



## Central Valley Regional Water Quality Control Board

24 January 2023

Tony Bhangu  
Colfax Auburn, LLC  
2649 Giorno Way  
El Dorado Hills, CA 95762

**By email:**  
Sukhbhangu43@gmail.com

### **REVISED OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, COLFAX AUBURN, LLC, COLFAX MAIDU VILLAGE PHASE 1, PLACER COUNTY, WQID 5S31C390732**

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle claims for administrative civil liability arising out of alleged violations by Colfax Auburn, LLC (Discharger) of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (Construction General Permit) at the Colfax Maidu Village Phase 1 construction project located on South Auburn Street in Colfax (Project). An initial settlement offer was sent to the Discharger on 5 October 2022. This revised settlement offer contains the amounts agreed upon by the Central Valley Water Board Prosecution Team and the Discharger. As the owner of the Project and the legally responsible person enrolled in the General Permit, the Discharger is responsible for complying with all elements of the General Permit and is strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer."

**This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of eighty-four thousand six hundred sixty-six dollars (\$84,866).**

**Please read this letter carefully and respond no later than 03 February 2023.**

### **DESCRIPTION OF VIOLATIONS**

Turbid stormwater runoff was observed discharging from disturbed soil areas unprotected with erosion control Best Management Practices (BMPs). The turbidity measured from the discharge was greater than 1,000 Nephelometric Turbidity Units (NTU). The Numeric Action Level (NAL) contained in the Construction General Permit

DENISE KADARA, ACTING CHAIR | PATRICK PULUPA, EXECUTIVE OFFICER

is 250 NTU. The BMPs observed during the inspection failed to meet the Construction General Permit's BAT/BCT standard and erosion control requirement for active construction areas.

Review of the inspection reports and accompanying photos showed that the Project did not have BMPs that met the BAT/BCT requirement between storm events recorded from 22 October 2021 through 16 December 2021. The Project is assumed to have returned to compliance on 23 December 2021 based on the inspection and sampling reports prepared by the Project's Qualified Storm Water Pollution Prevention Plan Practitioner (QSP), which documented no issues or violations, and sampling results below the NAL for turbidity.

This Settlement Offer alleges that the Discharger violated the following two sections of the General Permit: (1) General Permit Attachment D, Effluent Standard A.1.b. by discharging turbid runoff from the Project without using BMPs that achieved the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard; and (2) General Permit Attachment D, Erosion Control E.3., by failing to implement appropriate erosion control BMPs on disturbed soil areas during rain events.

### **STATUTORY LIABILITY**

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$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. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is over \$180,000 and the minimum liability is \$52.

### **PROPOSED SETTLEMENT OFFER**

**The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$84,866.** This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also

reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a contested enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection reports.

### **Responding to the Settlement Offer**

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **03 February 2023** to the following address:

Central Valley Regional Water Quality Control Board  
Attention: Kari Holmes, Supervisor, Enforcement Section  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

An email confirming acceptance of this Settlement Offer and submittal of the Waiver shall also be emailed by **03 February 2023** to:

Jorge L. Beltran ([Jorge.Beltran@waterboards.ca.gov](mailto:Jorge.Beltran@waterboards.ca.gov)) and,  
Brett Stevens ([Brett.Stevens@waterboards.ca.gov](mailto:Brett.Stevens@waterboards.ca.gov)).

**Important!** - Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

If you have any questions about this settlement offer, please contact Kari Holmes at (916) 464-4848 or [kari.holmes@waterboards.ca.gov](mailto:kari.holmes@waterboards.ca.gov).

*Original Signed By*

John J. Baum, P.E.  
Assistant Executive Officer

Enclosures: Offer to Settle Administrative Civil Liability  
Acceptance of Settlement Offer and Waiver of Right to a Hearing  
Penalty Calculation Methodology

cc: Kristine Karlson, U.S. EPA, Region IX, San Francisco  
Daniel S. Kippen, Office of Enforcement, State Water Board, Sacramento  
Bayley Toft-Dupuy, Office of Chief Counsel, State Water Board, Sacramento  
Patrick Pulupa, Executive Officer, Central Valley Water Board, Rancho Cordova

**ORDER NO. R5-2023-0503**  
**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING**  
**FOR**  
**COLFAX AUBURN, LLC**  
**COLFAX MAIDU VILLAGE PHASE 1**  
**PLACER COUNTY**

By signing below and returning this Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Water Board, Colfax Auburn, LLC (Discharger) hereby accepts the Settlement Offer described in the letter dated 24 January 2023 and titled Offer to Settle Administrative Civil Liability, Colfax Auburn, LLC, Colfax Maidu Village Phase 1, Placer County, WDID 5S31C390732 and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of eighty-four thousand eight hundred sixty-six (\$84,866) by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (Construction General Permit) at the Colfax Maidu Village Phase 1 construction project.

The Discharger understands that by signing this Acceptance and Waiver, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this Acceptance and Waiver does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to the following address:

Central Valley Regional Water Quality Control Board  
Attention: Kari Holmes, Supervisor, Enforcement Section  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of an NPDES permit. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

COLFAX AUBURN, LLC

By: Originally signed by Sukhwinder Bhangu

Title: Owner

Date: 02/08/2023

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: PATRICK PULUPA, Executive Officer

Date: 4/24/2023

**Attachment A - PENALTY CALCULATION METHODOLOGY  
FOR  
COLFAX AUBURN LIMITED LIABILITY CORPORATION  
COLFAX MAIDU VILLAGE PHASE 1  
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 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](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) can be found at:

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

**Background**

On 13 December 2021, staff from the Central Valley Regional Water Quality Control Board (Board) conducted an inspection of the Colfax Auburn Limited Liability Corporation (Discharger) Colfax Maidu Village Phase 1 construction project (Project). The inspection was conducted during a storm event that produced over 4 inches of rain between 13 and 16 December 2021, as documented by rain gauge CA-PC-11 Colfax 3.1-SW with latitude and longitude coordinates 39.060983, -120.99115. The Project received coverage under the State Water Resources Control Board's Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities, Order 2009-009-DWQ, as amended by Orders 2010-2014-DWQ and 2012-006-DWQ (Construction General Permit) on 3 July 2020. Generally speaking, one of the main purposes of the Construction General Permit is to minimize the amount of pollutant discharge with storm water runoff from a construction project, especially during rain events. Although the Construction General Permit requires implementation of Best Management Practices (BMPs) at enrolled sites, such as the Project, to accomplish this goal, during the inspection, Board staff observed that several areas of disturbed soil had no or ineffective erosion control best management practices (BMPs) resulting in a discharge of turbid storm water with a turbidity measured by Board Staff was greater than 1,000 Nephelometric Turbidity Units (NTU). The Numeric Action Level contained in the Construction General Permit is 250 NTU (Section V.B.2 of the Construction General Permit Order. The implementation of BMPs observed during the inspection did not meet the BAT/BCT standard.

Following the 13 December 2021 inspection, the Central Valley Water Board issued a Notice of Violation (NOV). The NOV required the Discharger to upload all inspection reports conducted by the Project's QSP leading up to the December 2021 storm event as well as documentation of corrective actions taken following the storm events. Review of the inspection reports and accompanying photos showed that the Project did not have BMPs that met the BAT/BCT requirement between storm events recorded from 22 October 2021 through 16 December 2021. The Project is assumed to have returned to compliance on 23 December 2021 based on the inspection and sampling reports prepared by the Project's Qualified Storm Water Pollution Prevention Plan Practitioner (QSP), which documented no issues or violations, and sampling results below the Numeric Action Level for turbidity.

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

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

There were eleven days of precipitation between 22 October 2021 and 16 December 2021, seven of which produced greater than 0.5 inches of rain. The Prosecution Team alleges that storm water discharged from the Project on days with greater than 0.5 inches of precipitation and that on seven days, the BMPs installed did not meet the BAT/BCT standard, in 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.*

PENALTY FACTOR	VALUE	DISCUSSION
Step 1, Factor 1: The degree of Toxicity of the Discharge (physical, chemical, biological, or thermal characteristics of the discharge)	2	Discharges of turbidity, such as those described herein, 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.
Step 1, Factor 2: Actual Harm or Potential harm to beneficial uses. (harm or potential for harm to beneficial uses)	2	Discharges from the Project reach the North Fork of the American River. The American River North Fork Watershed, from the source to Folsom Dam has the beneficial uses of aquatic freshwater habitat and wildlife habitat. Photographs during days of precipitation and discharge, and turbidity samples collected during the 13 December 2021 inspection show turbid discharges or the conditions for turbid discharges from the Project. Due to the dilution expected between the discharge locations and water bodies with beneficial uses, the discharge was expected to have a below moderate impact to beneficial uses, likely to cause harm in the short term but not appreciable harm in the long term.



PENALTY FACTOR	VALUE	DISCUSSION
Step 1, Factor 3: Susceptibility to Cleanup or Abatement	1	The sediment from the turbid discharge was deposited over a long distance and cleanup or abatement of 50% or more of the material would not be possible. Therefore, a score of 1 is appropriate.
Step 1, Final Score: Potential for Harm	5	The Potential for Harm score is the sum of Factors 1 through 3 of Step 1, shown above. The Total Potential for Harm score is $2+2+1 = 5$
Step 2: Per Gallon and per Day factor for Discharge Violations	0.15	The “Deviation from Requirement” is major because the Discharger did not implement or maintain required erosion and sediment control BMPs, rendering the permit’s BAT/BCT effluent standard ineffective. The Potential for Harm from step one of five, and the Major Deviation was used to determine both the per gallon and per day factors of 0.15 from Tables 1 and 2 of the Enforcement Policy.
Step 2: Volume discharged	n/a	The Prosecution Team did not to calculate the discharge volume at this time. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing.
Step 2: Adjustment for high volume discharges	n/a	The Prosecution Team chose to not calculate the discharge volume at this time. The Prosecution Team reserves the right to assess penalties for the volume discharged should this matter proceed to hearing.
Step 2: Days of discharge considered	7	According to rainfall data from station “CA-PC-11 Colfax 3.1 SW”, there were a total of eleven days of rainfall, seven of which had rainfall over $\frac{1}{2}$ ” between 22 October 2021 and when the project is considered to have met BAT/BCT BMP requirements. The Prosecution Team alleges that on seven of those eleven days, runoff was generated and discharge from the Project occurred on days where over $\frac{1}{2}$ ” of rain was recorded at the nearby weather station, and when BMPs did not meet the Construction General Permit’s BAT/BCT standard.
Step 2: Initial Liability for Violation #1	\$10,500	The liability is calculated as a per day factor multiplied by the number of days, multiplied by the maximum liability per day ( $0.15 \times 7 \text{ days} \times \$10,000/\text{day} = \$10,500$ ).

PENALTY FACTOR	VALUE	DISCUSSION
Step 3: Per Day Assessments for Non-Discharge Violations	N/A	This step does not apply to this violation as it is a discharge violation
Step 4: Adjustments for Discharger Conduct: Culpability	1.1	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed to meet the requirements of the Construction General Permit. Board staff inspected the Project on 7 December 2021, prior to the forecasted storm event, and communicated to the Discharger the requirements of Risk Level 2 projects to comply with the Construction General Permit. The Project was delayed by several months due to oversight for tribal concerns causing the Project to still have disturbed soils during winter months; however, these Construction General Permit requirements were known and not met prior to the issuance of a Notice of Violation. Therefore, an adjustment factor of 1.1 was deemed appropriate.
Step 4: Adjustments for Discharger Conduct: History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger; therefore, a neutral factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct Cleanup and Cooperation	1.0	Following issuance of the NOV, the contractor created a position specific to SWPPP compliance. While the cooperation to submit the information requested in the NOV was slow, the Project has been in compliance since the issuance of the NOV. Therefore, a factor of 1.0 was deemed appropriate.
<b>Step 1-4: Total Base Liability for Violation #1</b>	<b>\$13,860</b>	The base liability is calculated as the initial liability multiplied by each of the above three factors. ( $\$10,500 \times 1.1 \times 1.0 \times 1.0 = \$11,550$ )

**Violation 2 – Failure to implement erosion control BMPs on active areas**

During the site inspection on 13 December 2021, Board staff observed that the Risk Level 2 Project had large areas of disturbed soil without erosion control BMPs during a storm event. There were eleven days of precipitation between 22 October 2021 and 16 December 2021. The Prosecution team alleges that, on those eleven days, the Project was in violation of Attachment D, section E.3, Sediment Control, in the General Permit states: *Risk Level 2*

*dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.*

PENALTY FACTOR	VALUE	DISCUSSION
Step 1: Actual Harm or Potential for Harm for Discharge Violations	n/a	This step is not applicable because the violation is not a discharge violation.
Step 2: Per Gallon and Per Day Assessments for Discharge Violations	n/a	This step is not applicable because the violation is not a discharge violation.
Step 3, Non - Discharge Violations: Potential for harm	Moderate	The failure to install appropriate erosion controls led to the discharge of turbid, sediment laden water. Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat. Therefore, a "Moderate" potential for harm factor is appropriate.
Step 3, Non-Discharge Violations: Deviation from Requirement	Major	The "Deviation from Requirement" is major because the Discharger did not implement required erosion control BMPs for disturbed areas prior to a forecasted storm event on several disturbed soil areas of the Project rendering the permit requirement ineffective. Therefore, a major deviation from requirement is appropriate.
Step 3, Non-discharge Violations: Per day Factor	0.55	The value of 0.55 was determined from Table 3 in the Enforcement Policy. The middle value was chosen at this time.
Step 3, Non - discharge Violations: Days of Violation	11	The Discharger is required to implement erosion control BMPs on all disturbed soil areas prior to all rain events. The Prosecution Team alleges that the Discharger was in violation of the erosion control BMP requirement on all days with greater than 0.1 inches of precipitation. During the period between 22 October 2021 and 16 December 2021 there were eleven days of rainfall with greater than 0.1 inches of rain. The Project was assumed to have returned into compliance on 23 December 2021 based on inspection and sampling reports from the Project's QSP.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
<b>Step 3: Initial Liability for Violation #2</b>	\$60,500	The liability is calculated as per day factor multiplied by the number of days multiplied by the maximum liability per day (0.55 x 11 days x \$10,000/day) = \$60,500.
Step 4 Adjustments for Discharger Conduct Culpability	1.1	The Discharger has retained the services of a Qualified SWPPP Developer and Practitioner who is responsible for advising the Discharger on what BMPs are required to be installed to meet the requirements of the Construction General Permit. The Project was delayed by several months due to oversight for tribal concerns causing the Project to still have disturbed soils during winter months; however, these Construction General Permit requirements were known and not met prior to the issuance of a Notice of Violation. Therefore, an adjustment factor of 1.1 was deemed appropriate.
Step 4: Adjustments for Discharger Conduct History of Violations	1.0	The Central Valley Water Board has not previously issued any Administrative Civil Liability Orders against this Discharger; therefore, a neutral factor of 1.0 is appropriate.
Step 4: Adjustments for Discharger Conduct Cleanup and Cooperation	1.0	Following issuance of the NOV, the contractor created a position specific to SWPPP compliance. While the cooperation to submit the information requested in the NOV was slow, the Project has been in compliance since the issuance of the NOV. Therefore, a factor of 1.0 was deemed appropriate.
<b>Total Base Liability for Violation #2</b>	\$79,860	The base liability is calculated as the initial liability multiplied by each of the above three factors (\$60,500 x 1.1 x 1.0) = \$66,550

**Other Factor Considerations**

**Total Base Liability for all violations is \$78,100 (\$11550 for Violation # 1 + \$66550 for Violation # 2 = \$78,100).** The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

<b>OTHER FACTORS</b>	<b>VALUE</b>	<b>CONSIDERATIONS</b>
Step 6: Ability to pay and Continue in Business	No adjustment	Board staff does not have information suggesting that the Discharger cannot pay the proposed penalty and continue in business.
Step 7: Economic Benefit	\$49	Board staff estimated the economic benefit for each violation. The cost of installing BMPs which would have avoided the violations were estimated at \$5,714. Since

OTHER FACTORS	VALUE	CONSIDERATIONS
		these BMPs were installed following the violations, this cost was considered a delayed cost. The economic benefit of delaying these costs was estimated using the EPA's BEN model. Calculations showing the estimated Economic Benefit are included as Attachment A.
Step 8: Other Factors as Justice may Require	\$6,766	The costs of investigation and enforcement are "other factors as justice may require" and are added to the liability amount. The Central Valley Water Board has incurred approximately \$6,766 in staff costs associated with the investigation and enforcement of the alleged violations. The estimated staff costs used in Step 8 are included as Attachment B.
Step 9: Maximum Liability	\$180,000	Based on California Water Code section 13385, the maximum liability is \$10,000 per day per violation and \$10 per gallon. The maximum penalty of \$180,000 is calculated using only days of violation (18 days x \$10,000 per day) and does not include gallons discharged as the Prosecution Team has not estimated the discharged volume. The Prosecution Team reserves the right to include the volume discharged in the penalty calculation should this matter proceed to hearing. In addition, the Prosecution Team reserves the right to assess penalties for other violations observed during the 25 October 2021 storm event that were not included in this settlement if this matter proceeds to hearing.
Step 9: Minimum Liability	\$54	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>\$84,866</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability but cannot exceed the maximum liability The Final Liability is $\$78,100 + \$6,766 = 84,866$

- Attachments:
- A. Economic Benefit Calculation
  - B. Staff Cost Estimate

<b>Economic Benefit Analysis</b>									
<b>Colfax Maidu</b>									
Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
Hydromulch with tackifier	\$ 5,214	CCI	10/6/2021	Y	10/22/2021	12/23/2021	12/25/2022	7.50%	44
Mobilization of BMP Installer	\$ 500	CCI	10/6/2021	Y	10/22/2021	12/23/2021	12/25/2022	7.50%	4
<b>Income Tax Schedule:</b> Corporation								<b>Total Benefit: \$ 49</b>	
<b>USEPA BEN Model Version:</b> Version 2022.0.0 (June 2022)									
<b>Analyst:</b> Jennifer McGovern, Valaree St Mary									
<b>Date/Time of Analysis:</b> 9/28/22 11:30									
<b>Assumptions:</b>									
<ul style="list-style-type: none"> <li>o Cost estimates and compliance actions provided by Regional Board Staff</li> <li>o Failure to implement construction BMPs which included hydromulch with tackifier and mobilization of BMP installer was delayed, not avoided</li> <li>o Approximately 2.83 acres were disturbed (minus 7,400 sq ft) according to Regional Board Staff</li> <li>o BMP installation adjusted using the construction cost index (CCI)</li> <li>o Non-compliance and compliance dates for each compliance action provided by Regional Board Staff</li> <li>o The penalty payment date is assumed to be 3 months from the date of analysis</li> </ul>									
Accessible Draft <ul style="list-style-type: none"> <li>o The discharger is assumed to operate as a for-profit entity</li> </ul>									

**Table 1. Staff Cost Summary**

	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Inspections	2	\$ 295.41	\$ 590.82
Inspection Reports	2	\$ 549.82	\$ 1,099.65
Notice of Violations	1	\$ 390.67	\$ 390.67
ACL Prep	1	\$ 4,685.79	\$ 4,685.79
<b>Total Staff Costs</b>		<b>\$ 6,766.93</b>	

**Table 2. Staff Cost Calculation**

Inspection	<u>Hours</u> <sup>1</sup>	<u>Ave Cost/Hour</u> <sup>2</sup>	<u>Cost</u>
Water Resource Control Engineer	2.5	\$ 118.16	\$ 295.41
Senior Environmental Scientist	0	\$ 154.34	\$ -
Supervising Water Resources Control Engineer	0	\$ 179.32	\$ -
Assistant Executive Officer	0	\$ 185.26	\$ -
<b>Cost per Inspection</b>			<b>\$ 295.41</b>

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

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

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

**Notes:**

- 1 Inspection Time includes in-office pre-inspection research and drive time.
- 2 Hourly costs from SWRCB Office of Enforcement Fiscal Year 2020-2021 Billing Costs Summary, mid range salary used.