

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0521

IN THE MATTER OF

DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION
FOR
ROCKLIN COMMONS
PLACER COUNTY

This Complaint is issued to Donahue Schriber Asset Management Corporation (hereafter Discharger) pursuant to Water Code 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on evidence that the Discharger violated provisions of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

Background

1. Rocklin Pavilion, LLC and Rocklin Pavilion Sales, LLC are the property owners of the Rocklin Commons shopping center construction site. Donahue Schriber Asset Management Corporation (Donahue Schriber) is the developer of the construction site. Brown Construction, Incorporated (Brown Construction) is the general contractor and is responsible for all phases of construction under contract to Donahue Schriber. The Rocklin Commons construction site will be referred to as the Commons site or Site throughout this document.
2. The Commons site is located northwest of the intersection of Interstate-80 and Sierra College Boulevard in Placer County. The Site covers 36.6 acres, which is being developed for one major retail outlet, multiple smaller retail stores and restaurants, and associated parking lots.
3. On 2 September 2009, the State Water Resources Control Board adopted the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002) (General Permit). This Order became effective on 1 July 2010.
4. Among other items, the General Permit requires:
 - (a) the implementation of best management practices (BMPs), using best available technology economically achievable (BAT) and best conventional control technology (BCT) to reduce pollution from storm water runoff from construction sites (General Permit, Section V.A.2);
 - (b) that a State-certified Qualified SWPPP Developer (QSD) prepare a site-specific Storm Water Pollution Prevention Plan (SWPPP) and that dischargers identify the Risk Level prior to construction (General Permit, Sections XIV, A. and VIII);
 - (c) that Risk Level 2 dischargers develop and implement a Rain Event Action Plan (REAP) designed to protect all exposed portions of a site within 48 hours prior to any likely precipitation event. A REAP must be developed when there is a forecast of 50% or greater

probability of precipitation in the project area (General Permit, Attachment D, Section H);
and,

- (d) that Risk Level 2 dischargers collect and analyze effluent samples at all discharge points where storm water is discharged off-site (General Permit, Attachment D, Section I.4.).
5. On 14 June 2011, Donahue Schriber, acting as the owners' representative, applied for permit coverage under the General Permit for the Commons site by filing a Notice of Intent application on the Water Board's SMARTS (Storm Water Multiple Application and Tracking System) data management system. Donahue Schriber determined that the Commons site is a Risk Level 2 site based on Project Sediment Risk and Receiving Water Risk under the terms of the General Permit.
6. On 29 June 2011, the Notice of Intent for the Commons site was approved and the Site was assigned Waste Discharge Identification Number (WDID #) 5S31C361332. Janet Petersen, Vice President of Development Services with Donahue Schriber is listed as the legally responsible person (LRP) for the Commons site, and Donahue Schriber is responsible for complying with all elements of the General Permit. This Complaint is being issued to Donahue Schriber, only, because of its status as the LRP for the Commons site.
7. The Discharger completed a SWPPP for the Commons site and uploaded it to the SMARTS data management system on 22 June 2011. The SWPPP does not specifically identify what type of erosion control BMPs will be installed prior to rain events, but states in Erosion Control Notes on Sheet C5 that "All areas disturbed during construction by grading, trenching, or other activities, shall be protected from erosion during the wet season (October 1 through April 30). Hydroseed, if utilized, must be placed by September 15. Hydroseed placed during the wet season shall use a secondary erosion protection measure." SWPPP Section 500.3.2 Soil Stabilization (Erosion Control) states that "Sufficient soil stabilization materials will be maintained on site to allow implementation in conformance with Caltrans requirements and as described in the SWPPP. This includes implementation requirements for active and non-active areas that require deployment before the onset of rain."

Chronology

8. From September 2011 through February 2012, Water Board staff completed multiple field meetings and inspections at the Commons site following mass grading activities at the Site. Disturbed soil areas across the Site were treated with tree mulch and Hydro Pam, but the site was not hydroseeded to regenerate vegetation. Few high rainfall events occurred throughout the 2011/2012 water year, and turbidity results reported in SMARTS for the Site shows that turbidity concentrations rarely exceeded the 250 NTU Numeric Action Level in the General Permit.
9. Starting in early November 2012, Brown Construction started grading the Commons site in preparation of installing underground utilities and constructing building pads. All natural vegetation and tree mulch was removed from the center of the Site.
10. From 28 November 2012 through 5 December 2012, multiple rainfall events occurred throughout northern and central California. In the Rocklin area, the heaviest rainfall occurred on 30 November (Friday) and 2 December (Sunday). This storm was forecast by NOAA (National Oceanic and Atmospheric Administration) National Weather Service a minimum of five days prior to the first rainfall on 28 November.

11. On 30 November 2012, Water Board staff conducted an inspection at the Site during a heavy rain event with the Qualified SWPPP Practitioner (QSP) Dave Clayson. The rain event started on 28 November 2012 and produced approximately 0.7 inches of rainfall within the first two days, then 3.7 inches of rainfall on 30 November, and an additional 2.2 inches of rainfall on 2 December 2012 for a total of 6.6 inches of rainfall for the five day event.

During the inspection, staff observed turbid storm water discharging from the site at three locations along Granite Drive. Staff collected a grab sample at Discharge Location #2, analyzed the sample for turbidity using a portable turbidimeter, and identified the turbidity at over 1,000 NTU. The Site QSP also collected grab samples at two of the three discharge locations and identified turbidity at Location #2 at 1,378 NTU, and Location #4 at 3,450 NTU. The interior of the approximately 36-acre site was graded and no erosion controls were installed across this area prior to the rain event. Brown Construction constructed a shallow detention basin across the north center portion of the site and this basin was full during staff's inspection. Erosion and sediment control BMPs were installed on the slopes around the perimeter of the site.

12. Based on the 30 November 2012 inspection, Board staff determined that the Site did not have appropriate erosion or sediment control BMPs installed prior to the 28 November through 5 December 2012 rain event(s) as required by the General Permit. This lack of soil stabilization led to a discharge of turbid storm water from the Site to three culverts which commingled with the City of Rocklin's storm drain system and flowed to a vegetated lot west of the Site across Granite Drive. Surface drainage from this undeveloped lot flows to Sucker Ravine, a water of the United States, which is a tributary to Secret Ravine. Although Board staff believes that high rainfall on 30 November 2012 resulted in turbid water discharging from the Site into Sucker Ravine, staff did not witness if this discharge occurred.
13. During the 28 November to 5 December 2012 rain event(s), Brown Construction deepened the temporary on-site detention basin. To prevent or reduce additional discharges from the Site, storm water collected across the Site was pumped to this new basin. On 20 December 2012, the Discharger started operating an on-site active treatment system (ATS) to treat suspended sediment in storm water. Treated water was discharged to the culvert inlet at Discharge Location #4.
14. Starting on 14 December 2012, and continuing weekly to date, Brown Construction has provided a weekly summary of construction activities and activities completed to stabilize the Site. As of 19 December 2012, in preparation for another storm event, Brown Construction reported that disturbed soil areas were sprayed with hydro straw, perimeter slopes were covered with erosion control blanket or sprayed, and the ATS was would be operable by 20 December and starting to treat storm water from the temporary detention basins to increase their storage capacity.
15. On 21 December 2012, Board staff issued a Notice of Violation (NOV) and Water Code Section 13267 Order for the General Permit violations observed during the inspection on 30 November 2012. The Notice of Violation required a response from the Discharger by 18 January 2013, which was later extended to 25 January 2013. The NOV and 13267 Order required the Discharger to install appropriate erosion and sediment control BMPs throughout the Site and submit a complete Numeric Action Level (NAL) Exceedance Report as described in the General Permit for the 28 November through 5 December 2012 storm event(s).
16. On 24 December 2012, Board staff conducted an inspection following a storm event which started on 21 December (Friday) and continued through 25 December 2012 (Tuesday) and produced approximately 2.4 inches of precipitation as of 24 December. As stated above, on 19 December, Brown Construction applied hydro straw to disturbed soil areas that were not being

used to store water. It appeared to Board staff that the hydro straw helped to stabilize soils during the three day rain event and only a few rills were observed around the perimeter of the Site.

17. On 25 January 2013, the Discharger submitted its NOV Response. In the report, the Discharger stated that the Site received 6.61 inches of rainfall between 28 November and 2 December 2012 and an additional 0.9 inches on 4 December. The Discharger estimated that 179,940 gallons of storm water discharged from the construction site on 30 November, an additional 78,386 gallons discharged on 2 December, and approximately 44,674 gallons of stored storm water leaked into the on-site storm drain system between 2 December and 6 December, for a total of 303,000 gallons discharged from the Site between 30 November and 6 December 2012. The Discharger stated that a series of detention basins and berms were created prior to the 28 November storm event and that these basins and berms did not fail, but storm water flowed over and around these BMPs as rainfall intensity increased. Following the high rainfall events on 30 November and 2 December, the only discharge from the site was the seepage into perforated pipes at the storm drain system manholes. Board staff reviewed the Discharger's estimates and calculations and agreed that the estimated discharge volume from the Site is reasonable.
18. The NOV Response report stated that the Site is approximately 1,000 feet northeast of Sucker Ravine Creek, and storm water runoff from the site flows to a series of cross-culverts under Granite Drive and outlets onto an undeveloped parcel that is heavily vegetated before discharging to Sucker Ravine. During the 30 November rain event inspection, Board staff identified that surface water drainage off Granite Drive also drains to these cross-culverts before discharging onto the undeveloped parcel. As noted above, Board staff did not observe if the turbid discharge from the Site entered Sucker Ravine, so no violation of the effluent limits in the General Permit was alleged in this Complaint.
19. The Discharger's NOV Response report did not include sample results for Location #1 on 30 November 2012. This discharge point receives runoff from Area 1 (5.3 acres) of the Site, Run-on Area 2B (1.3 acres), and Run-on Area 2C (4.1 acres). Drainage from Areas 2B and 2C are from the Caltrans property along Interstate 80 which flows into a drain inlet at the edge of the Commons Site and is carried through a 30-inch diameter culvert under the Site to Discharge Location #1. However, the 30-inch culvert connects to multiple manholes within the Site which were later determined to be leaking turbid storm water into the system through perforated pipes. These discharges were not identified on 30 November because a discharge sample was not collected at Discharge Location #1.

Violations at the Rocklin Commons Construction Site

20. General Permit Attachment D, Section E.3. Sediment Controls, states in part:
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.

The Discharger is alleged to have violated this requirement of the General Permit for a period of eight days (28 November to 5 December 2012) due to the failure to implement appropriate erosion control BMPs for areas under active construction.
21. General Permit Attachment D, Section I. Risk Level 2 Monitoring and Reporting Requirements, states in part:
4.a. Risk Level 2 dischargers shall collect storm water grab samples from sampling locations, as defined in Section I.5; and,

5.b. Risk Level 2 dischargers shall collect effluent samples at all discharge points where storm water is discharged off-site.

The Discharger is alleged to have violated these requirements of the General Permit on 30 November 2012 due to the failure to collect storm water grab samples from all sample discharge points where storm water is discharged off-site.

Surface Water Beneficial Uses

22. Surface water drainage from the Commons site flows to Sucker Ravine, which is a tributary to Miners Ravine, which is a tributary to Dry Creek, which is tributary to the Sacramento River between Colusa Drain and the I Street Bridge.
23. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. The beneficial uses for the Sacramento River from Colusa Basin Drain to the "I" Street Bridge are municipal and domestic supply, agricultural supply for irrigation, contact water recreation, other non-contact water recreation, warm and cold freshwater aquatic habitat, warm and cold fish migration habitat, warm and cold spawning habitat, wildlife habitat, and navigation. The Basin Plan does not specifically identify beneficial uses for Sucker Ravine, but states that the beneficial uses of any identified water body generally apply to the tributary streams.

Calculation of Penalties Under Water Code Section 13385

24. Water Code section 13385 states, in relevant part:
 - (a) *Any person who violates any of the following shall be liable civilly in accordance with this section:*
 - (2) *A waste discharge requirement ... issued pursuant to this chapter...*
 - (5) *Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.*
25. The General Permit was adopted by the State Water Board on 2 September 2009, pursuant to Clean Water Act sections 201, 208(b), 302, 303(b), 304, 306, 307, 402, and 403. Section IV(A)(1) of the General Permit, states in part:

Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.
26. The Discharger's failure to implement the elements of the General Permit described above violated the General Permit and therefore, violated the Clean Water Act and the Porter-Cologne Water Quality Control Act. Water Code section 13385 authorizes the imposition of administrative civil liability for such violations.
27. Water Code section 13385 states, in relevant part:
 - (c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) ...At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

28. **Maximum Civil Liability under Water Code Section 13385:** Pursuant to Water Code section 13385(c), each violation of the General Permit identified above is subject to penalties not to exceed \$10,000 per day and \$10 per gallon of discharge exceeding 1,000 gallons.

- The Discharger failed to comply with Sediment Control Section E.3 from 28 November 2012 through 5 December 2012, a period of 8 days. Therefore, the maximum penalty is \$10,000 X 8 days, or \$80,000.
- The Discharger failed to comply with Risk Level 2 Monitoring and Reporting Requirements Section I.4 and I.5 on 30 November 2012, a period of 1 day. Therefore, the maximum penalty is \$10,000 X 1 day, or \$10,000.

The maximum liability for these violations is **ninety thousand dollars (\$90,000)**.

29. **Minimum Civil Liability for Failure to Implement Appropriate BMPs:** Pursuant to Water Code section 13385(e), at a minimum, civil liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to failure to implement appropriate erosion and sediment control BMPs as listed in the site specific SWPPP. CASQA (California Stormwater Quality Association) estimates installation and maintenance of hydroseed at \$1,900 to \$4,000 per acre (July 2007 data), and this range is generally dependent on slope and soil type. The economic benefit received by the Discharger by not installing and maintaining appropriate erosion control BMPs is estimated to be \$2,000 per acre, based on a generally flat site that can be easily accessed by wheeled vehicles. Using the Discharger's NOV Response, Board staff also estimated that approximately 30 acres of disturbed area was not adequately protected with BMPs. Therefore, the cost to stabilize this construction site is estimated to be \$60,000. The economic benefit incurred by the Discharger is the failure to spend \$60,000 between 28 November and 25 December 2012; the value can be calculated as the interest on a loan to complete the work. Using the US EPA's BEN model, the economic benefit gained by non-compliance is calculated to be approximately **one hundred one dollars (\$101)**, which becomes the minimum civil liability which must be assessed pursuant to section 13385.

Proposed Administrative Civil Liability

30. Pursuant to Water Code section 13385(e), in determining the amount of any civil liability imposed under Water Code section 13385(c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

31. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385(e).
32. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
33. As described above, the maximum penalty for the violations is \$90,000, The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the estimated economic benefit of \$101, so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is \$111. Based on consideration of the above facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$51,550**. The specific factors considered in this penalty are detailed in Attachment A.

Regulatory Considerations

34. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the General Permit for which penalties have not yet been assessed or for violations that may subsequently occur.
35. An administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
36. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a) (2).

DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes an administrative civil liability in the amount of **fifty one thousand five hundred and fifty dollars (\$51,550)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **30/31 May 2013**, unless one of the following options occurs by **29 March 2013**:
 - a) The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **fifty one thousand five hundred and fifty dollars (\$51,550)**.; or

- b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
 - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

-Original Signed by AEO Andrew Altevogt for

PAMELA C. CREEDON, Executive Officer

4 March 2013

Date

Waiver Form
Attachment A: Specific Factors Considered for Civil Liability

WMH/SER/WSW: 27 February 2013

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Donahue Schriber Asset Management Corporation, (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0521 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **fifty one thousand five hundred and fifty dollars (\$51,550)**, by check that references "ACL Complaint R5-2013-0521" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **29 March 2013**.

c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

**Attachment A to ACL Complaint R5-2013-0521:
Specific Factors Considered for Civil Liability
Rocklin Commons, Placer 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 (CWC) 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.

No discharge violations are alleged in this Complaint. The Site is approximately 1,000 feet northeast of Sucker Ravine Creek. Storm water runoff from the site flows to a series of cross-culverts under Granite Drive where it commingles with runoff from the street. The combined runoff then flows onto an undeveloped parcel that is heavily vegetated before discharging to Sucker Ravine. Board staff did not observe if the turbid discharge from the Site entered Sucker Ravine, so this complaint does not allege violations of the effluent limits in the General Permit.

Violation 1: Failure to Implement Appropriate BMPs on Active Construction Areas prior to a Rain Event.

The General Permit requires Risk Level 2 dischargers to implement appropriate erosion and sediment control BMPs. The Rocklin Commons site is Risk Level 2.

Board staff considered the Discharger to be in violation of the erosion control BMP requirements only on the days when rain occurred at the site because the General Permit distinguishes between active and inactive construction areas. Active construction areas are defined in the General Permit as: "areas undergoing land surface disturbance. This includes construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage." Active areas must have appropriate erosion and sediment controls installed prior to rainfall but not between rain events. The General Permit defines inactive areas of construction as "areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days." Inactive areas must have effective soil cover during the entire period of inactivity, regardless of rainfall.

For the Rocklin Commons site, Board staff understands that the Discharger was conducting mass grading and utility installation activities, and returned to work as soon as possible following the rain events. Therefore, staff considered the requirements for installation of erosion control BMPs at active construction areas, rather than inactive areas, when determining the violations in this case.

Violation 1 is a non-discharge violation for the period of 28 November through 5 December 2012 when inadequate erosion and sediment control BMPs were installed at the site.

Step 1 – Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2 – Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm

The characteristics of the violation present either a minor, moderate, or major potential for harm or threat to beneficial uses. The Potential for Harm is considered to be **Moderate**, which is defined in the Enforcement Policy as “The characteristics of the violation present a substantial threat to beneficial uses and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.”

In this case, the Discharger failed to implement appropriate erosion control BMPs prior to the 28 November to 5 December 2012 (8 days) storm event as required by the Construction General Permit. Temporary erosion controls such as straw and tack or bonded fiber matrix cover disturbed soils and protect soil particles from detaching. This helps lock the soil particles in place and reduces turbidity in storm water runoff. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing 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. The failure to implement appropriate erosion control BMPs has the potential to impact Sucker Ravine Creek, which is tributary to Secret Ravine.

Deviation from Requirement

The violation represents either a minor, moderate, or major deviation from the applicable requirements. The Deviation from Requirement is considered **Moderate**, which is defined in the Enforcement Policy as “The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).”

In this case, the Discharger failed to implement appropriate erosion controls as required by the General Permit and the intended effectiveness of the requirement was not met. The requirement was partially compromised because the Discharger applied erosion and sediment controls BMPs on slopes along the perimeter of the site, but did not apply temporary erosion controls BMPs to the center of the site that was previously graded. Erosion and sediment control BMPs applied along the perimeter of the site were insufficient to control the volume of sediment laden water discharging from the site.

Using Table 3 in the Enforcement Policy, the range of factors for a **Moderate** Potential for Harm and a **Moderate** Deviation from Requirement is 0.3 to 0.4, and the middle of the range (0.35) was used for the Per Day Factor. This value is multiplied by the days of violation and the maximum per day penalty, as shown below.

Violation 1 –Per Day Assessment for Non-Discharge Violations

The initial liability amounts for the violations of the General Permit, Att. D., Section E.3. (Sediment Controls) calculated on a per-day basis from 28 November to 5 December 2012 (8 days), are as follows:

$$8 \text{ days} \times \$10,000 \text{ per day} \times 0.35 = \mathbf{\$28,000}$$

$$\text{Total Initial Liability} = \mathbf{\$28,000}$$

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to cleanup or cooperate with the regulatory authority, and the violator’s compliance history.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.1** because of the Discharger failed to implement erosion control BMPs as required by the General Permit for a forecasted multi-day storm event. The Discharger did not anticipate what a reasonable person would have and did not implement appropriate measures to avoid the discharge.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of **1.0** because the Discharger acted reasonably in responding to turbid water discharges off the construction site by improving erosion and sediment control BMPs during and after the storm and by installing an active treatment system (ATS) following the rain event. The Discharger effectively stabilized the site within 14 days following the rain event and the ATS was operating within 15 days.

History of Violations

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used, and is to be increased as necessary. In this case, a multiplier of **1.0** was used because there have been no previous violations other than the alleged violations currently at issue in this Complaint.

Step 5 - Determination of Total Base Liability Amount

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

Violation 1 - Total Base Liability Amount

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

$$\$28,000 \times 1.1 \times 1.0 \times 1.0 = \$30,800$$

Total Base Liability = **\$30,800**

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violation.

Violation 2: Failure to collect a discharge sample on 30 November 2012.

Step 1 – Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2 – Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

Potential for Harm

The characteristics of the violation present either a minor, moderate, or major potential for harm or threat to beneficial uses. The Potential for Harm for the per day assessment is considered to be **Minor**, which is defined in the Enforcement Policy as “The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.” In this case, the Discharger failed to collect a storm water discharge sample at Location 1 during a rain event on 30 November 2012. The General Permit requires dischargers to collect storm water grab samples from all locations where storm water is discharged off-site. Grab samples are analyzed in the field for turbidity and pH and the results are used to evaluate the effectiveness of BMPs and determine if BMPs need to be added or improved. Although the Discharger collected and analyzed samples from the other discharge locations on this date, the Discharger failed to collect a sample from Location 1.

Deviation from Requirement

The violation represents either a minor, moderate, or major deviation from the applicable requirements. The Deviation from Requirement for the per day assessment is considered **Moderate**, which is defined in the Enforcement Policy as “The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).” In this case, the Discharger failed to collect a storm water grab sample at Location 1 during a rain event on 30 November 2012, but did collect other required samples. As such, the intended effectiveness of the requirement was partially compromised.

Using Table 3 in the Enforcement Policy, the range of factors for a **Minor** Potential for Harm and a **Moderate** Deviation from Requirement is 0.2 to 0.3, and the middle of the range (0.25) was used for the Per Day Factor. This value is multiplied by the days of violation and the maximum per day penalty, as shown below.

Violation 2 –Per Day Assessment for Non-Discharge Violations

The initial liability amount for the violations of the General Permit, Att. D., Section I.4. (Water Quality Sampling and Analysis) calculated on a per-day basis for one day on 30 November 2012, is as follows:

$$1 \text{ day} \times \$10,000 \text{ per day} \times 0.25 = \mathbf{\$2,500}$$

Total Initial Liability = **\$2,500**

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to cleanup or cooperate with regulatory authority, and the violator’s compliance history.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of 1.1 because of the Discharger failed to follow the General Permit requirements by failing to collect a storm water grab sample at Location 1 on 30 November 2012.

Cleanup and Cooperation

The Discharger did not collect or analyze a storm water grab sample at Location 1 on 30 November 2012. A multiplier value of 1.0 was used for the cleanup and cooperation factor because the Discharger collected and analyzed samples from the other required locations.

History of Violations

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used, and is to be increased as necessary. In this case, a multiplier of 1.0 was used because there have been no previous violations other than the alleged violations currently at issue in this Complaint.

Step 5 - Determination of Total Base Liability Amount

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

Violation 2 - Total Base Liability Amount

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

$$\$2,500 \times 1.1 \times 1.0 \times 1.0 = \$2,750$$

Total Base Liability = **\$2,750**

COMBINED TOTAL BASE LIABILITY AND FACTORS APPLIED TO ALL VIOLATIONS

The combined Total Base Liability Amount for the two violations is **\$33,550** (\$30,800+ \$2,750).

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

STEP 6 – Ability to Pay and Continue in Business

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. The Complaint is being issued only to the LRP, Donahue Schriber. Therefore, the Central Valley Water Board Prosecution Team considered only Donahue Schriber's ability to pay and to continue in business when determining the administrative civil liability amount.

Donahue Schriber is a real estate investment and retail property corporation that owns and manages 79 shopping centers located throughout California, Arizona, Nevada, Oregon, and Washington. When completed, the Commons site will consist of approximately 363,000 square feet of new retail and restaurant space with Target as the anchor tenant. Given the size of the Discharger's company and the scale of the Rocklin Commons project, the Discharger has the ability to pay the combined Total Base Liability Amount.

STEP 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. The Central Valley Water Board has incurred \$18,000 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 120 hours of staff time devoted to investigating and drafting the complaint at \$150 an hour. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

STEP 8 – Economic Benefit

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to a failure to implement appropriate erosion and sediment control BMPs as required by the General Permit and listed in the site specific SWPPP. The California Stormwater Quality Association (CASQA) estimates installation and maintenance of hydroseed at \$1,900 to \$4,000 per acre (July 2007 data), and this range is generally dependent on slope and soil type. The economic benefit received by the Discharger by not installing and maintaining appropriate erosion control BMPs is estimated to be \$2,000 per acre, based on a generally flat site that can be easily accessed by wheeled vehicles. Based on information submitted by the Discharger, Board staff calculated that approximately 30 acres of disturbed area were not adequately protected with BMPs. Therefore, the cost to stabilize this acreage is estimated to be \$60,000. The Discharger realized some cost savings by not spending this money prior to the 28 November 2012 storm event. However, the Discharger did install additional BMPs on 19 December 2012, prior to the 21 December 2012 storm event. Therefore, the economic benefit can be calculated as the interest saved by not spending \$60,000 for a period of 21 days from 28 November to 19 December 2012. A Water Board Senior Economist staff used the US EPA's BEN model to determine the economic benefit, as required by the Enforcement Policy. The estimated value is \$101.

The Discharger may have gained economic benefit by not collecting and analyzing a sample on 30 December 2012. Given that the sample collection and field analysis for turbidity would likely only have taken a few minutes, the economic benefit of this violation is considered negligible. However, it is unknown whether the Discharger's actions in the field, and therefore costs, would have been different if the water quality information had been obtained.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." The economic benefit plus \$10% is \$111.

STEP 9 – Maximum and Minimum Liability Amounts

a) Minimum Liability Amount: Economic Benefit plus 10%: **\$111**

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is \$101. Therefore, the minimum liability amount pursuant to the Enforcement Policy is \$111.

b) Total Maximum Liability Amount: **\$90,000**

- i. Maximum liability amount Violation 1: \$80,000 (8 days x \$10,000 per day)
- ii. Maximum liability amount Violation 2: \$10,000 (1 day x \$10,000/day)

Discussion: The maximum administrative liability amount is the maximum amount allowed by CWC section 13385. Without the benefit of the alternative approach for calculating liability under the Enforcement Policy, the Discharger could be assessed up to \$90,000 in administrative civil liabilities for the alleged violations.

The proposed liability falls within these maximum and minimum liability amounts.

STEP 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the alleged violations is **\$51,550**.