risk level of a site based on both sediment transport and receiving water risk. The Project was subsequently determined to be Risk Level 3 and subject to the requirements contained in Attachment E, Risk Level 3 Requirements of Order No. 2009-0009-DWQ amended by the CGP.

¹Water Board's Adopted Enforcement Policy available at: http://www.swrcb.ca.gov/water_issues/programs/enforcement/policy.shtml

- Discharge Prohibition III.B. of the CGP prohibits all discharges except for the storm water and non-storm water discharges specifically authorized by the permit.
- The Narrative Effluent Limits of the CGP require that dischargers minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve Best Available Technology Economically Achievable (BAT) for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.

VIOLATION 1 (STEP 1): POTENTIAL FOR HARM

FACTOR 1: HARM OR POTENTIAL HARM TO BENEFICIAL USES

- **SCORE = 4 [ABOVE MODERATE] (Discharge Event 1), 2 [BELOW MODERATE] (Discharge Event 2), 3 [MODERATE] (Discharge Event 3)**

The existing and potential beneficial uses of Haehl Creek (tributary to the Upper Main Eel River Hydrologic Area) include municipal, agricultural, industrial, groundwater recharge, navigation, hydropower generation, water contact recreation, non-contact water recreation, commercial and sport fishing, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare, threatened, or endangered species habitat, migration of aquatic organisms, spawning, reproduction, and/or early development, and aquaculture.

Storm water runoff can pick up debris, chemicals, sediment and other pollutants generated from construction related activities that may enter Haehl Creek. Without sufficient storm water controls to reduce erosion, trap sediment, and maximize infiltration, storm water runoff is generally discharged untreated into water bodies used for swimming, fishing, etc. Suspended sediment from storm water discharges can impair aquatic life through deposition of fines into spawning, rearing, and interstitial niche habitats in the stream's substrate. The filling in of interstitial niches reduces habitat availability; reduced habitat availability in turn affects habitat complexity and biodiversity of species, which affects available food sources in terms of available grazing, shredding, and prey species types. Sediment deposition may also reduce the storage capacity of waterways, causing flooding and stream bank scouring. In addition, excessive suspended materials can clog fish gills by inhibiting the exchange of oxygen and carbon dioxide, and reduce resistance to disease. Furthermore, sediment from storm water runoff causes elevated turbidity levels.

Turbidity is the clouding of water, which reduces the amount of light available in the water column. Discharges of sediment-laden storm water runoff from construction activities caused and contributed to elevated turbidity measurements in Haehl Creek observed at monitoring station WQ-03. For the three rain events occurring February 5 through 10, February 12 to 19, and March 25 to April 4, 2014 turbidity at WQ-03 averaged approximately 284, 104, and 111 NTU, respectively with peak measurements of 1,322, 385, and 850 NTU. The greatest turbidity violations (e.g. turbidity in excess of 50 percent above background) were observed on the days of the most severe precipitation and/or the days following the most severe precipitation. The first and third storm events resulted in the most egregious turbidity violations, with exceedances of greater than 100 percent above naturally occurring background levels of turbidity. The intensity and subsequent turbidity impacts of the first storm event was greater than the third storm event.

Elevated turbidity levels can create a substantial threat and/or potential threat to beneficial uses such as non-contact recreational activities including aesthetic enjoyment of the water bodies in conjunction with hiking, fishing, etc., while likely causing temporary, if not permanent, impacts to aquatic life. Discharges of sediment can pick up pollutants from the project site and can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clogging fish gills, smothering aquatic habitat and spawning areas, and impeding water contact recreation. The reduction in light caused by turbidity can affect food supply on all trophic levels of the food web, including macro-invertebrates. Turbidity can decrease the ability of organisms to avoid predation and to find cover. All of the above, in turn, affect overall physiological health.

In February 2014, the California Department of Fish and Wildlife documented adult steelhead trout and Southern Oregon/Northern California coho salmon in the lower reaches of Haehl Creek and two coho redds in upper Haehl Creek. Steelhead trout are federally-threatened species and the Southern Oregon/Northern California coho salmon are both state and federally-threatened species. The runoff of the sediment-laden water had the potential to impact habitat and health for steelhead trout and coho salmon. In consideration of these factors, a factor of 4, 2, and 3 for the three storm events, respectively was assessed.

FACTOR 2: PHYSICAL, CHEMICAL, BIOLOGICAL OR THERMAL CHARACTERISTICS

- **SCORE = 2 [MODERATE THREAT]**

The discharge resulting from the storm events described above consisted of sediment-laden storm water. In addition, storm water contact with roadways and construction equipment potentially mobilized other contaminants such as petroleum hydrocarbons and heavy metals. Sediment-laden water is severely degraded water. As described in more detail in Factor 1, sediment-laden water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Based on the characteristics of the discharge and whether the discharge poses a concern regarding receptor protection, a score of 2 was assigned, as the sediment-laden storm water posed a moderate threat.

FACTOR 3: SUSCEPTIBILITY TO CLEANUP OR ABATEMENT

- **SCORE = 1 [<50% SUSCEPTIBLE TO CLEANUP OR ABATEMENT]**

A score of 1 is appropriate where less than 50% of the discharge is susceptible to cleanup or abatement. In the case of these discharges, sediment-laden storm water discharged from the project area and entered Haehl Creek. Because the discharge dispersed and likely dissipated in the watershed, cleanup or abatement of the sediment was not possible. A factor of 1 is appropriate where less than 50% of the discharge was susceptible to cleanup or abatement.

FINAL SCORE = Storm Event 1: 7 [4 + 2 + 1]. Storm Event 2: 5 [2 + 2 + 1]. Storm Event 3: 6 [3 + 2 + 1]

(STEP 2): ASSESSMENTS FOR DISCHARGE VIOLATIONS

VOLUME AND TOTAL NUMBER OF DAYS DETERMINATION

- Discharge Event 1: 2,127,000 GALLONS OVER 6 DAYS (2/5/2014 THROUGH 2/10/2014)
- Discharge Event 2: 147,000 GALLONS OVER 8 DAYS (2/12/14 THROUGH 2/19/14)
- Discharge Event 3: 1,168,000 GALLONS OVER 11 DAYS (3/25/14 THROUGH 4/4/14)

DEVIATION FROM REQUIREMENT

- **SCORE = MAJOR**

The deviation from requirements is scored as major because the prohibition of discharging waste to surface waters in Violation of Condition 33 of the 401 Certification and Discharge Prohibition III.B. of the CGP was completely undermined when sediment-laden storm water ran off the construction site and into Haehl Creek, resulting in elevated turbidity. Regional Board staff reviewed the best management practices (BMPs) in place and determined that the Discharger performed an inadequate level of site preparation and maintained inadequate erosion and sediment controls within the South Haehl Creek watershed prior to the onset of wet season 2013-2014.

VOLUME ASSESSMENT

- **SCORE = \$2.00 per gallon**

Pursuant to Water Code section 13385(c), the Regional Water Board may impose administrative civil liability pursuant to Article 2.5 (commencing with section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following; (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.

The Water Quality Enforcement Policy requires application of the per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. The Policy allows discretion to lower this factor for high volume discharges. The Policy recommends a maximum of \$2.00 per gallon factor be used for sewage spills and storm water. Where reducing the maximum per gallon factor results in an inappropriately small penalty, a higher amount, up to the maximum, may be used. The final volume estimate used for the penalty calculation (3.439 MG) is a high volume that resulted from three storm events, and therefore, the per gallon factor has been discounted to \$2 per gallon, which does not result in an inappropriately low penalty. This final volume estimate was derived from Caltrans' total estimate of 3,443,280 million gallons (MG), rounded down to the nearest thousand gallons for each storm (2.127, 0.147, and 1.168 MG respectively) and then subtracting a 1,000 gallons in accordance with 13385.

PER DAY ASSESSMENT

Discharge Event 1: \$10,000/DAY X 6 (2/5/14 THROUGH 2/10/14) = \$60,000

Discharge Event 2: \$10,000/DAY X 8 (2/12/14 THROUGH 2/19/14) = \$80,000

Discharge Event 3: \$10,000/DAY X 11 (3/25/14 THROUGH 4/4/14) = \$110,000

INITIAL LIABILITY AMOUNT = \$1,930,200

• **PER GALLON:**

○ 2,127,000 GALLONS OVER 6 DAYS (2/5 THROUGH 2/10): $\$2 \times (2,127,000 - 1,000) \times 0.31^*$
= \$1,318,120

○ 147,000 GALLONS OVER 8 DAYS (2/12 THROUGH 2/19): $\$2 \times (147,000 - 1,000) \times 0.15^*$
= \$43,800

○ 1,168,000 GALLONS OVER 11 DAYS (3/25/14 THROUGH 4/4/14): $\$2 \times (1,168,000 - 1,000) \times 0.22^*$ = \$513,480

- **PER DAY:** 6 x \$10,000 x 0.31* = \$18,600
8 x \$10,000 x 0.15* = \$12,000
11 x \$10,000 x 0.22* = \$24,200

* Per Gallon and Per Day Factor for discharges per the Enforcement Policy is determined by the Final Potential for Harm Score or

(STEP 4): ADJUSTMENT FACTORS

CULPABILITY

- **SCORE = 1.2**

A score of 1.2 is appropriate where the Discharger has a high degree of culpability. Regional Board staff repeatedly notified Caltrans of deficient erosion and sediment control practices through email and inspection reports prior to, and during the wet season 2013-2014. Following an inspection conducted by Regional Board staff on October 17, 2013, an e-mail from Regional Board staff to Caltrans noted that “the site requires significant drainage and design modifications as well as erosion and sediment control implementation before preparations for rain are complete.” In addition, Regional Board staff questioned whether the series of basins intended to intercept storm water on the south side of Haehl Creek “have been sized to capture and store storm water for expected follows from upstream areas.” Those basins were identified by Caltrans as sediment trap (ST) ST-1, ST-3, and ST-4. Staff requested documents from Caltrans regarding design and hydraulic analysis for these structures.

Following an inspection on November 4, 2013, Regional Board staff again observed incomplete slope stabilization, inadequate erosion and sediment controls, and the lack of energy dissipation in the sediment trap basins. For slope stabilization and erosion control, although rolled erosion control product was recommended for this area, Caltrans heavily relied on the application of Bonded Fiber Matrix (BFM), also known as Engineered Fiber Matrix, combined with hydroseed. The application of BFM occurred during the late fall and winter months when temperatures were below the manufacturer’s ideal conditions. Based on the monthly reports submitted by Caltrans, the hydroseed was ineffective and the BFM failures indicated ineffective curing and adhesion.

On December 5, 2013, Montgomery & Associates, Inc. (Montgomery) provided a hydraulic analysis report prepared by WRECO in response to the Regional Board’s request following the October inspection, which evaluated the temporary sediment basin system identified in the October and November 2013 inspections. The report indicated that the drainage system collected storm water runoff from up to 20.6 acres of watershed area. The approximate capacities of basins ST-1, ST-3, and ST-4 were calculated to be approximately 363, 1,391, and 2,916 cubic yards, respectively (Note: ST-4 capacity was reported as 1,259 cubic yards; however, based on the dimensions provided, the capacity was miscalculated by Montgomery).

The hydraulic analysis indicated that the basins could handle the expected flow rates from the site; however, the analysis did not determine the sediment trapping efficiency of the system. Using the data provided by WRECO and Montgomery, State Water Board staff determined that the basins were not designed per Caltrans or California Stormwater Quality Association (CASQA) standards. Caltrans guidance document for sediment traps, requires a minimum capacity of 100 cubic yards per acre of watershed to accommodate settling and sediment storage zones, and should not be used where the contributing watershed area exceeds five acres³. Only basin ST-4 met the capacity requirement; however, it exceeded the maximum area by a factor of four.

A reasonable discharger under similar circumstances would have thoroughly assessed site conditions to install more protective controls, measures, and management practices in advance of the 2014 rainy season. Had the Discharger taken the appropriate corrective actions based on existing knowledge of site conditions (i.e. slope/soil stability and erodibility), ineffective erosion and sediment control measures, and under-designed sediment traps, significant turbid discharges to Haehl Creek would have been avoided. Therefore, State Water Board staff selected 1.2.

CLEANUP AND COOPERATION

- **SCORE = 0.8**

³ Caltrans Storm Water Quality Handbooks, Construction Site Best Management Practices Manual – SC-3, March 1, 2003.

Once Caltrans determined that additional BMPs were necessary, Caltrans took significant steps and measures to attempt to repair slope failures and reinstall erosion and sediment control measures. Caltrans immediately mobilized crews to restabilize the Site before the 2014 NOV issued by the Regional Water Board. In addition, limited sediment trap dewatering was conducted to further reduce sediment-laden storm water from discharging to Haehl Creek. Following the Section 13267 Investigative Order, the Discharger cooperatively provided responses both formally in a technical report, as well as informally to enforcement staff.

HISTORY OF VIOLATIONS

- **SCORE = 1.1**

Other Caltrans violations in the North Coast Region are described below:

On December 10, 2009, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2009-0115, in the matter of the Caltrans Hardscrabble Creek Bridge Replacement Project. The order assessed a total civil liability of \$26,000 for two 1,000 gallon discharges, the failure to follow the project description and the failure to have adequate BMPs.

On March 15, 2012, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2012-0034, in the matter of the Caltrans Confusion Hill Bypass Project. The order assessed a total civil liability of \$540,182 for discharge violations related to construction dewatering, leaky equipment, slag discharge, four unauthorized turbid discharges to the South Fork Eel River, insufficient turbidity measurements, improper disposal of cement waste, five individual events, and non-containment of the trestle deck.

On April 26, 2012, the Regional Water Board adopted Administrative Civil Liability Order No. R1-2012-0054, with respect to the Caltrans Confusion Hill Bypass Project for reporting violations settled between Regional Water Board staff and Caltrans that allegedly occurred on the Confusion Hill Bypass Project. The order reflected the settlement agreement of a total civil liability of \$400,000.

Based on the timing of the previous violations by Caltrans District 1 relative to the enforcement action and the similarity of the violations to the violations alleged herein, the Regional Water Board Prosecution Team selected a multiplier of 1.1.

(STEP 5): DETERMINATION OF BASE LIABILITY

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier
= Total Base Liability

$$\$1,930,200 \times 1.2 \times 0.8 \times 1.1 = \$2,038,291$$

Total Base Liability = \$2,038,291

Violation #2: Sediment Basins in Violation of the Construction General Permit, Attachment E, Provision E.2 and Condition 30 of the 401 Certification

Description:

This violation covers the design and installation of sediment basins (also referred to as detention ponds/sediment traps in Caltrans documentation) employed in the Haehl Creek Interchange project area. In Caltrans' documentation, the basins are referred to as ST-1, ST-2, ST-3 and ST-4 or Basins 1-4. According to Caltrans' November 14, 2014 response to a Section 13267 Investigative Order, the sediment

basins were “a series of interconnected desilting basins that collect stormwater runoff from most of the recently graded area, and then outfalls to Haehl Creek.” (Appendix 7, page 7). The basins were intended to “allow sediment mobilized from the sheet flow an opportunity to settle out prior to flowing into Haehl Creek.” (Appendix 7, page 7). Following the inspection on October 16, 2013, Caltrans conducted an engineered analysis of the basins to submit as a proposal to the Regional Water Board for approval of a non-standard BMP. An engineered analysis and a SWPPP amendment were drafted for submission to the Regional Water Board on December 8, 2013.

Alleged Violation:

Under the CGP, Attachment E, Provision E.2, Caltrans is required to design sediment basins, at a minimum, in accordance with CASQA construction standards. 401 Certification Condition 30 requires that “All activities and best management practices (BMPs) shall be implemented according to the submitted application and the conditions in this Order . . . If the project Resident Engineer elects to install alternative BMPs for use on the project, Caltrans shall submit a proposal to Regional Water Board staff for review and concurrence.”

Because the basins were not designed according to the CASQA Construction BMP Guidance Handbook, and Caltrans did not submit a proposal for a non-standard BMP to the Regional Water Board prior to implementation, employment of the sediment basins as a sediment control was a violation of the Risk Level 3 requirements of the CGP and Condition 30 of the 401 Certification. Failure to design the basins to CASQA standards likely reduced their effectiveness at sediment settling and retention, thus increased discharge of sediment-laden runoff to Haehl Creek. Caltrans indicated to Regional Water Board staff that a non-standard BMP was required given there was insufficient room to construct the sediment basins on the site per the requirements of CASQA and an Active Treatment System (ATS) was not considered feasible by Caltrans in the 2013/2014 winter (an ATS was installed and used in 2014/2015).

(STEP 3*): PER DAY ASSESSMENT

* Step 1 and Step 2 are not applied as this is a non-discharge violation

PER DAY FACTOR

POTENTIAL FOR HARM

- SCORE = MODERATE

Assuming that sediment basins were designed to permit standards, it is likely that the sediment basins would have been more efficient at sediment capture and sediment load reduction of storm water discharges or, given the size limitations at the location, an ATS would have been given further consideration as a sediment control BMP. The basins reduced efficiency impaired their ability to capture sediment runoff during storm events from upstream erosion and sediment control best management practices that were ineffective or had failed (see Violation #3). Even though the sediment basins were not designed appropriately, their presence likely removed some sediment prior to discharge into Haehl Creek. Therefore the potential for harm was scored as moderate.

DEVIATION FROM REQUIREMENT

- SCORE = MAJOR

The extent of deviation from the applicable requirements is major because Caltrans failed to submit a proposal for a non-standard BMP in advance of deploying the BMP, therefore rendering the 401 Certification requirement ineffective in its essential function. CGP design requirements are meant to ensure effective sediment retention for these BMPs. The failure to design to the permit requirement resulted in a less effective BMP and likely allowed for an increased sediment load in discharges to Haehl Creek.

- PER DAY FACTOR SCORE = MODERATE + MAJOR = 0.55

TOTAL NUMBER OF DAYS DETERMINATION

- **DAYS = 37**

The period from November 1, 2013 through December 7, 2013, the day before Caltrans submitted the proposal for non-standard BMP, is a total of 37 days.

STATUTORY MAXIMUM PER DAY

- **\$10,000 per day**

Water Code section 13385 states that a penalty of \$10,000 may be assessed for each day in which the violation occurs.

INITIAL LIABILITY AMOUNT = \$203,500

$$**37 days x \$10,000 x 0.55 = \$203,500**$$

(STEP 4): ADJUSTMENT FACTORS**CULPABILITY**

- **SCORE = 1.2**- See Step 4: Adjustment Factors for Violation #1.

CLEANUP AND COOPERATION

- **SCORE = 0.8**- See Step 4: Adjustment Factors for Violation #1.

HISTORY OF VIOLATIONS

- **SCORE = 1.1**- See Step 4: Adjustment Factors for Violation #1.

MULTIPLE DAY VIOLATIONS

For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. The Regional Water Board must also make an express finding that the violation, a) does not cause 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.

The violation results in no economic benefit from the illegal conduct that can be measured on a daily basis. Here, Caltrans submitted its proposal for an alternative BMP (sediment basins not designed in accordance with CASQA standards) after the basins had already been constructed. Submission of an alternative BMP proposal to the Regional Water Board is a one-time cost that does not result in an economic benefit that can be measured on a daily basis. Applying the formula in the Enforcement Policy results in a reduction from 37 days of violation to 7 days of violation.

(STEP 5): DETERMINATION OF BASE LIABILITY

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability

Amount determined in Step 3.

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier =
Total Base Liability

(7 days x \$10,000 x 0.55) x 1.2 x 0.8 x 1.1 = \$40,656

Total Base Liability for Violation #3 = \$40,656

Violation #3: Erosion Control BMPs Implemented at the Haehl Creek Interchange in Violation of the Construction General Permit, Attachment E, Provision D.2

Description:

This violation covers the application and implementation of erosion control BMPs employed in the Haehl Creek Interchange project area prior to and during the storm events occurring from February 5 through 10, February 12 to 19, and March 25 to April 4, 2014.

Alleged Violation:

Under the CGP, Attachment E, Provision D.2, Caltrans is required to implement appropriate erosion control BMPs for inactive areas and all finished slopes. The application of effective erosion control BMPs on erodible slopes during storm events is imperative, as it reduces the sediment load in storm water discharges by reducing the potential for soil erosion.

On February 26, 2014 Regional Water Board issued a NOV finding that, "Given the significant turbidity exceedances at the Project site and BMP performance, the Regional Water Board has concluded that there was an inadequate level of site preparation and erosion and sediment controls in place" at the Haehl Creek Interchange portion of the project. Caltrans photos of the interchange area following the February 7-9, 2014 rain event show multiple examples of failed BMPs resulting in sediment discharges. The NOV required BMPs to be repaired and improved, and required a plan to provide additional BMPs. Caltrans' response to the NOV indicated the turbidity exceedances were caused by a combination of factors, including ineffective BMPs. (see Caltrans Response to February 26, 2014 NOV for Willits Bypass Project dated March 7, 2014.) Corrective actions were submitted as part of Caltrans' NOV response.

(STEP 3*): PER DAY ASSESSMENT

* Step 1 and Step 2 are not applied as this is a non-discharge violation

PER DAY FACTOR**POTENTIAL FOR HARM**

- **SCORE = MODERATE**

Assuming that effective erosion control BMPs were applied during the 2013-2014 wet season to inactive areas of the project and all finished slopes, it is likely that erosion and the resulting sediment discharges would have been reduced. Ineffective erosion control BMPs, combined with reduced sediment basin efficiency (per Violation 2) at the Haehl Creek Interchange produced excessive sediment discharges (occurring from February 5, 2014 through April 1, 2014) that resulted in increases in turbidity in Haehl Creek and caused substantial impacts to beneficial uses (as described in detail further detail in Violation 1, Factor 1: Harm or Potential Harm to Beneficial Uses). Even though the erosion control BMPs were ineffective, their presence likely prevented some erosion and subsequent to discharge into Haehl Creek. Therefore the potential for harm was scored as moderate.

DEVIATION FROM REQUIREMENT

- **SCORE = MODERATE**

The extent of deviation from the applicable requirements is moderate because the intended effectiveness of the requirement for appropriate was partially compromised. Erosion and sediment controls BMPs were in place, however, they were inadequate and ineffective for the site conditions and rain events that occurred from February to April 2014. As an example, Caltrans insisted on primarily applying BFM with hydroseeding at the South Haehl Creek project site despite recommendations from Caltrans and contractor pollution prevention staff urging that rolled erosion control product (RECP) would be a necessary technology for this area (April 23, 2014 Memo from Brendan Thompson to Mona Dougherty of the Water Board). The effectiveness of the BFM with seed was compromised because the seeds did not sprout. RECP would have provided greater resistance to rainfall force and greater containment of dislodged sediment as compared to BFM alone. Caltrans identified RECP as a BMP that would be used on site on steeper embankment slopes located at structure approaches in its 401 certification application, and included RECP as a contract bid item, yet Caltrans chose not to use it at South Haehl Creek. Caltrans did not meet the BCT standard, in part, because they did not provide the more protective level of erosion control that was recommended by their own pollution prevention staff and included in their 401 Application.

- **PER DAY FACTOR SCORE = MODERATE + MODERATE = 0.30**

TOTAL NUMBER OF DAYS DETERMINATION

- **DAYS = 96**

Days applied to this violation is assessed from the reasonable date that effective erosion control BMPs should have been installed and functional during the 2013-2014 wet season (November 1, 2013) up to and including the day before the major storm event occurring February 5, 2014.

STATUTORY MAXIMUM PER DAY

- **\$10,000**

Water Code section 13385 states that a penalty of \$10,000 may be assessed for each day in which the violation occurs.

INITIAL LIABILITY AMOUNT =

96 days x \$10,000 x 0.30 = \$288,000

(STEP 4): ADJUSTMENT FACTORS

CULPABILITY

- **SCORE = 1.2** - See Step 4: Adjustment Factors for Violation #1.

CLEANUP AND COOPERATION

- **SCORE = 0.8** - See Step 4: Adjustment Factors for Violation #1.

HISTORY OF VIOLATIONS

- **SCORE = 1.1** - See Step 4: Adjustment Factors for Violation #1.

(STEP 5): DETERMINATION OF BASE LIABILITY

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

\$288,000 x 1.2 x 0.8 x 1.1 = \$304,128

Total Base Liability for Violation 3 = \$304,128

Combined Total Base Liability and Factor Applied to All Violations

The combined Total Base Liability Amount for the three violations is **\$2,383,075**

The following factors apply to the combined Total Base Liability Amounts for all of the violations discussed above.

(STEP 6): ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS:

The ability to pay and to continue in business must be considered when assessing administrative civil liabilities. Caltrans is a California state agency with an annual budget of over \$12 billion. Given this information, the combined Total Base Liability Amount was not adjusted for the Discharger's ability to pay.

(STEP 7): OTHER FACTORS AS JUSTICE MAY REQUIRE:

- No adjustments to the proposed penalty

(STEP 8): ECONOMIC BENEFIT:

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the CGP and 401 Certification were due to the failure to implement appropriate erosion and sediment control BMPs.

The Regional Board contends that Caltrans had sufficient evidence prior to the wet season in 2013 to support a more robust water pollution control program. Although Caltrans made several efforts to repair and improve water pollution control measures, they continued to rely on improperly designed sediment traps and ineffective control measures warranting of a change in strategy. Based on initial water pollution control plans provided by Caltrans showing proposed temporary ATS locations, installing one or multiple treatment systems had been evaluated and rejected by Caltrans at some point in the project's history, even though an ATS would have likely prevented all, or a significant percentage of the discharge violations related to each of the three storm events at issue.

The Regional Board believes the installation of an ATS is the only feasible approach that would have prevented the violations stipulated in this complaint. By postponing the design and installation of an ATS from the 2013-2014 season to 2014-2015, Caltrans realized an economic benefit, which resulted in 3.443 MG of sediment-laden discharge to Haehl Creek. Thus, the delayed costs of constructing and installing an ATS, associated conveyance piping, and retention basins in addition to the avoided costs of operation for the 2013-2014 season provided a financial savings to Caltrans. Additional economic benefit was realized by the delayed implementation of erosion control.

The BEN financial model provided by the US EPA was used to compute the economic benefit of noncompliance. The date of initial noncompliance was estimated by assuming the ATS and erosion control

should have been functional (November 1, 2013). For computational purposes, the penalty payment date was estimated as June 30, 2015. Based on specific assumptions within the model, the overall economic benefit of noncompliance was \$1,261,502.

(STEP 9): MAXIMUM AND MINIMUM LIABILITY:

Minimum Liability Amount: The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations." As shown below, the statutory minimum amount for the alleged violation is **\$1,387,652**.

$$\$1,261,502 \times 1.1 = \$1,387,652$$

Maximum Liability Amount: The maximum administrative civil liability amount is the maximum amount allowed by Water Code section 13385.

Violation 1

$$\text{Discharge Event 1: } (2,126,000 \times \$10/\text{gallon}) + (6 \text{ days} \times \$10,000/\text{day}) = \$21,320,000$$

$$\text{Discharge Event 2: } (146,000 \times \$10/\text{gallon}) + (8 \text{ days} \times \$10,000/\text{day}) = \$1,540,000$$

$$\text{Discharge Event 3: } (1,167,000 \times \$10/\text{gallon}) + (11 \text{ days} \times \$10,000/\text{day}) = \$11,780,000$$

Violation 2

$$\text{Violation: } 37 \text{ days} \times \$10,000/\text{day} = \$370,000$$

Violation 3

$$\text{Violation: } 96 \text{ days} \times \$10,000/\text{day} = \$960,000$$

(STEP 10): FINAL LIABILITY AMOUNT:

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the alleged violations is **\$2,383,075**. This liability falls within the statutory maximum and minimum liability amounts.

ATTACHMENT B

Willits Bypass

Supplemental Environmental Project (SEP) Proposal: Making 401 certified Caltrans projects, from the North Coast, available online through EcoAtlas

San Francisco Estuary Institute (SFEI)
4911 Central Avenue, Richmond, CA 94804
December 1, 2017

Project Period: One year from date of Regional Water Board's adoption of ACLO
Project Cost: \$45,000

Executive Summary

This project will enhance access to watershed assessment data by making 401 certified Caltrans projects and maps, from the North Coast, available online through EcoAtlas (ecoatlas.org). EcoAtlas is an online data visualization tool that enables users to view the abundance, distribution, diversity, and condition of aquatic resources on a common map, along with the projects that are affecting these resources. Summaries aggregate ecological information at various spatial scales to inform decision-making and assist with watershed planning, assessment, and reporting.

Project Description

This project will demonstrate and advance data management, access, and visualization capacity in the North Coast by using existing online data management and visualization tools to map certified projects. By uploading projects into Project Tracker (ptrack.ecoatlas.org) and displaying them on EcoAtlas, users will be able to identify where and what type of habitats are in their watershed and will help them determine what can be preserved, protected, or restored. Several tools will be available to users through EcoAtlas including generating project information pages, Landscape Profile reports for an area of interest, and Habitat Development Curves (HDCs) to help guide the management and design of projects. Currently, HDCs are available for estuarine and depressional habitats. This work was funded by CalTrans in 2016 and could be expanded to include other habitats with additional funding. While this project will focus on entering projects that have been certified in the past five years, future phases could continue to map certified projects in the future. This project will benefit local planners, project proponents, non-governmental organizations (NGOs), restoration practitioners, and the public.

SFEI will be the implementing party for this project. SFEI will upload information and maps for 401 certified projects from Caltrans into Project Tracker. In addition, SFEI staff will provide technical support and outreach to key stakeholders as needed. The goal of the outreach is to inform stakeholders of the existing data management resources available online for summarizing, reporting, and accessing data within the watershed context.

Project Justification

The advantage of uploading certified projects to Project Tracker is that users can view their projects along with projects conducted by other user groups in EcoAtlas. Reporting tools then allow users to generate reports and view the projects on the same map. In addition, there is an existing web service for the habitat projects in EcoAtlas that could be used by others in their tools if desired, e.g., the State's My Water Quality portals.

The project meets the requirements for a Supplemental Environmental Project (SEP) as set forth in the State Water Resources Control Board's SEP Policy. The project only consists of measures that go above and beyond the otherwise applicable obligations of the North Coast, and it does not directly benefit, in a fiscal manner, the North Coast Regional Water Quality Control Board's functions, its staff, or family members of staff. While North Coast counties will receive indirect benefits from the project, Caltrans and counties were not required to upload these prior certified projects into Project Tracker. The project demonstrates existing, online tools that enable the synthesis of habitat restoration data in the North Coast watersheds. There is a clear nexus between the alleged violations and this project's improvement to assessing the North Coast watersheds.

Project Tasks (Scope of Work)

Task 1. Upload thirty-five (35) 401 certified projects from Caltrans into Project Tracker

- Upload information for thirty-five (35) 401 certified projects into Project Tracker. Information will be obtained from Mitigation Plans and the California Integrated Water Quality System (CIWQS) database. If needed, a script will be created to crosswalk data from CIWQS into Project Tracker. Work with Water Board staff to access Mitigation Plans and CIWQS data. Water Board staff will provide this information to SFEI within 30 days of SEP approval to meet the 1- year completion date.

Task 2. Upload polygons for projects

- Upload maps for thirty-five (35) projects. Projects will initially be mapped as points using latitude and longitude coordinates. Under this task, polygons will be uploaded for projects by reviewing documents to determine the mitigation and impact areas.
- Estimate 4 hours per project to map mitigated and impacted habitats.

Task 3: Outreach to stakeholders in the North Coast Region

- Conduct webinar trainings and outreach to stakeholders so they are able to upload future projects and/or modify project information as needed.

Task 4. Project Management

- Project administration, coordination, invoicing, and progress reporting are covered under this task.

Budget

Task Description and Schedule	Timeline	Task Cost Estimate
Task 1. Upload thirty-five (35) 401 certified projects from Caltrans into Project Tracker	Months 1-6	\$15,000
Task 2. Upload polygons for projects	Months 7-12	\$16,800
Task 3: Outreach to stakeholders in the North Coast Region	Months 7-12	\$7,200
Task 4. Project Management - Includes internal and external coordination, and invoicing and progress reporting	Months 1-12	\$6,000
Total Cost		\$45,000