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## Central Valley Regional Water Quality Control Board

29 March 2017

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

**CERTIFIED MAIL**  
**91 7199 9991 7036 6990 3018**

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

***FINALIZED STIPULATED ORDER AND INVOICE FOR PAYMENT, CITY OF SUTTER CREEK, BADGER STREET BRIDGE REPLACEMENT PROJECT, AMADOR COUNTY, WQID 5S03C376811 AND 5B03CR00070***

Enclosed for your records is a signed copy of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability, Order R5-2017-0507 (Stipulated Order or Order). As described below, this Order memorializes the settlement reached between the Central Valley Water Board and the City of Sutter Creek for violations of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* and the *Clean Water Act Section 401 Technically Conditioned Water Quality Certification, WQID 5B03CR00070*, at the Badger Street Replacement Bridge Project construction site in Sutter Creek. This letter also serves as your invoice for payment of the agreed-upon administrative civil liability.

On 9 February 2017, the City of Sutter Creek accepted the Stipulated Order and waived its right to a hearing before the Central Valley Water Board. On 10 February 2017, the Prosecution Team posted the Stipulated Order on the Central Valley Water Board's website for a 30-day public comment period as required by federal regulations. The comment period ended on 15 March 2017 and no comments were received. The Prosecution Team subsequently presented the Stipulated Order to the Central Valley Water Board's Executive Officer (acting as head of the Advisory Team) for formal endorsement of the Order on behalf of the Central Valley Water Board. A copy of the endorsed Stipulated Order is enclosed.

As a condition of the Stipulated Order, the City of Sutter Creek agreed to the imposition of administrative liability totaling eighty six thousand one hundred twelve dollars (\$86,112). The City of Sutter Creek agreed to make two payments in the following amounts as explained in the enclosed Stipulated Order and summarized below.

Please remit one payment of **forty-three thousand fifty-six dollars (\$43,056)** by check that references *ACL Order R5-2017-0507* made payable to the *State Water Board Cleanup and Abatement Account*. Please send the payment to:

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KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

Accounting Office, Attn: ACL Payment  
State Water Resources Control Board  
P.O. Box 1888  
Sacramento, CA 95812-1888

Please remit a second payment of **forty-three thousand fifty-six dollars (\$43,056)** by check that references *ACL Order R5-2017-0507* made payable to the *Rose Foundation* for a Supplemental Environmental Project (SEP). Please send the payment to:

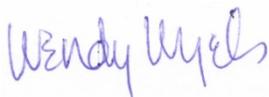
Rose Foundation  
Attn: Tim Little  
1970 Broadway, Suite 600  
Oakland, CA 94612-2218

The payments must be received by **28 April 2017**. In addition, copies of the checks must be mailed to:

Wendy Wyels  
Central Valley Water Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Late payment will result in this matter being referred to a collection agency or to the Attorney General's office for prosecution resulting in a judgment to collect from the appropriate superior court. Alternatively, the Central Valley Water Board may obtain a judgment directly from the superior court pursuant to Water Code section 13328.

If you have any questions, please contact me at (916) 464-4835 or [wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov).



WENDY WYELS, Supervisor  
Compliance and Enforcement Section

Enclosure: Order R5-2017-0507

cc: Greg Gholson, U.S. Environmental Protection Agency, Region IX, San Francisco  
Adam Laputz, Central Valley Water Board, Sacramento  
David Boyers, Office of Enforcement, State Water Resources Control Board, Sacramento  
Tim Little, Rose Foundation, Oakland

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2017-0507  
IN THE MATTER OF

CITY OF SUTTER CREEK  
BADGER STREET BRIDGE REPLACEMENT PROJECT  
AMADOR COUNTY

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) 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 the City of Sutter Creek (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.

**Recitals**

1. The Prosecution Team alleges that the City of Sutter Creek violated the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) and the *Clean Water Act Section 401 Technically Conditioned Water Quality Certification* (401 Water Quality Certification) at the City's Badger Street Replacement Bridge Project. The alleged violations are described in a Notice of Violation from the Central Valley Water Board dated 10 November 2016, a Central Valley Water Board Inspection Report dated 28 October 2016 and a Notice of Violation from the Department of Fish and Wildlife dated 30 November 2016, which are attached hereto as Attachments A, B and C, respectively.
2. The Central Valley Water Board may assess an administrative civil liability pursuant to Water Code section 13385, subdivisions (a)(2) and (a)(5) for the alleged violations in an amount not to exceed \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons.
3. Pursuant to Water Code section 13385(e), in determining the amount of 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.

4. The State Water Resources Control Board's Water Quality Enforcement Policy establishes a methodology for assessing administrative civil liability in consideration of the factors as outlined in Water Code section 13385(e). The administrative civil liability amount imposed pursuant to this Stipulated Order was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment D.

#### Settlement

5. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation and 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. The Central Valley Water Board Prosecution Team believes 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.

#### Stipulations

The Parties stipulate to the following:

6. Administrative Civil Liability: The Discharger hereby agrees to the imposition of administrative civil liability totaling **eighty six thousand one hundred twelve dollars (\$86,112)** to the Central Valley Water Board to resolve the alleged violations. The Parties agree that the calculation of the proposed liability using the penalty methodology in the Enforcement Policy, as explained in detail in Attachment D, is appropriate even though the penalty amounts calculated for violations #3, #4, and #5 exceed the daily statutory maximum liability, considering that any potential liability on a per gallon basis for violations #1 and #2 is waived. The Discharger agrees to pay the following amounts:
  - a. **Forty-three thousand fifty-six dollars (\$43,056)** shall be paid to the State Water Board *Cleanup and Abatement Account*. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board, by check payable to the State Water Board *Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check shall be sent to Wendy Wyels, Central Valley Water Quality Control Board, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA, 95670.
  - b. **Forty-three thousand fifty-six dollars (\$43,056)** shall be paid to the Rose Foundation for Communities and the Environment (Rose Foundation) for a Supplemental Environmental Project (SEP). Out of that amount, \$38,875.81 shall be distributed in its entirety to the California Product Stewardship Council (CPSC) solely for use as

part of the Sustainable Medication Take Back for Amador County Project, \$1,254.06 shall be distributed to the Rose Foundation for general SEP development costs, and the remaining \$2,926.13 shall be distributed to the Rose Foundation and used for oversight of the specific SEP described herein. Attachment E, which is hereby incorporated into this Order by reference, describes the Rose Foundation's SEP Development and SEP oversight activities in detail. This SEP is intended to continue expansion of CPSC's pharmaceutical disposal education and outreach effort to protect watersheds of the Central Valley. Payment shall be made no later than thirty (30) days after the entry of an Order approving this Settlement Agreement by the Central Valley Water Board. Payment shall be provided to the Rose Foundation in the form of a single check payable to the "Rose Foundation." Payment shall be sent to the following address: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94612-2218, Attn: Tim Little. A copy of the check shall be sent to Wendy Wyels at the address set forth above.

7. Supplemental Environmental Project: The Discharger and the Central Valley Water Board agree that the payment specified in Section 6.b of the Stipulation is a SEP, and that the amount specified (hereafter SEP amount) will be treated as a Suspended Administrative Civil Liability for purposes of this Stipulated Order. Upon the Discharger's payment of its SEP obligations under this Stipulation, Central Valley Water Board staff shall send the Discharger a letter recognizing the satisfactory completion of its SEP obligations. This letter shall terminate any further SEP obligations of Discharger and result in the permanent waiver of the SEP suspended liability.
  - a. Using the grant funds, CPSC will expand upon the award winning "Don't Rush to Flush, Meds in the Bin We All Win!" program developed by the California Stewardship Council. The project protects water quality by establishing safe and convenient medication collection sites and promoting their use to the public in lieu of flushing or trashing medications in Amador County. A full description of program, including a list of deliverables and timeline, is included as Attachment E, which is hereby incorporated into this Order.
8. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of administrative civil liability 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 continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse Discharger from meeting any more stringent requirements that may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
9. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:  
Wendy Wyels- Supervisor, Compliance and Enforcement Section  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

(916) 464-4656  
[Wendy.Wyels@waterboards.ca.gov](mailto:Wendy.Wyels@waterboards.ca.gov)

David Boyers – Assistant Chief Counsel  
Office of Enforcement, State Water Resources Control Board  
801 K Street, 23rd Floor  
Sacramento, CA 95814  
(916) 341-5276  
[David.boyers@waterboards.ca.gov](mailto:David.boyers@waterboards.ca.gov)

For the Discharger:  
Amy Gedney – City Manager  
City of Sutter Creek  
18 Main Street  
Sutter Creek, CA 95647  
(209) 267-5647  
[agedney@cityofsuttercreek.org](mailto:agedney@cityofsuttercreek.org)

10. **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.
11. **Matters Addressed by Stipulation:** 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 Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Dischargers as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the ACL by the deadline specified herein.
12. **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 Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
13. **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 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.
14. **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 Order.

15. **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.
16. **Modification:** This Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
17. **If 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 Resources Control Board or a court, the Parties acknowledge that 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 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; or
  - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
18. **No Admission of Liability:** Neither this Stipulated Order, nor any payment pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future actions by the Central Valley Water Board.
19. **Waiver or Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323 (b), and hereby waives its right to a hearing before the Central Valley Water Board.

20. **Waiver of Right to Petition:** 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.
21. **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 causes of action, which arise out of or are related to this action.
22. **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 Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Respondent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
23. **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 Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
24. **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.
25. **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 Order.
26. **Counterpart Signatures:** This 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.

**IT IS SO STIPULATED.**

  
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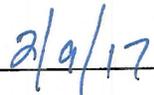
Andrew Altevogt  
Assistant Executive Officer, For the Central Valley Water Board Prosecution Team

  
\_\_\_\_\_

Date

  
\_\_\_\_\_

Linda Rianda  
Mayor, For the City of Sutter Creek

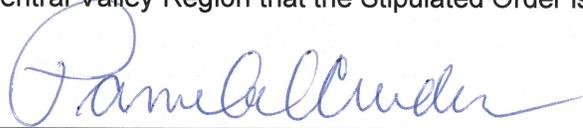
  
\_\_\_\_\_

Date

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

1. 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 administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (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.
2. The foregoing Stipulation is fully incorporated herein and made part of this Order.
3. 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.

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.



Pamela Creedon  
Executive Officer  
Central Valley Regional Water Quality Control Board

Date

- Attachment A: Central Valley Water Board Notice of Violation dated 10 November 2016
- Attachment B: Central Valley Water Board Inspection Report dated 28 October 2016
- Attachment C: Department of Fish and Wildlife Notice of Violation dated 30 November 2016
- Attachment D: Penalty Calculation Methodology
- Attachment E: SEP Project Funding and Description

Settlement Agreement and Stipulation for  
Entry of Administrative Civil Liability Order R5-2017-0507  
City Of Sutter Creek  
Badger Street Bridge Replacement Project  
Amador County

Attachment A: Central Valley Water Board Notice of Violation dated 10 November 2016

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## Central Valley Regional Water Quality Control Board

10 November 2016

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

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

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

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

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

### **General Permit Violations**

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

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

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

### **Water Quality Certification Violations**

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

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

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

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

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

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

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

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

## **Response**

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

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

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

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

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

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



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

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

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

Settlement Agreement and Stipulation for  
Entry of Administrative Civil Liability Order R5-2017-0507  
City Of Sutter Creek  
Badger Street Bridge Replacement Project  
Amador County

Attachment B: Central Valley Water Board Inspection Report dated 28 October 2016

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

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

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

### Inspection Summary / Comments:

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

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

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

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

Signature



Date 11/03/2016

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



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



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



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



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



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



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



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



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



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



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



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



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



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



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



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

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**Central Valley Regional Water Quality Control Board**

1 April 2015

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

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

**ACTION:**

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

**WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

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

**TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS:**

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

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

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

**Table 1:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

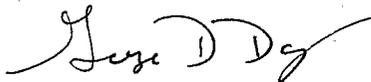
George Day, Senior Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
364 Knollcrest Drive, Suite 205, Redding, California 96002  
gday@waterboards.ca.gov  
(530) 224-4859

**WATER QUALITY CERTIFICATION:**

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

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

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



(for) PAMELA C. CREEDON  
Executive Officer

DLW:lmw

Enclosure: Water Quality Order No. 2003-0017 DWQ

cc list see next page

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

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

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

## PROJECT INFORMATION

**Application Date:** 5 November 2014

**Application Complete Date:** 30 March 2015

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

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

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

**Type of Project:** Bridge Replacement Project

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

**County:** Amador County

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

**Water Body Type:** Wetland and Riparian

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

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

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

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

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

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

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

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

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

Notes  
NA Not Applicable

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

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

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

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

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

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

Settlement Agreement and Stipulation for  
Entry of Administrative Civil Liability Order R5-2017-0507  
City Of Sutter Creek  
Badger Street Bridge Replacement Project  
Amador County

Attachment C: Department of Fish and Wildlife Notice of Violation dated 30 November 2016



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

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



CERTIFIED MAIL

NOV 30 2016

Date

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

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

Dear Ms. Gedney:

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

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

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

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

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

*Conserving California's Wildlife Since 1870*

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

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

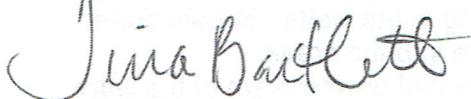
Department staff directed City of Sutter Creek to address the violation by either stabilizing the site and ceasing all work activity for the 2016 winter season, or to provide a detailed description of remaining work to be done and how that work would be implemented without harming the stream with excessive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

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

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

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

Sincerely,



Tina Bartlett  
Regional Manager

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

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

Eric Stitt  
E Corp Consulting  
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Chris Stabenfeldt  
E Corp Consulting  
[cstabenfeldt@ecorpconsulting.com](mailto:cstabenfeldt@ecorpconsulting.com)

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

Settlement Agreement and Stipulation for  
Entry of Administrative Civil Liability Order R5-2017-0507  
City Of Sutter Creek  
Badger Street Bridge Replacement Project  
Amador County

Attachment D: Penalty Calculation Methodology

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Settlement Agreement and Stipulation for  
Entry of Administrative Civil Liability Order R5-2017-0507  
City Of Sutter Creek  
Badger Street Bridge Replacement Project  
Amador County

Attachment E: SEP Project Funding and Description

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## PROJECT PROPOSAL

### *Sustainable Medication Take Back for Amador County*

**Amount Requested:** \$ 40,042.08 – 18 Months

#### **Summary Description:**

The proposed project would expand the award winning “[Don’t Rush to Flush, Meds in the Bin We All Win!](#)” (DRTF) program developed by the California Product Stewardship Council (CPSC) with funding from previous Rose Foundation grants. DRTF protects water quality by establishing safe and convenient medication collection sites and promoting their use to the public in lieu of flushing or trashing medications. Reducing flushing is the primary goal because wastewater treatment plants typically can only remove a small portion of active pharmaceutical compounds, with the remainder flowing directly into waterways. DRTF also discourages trashing because landfill leachate, which is often pumped out of the landfill and processed at the same wastewater treatment plants, can present a similar risk for contamination of waterways. The project as proposed focuses on reducing pharmaceutical contamination in the waterways of Amador County, including the Cosumnes River, Dry Creek, the South Fork of the American River, the Mokelumne River, any tributaries to those waterways within the County that receive discharged wastewater, and the groundwater aquifers in the region. Downstream waterways that receive in-flows from the aforementioned including the Sacramento River, the San Joaquin River, and the San Francisco-San Joaquin Delta will also benefit from the reduction in pharmaceutical contaminants upstream. The project’s impact will be measured by the amount of medicines diverted from improper disposal by being collected in the bins.

CPSC will collaborate with community partners and establish up to four (4) new medication collections bins if the requested amount is awarded and promote the DRTF program to the community. The education and outreach program will target all consumers of medication in the project region with an emphasis on low-income and disadvantaged populations to achieve the primary goal of protecting the watershed through pollution prevention and reduction and the secondary goal of reducing the community health impacts associated with improperly stored and disposed medications. We will measure progress by: 1) successfully establishing up to 4 new medication collection locations and securing commitments to pay for ongoing disposal costs of medications collected in these bins, 2) pounds of medications collected during the grant term with a collection goal of fifteen (15) pounds per bin per month, 3) commitments from a minimum of three program partners including at least one disadvantaged community group to provide ongoing promotion of the program, 4) commitments from bin hosts to continue hosting beyond the 18 month grant term as part of a sustainable program, and 5) measuring results through a public survey.

#### **Detailed Project Description:**

The project will build on CPSC’s existing relationships with local governments and non-governmental organizations (NGO’s) active in Amador County as well as materials developed for four previous Rose Foundation-funded DRTF expansion projects (Sacramento and Yolo Counties, East Contra Costa County,

Madera County, and Monterey County), thereby maximizing the benefits of the original investment of Rose Foundation grant funds to expand a successful, award-winning, turn-key program.

This is an 18 month project and can commence immediately once the signed contract agreement has been received. CPSC will work in collaboration with several governmental entities such as Amador County, Cities of Amador, Jackson, Plymouth, Ione, and Sutter Creek, the Amador County Public Health and Environmental Health Departments, and local water agencies such as the Amador Water Agency. CPSC will contact the key project partners upon receipt of the grant to secure their partnership on the project and assistance in identifying important stakeholder groups for outreach, recruiting and placing new bins, and educating residents about the program.

The project goal is to educate consumers that unwanted medications should not be flushed or trashed and instead should be disposed of at secure, conveniently placed drop-off locations in order to help reduce pharmaceutical contaminants in water supplies and lower the risk of accidental poisonings or substance abuse associated with unwanted medications stored in the home or diverted when improperly disposed.

CPSC will contact local stakeholders from the categories listed below to educate them on proper medication disposal and its nexus with water quality, environmental protection, public health, and crime reduction and recruit them to partner with CPSC to identify and establish new collection locations and promote them to the surrounding communities.

- Medical community – pharmacies, hospitals, health and veterinary clinics and their staff and professional associations
- Local government and special districts – county and city departments of public health, environmental health, solid waste & recycling, and public works; county and city law enforcement; water delivery and sanitation districts; and community services districts
- NGO's – drug abuse prevention groups, environmental advocacy organizations, community health protection groups, youth and children's groups, senior protection groups

CPSC and project partners will conduct one presentation to key stakeholder groups in the region in order to secure partnership on the project and long-term commitments to fund disposal of the collected medicines and promote the DRTF message after the grant term, making this program sustainable. CPSC will utilize a recruitment packet based on materials used to secure hosting commitments for the previous DRTF expansion projects. The first half of the project duration will be focused on conducting one presentation to gain community partnerships, recruitment of bin hosts, siting the collection bins, and development and rollout of the public relations (PR) campaign. The second half of the project duration will be focused on continued outreach and monitoring to ensure the public is aware of the bins and gather data on bin usage, public awareness, and behavior change. CPSC may retain a Public Relations firm to advise on effective public education and messaging in the project region if needed.

Below are four outcomes of the sustainable project through and beyond the grant term:

Outcome 1 - Presentations: Conduct one presentation to key stakeholders resulting in commitments from a minimum of three local organizations to participate in and support the project with contributions including in-kind program promotion, bin hosting, and financial commitments for a sustainably funded program.

**Outcome 2 - Site Bins:** Establish up to 4 new permanent medication collection locations (or one location for each \$10,000 in grant funding procured), targeting pharmacies, hospitals, health clinics or law enforcement locations in disadvantaged communities and/or areas lacking convenient medication collection sites.

**Outcome 3 - Public Education and Awareness Campaign:** Build on the award-winning DRTF education campaign and messaging developed for previous Rose Foundation grants and customize for the project region and available outreach channels to educate residents and the medical community not to flush medications or put them in the trash and instead bring them to the new or existing collection sites. The campaign will target disadvantaged communities through a variety of outreach methods including but not limited to print and online advertising, brochures, handouts, and other print materials, radio, billboards, and social media. CPSC will also disseminate information on pharmaceutical product stewardship broadly through the Don't Rush to Flush [website](#) [Facebook](#) and [Twitter](#) social media pages and our [website](#).

**Outcome 4 - Increase Healthcare Industry Awareness:** Increase pharmacist, physician, and veterinarian awareness of proper disposal practices and local collection locations to encourage regular counseling of patients about proper medication storage and disposal and develop education materials to provide to patients. Evaluation of the effectiveness of public education efforts about not flushing medications and use of collection bins through a survey of the public.

**Deliverables & Timeline:**

Timeline & Deliverables		
Milestone	Tasks	Deliverables
25% complete— 5 month mark target for 18 month project	<ol style="list-style-type: none"> <li>Identify relevant stakeholders.</li> <li>Conduct one presentation to key stakeholder groups.</li> <li>Retain Public Relations firm (if needed and funding provided) and develop the educational materials for the medical community to give to the public.</li> <li>Begin recruitment of new take-back locations.</li> </ol>	<b>Outcome 1 – Presentation:</b> Conduct one presentation to key stakeholders. Receive commitments from a minimum of three local organizations to participate in and support the project with contributions including in-kind program promotion, bin hosting, and financial commitments for a sustainably funded program.
50% complete— 9 month mark target for 18 month	<ol style="list-style-type: none"> <li>Establish up to 4 new permanent medication take-back sites.</li> <li>Promote the new and existing collection locations for unwanted and expired medications.</li> </ol>	<b>Outcome 2 -</b> Establish new permanent medication take-back sites and hold a kick-off multi-media campaign to promote them heavily in the region to ensure they are well-utilized. Participation in quarterly check-in call with foundation staff. Submit mid-year progress report.

project	<ol style="list-style-type: none"> <li>3. Distribute educational materials for the medical community to give the public including doctors and clinics serving disadvantaged communities.</li> </ol>	
75% complete— 14 month mark target for 18 month project	<ol style="list-style-type: none"> <li>1. Develop and execute a comprehensive public education campaign to ensure the public and medical community.</li> <li>2. Conduct post program survey of the public to determine knowledge and use of program.</li> </ol>	<p><b>Outcome 3:</b> <i>Conduct public education and awareness campaign in collaboration with local partners targeting disadvantaged communities through a variety of outreach methods including but not limited to print and online advertising, brochures, handouts, and other print materials, radio, billboards, and social media. Support local partners in conducting ongoing education and promotion activities to ensure sustained awareness of and usage of the bins beyond the grant term. Complete post-program survey.</i></p>
100% complete— 18 month mark target for 18 month project	<ol style="list-style-type: none"> <li>1. Compile medicine bin collection data. The collection goal is 15 pounds per bin per month.</li> <li>2. Complete data analysis and prepare and submit final grant report to Rose Foundation per contract.</li> </ol>	<p><b>Outcome 4:</b> <i>Analyze data about public knowledge of the program and produce clear and concise reports for the Rose Foundation about the project implementation. Participation in quarterly check-in call with foundation staff and submit final progress report.</i></p>
Ongoing Tasks	<ol style="list-style-type: none"> <li>1. Ongoing tracking of collected medications to maintain comprehensive records of pharmaceuticals diverted from waterways.</li> </ol>	

## California Product Stewardship Council

### Rose Foundation Grant Proposal Budget - Sustainable Medication Take-Back: Watersheds in Amador County

<b>Employee Wages</b>	<u>Hours</u>	<u>Hourly Rate</u>		
Executive Director	28	175	\$	4,900
Assistant Director	14	155	\$	2,170
Program Manager	-	150	\$	-
Special Projects Manager II	20	145	\$	2,900
Special Projects Manager I	-	135	\$	-
Special Project Coordinator	-	115	\$	-
Senior Associate	91	85	\$	7,735
Associate	60	75	\$	4,500
Intern	26	25	\$	650
<b>Total Employee Hours/Wages</b>	<b>239</b>		<b>\$</b>	<b>22,855</b>

<b>Contract Services</b>	<u>Hours</u>	<u>Hourly Rate</u>		
			\$	-
<b>Total Contract Services</b>			<b>\$</b>	<b>-</b>

<b>Expenses</b>		
Media Buys & Printing to Promote Med Take-Back Sites		\$8,000
Contract Services Public Relations Consultant		\$1,500
Travel		\$520.81
Bins		\$6,000
<b>Total Expenses</b>		<b>\$16,020.81</b>

<b>Total Budget Requested for CPSC*</b>	<b>\$38,875.81</b>
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<b>Local Government Staff Project Support</b>		
Staff Time and Promotion In-Kind		\$6,000
Total Project Budget With In-Kind		\$44,875.81
<b>Total Project Budget</b>		<b>\$38,875.81</b>
Direct Administration Cost		\$2,929.13
<b>Total SEP Amount</b>		<b>\$41,804.94</b>
Overall Program Oversight		\$1,251.06
<b>Total Due from Discharger</b>		<b>\$43,056.00</b>

**\*Hours and materials budget line items are for planning purposes only and may be adjusted, within the not-to-exceed amount, throughout the grant period by mutual consent of Rose Foundation Grant Manager and California Product Stewardship Council in order to complete the tasks specified in the Scope of Work.**