



Central Valley Regional Water Quality Control Board

05 October 2022

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OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, CASTLE COMPANIES, LOMA RICA RANCH, NEVADA COUNTY, WDID 5S29C393771

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 Castle Companies (Discharger) of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Loma Rica Ranch construction project located in Grass Valley (Project). 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 one hundred ninety-four thousand two hundred thirty-five dollars (\$194,235).

Please read this letter carefully and respond no later than 04 November 2022.

DESCRIPTION OF VIOLATIONS

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

The Project applied for, and received, coverage under the State Water Resources Control Board's *Waste Discharge Requirements for Discharges of Storm Water Runoff*

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Associated with Construction and Land Disturbance Activities, Order 2009-009-DWQ (Construction General Permit) in May 2021. The Project is categorized as a Risk Level 2 Project as defined Construction General Permit and planned to disturb approximately 40 acres of previously undeveloped land for residential construction.

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

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

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

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

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

BMPs installed at the Project were in substantial compliance with Construction General Permit requirements.

This Settlement Offer alleges the Discharger violated the following three sections of the Construction 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; (2) General Permit Attachment D, Erosion Control E.3. by failing to implement appropriate erosion control BMPs on disturbed soil areas of the Project during rain events; and (3) General Permit Attachment D, Sediment Control E.1. by failing to install adequate perimeter sediment control BMPs at the Project.

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 \$470,000 and the minimum liability is \$568.

PROPOSED SETTLEMENT OFFER

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$194,235. 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 **04 November 2022** 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 **04 November 2022** to:

Michael Fischer (Michael.Fischer@waterboards.ca.gov) and,
Brett Stevens (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 at kari.holmes@waterboards.ca.gov.

Original Signed by

John J. Baum
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

Castle Companies
Loma Rica Ranch
Acceptance and Waiver

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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. R5-2022-XXXX
ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
CASTLE COMPANIES
LOMA RICA RANCH
NEVADA 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, Castle Companies (Discharger) hereby accepts the Settlement Offer described in the letter dated 05 October 2022 and titled Offer to Settle Administrative Civil Liability, Castle Companies, Loma Rica Ranch, Nevada County, WDID 5S29C393771 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 one hundred ninety-four thousand two hundred thirty-five dollars (\$194,235) 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 (General Permit) at the Loma Rica Ranch 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*.

CASTLE COMPANIES

By: Original Signed by Thomas Baldacci

Title: President

Date: 23 December 2022

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

By: PATRICK PULUPA, Executive Officer

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

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

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 prior to major forecasted storm events disturbed soil areas of the Project rendering the

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

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

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

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

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

Other Factor Considerations

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

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

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