

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

IN THE MATTER OF:

**CASTLE COMPANIES;  
LOMA RICA RANCH**

**SETTLEMENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY ORDER**

**ORDER NO. R5-2023-0524**

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**SECTION I: INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order, Order, or ACLO) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and Castle Companies (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Section II: BACKGROUND**

2. On September 2, 2009, the State Water Resources Control Board (State Water Board) adopted the Construction General Storm Water Permit (Permit). The Permit became effective on July 1, 2010 and was amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ. The Permit authorizes discharges of storm water associated with construction activity so long as the dischargers comply with all requirements, provisions, limitations and prohibitions in the permit. Pursuant to federal statutes and regulations, the Permit requires the implementation of the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce or eliminate pollutants in storm water runoff and imposes additional requirements necessary to implement applicable water quality standards.
3. Entities that have obtained coverage under the Permit (dischargers) are required to implement controls, structures, and management practices (a.k.a. Best Management Practices or BMPs) to comply with the Permit's requirements. Based upon each site's sediment transport and receiving water risk level (Risk Level) the Best Management Practices are "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce

the pollution of 'waters of the United States.' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 C.F.R. § 122.2). The Permit requires different BMPs, monitoring and reporting to achieve and demonstrate BAT and BCT.

4. Dischargers identify the appropriate Risk Level and are required to have a State-certified Qualified SWPPP Developer (QSD) prepare a site-specific Storm Water Pollution Prevention Plan (SWPPP) prior to construction (Permit, Sections VIII and XIV, A.). The Permit requires Qualified SWPPP Practitioners (QSPs) to implement BMPs required by the Permit (Permit, Section VII, B.3.).
5. Sites identified as a "Risk Level 2" must implement heightened requirements under the Permit due to an increased risk to water quality (see Permit, Attachment D).
6. Sites that fail to implement one or more of the requirements contained in Attachment D are not in compliance with BAT and BCT requirements. Discharges of storm water or non-storm water from sites where BMPs have not been implemented to achieve BAT and BCT, as required by the Permit, are unauthorized discharges.
7. The Discharger owns the site identified as "Loma Rica Ranch" located at the corner of Idaho-Maryland Road and Sutton Way in Grass Valley, California, and are in the process of developing the site for residential construction, hereinafter referred to as the "Project." The QSD uploaded the Permit Required Documents, which were certified and submitted by Dan Boatwright (Project Manager for Castle Companies) on 4 May 2021. The Project obtained Permit coverage as a Risk Level 2 project under Waste Discharger Identification Number 5S29C393771 on 10 May 2021.
8. On 22 October 2021, Central Valley Water Board staff received a complaint of a discharge of sediment to Wolf Creek from the Project. Board staff contacted the City of Grass Valley (City), who was already aware of the situation and had inspected the Project and issued a Notice of Violation (NOV) on 22 October 2021 for sediment discharge and failure to implement storm water BMPs based on their inspection.
9. Board staff conducted an inspection of the Project on 25 October 2021, the fifth day of a forecasted major "atmospheric river" rain event which produced over 13 inches of precipitation. During the inspection, Board staff observed that the Project had minimal sediment control BMPs installed and had several areas, including slopes, with no erosion control BMPs. Board staff also observed discharges of sediment and turbid storm water into Wolf and Olympia Creeks. Significant erosion was observed and several of the sediment control BMPs were overwhelmed and

ineffective. Board staff observed that the Project did not implement erosion control BMPs on disturbed soil areas prior to the storm event. Board staff issued an NOV on 2 November 2021 for violations observed during the 25 October 2021 inspection.

10. On 9 November 2021, the Discharger responded to the 2 November 2021 NOV with photographs showing hydraulically applied erosion control BMPs being installed on 8 November 2021.
11. On 9 November 2021, Board staff re-inspected the Project during a rain event. During the 9 November 2021 inspection, Board staff observed that large portions of the Project had erosion control BMPs installed; however, road cuts and other disturbed soil areas did not have erosion control BMPs. Also, sediment controls installed were overwhelmed and discharges with a turbidity of 724 Nephelometric Turbidity Units (NTU) into Olympia Creek were observed. Both Wolf Creek and Olympia Creek were sampled for turbidity upstream and downstream of the Project's discharge. The turbidity measured in Wolf Creek downstream of the Project showed an increase of 494% in comparison to the upstream concentration. A 147% increase was measured downstream of the Project in Olympia Creek in comparison to the upstream concentration. Board staff issued a second NOV for violations observed during the 9 November 2021 inspection on 3 December 2021.
12. The Discharger responded to the second NOV with a construction schedule and documentation showing that additional erosion and sediment control BMP installation was conducted between 15 and 22 November 2021. Turbidity samples collected by the Project's Qualified SWPPP Practitioner during rain events in December 2021 indicate that BMPs were effective.
13. Board staff conducted another follow-up inspection on 13 December 2021 during a rain event. Board staff confirmed that erosion and sediment control BMPs meeting the intent of the Construction General Permit's requirements had been installed. During the inspection, one discharge sample had a turbidity concentration above the Numeric Action Level (NAL) contained in the Construction General Permit of 250 NTU; however, BMPs installed at the Project were in substantial compliance with Construction General Permit requirements.

### **Section III: Statutory and Regulatory Considerations**

14. Water Code section 13385(a) provides, in relevant part, "*A person who violates any of the following shall be liable civilly in accordance with this section: ... (5) A requirement of Section 301...of the federal Clean Water Act (33 USC Sec. 1311...), as amended...*"

15. Water Code section 13385(c) states: *“Civil liability may be imposed administratively by...the regional board pursuant Article 2.5 (Commencing with Section 13323) of Chapter 5...”* The penalty shall not exceed the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and ten dollars (\$10) per gallon for each gallon in excess of the first one thousand (1,000) gallons discharged.
16. Pursuant to Water Code section 13327, in determining the amount of discretionary civil liability, the Central Valley Water Board is required to take into consideration 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 ability to continue in 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 as justice may require.
17. If this matter were brought to the Board in a contested hearing, it would be subject to the Water Quality Enforcement Policy adopted 4 April 2017 and made effective 5 October 2017 (2017 Enforcement Policy). The 2017 Enforcement Policy requires the calculation of an estimated economic benefit. The estimated economic benefit plus an additional 10% is the minimum amount for an administrative civil liability under the 2017 Enforcement Policy. In this instance, the estimated economic benefit plus 10% is \$568, which amounts to the estimated cost of compliance plus 10% as determined in Attachment A. As explained in Attachment A, this exceeds the statutory minimum, and therefore the economic benefit plus 10% is used in lieu of the statutory minimum.
18. In this case, application of the Enforcement Policy for a discretionary penalty results in a Final Liability of **one hundred ninety-four thousand, two hundred and thirty-five dollars (\$194,235)**. The “Penalty Calculation Methodology” describes in detail how the penalty amount was calculated and is included as Attachment A to this Settlement.

#### **Section IV: Settlement**

19. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the

amount of **one hundred ninety-four thousand, two hundred and thirty-five dollars (\$194,235)** in administrative civil liability against the Discharger.

20. The Central Valley Water Board Prosecution Team has determined that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public.

### **Section V: Stipulations**

The Parties stipulate to the following:

21. **Administrative Civil Liability:** Without admitting the truth of any violations alleged in this Stipulated Order, the Discharger hereby agrees to the imposition of **one hundred ninety-four thousand, two hundred and thirty-five dollars (\$194,235)** in administrative civil liability to the Central Valley Water Board to resolve the violations alleged in this Stipulated Order. The Discharger agrees to pay the following amounts:
- a. **One hundred seventy thousand eight hundred and seventy-eight dollars (\$170,878)** shall be paid to the State Water Pollution Cleanup and Abatement Account. Payment shall be made no later than thirty (30) days after adoption of an order approving this Stipulated Order by the Central Valley Water Board, or its delegee, by check payable to the *State Water Pollution Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Stipulated Order (R5-2023-0524). The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Michael Fischer, Water Resource Control Engineer, and Kari Holmes, Compliance and Enforcement Supervisor, Central Valley Water Board, 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114.
  - b. **Twenty-three thousand three hundred fifty-seven dollars (\$23,357)** shall be permanently suspended upon completion of the Supplemental Environmental Project (SEP) described in Attachment B of this Order, hereby incorporated by reference. Failure to complete all aspects of the SEP shall result in the Discharger's payment of the entire suspended penalty amount to the State Water Pollution Cleanup and Abatement Account, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone.

22. **Supplemental Environmental Project (SEP)**: The remaining \$23,357 in suspended administrative civil liability shall be satisfied through the implementation of the SEP described in Attachment B, incorporated herein by reference, and summarized below. The Discharger proposes to implement the following SEP:
- a. **Riparian Habitat Assessment and Restoration at the Roy Peterson Wolf Creek Preserve**: The Discharger will fund a riparian habitat assessment and restoration project performed by the Wolf Creek Community Alliance at the Roy Peterson Wolf Creek Preserve. The project consists of an initial survey, followed by invasive plant removal and revegetation with native plants. Approximately 7 acres of the preserve along 1500 linear feet of Wolf Creek will be surveyed and it is anticipated that approximately 200 invasive plants will be removed and replaced with native plant species. The expected benefits of the project involve riparian zone habitat enhancement, including increased shading leading to reductions in summer stream temperature, improved water quality due to the creation of a stronger riparian buffer and reduced erosion, as well as increased plant diversity, enhancement of habitat for keystone and sensitive species, improvements in water capture, storage and groundwater recharge, as well as benefits to flood control.
23. **SEP Completion Deadlines**: The Discharger shall complete the SEP by 31 December 2025, as described in Attachment B.
24. **Representations and Agreements Regarding the SEP**:
- a. As a material condition for the Board's acceptance of this Stipulated Order, the Discharger represents that it will expend the SEP Amount to implement the SEP set forth in Attachment B. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedule, is a material condition of this settlement of liability between the Discharger and the Board.
- b. The Discharger agrees to (1) expend the SEP Amount to implement the SEP as described in this Stipulated Order; (2) provide certified, written reports to the Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) provide as part of the final report due by the deadline set forth in Attachment B (SEP Completion Date), a certification by a responsible official, signed under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act. The Discharger further agrees that the Board has the right to require a third-

party audit, to be paid by the Discharger, of the funds expended to implement the SEP, and that the Discharger bears ultimate responsibility for meeting all deadlines and requirements specified in Attachment B.

25. **Publicity Associated with the SEP:** Whenever the Discharger or its agents or subcontractors publicize any aspect of the SEP, they shall state in a **prominent manner** that such work was undertaken as part of a settlement of a Board enforcement action against the Discharger.
26. **Progress Reports and Inspection Authority:** The Discharger shall provide quarterly reports within 30-days of the end of each calendar quarter describing progress implementing the SEP to the Board as described in Attachment B. The Discharger agrees to grant permission to inspect the SEP during normal business hours.
27. **Audits and Certification of Supplemental Environmental Project:**
  - a. **Certification of Completion:** Within thirty (30) days of completion of the SEP, but not later than 30 January 2026, the Discharger shall submit a certified statement of completion of the SEP (“Certification of Completion”). The Certification of Completion may be submitted with the Discharger’s Final Report for the Project. The Discharger’s authorized representative shall submit the Certification of Completion under penalty of perjury to the Designated Central Valley Water Board contact. The Certification of Completion shall include the following:
    - i. **Certification of Expenditures:**

Certification documenting all expenditures by the Discharger. The expenditures may include external payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Central Valley Water Board staff that is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the Central Valley Water Board for oversight.
    - ii. **Certification of Performance of Work:**

Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.

iii. **Third Party Audit:**

If the designated Central Valley Water Board contact obtains information that causes the representative to reasonably believe that the Discharger has not expended money in the amounts claimed, or has not adequately completed any of the work in the SEP, the designated Central Valley Water Board contact may require, and the Discharger shall submit, at its sole cost, a report prepared by an independent third party (or parties), stating that in its professional opinion, the Discharger has or has not expended money in the amounts claimed. In the event of such an audit, the Discharger agrees that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the designated Central Valley Water Board contact within three months of the completion of the Discharger's SEP obligations. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

- b. **Time Extension for SEP:** The Executive Officer of the Board may extend the SEP deadlines contained in this Stipulated Order if the Discharger demonstrates delays from unforeseeable circumstances, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. Any request by a Discharger to extend a SEP-related deadline shall be in writing and made at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or its delegate must be in writing.
- c. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the designated Central Valley Water Board contact that the entire SEP Amount pursuant to Paragraph 21.b have been spent for the completed SEP, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP, as an administrative civil liability to the State Water Pollution Cleanup and Abatement Account.
- d. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Deadline required by this Stipulated Order, the designated Central Valley Water Board contact shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or some portion thereof.

28. **Board Not Liable:** Neither Board members, nor Board staff, attorneys, or representatives, shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger, its directors, officers, employees, agents, representatives, or contractors, in carrying out activities pursuant to this Stipulated Order, nor shall the Board, its staff, attorneys, or representatives, be held as parties to or guarantors of any contract entered into by the Dischargers, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
29. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations. Further, except as expressly set forth in this Stipulated Order, nothing in this Stipulated Order releases or waives any claims that either the Central Valley Water Board or Discharger may have against any persons or entities that are not parties to this Stipulated Order, including but not limited to the QSP.
30. **Party Contacts for Communications Related to Stipulated Order:**
- For the Central Valley Water Board:  
Michael Fischer  
Water Resource Control Engineer, Central Valley Water Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114  
[michael.fischer@waterboards.ca.gov](mailto:michael.fischer@waterboards.ca.gov)  
(916) 464-4663
- Daniel S. Kippen, Esq.  
Office of Enforcement, State Water Board  
P.O. Box 100  
Sacramento, California 95812  
[dan.kippen@waterboards.ca.gov](mailto:dan.kippen@waterboards.ca.gov)  
(916) 341-5272
31. **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.

32. **Matters Addressed by this Stipulated Order:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Stipulated Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the Discharger's full payment of the ACL by the deadline specified in Paragraph 21.a and completion of the SEP referenced in Paragraph 21.b or full payment of the associated suspended liability.
33. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
34. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Valley Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Valley 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 mutually revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
35. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to this Stipulated 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.
36. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the

same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Stipulated Order.

37. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order 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.
38. **Interpretation:** This Stipulated Order shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one Party.
39. **Publicity:** Whenever the Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the Project is being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the Discharger.
40. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee and the Discharger.
41. **If Stipulated Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Discharger's waivers in Sections 40 and 41 shall cease to apply and the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree that each Party retains all rights and defenses in any such future action. The Parties further agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; provided however, that objections intended to preserve Discharger's due process rights are not waived by this section; or
  - b. Laches or delay or other equitable defenses based on the time period that the Stipulated Order or decision by settlement may be subject to administrative or judicial review.
42. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations 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.
  43. **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 Board.
  44. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
  45. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
  46. **Water Boards Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order including the SEP described above, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees,

agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order including the SEP.

47. **Discharger not Liable:** Neither the Discharger, its directors, officers, employees, agents, representatives of contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the members, employees, representatives, agents or attorneys of the Central Valley Water Board or State Water Resources Control Board arising out of or relating to any matter expressly addressed by this Stipulated Order including the SEP described above.
48. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
49. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Central Valley 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 Stipulated Order.
50. **Site Inspections:** The Discharger shall permit Central Valley Water Board's staff to inspect during normal business hours any location where the SEPs are being implemented as well as review any documents associated with implementation of the SEP(s) at any time during normal business hours.
51. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
52. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
53. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Stipulated Order.
54. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated 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 Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or

electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

55. **Incorporation of Exhibits:** Attachments A and B are hereby incorporated by reference.

[SIGNATURES FOLLOW IMMEDIATELY ON NEXT PAGE]

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board  
Central Valley Region Prosecution Team

***Original Digitally Signed By: John J. Baum***  
***Date 2023.06.05 18:11:21 -07'00'***

By: \_\_\_\_\_ Date: 6/5/2023  
John J Baum  
Assistant Executive Officer

CASTLE COMPANIES

By: ***Original Signed By: Thomas A Baldacci*** Date: 6/9/2023

Printed Name: Thomas A. Baldacci

Title: Managing Partner

**HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:**

1. This Order incorporates the foregoing Sections I through V by this reference as if set forth fully herein.
2. In adopting this Stipulated Order, the Central Valley Water Board, or its delegee, has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Discharger discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
3. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for ACL and successful completion of the SEP. As such, the Central Valley Water Board finds that issuance of this Stipulated Order is not considered subject to the provisions of CEQA as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
4. The Executive Officer of the Central Valley 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 the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region that the Stipulated Order is approved.

***Original Signed By Patrick Pulupa***

***July 25, 2023***

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Patrick Pulupa  
Executive Officer  
Central Valley Regional Water Quality Control Board

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Date

Settlement & ACL Order R5-2023-0524  
Castle Companies; Loma Rica Ranch

**Attachment A**: Penalty Calculation Methodology  
**Attachment B**: Supplemental Environmental Project

**Attachment A - PENALTY CALCULATION METHODOLOGY  
FOR  
CASTLE COMPANIES  
LOMA RICA RANCH  
NEVADA COUNTY**

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

([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf))

**Background**

On 22 October 2021, staff from the Central Valley Regional Water Quality Control Board (Board) received a complaint of a discharge of sediment to Wolf Creek from a construction site located at the corner of Idaho-Maryland Road and Sutton Way in Grass Valley. Board staff contacted the City of Grass Valley (City), who was already aware of the situation and had inspected the Castle Companies (Discharger) Loma Rica Ranch construction project (Project) at that location. The City issued a Notice of Violation on 22 October 2021 for sediment discharge and failure to implement storm water Best Management Practices (BMPs) based on their inspection.

The Discharger applied for, and received, coverage under the State Water Resources Control Board's *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities, Order 2009-009-DWQ* (Construction General Permit) in May 2021. The Project is categorized as a Risk Level 2 Project as defined Construction General Permit and planned to disturb approximately 40 acres of previously undeveloped land for residential construction. Generally speaking, one of the main purposes of the Construction General Permit is to minimize the amount of pollutant discharge with storm water runoff from a construction project, especially during rain events. Although the Construction General Permit requires implementation of BMPs at enrolled sites, such as the Project, to accomplish this goal, during the City's 22 October 2021 inspection, City staff observed that the Project failed to meet those requirements.

Board staff conducted an inspection of the Project on 25 October 2021, the fifth day of a forecasted major "atmospheric river" rain event which produced over 13 inches of precipitation in the Grass Valley area. During the inspection, Board staff observed that the Project had minimal sediment control BMPs installed, with no erosion control BMPs which are required on Risk Level 2 Projects during rain events. Board staff also observed discharges of sediment and turbid storm water into Wolf and Olympia Creeks. Significant erosion was observed and several of the sediment control BMPs were overwhelmed and ineffective. Board staff observed that the Project did not implement erosion control BMPs on disturbed soil areas prior to the storm event. Board staff issues a Notice of Violation (NOV) on 2 November 2021 for violations observed during the 25 October 2021 inspection.

On 9 November 2021, the Discharger responded to the 2 November 2021 NOV with photographs showing hydraulically applied erosion control BMPs being installed on 8 November 2021.

On 9 November 2021, Board staff re-inspected the Project during a rain event. During the 9 November 2021 inspection, Board staff observed that large portions of the Project had erosion control BMPs installed; however, road cuts and other disturbed soil areas did not have erosion control BMPs. Also, sediment controls that were installed were overwhelmed and a storm water discharge with a turbidity of 724 Nephelometric Turbidity Units (NTU) into Olympia Creek was observed. Both Wolf Creek and Olympia Creek were sampled for turbidity upstream and downstream of the Project. The turbidity measured in Wolf Creek downstream of the Project showed an increase of 494% in comparison to the upstream concentration. A 147% increase was measured downstream of the Project in Olympia Creek in comparison to the upstream concentration. Board staff issued a second NOV for violations observed during the 9 November 2021 inspection on 3 December 2021.

The Discharger responded to the second NOV with a construction schedule and documentation showing that additional erosion and sediment control BMP installation was conducted between 15 and 22 November 2021. Turbidity samples collected by the Project's Qualified SWPPP Practitioner during rain events in December 2021 indicate that BMPs were effective.

Board staff conducted another follow-up inspection on 13 December 2021 during a rain event. Board staff confirmed that erosion and sediment control BMPs meeting the intent of the Construction General Permit's requirements had been installed. During the inspection, one discharge sample had a turbidity concentration above the Numeric Action Level (NAL) of 250 NTU contained in section V.B.2 of the Construction General Permit; however, BMPs installed at the Project were in substantial compliance with Construction General Permit requirements.

### **Violation 1 – Failure to minimize or prevent pollutants in storm water discharges in violation of the Construction General Permit**

Pursuant to the Construction General Permit, the Discharger was required to minimize or prevent pollutants in storm water using controls, structures and management practices that achieve best available technology economically achievable (BAT) for toxic pollutants and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants, also referred as the BAT/BCT standard.

There were fifteen days of precipitation between 1 October 2021 and 17 November 2021, the date which the Discharger implemented BMPs that meet the Construction General Permit's requirements. Four of these days produced greater than 0.5 inches of rain, which caused a storm water discharge that did not meet the BAT/BCT standard, in violation of the Construction General Permit. Attachment D, section A.1.b, Effluent Standards, in the General Permit states: *Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional*

*pollutants and BCT for conventional pollutants.* The Discharger’s actions as described herein failed to comply with that requirement of the Construction General Permit.

PENALTY FACTOR	VALUE	DISCUSSION
Step 1, Factor 1: The Degree of Toxicity of the Discharge (physical, chemical, biological, or thermal characteristics of the discharge)	2	High levels of turbidity in storm water discharges, such as those measure by Board staff during the 25 October 2021 inspection, can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat. Here, a score of 2 is appropriate because the discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of threat to potential receptors).
Step 1, Factor 2: Actual Harm or Potential Harm to Beneficial Uses (harm or potential for harm to beneficial uses)	3	Discharges from the Project flow directly into Olympia Creek and Wolf Creek, which discharge to the Bear River. The Wolf Creek Watershed is designated by the State Water Board as a high-risk receiving water watershed. According to the Board’s Basin Plan, the beneficial uses of the Bear River include aquatic freshwater habitat and wildlife habitat. Due to the direct discharge into surface waters that sustain aquatic life, the discharge was expected to have a moderate impact to beneficial uses, likely to attenuate without appreciable long term acute or chronic effects. Therefore, a score of 3 is appropriate.
Step 1, Factor 3: Susceptibility to Cleanup or Abatement	1	The sediment from the turbid discharge was deposited over a long distance and cleanup or abatement of 50% or more of the material would not be possible.
Step 1, Final Score: Potential for Harm	6	The Potential for Harm score is the sum of Factors 1 through 3 for Step 1, shown above. The total Potential for Harm score is $2+3+1 = 6$ .
Step 2: Per Gallon and per Day factor for Discharge Violations	0.28	The “Deviation from Requirement” is major because the Discharger did not implement required BMPs, rendering the permit’s BAT/BCT effluent standard ineffective, resulting in a discharge from the Project with a turbidity over the NAL. The Potential for Harm from step one of 6 and the Major Deviation was used to determine both the per gallon and per day factors of 0.28 from Tables 1 and 2 of the Enforcement Policy.

PENALTY FACTOR	VALUE	DISCUSSION
Step 2: Volume discharged	n/a	The Prosecution Team did not to calculate the volume of discharge at this time. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing.
Step 2: Adjustment for high volume discharges	n/a	The Prosecution Team is choosing not to calculate the volume of discharge at this time. The Prosecution Team reserves the right to assess penalties for the volume discharged should this matter proceed to hearing.
Step 2: Days of discharge	4	According to available rainfall data from station "CA-NV-52, Grass Valley 0.4SE", there were a total of 15 days of rainfall, four of which had rainfall over ½" between 1 October 2021 and when compliant BMPs were installed on 17 November 2021. The Prosecution Team alleges that runoff was generated and discharge from the Project occurred on the four days where over ½" of rain was recorded.
<b>Step 2: Initial Liability for Violation #1</b>	<b>\$11,200</b>	The liability is calculated as the per day factor multiplied by the number of days multiplied by the maximum liability per day ( $0.28 \times 4 \times \$10,000 = \$11,200$ ).
Step 3: Per Day Assessments for Non-Discharge Violations	n/a	This step does not apply to this violation as it is a discharge violation.
Step 4: Adjustments for Discharger Conduct: Culpability	1.0	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed. Based on communication with the Discharger and the BMP installation contractor, the Discharger intended to install BMPs but failed to execute a contract prior to the first rain event in October 2021. Therefore, a neutral adjustment factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct: History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger. Therefore, a neutral adjustment factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct: Cleanup and Cooperation	1.0	Following the 25 October 2021 inspection and resulting NOV, the Discharger exhibited the level of cleanup and installation of BMPs expected. Therefore, a neutral adjustment factor of 1.0 is appropriate.
<b>Steps 1-4: Total Base Liability for Violation #1</b>	<b>\$11,200</b>	The base liability is calculated as the initial liability multiplied by each of the above three factors. ( $\$11,200 \times 1.0 \times 1.0 \times 1.0 = \$11,200$ )

**Violation 2 – Failure to implement erosion control BMPs on active areas in violation of the Construction General Permit**

Inspections conducted by the Project’s Qualified Storm Water Pollution Prevention Plan Professional (QSP) and follow-up inspections by the City and Board staff show that the site did not have adequate erosion control BMPs on disturbed soil areas between 18 October 2021 (first day of significant rain for the season) and 17 November 2021. The Project was likely *inactive* following the late October 2021 storm events; however, the Prosecution team is electing to assess violations for not protecting *active* disturbed soils areas during with adequate erosion control BMPs only during rain events. Inactive areas are considered in violation every day that they are not protected, regardless of rainfall, and would result in a significantly higher number of days in violation, and therefore, a higher penalty. Attachment D, section E.3, Sediment Control, in the Construction General Permit states: *Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.* Board Staff alleges that the Discharger was in violation of this requirement on days when greater than 0.1” of precipitation occurred between 1 October 2021 and 17 November 2021. There were twelve days of precipitation greater than 0.1” between 1 October 2021 and 17 November 2021, the date which the Discharger implemented erosion control BMPs that meet the Construction General Permit’s requirements.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Step 1: Actual Harm or Potential for Harm for Discharge Violations	n/a	This step is not applicable because the violation is not a discharge violation.
Step 2: Per Gallon and Per Day Assessments for Discharge Violations	n/a	This step is not applicable because the violation is not a discharge violation.
Step 3, Non-Discharge Violations: Potential for Harm	Moderate	The failure to install appropriate erosion controls led to the discharge of turbid, sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat. Therefore, a “Moderate” potential for harm factor is appropriate.
Step 3, Non-Discharge Violations: Deviation from Requirement	Major	The “Deviation from Requirement” is major because the Discharger did not implement required erosion control BMPs prior to major forecasted storm events disturbed soil areas of the Project rendering the

PENALTY FACTOR	VALUE	DISCUSSION
		permit requirement ineffective. Therefore, a Major deviation from requirement factor is appropriate.
Step 3, Non-Discharge Violations: Per day factor	0.55	The value of 0.55 was determined from Table 3 in the Enforcement Policy. The middle value was chosen at this time.
Step 3, Non-Discharge Violations: Days of Violation	12	The Discharger is required to implement erosion control BMPs on all disturbed soil areas prior to all rain events. Though the Project was likely inactive following the late October 2021 storm events, the Prosecution Team is alleging that the Discharger was in violation of the active area erosion control BMP requirement on all days of precipitation greater than 0.1". Using the active area requirement rather than the inactive area requirement significantly reduces the number of days of violation. During the period between 1 October 2021 and when the Discharger completed installation of adequate erosion control BMPs on 17 November 2021, there were twelve days of rainfall greater than 0.1".
<b>Step 3: Initial Liability for Violation #2</b>	<b>\$66,000</b>	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (0.55 x 12 x \$10,000/day = \$66,000).
Step 4: Adjustments for Discharger Conduct Culpability	1.0	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed. Based on communication with the Discharger and the BMP installation contractor, the Discharger intended to install BMPs but failed to execute a contract prior to the first rain event in October 2021. Therefore, a neutral culpability adjustment factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger; therefore, a neutral History of Violations adjustment factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct Cleanup and Cooperation	1.0	Following the 25 October 2021 inspection and resulting NOV, the Discharger exhibited the level of cleanup and installation of BMPs expected. Therefore, a neutral cleanup and cooperation adjustment factor of 1.0 is appropriate.
<b>Total Base Liability for Violation #2</b>	<b>\$66,000</b>	The base liability is calculated as the initial liability multiplied by each of the above three factors (\$66,000 x 1.0 x 1.0 x 1.0 = \$66,000).

**Violation 3 – Failure to implement sediment control BMPs in violation of the Construction General Permit**

Inspections conducted by the Project’s QSP and follow-up inspections by the City and Board staff show that the site did not have adequate erosion control BMPs on disturbed soil areas between 18 October 2021 (first day of significant rain for the season) and 17 November 2021. Implementation of effective perimeter controls to control erosion and sediment discharges are required at all times. Attachment D, section E.1, Sediment Control, in the Construction General Permit states: *Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.* Board Staff alleges that the Discharger was in violation of this requirement for 31 days from 18 October 2021, the date of the first major rain event, and 17 November 2021, when adequate sediment control BMPs were installed.

PENALTY FACTOR	VALUE	DISCUSSION
Step 1: Actual Harm or Potential for Harm for Discharge Violations	n/a	This step is not applicable because the violation is not a discharge violation.
Step 2: Per Gallon and Per Day Assessments for Discharge Violations	n/a	This step is not applicable because the violation is not a discharge violation.
Step 3, Non-Discharge Violations: Potential for Harm	Moderate	The failure to install appropriate sediment controls contributed to the discharge of turbid, sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat. Therefore, a “Moderate” potential for harm factor is appropriate.
Step 3, Non-Discharge Violations: Deviation from Requirement	Moderate	The “Deviation from Requirement” is moderate because the Discharger did implement some of the required erosion control BMPs in October 2021 but did not complete the installation of sediment control BMPs until mid-November 2021 resulting in turbid water and sediment discharges and rendering the permit requirement only partially effective. Therefore, a Moderate deviation from requirement factor is appropriate.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Step 3, Non-Discharge Violations: Per day factor	0.35	The value of 0.35 was determined from Table 3 in the Enforcement Policy. The middle value was chosen at this time.
Step 3, Non-Discharge Violations: Days of Violation	31	The Discharger is required to implement effective sediment control BMPs at all times. The Prosecution team is alleging that the Discharger was in violation of this requirement for a period of 31 days from 18 October 2021 through 17 November 2021.
<b>Step 3: Initial Liability for Violation #3</b>	<b>\$108,500</b>	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day ( $0.35 \times 31 \times \$10,000/\text{day} = \$108,500$ ).
Step 4: Adjustments for Discharger Conduct Culpability	1.0	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed. Based on communication with the Discharger and the BMP installation contractor, the Discharger intended to install BMPs but failed to execute a contract prior to the first rain event in October 2021. Therefore, a neutral culpability adjustment factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger; therefore, a neutral History of Violations adjustment factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct Cleanup and Cooperation	1.0	Following the 25 October 2021 inspection and resulting NOV, the Discharger exhibited the level of cleanup and installation of BMPs expected. Therefore, a neutral cleanup and cooperation adjustment factor of 1.0 is appropriate.
<b>Total Base Liability for Violation #3</b>	<b>\$108,500</b>	The base liability is calculated as the initial liability multiplied by each of the above three factors ( $\$108,500 \times 1.0 \times 1.0 \times 1.0 = \$108,500$ ).

**Other Factor Considerations**

**Total Base Liability for all violations is \$185,700 (\$11,200+ \$66,000 + \$108,500 = \$185,700).** The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

<b>OTHER FACTORS</b>	<b>VALUE</b>	<b>CONSIDERATIONS</b>
Step 6: Ability to Pay and Continue in Business	No adjustment	Board staff does not have information suggesting that the Discharger cannot pay the proposed penalty and continue in business.
Step 7: Economic Benefit	\$540	Board staff estimated the economic benefit for each violation. The cost of installing BMPs which would have avoided the violations were estimated at \$121,060. Since these BMPs were installed following the violations, this cost was considered a delayed cost. The economic benefit of delaying these costs was estimated using the EPA's BEN model. Calculations showing the estimated Economic Benefit are included as Attachment A.
Step 8: Other Factors as Justice May Require	\$8,535	The costs of investigation and enforcement are "other factors as justice may require" and is added to the liability amount. The Central Valley Water Board has incurred over \$8,535 in staff costs associated with the investigation and enforcement of the alleged violations. The estimated staff costs used in Step 8 are included as Attachment B.
Step 9: Maximum Liability	Over \$470,000	Based on California Water Code section 13385, the maximum liability is \$10,000 per day per violation and \$10 per gallon. The maximum penalty of \$470,000 is calculated using only days of violation (47 days x \$10,000 per day) and does not include gallons discharged as the Prosecution Team has not estimated the discharge volume. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing. In addition, the Prosecution Team reserves the right to assess penalties for other violations observed during Board staff, QSP, and City of Grass Valley inspections that were not included.
Step 9: Minimum Liability	\$594	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
<b>Step 10: Final Liability</b>	<b>\$194,235</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability but cannot exceed the maximum liability. The Final Liability is \$194,235 (\$185,700 + \$8,535 = \$194,235).

Attachments: Attachment A - Economic Benefit Calculation  
Attachment B – Staff Cost Calculation

**Table 1. Staff Cost Summary**

	Quantity	Unit Cost	Total Cost
Inspections	3	\$ 472.65	\$ 1,417.96
Inspection Reports	3	\$ 549.82	\$ 1,649.47
Notice of Violations	2	\$ 390.67	\$ 781.33
ACL Prep	1	\$ 4,685.79	\$ 4,685.79
<b>Total Staff Costs</b>		<b>\$</b>	<b>8,535</b>

**Table 2. Staff Cost Calculation**

Inspection	Hours <sup>1</sup>	Ave Cost/Hour <sup>2</sup>	Cost
Water Resource Control Engineer	4	\$ 118.16	\$ 472.65
Senior Environmental Scientist	0	\$ 154.34	\$ -
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Inspection</b>			<b>\$ 472.65</b>

  

Inspection Report	Hours	Ave Cost/Hour	Cost
Water Resource Control Engineer	4	\$ 118.16	\$ 472.65
Senior Environmental Scientist	0.5	\$ 154.34	\$ 77.17
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Inspection Report</b>			<b>\$ 549.82</b>

  

Notice of Violation	Hours	Ave Cost/Hour	Cost
Water Resource Control Engineer	2	\$ 118.16	\$ 236.33
Senior Environmental Scientist	1	\$ 154.34	\$ 154.34
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Notice of Violation</b>			<b>\$ 390.67</b>

  

ACL Preparation	Hours	Ave Cost/Hour	Cost
Water Resource Control Engineer	20	\$ 118.16	\$2,363.27
Senior Environmental Scientist	8	\$ 154.34	\$1,234.72
Supervising Water Resources Control Engineer	4	\$ 179.32	\$ 717.28
Assistant Executive Officer	2	\$ 185.26	\$ 370.52
<b>Cost per Notice of Violation</b>			<b>\$4,685.79</b>

**Notes:**

1 Inspection Time includes in-office pre-inspection research and drive time.

2 Hourly costs from SWRCB Office of Enforcement Fiscal Year 2020-2021 Billing Costs Summary, mid range salary used.

**Name of Project —**

***Riparian Habitat Assessment and Restoration at the Roy Peterson Wolf Creek Preserve***

**Project Applicant Address**

Wolf Creek Community Alliance  
P.O.Box 477  
Grass Valley, CA 95945

**Contact Person, Title, Contact Info —**

Gary Griffith, President  
(530) 559-8384  
mtngriffith@gmail.com

**Project Category —**

Environmental restoration and protection

**Project Location —**

Roy Peterson Wolf Creek Preserve  
21335 Erin Place  
Grass Valley, Ca 95949  
Wolf Creek Watershed  
Coordinates: N 39.05633, W -121.096006

**Background —**

*WCCA has recently been entrusted with the restoration and preservation of a largely undeveloped 58.2 acre parcel on Wolf Creek, directly downstream from the City of Grass Valley and the Loma Rica Ranch project. The creek runs through this parcel, the newly created Roy Peterson Wolf Creek Preserve, for approximately 1500 linear feet (.3 mi.). The parcel also extends on both sides of the creek, thus protecting the stream, its riparian*

*zone, and upland habitats that border the riparian zone. On this reach of Wolf Creek, there is an extensive flood plain, with braided stream channels, and a wide riparian zone, which has created habitat rich in plant and animal diversity, including native rainbow trout, otters, sensitive bird species such as the Yellow-breasted Chat, and evidence of beaver. Upland habitats transition into blue oak woodland, serpentine meadows, and chaparral, containing an assemblage of diverse and sometimes rare native species not usually found in the watershed.*

*However, the riparian zone suffers from historic degradation, due to the presence of an old emigrant-period road bed, a more recently used dirt road crossing the stream, areas of stream undercutting and erosion, and extensive numbers of invasive plants, including non-native grasses, escaped cultivars, and poison hemlock.*

This project will survey and assess this riparian zone along with its flood plan, remove invasive plants, and restore the area with native plants.

## **Project Description —**

The project has two components:

- 1) survey and assess the riparian zone and floodplain
- 2) remove invasive plants and restore native vegetation

There will be an initial survey, followed by invasive plant removal, followed by revegetation with natives. Approximately 7 acres will be involved. The project will be implemented from July 1, 2023 through December 31, 2025. This will facilitate staged removal of the invasive plants and allow replacement natives to become established over the same period.

## **Brief Work Plan -**

Survey & Assessment Tasks:

- Creation of a GIS basemap for the preserve
- Water quality monitoring for turbidity, temperature, pH, TDS, &

dissolved oxygen 9 x per year (23 total events)

- Quarterly bird surveys with Audubon published to eBird (10 surveys)
- Two plant surveys resulting in a species plant list in the riparian zone
- Two benthic macroinvertebrate surveys
- Two trout surveys

#### Vegetation Restoration Tasks:

- Removal of invasive plants in 3 stages
- Planting of native plants in 3 stages

#### Compliance Notes:

- The removal with hand tools of approximately 200 invasive plants and their replacement with native plants will disturb approximately 800 sf of ground. Because this is less than one acre, a construction storm water permit is not required.
- CEQA: This project is Categorical Exempt as per CEQA Section 15304. "MINOR ALTERATIONS TO LAND Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes".

### Detailed Scope of Work —

#### **Survey & Assessment:**

- Delineation of stream channels and riparian zone boundaries
- Identification of areas of erosion, undercutting, and the presence or absence of large woody debris (LWD) in stream channels
- Transect and plot surveys identifying invasives and natives, both for frequency and diversity, including density and class for larger, woody plants
- Measurement of riparian canopy
- Mapping of the area using drone photography and digital GIS resources
- Identification, flagging, and mapping of specific invasive plants to

remove

- Quarterly stream flow measurements
- Yearly benthic macroinvertebrate surveys (3)
- Yearly trout surveys (3)
- Photo data documenting flood events and changes to the stream and riparian zone for the duration of the project

### **Vegetation Restoration:**

- The site will be divided into three reaches. The project will include a staged removal of invasives, with revegetation and tending of the new native species in each of the 3 reaches as we move downstream.
- Invasive species to be removed will include spanish broom, himalayan blackberry, hemlock, barbed goatgrass. To complete the removal of the spanish broom and other non-native plants, we will purchase 3 weed-wrenches, two professional grade loppers, a gas- or battery-operated brush cutter with both steel- and string-head attachments, a gas- or battery-operated chainsaw, and miscellaneous PPE.
- For the planting of the new native plants, in addition to the actual plant stock we will purchase deer-fencing supplies, hoses for watering, and a submersible pump for irrigation during the first three summers while the plants become established. The pump will be used to pump water out of an existing concrete storage tank that is supplied by an existing domestic well. We will use the services of our biological consultant (Daniel Nicholson) to oversee final selection of the revegetation plant list. The proposed list includes: **Cottonwood, alder, Arroyo willow, red willow, sandbar willow, elderberry, Santa Barbara sedge, torrent sedge.**

### **Reporting:**

- Quarterly reports and a final report for this SEP will be submitted to the Regional Board.

## **Quarterly Deliverables and Schedule for this SEP —**

3rd Quarter 2023 -

- Initial Survey and assessment

- Creation of GIS map
- Flagging of invasive plants to be removed in first restoration cycle

#### 4th Quarter 2023

- Reach #1. Remove spanish broom and other invasive species in the floodplain and riparian zone (approximately 2.3 acres)
- Bring approximately 6 volunteers (2 work parties)

#### 1st Quarter 2024

- Reach #1. Revegetation with native plants - 6 volunteers (2 work parties)
- Maintenance of native plantings until they are established. GIS marking of new plantings

#### 2nd Quarter 2024

- Reach #1. Weeding and watering
- Removal of sprouts from non-native plants

#### 3rd Quarter 2024

- Bring approximately 6 volunteers (2 work parties). Maintenance of native plantings until they are established: weeding, watering, and removal of sprouts from non-native plants
- Assessment and recording of restoration success using GIS resources

#### 4th Quarter 2024

- Reach #2. Remove spanish broom and other invasive species in the floodplain (approximately 2.3 acres)
- Maintenance of native plantings until they are established: weeding, watering, and removal of sprouts from non-native plants
- Bring approximately 6 volunteers (2 work parties)

#### 1st Quarter 2025

- Reach #2 Revegetation with native plants with approximately 6 volunteers (2 work parties)
- Maintenance of native plantings until they are established: weeding, watering, and removal of sprouts from non-native plants

#### 2nd Quarter 2025

- Weeding and watering
- Removal of any sprouts from non-native plants
- GIS Marking of new plantings

### 3rd Quarter 2025

- Bring approximately 6 volunteers (2 work parties) Maintenance of native plantings until they are established: weeding, watering, and removal of sprouts from non-native plants
- Assessment and recording of restoration success using GIS resources

### 4th Quarter 2025

- Reach #3. Remove final  $\frac{1}{3}$  of the spanish broom and other invasive species in the floodplain (approximately 2.3 acres) and revegetation with native plants
- Maintenance of native plantings until they are established: weeding, watering, and removal of sprouts from non-native plants
- Bring approximately 6 volunteers (2 work parties) to engage in the work of rewilding the site
- GIS Marking of new plantings
- Final Assessment and recording of restoration success using GIS resources

### **Milestones and Completion —**

As per Section IX.A. of the SEP Policy, each of the above quarterly deliverables represents a milestone that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone. Milestones that allow for a portion of the liability to be permanently suspended must have an identifiable, or 'stand alone,' environmental benefit.

For this SEP, each quarterly milestone permanently suspends 10% of the liability of the project. The stand-alone environmental benefits are detailed in each quarterly milestone.

As per Section IX.D. of the SEP Policy, a certification of completion and certification documenting the expenditures by the settling party will be submitted to the Regional Water Board upon completion of the project.

**Total Project Cost —**

\$23,357 is requested for this SEP. This includes \$5,720 in equipment & supplies, \$14,807 in staff time, \$2,830 in consultant and lab fees. WCCA anticipates at least \$12,550 in matching funds being allocated to this project through volunteer hours. A detailed budget is attached.

**Project Readiness —**

This project is ready to start. Wolf Creek Community Alliance is the property owner. See above notes on CEQA and storm water permit compliance.

**Improvements to water quality / beneficial uses —**

The expected benefits of the project involve riparian zone habitat enhancement as well as other benefits related to that enhancement. These would include increased shading leading to reductions in summer stream temperature, improved water quality, due to the creation of a stronger riparian buffer and reduced erosion, increased plant diversity, enhancement of habitat for keystone and sensitive species, improvements in water capture, storage and groundwater recharge, and benefits for flood control.

**Disadvantaged Community —**

The project is located downstream from and within the watershed that contains the city of Grass Valley, which is considered a Disadvantaged Community by the Northern California Water Association. (Population 12,932, Households 5,992, MHI \$35,662). Grass Valley is the only city in the Wolf Creek watershed, and is the primary population center. Many of the volunteers and students who will participate in the project are from Grass Valley. The educational and outreach aspects of the project are designed to benefit this Disadvantaged Community, which sits in the headwaters of the watershed.

**Furthering the core value of the human right to water —**

The core value of the human right to water is embedded in and supported by the protection of and restoration of watershed resilience. Increases in

groundwater recharge support the many local residences that rely on well water. Stream health is foundational to the area's use of Wolf Creek for water conveyance downstream to agricultural and residential properties and to city sewage treatment upstream. Community participation and education about this project reinforces this core value and underlines how, in a time of climate change, our human right to water is made possible through the protection of healthy watersheds.

**Response to Climate Change / basis for additional funding  
/monitoring & success criteria / institutional stability and capacity**

This project supports and conforms to the State Water Board's Resolution No. 2017-0012, as the resolution itself states, by promoting "ecosystem protection, enhancement and restoration, drought response, and groundwater recharge." Revegetation of the 7 acres of this project will provide a modest amount of carbon sequestration. The use of hand tools and/or battery-operated tools for most of the work will limit the burning of fossil fuels. There will be no use of diesel- or gasoline-powered heavy equipment (other than personal vehicles for transportation).

*As this project is the initial phase of a more comprehensive restoration and rewilding project for the preserve, it will serve well as a basis for additional complementary projects funded from other sources. We are currently submitting grants with foundations and agencies from which we have previously received support. Completion of this project will only assist in the procurement of these kinds of additional funding.*

*Monitoring and success criteria are integrated into the project, from the point of initial surveying and assessment, through quarterly monitoring, and finally to end-of-project evaluation. Success will be measured through specific, measurable data including extent of successful revegetation with native species and absence of invasive species, through water quality measurements, through mapping of the riparian zone and its canopy, and through BMI surveys, and surveys of trout, bird, and keystone species such*

*as beaver.*

*WCCA is uniquely qualified to manage and complete this project. For 18 years our mission has been to protect, preserve, and restore the Wolf Creek Watershed. We have extensive expertise with water quality stream monitoring, benthic macroinvertebrate surveying, biological surveying, and vegetation restoration. Our local collaborators in this have been the City of Grass Valley, the Nevada Irrigation District, Sierra Streams Institute, the Bear Yuba Land Trust, and the South Yuba River Citizens League.*

*Moreover, through our partnerships and an extensive network of volunteers, WCCA, in this kind of project and others, consistently engages the community in ways that increase access to nature, cultural resources, and outdoor activities through the reclamation of degraded habitat in a watershed largely privately owned, with few protected places and little access. As such, this project will build community involvement in watershed protection, restoration and greater awareness of the importance of water and watersheds.*

*WCCA has a long record of successful restoration projects, supported by the City of Grass Valley, and the Nevada Irrigation District, and by grants from funders such as the Rose, Schwemm, and Teichert Foundations. Currently, we are managing three small projects in the watershed headwaters involving vegetation restoration. Further we have ongoing expertise within our organization and support from a group of experts that will be involved in this project:*

- *BJ Schmidt, M.A., Water Quality Program Manager*
- *Eric Engels, PhD, plant ecologist*
- *Daniel Nicholson, restoration botanist/biologist in private practice for over 10 years*
- *Shane Hanofee, current president of the CNPS local chapter, professional vegetation consultant*
- *Dave Herbst, PhD, head of Benthic Macroinvertebrate Lab at Sierra Streams Institute*

- *Doug Zike, Gold Country Fly Fishers*
- *Alex Lerch, GIS specialist and vegetation technician with the CA State Parks*
- *Steve and Diane Rose, leaders of “Nevada County Breeding Bird Atlas Project” - Sierra Foothills Audubon Society*
- *Josie Crawford, retired CNPS Education Coordinator*

**SEP BUDGET: Riparian Habitat Assessment and Restoration at the Roy Peterson Wolf Creek Preserve**

<b>Equipment &amp; Supplies</b>					
item	amount	unit cost	cost inc tax & del	description	
Brush cutter	1	669	\$700.00	Husqvarna 336FR 966604702 Bike Handle Pro Brushcutter with Line/Brush and Saw Blade, 34.6 cc , Orange	
Loppers	2	130	\$280.00	EZ Kut G2 Loppers and Pruners Heavy Duty Branch Cutter. Ratcheting Lopper Branch Tree Limb Cutter. 42 inch Extendable Anvil Hand Loppers Ratchet Function. Tree Pruner Lopper Heavy Duty Tree Trimmer	
submersible pump	1	126	\$140.00	Deep Well Submersible Pump, 1 hp, 115V, 60 Hz, 33 GPM, 207' Head, Stainless Steel, 4", 33 Feet Electric Cord, Long Life M#05	
hose and fittings			\$250.00		
weed wrenches	3	249	\$800.00	Uprooter Professional pulling tool	
PPE			\$100.00	gloves, goggles,	
chain saw - battery	1	499	\$550.00	Makita 14 in. 18-Volt X2 (36-Volt) 5.0Ah LXT Lithium-Ion Brushless Cordless Top Handle Chain Saw Kit	
chain saw chaps & helmet			\$175.00		
chain saw bar oil			\$25.00		
new plants, seed, soil amendments			\$800.00		
deer-proofing supplies			\$400.00	fencing & posts	
BMI Sampling equipment			\$100.00	misc equipment to augment our in-house supplies	
Flow Probe Water Velocity Meter	1		\$1,400.00	flow probe velocity meter YSI	
<b>subtotal</b>			<b>\$5,720.00</b>		
<b>Staff time</b>					
	rate	hours	cost	description	
oversight & volunteer supervision	\$40.00	125	\$5,000.00	organize and attend 14 volunteer work parties	
Stream flow surveys	\$40.00	15	\$600.00	to monitor seasonal flow and create hydrograph	
submit 9 quarterly reports	\$40.00	27	\$1,080.00		
submit final report	\$40.00	5	\$200.00		
lead 2 BMI Sampling events	\$40.00	6	\$240.00	organize and lead two sampling events, pre- and post-project with 2 volunteers	
tech support - equipment	\$25.00	100	\$2,500.00	prep & maintain equipment, attend 14 work parties	
disposal	\$25.00	25	\$625.00	chip & spread or burn plant material	
willow cuttings	\$25.00	10	\$250.00	collect and prepare new willow cuttings from site for planting	
GIS mapping - specialist	\$43.75	30	\$1,312.50	specialist @ \$35x 1.25	
identify plants to be removed	\$40.00	25	\$1,000.00	locate and mark	
identify and procure new plants	\$40.00	50	\$2,000.00	locate and mark	
<b>subtotal</b>			<b>\$14,807.50</b>		
<b>Other costs</b>					
		<b>unit</b>			
vehicle miles	\$0.63	1248	\$780.00	48 round trips Grass Valley to Preserve 13 miles each way	
Constultant	\$55.00	10	\$550.00	Daniel Nicholson, Biological Consultant	
BMI Sampling Identification	\$500.00	3	\$1,500.00	ID conducted to Family, Genus, and Species level at SSI lab for two sampling events	
<b>subtotal</b>			<b>\$2,830.00</b>		
<b>SEP financial request</b>			<b>\$23,357.50</b>		
<b>Volunteer time - match</b>					
	\$29.95	336	\$10,063.20	6 volunteers x 4 hours X 14 work parties	
	\$29.95	12	\$359.40	2 volunteers x 3 hours x 2 BMI sampling events	
Drone surveys	\$100.00	6	\$600.00	1 volunteer x 2 hours x 3 drone surveys	
Trout surveys			\$1,500.00	trout survey by Gold Country Fly Fishers	
<b>subtotal</b>			<b>\$12,522.60</b>		
<b>Total project cost - SEP + Match</b>			<b>\$33,420.70</b>		