

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

In the matter of:	)	
	)	
<b>MISSION VALLEY ROCK CO.,</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>LLC</b>	)	<b>STIPULATION FOR ENTRY OF</b>
	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
<b>Unauthorized Discharge of</b>	)	<b>ORDER</b>
<b>41,000 Gallons of Sediment-</b>	)	
<b>Laden Process Wastewater to</b>	)	<b>ORDER NO. R2-2022-1003</b>
<b>Alameda Creek</b>	)	

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region Prosecution Team (Prosecution Team), and Mission Valley Rock Co., LLC (Settling Respondent) (collectively, Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate, for adoption as an Order by settlement pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by the imposition of administrative civil liability against the Settling Respondent in the amount of **\$368,940**.

**Section II: RECITALS**

1. From March 22 – 24, 2021 (three days), Settling Respondent discharged without authorization approximately 41,000 gallons of sediment-laden process wastewater from its Mission Valley Rock facility located at 7999 Athenour Way, Sunol, California (Facility) to Alameda Creek in Alameda County.
2. The discharge violated Prohibition III.A of Order R2-2020-0028 (NPDES Permit CAG982001), Aggregate Mining, Marine Sand Washing, and Sand Offloading General Permit, which states, "Discharge of waste at a location or in a manner different than described in an NOI (i.e., Notice of Intent) and Authorization to Discharge is prohibited." Neither the NOI nor the Authorization to Discharge identifies the unauthorized discharge described here.

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3. The Settling Respondent is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (a)(2), which provides: "A person who violates any of the following shall be liable civilly in accordance with this section: A waste discharge requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160."
4. To resolve the alleged violation in paragraph 1, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$368,940** against the Settling Respondent. The Prosecution Team calculated the proposed liability using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy* (Enforcement Policy) (October 2017) as shown in Attachment A, which is incorporated herein by reference.
5. The Parties have engaged in settlement negotiations and agree to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
6. The Prosecution Team affirms that the resolution of the alleged violation is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violation, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

**Section III: STIPULATIONS**

The Parties incorporate the foregoing Recitals and stipulate to the following:

7. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability of **\$368,940** to resolve the alleged violation set forth in section II as follows:
  - a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Settling Respondent shall mail a check for **\$184,470**, made payable to "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order, to:

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

The Settling Respondent shall email a copy of the check to the State Water Board, Office of Enforcement ([dan.kippen@waterboards.ca.gov](mailto:dan.kippen@waterboards.ca.gov)), and to the Regional Water Board ([habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)).

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- b. The Parties agree that the remaining **\$184,470** of the administrative liability shall be paid to the Regional Monitoring Program, care of the San Francisco Estuary Institute (SFEI), for implementation of a supplemental environmental project (SEP) named “High-Speed Mapping of Water Quality Parameters on the Eastern Shoal of South San Francisco Bay” as follows:
- i. **\$184,470** (SEP Amount) shall be paid in the manner described in section III, paragraph 1.b.ii, solely for use toward the SEP. Funding this project will result in high-speed mapping of water quality parameters covering the eastern shoals of South San Francisco Bay monthly over the course of four months. A complete description of the SEP is provided in Attachment B, incorporated herein by reference.
  - ii. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Settling Respondent shall mail a check for **\$184,470**, made payable to “Regional Monitoring Program,” referencing the Order number on page one of this Stipulated Order, to:

Regional Monitoring Program  
c/o San Francisco Estuary Institute  
4911 Central Avenue  
Richmond, CA 94804

The Settling Respondent shall email a copy of the check to the State Water Board, Office of Enforcement ([dan.kippen@waterboards.ca.gov](mailto:dan.kippen@waterboards.ca.gov)), and to the Regional Water Board ([habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)).

8. **The SEP and Suspended Liability:** In accordance with the State Water Board’s *Policy on Supplemental Environmental Projects* (May 2018) and State Water Board Resolution 2018-0015, the Parties agree that the Settling Respondent’s payment of the SEP Amount to fund the SEP Project constitutes a SEP, and that the SEP Amount shall be treated as a permanently suspended administrative civil liability for purposes of this Stipulated Order. The Settling Respondent’s SEP obligations shall be satisfactorily completed, and the SEP Amount will be permanently suspended, upon SFEI’s written notification to the Regional Water Board and the Settling Respondent acknowledging that the Regional Monitoring Program received payment of the SEP Amount from the Settling Respondent and that the payment will be spent on the project described in section III, paragraph 7.b.i, and Attachment B in accordance with the terms of this Stipulated Order. SFEI’s annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.

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9. **Publicity Associated with the SEP:** Whenever the Settling Respondent or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Settling Respondent.
10. **Regional Water Board Not Liable:** The Regional Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Settling Respondent or its corporate affiliates, directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order. The Regional Water Board and its members, staff, attorneys, and representatives shall not be held as parties to, or guarantors of, any contract entered into by the Settling Respondent or its corporate affiliates, directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
11. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

12. **Party Contacts for Communications related to this Stipulated Order:**

**For the Regional Water Board:**

Habte Kifle  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)  
(510) 622-2371

Counsel:  
Daniel S. Kippen, Esq.  
State Water Resources Control Board  
Office of Enforcement  
801 K Street, 23rd Floor  
Sacramento, CA 95814  
[dan.kippen@waterboards.ca.gov](mailto:dan.kippen@waterboards.ca.gov)  
(916) 323-6848

**For the Settling Respondent:**

Erika Guerra  
Mission Valley Rock Co.  
3000 Executive Parkway  
San Ramon, CA 94583  
[erika.guerra@martinmarietta.com](mailto:erika.guerra@martinmarietta.com)  
(734) 383-1010

Counsel:  
Nicole E. Granquist, Esq.  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
[ngranquist@downeybrand.com](mailto:ngranquist@downeybrand.com)  
(916) 520-5369

13. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
14. **Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of any alleged violation of the Water Code by Settling Respondent associated with the discharge described in paragraph 1 as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in paragraph 7.
15. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
16. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised and the Regional Water Board or its delegate requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulated Order as necessary or advisable under the circumstances.
17. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
18. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing expressly referencing this Stipulated Order, signed by all Parties, and approved by the Regional Water Board or its delegate.
19. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to

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assess administrative civil liability for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to, objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter. The Parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or judicial review to the extent such period has been extended by these settlement proceedings.

20. **Waiver of Hearing:** The Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter proceeds to the Regional Water Board or State Water Board for hearing, the Settling Respondent does not waive its right to a hearing before an order is imposed.
21. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order, as presented herein, is not adopted by the Regional Water Board or its delegate, the Settling Respondent hereby waives its right to petition the Regional Water Board's or its delegate's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate court.
22. **Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.
23. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Settling Respondent does not admit to any of the allegations stated herein or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e). By entering into this Stipulated Order, the Settling Respondent does not waive any defenses or arguments

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related to any new enforcement action the Regional Water Board may bring in the future.

24. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its delegate under the terms of this Stipulated Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.
25. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.
26. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
27. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
28. **Counterpart Signatures; Facsimile and Electronic Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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29. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: May 19, 2022  
Original Signature on File

By: \_\_\_\_\_  
Thomas Mumley  
Assistant Executive Officer

**IT IS SO STIPULATED.**

**MISSION VALLEY ROCK CO., LLC**

Date: May 19, 2022  
Original Signature on File

By: \_\_\_\_\_  
John A. Gillan  
Associate General Counsel and  
Head of Sustainability

**ORDER OF THE REGIONAL WATER BOARD**

1. This Order incorporates the foregoing sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the State Water Board's Enforcement Policy, which is incorporated herein by reference. The consideration of these factors and application of the Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegation set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board or its delegate finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under this Stipulated Order.

**IT IS HEREBY ORDERED** pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

\_\_\_\_\_  
Lisa Horowitz McCann  
Assistant Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

\_\_\_\_\_  
Date

# **ATTACHMENT A**

## **Factors in Determining Administrative Civil Liability**

### **MISSION VALLEY ROCK CO., LLC 41,000-GALLON UNAUTHORIZED PROCESS WASTEWATER DISCHARGE TO ALAMEDA CREEK SUNOL, ALAMEDA COUNTY**

The State Water Resources Control Board's *Water Quality Enforcement Policy* (April 2017) (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code (Water Code) section 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms may not be replicated herein. The Enforcement Policy is at:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final\\_adopted\\_policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final_adopted_policy.pdf)

### **ALLEGED VIOLATION**

From March 22 – 24, 2021 (three days), Mission Valley Rock Co., LLC<sup>1</sup> (Discharger) (formerly Hanson Aggregates, Mission Valley Rock) discharged without authorization approximately 41,000 gallons of sediment-laden process wastewater from its Mission Valley Rock facility located at 7999 Athenour Way, Sunol, California (Facility) to Alameda Creek in Alameda County. The discharge violated Prohibition III.A of Order R2-2020-0028 (NPDES Permit CAG982001), Aggregate Mining, Marine Sand Washing, and Sand Offloading General Permit, which states, "Discharge of waste at a location or in a manner different than described in an NOI (i.e., Notice of Intent) and Authorization to Discharge is prohibited." Neither the NOI nor the Authorization to Discharge identifies the unauthorized discharge described here.

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<sup>1</sup> On or about October 25, 2021, the San Francisco Bay Regional Water Quality Control Board received a letter on "Martin Marietta" and "Mission Valley Rock, LLC" letterhead stating, in part, "Martin Marietta Materials acquired Hanson Aggregates Mid-Pacific, Inc., including this Mission Valley Rock facility, on October 1, 2021." The correct corporate operating entity name is Mission Valley Rock Co., LLC; that company is registered to do business in the State of California, and has agreed to accept liability associated with this enforcement action.

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On April 2, 2021, San Francisco Public Utilities Commission (SFPUC) biologists discovered the discharge while performing a fish spawning survey. SFPUC operates a drinking water treatment plant upstream of the unauthorized discharge. SFPUC biologists notified San Francisco Bay Regional Water Quality Control Board (Regional Water Board) staff of the unauthorized discharge and described their observation as follows:

... unusually fine and concentrated silt for approximately 500 feet of stream length. No similar silt was observed upstream of this location but it could be found in most backwater/slow [areas] downstream. At some areas downstream the silt was 6 inches thick and [covering] most of the 20-30 feet of stream width.<sup>2</sup>

California Department of Fish and Wildlife and Regional Water Board staff inspected the site on April 3 and April 5, 2021,<sup>3</sup> and confirmed the significant fine sediment deposition within, and along the bank and riparian area of Alameda Creek. The Discharger submitted a report on April 7, 2021, and supplemented the report on September 23, 2021, characterizing the discharge volume and explaining how and why the unauthorized discharge occurred.

The Discharger is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (a)(2), which provides: "A person who violates any of the following shall be liable civilly in accordance with this section: A waste discharge requirement or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160." The factors considered in determining the liability for the violation are described below:

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<sup>2</sup> Email message from Ellen Natesan, Ph.D., of SFPUC to Habte Kifle of Regional Water Board, *Silt in Alameda Creek*, April 2, 2021.

<sup>3</sup> Regional Water Board staff inspection report, *April 5, 2021 Inspection of Mission Valley Rock Sunol Facility, 7999 Athenour Way Sunol, Alameda County*, July 9, 2021.

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Factor	Selection	Rationale
Degree of Toxicity of the Discharge	3	<p>A score of 3 (above-moderate) is appropriate because the discharged material posed an above-moderate risk or a direct threat to potential receptors or beneficial uses (i.e., the chemical and/or physical characteristics of the discharged material exceeded known risk factors or there was a substantial threat to potential receptors). (Enforcement Policy, pp. 11-12.)</p> <p>Fine sediment poses a direct threat to water quality and beneficial uses, for aquatic species in particular, because it can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants; clog fish gills; impair respiration, feeding, and excretory functions; and smother aquatic habitat and spawning areas. Sediment can also alter or obstruct creek flows, increasing the potential for flooding; restrict contact and non-contact recreational activities; and transport other materials, such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms.</p>
Actual Harm or Potential Harm to Beneficial Uses	4	<p>A score of 4 (above moderate) is appropriate because the discharge caused more than moderate harm or potential harm to beneficial uses. A score of 4 “is typified by observed or reasonably expected potential significant impacts, and involves potential for actual partial or temporary restrictions on, or impairment of, beneficial uses.” (Enforcement Policy, p. 12.)</p> <p>The beneficial uses of Alameda Creek include cold and warm freshwater habitat, preservation of rare and endangered species, fish spawning and migration, wildlife habitat, and water contact and non-contact recreation.<sup>4</sup> Based on the characteristics of the sediment discharge discussed above, it is reasonable to expect potential significant impacts to these beneficial uses. In fact, significant impacts to beneficial uses were observed: SFPUC staff observed significant fine sediment deposition and cloudy water in Alameda Creek on April 2, 2021, over one week after the discharge occurred; Regional Water Board staff observed fine silt deposits in Alameda Creek during its April 5, 2021, inspection.</p>
Susceptibility to Cleanup or Abatement	1	<p>A score of 1 is appropriate because 50 percent or more of the discharge commingled with the receiving waters and was not susceptible to cleanup. (Enforcement Policy, p. 13.)</p>

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<sup>4</sup> Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan), Chapter 2.

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<b>Factor</b>	<b>Selection</b>	<b>Rationale</b>
Deviation from Requirement	Major	The violation is a major Deviation from Requirement because the discharge violated Prohibition III.A of Order R2-2020-0028 (discharge of waste at a location or in a manner different than described in the Notice of Intent and Authorization to Discharge is prohibited). Thus, the permit requirements were rendered ineffective in their essential function. (Enforcement Policy, p. 14.)
Per-Gallon and Per-Day Factors	0.6	This multiplier is based on the total Potential for Harm score of 8 (i.e., the sum of the above factors: 3+4+1) and a major Deviation from Requirement. (Enforcement Policy, Tables 1 and 2.)
Adjustment for High Volume Discharges	No adjustment	The 41,000-gallon discharge is below the 100,000-gallon threshold for consideration of a high-volume discharge adjustment for a per-gallon penalty assessment. Therefore, this discharge is not eligible for an adjustment.
<b>Initial Liability</b>	<b>\$258,000</b>	The initial liability is the per-gallon factor multiplied by the gallons discharged to surface water (minus 1,000 gallons) multiplied by the maximum per-gallon liability (\$10), plus the per-day factor multiplied by the maximum per-day liability (\$10,000) multiplied by the number of days of discharge: $(0.6 \times 40,000 \text{ gal} \times \$10/\text{gal}) + (0.6 \times \$10,000/\text{day} \times 3 \text{ days})$ .
Culpability	1.3	A score of 1.3 (above neutral) is appropriate because a reasonable and prudent discharger would have implemented procedures to ensure that sediment-laden process wastewater was not discharged to surface waters. Between March 10 and 11, 2021, the Discharger punctured an unused process wastewater pipeline during routine road work. The Discharger assumed an unidentified blockage plugged the damaged pipeline and did not decommission or repair it. A reasonable and prudent discharger would have investigated the situation and taken measures to ensure that it effectively plugged the pipeline and that process wastewater would never be able to flow through it. Instead, the Discharger assumed the blockage would be sufficient to contain the wastewater. The discharge was entirely preventable because the Discharger knew (or should have known) of the risk of discharge and did nothing to prevent it.
History of Violations	1.1	A score of 1.1 is appropriate because the Discharger has a history of violations. Within the last five years, the Regional Water Board has imposed administrative civil liabilities of \$3,000 (Order R2-2019-1009) for effluent limitation violations of NPDES Permit CAG982001.

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<b>Factor</b>	<b>Selection</b>	<b>Rationale</b>
Cleanup and Cooperation	1.0	A score of 1.0 (neutral) is appropriate because the Discharger responded in a reasonable and timely manner upon discovery of the discharge and cooperated with the California Department of Fish and Wildlife and Regional Water Board staff to implement corrective actions.
<b>Total Base Liability</b>	<b>\$368,940</b>	The total base liability is the initial liability times the culpability, history of violations, and cleanup and cooperation factors (\$258,000 x 1.3 x 1.1 x 1.0).
Ability to Pay and Continue in Business	No adjustment	The Discharger is able to pay the proposed administrative civil liability based on publicly available information. In its 2020 annual report to stockholders, the Discharger reported annual revenues of \$4.4 billion, with net earnings of \$721 million. The Discharger acquired Lehigh Hanson, Inc.'s West Region business for \$2.3 billion in cash in October 2021. The proposed liability will not affect the Discharger's ability to continue in business.
Economic Benefit	<i>de minimus</i>	Because decommissioning the damaged pipeline would have required very little effort, the Discharger did not gain any significant economic benefit from the violation. Any savings gained in time, labor, and materials (e.g., by not plugging the pipeline with concrete) were negligible.
Staff Costs	No adjustment	Staff costs are not included in the final proposed liability.
Minimum and Maximum Liabilities	<i>de minimus</i> to \$430,000	According to the Enforcement Policy, the minimum liability is the economic benefit plus ten percent. Here, because the Discharger did not benefit economically from the violation, the minimum liability is <i>de minimus</i> . The maximum liability Water Code section 13385 allows is \$10,000 per day of violation and \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons. Here, the maximum liability is \$430,000 based on 3 days of violation and 41,000 gallons discharged. The minimum liability is nominal.
<b>Final Liability</b>	<b>\$368,940</b>	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, and the maximum and minimum liabilities.

# ATTACHMENT B

**Mission Valley Rock Co., LLC (Settling Respondent)  
Project Description for  
Supplemental Environmental Project (SEP) Fund for the  
San Francisco Bay Regional Monitoring Program**

**1. Project Name**

High-Speed Mapping of Water Quality Parameters on the Eastern Shoal of South San Francisco Bay.

**2. Project Amount**

\$184,470

**3. Project Lead**

San Francisco Estuary Institute (SFEI)

**4. SFEI Contacts**

- Technical: Ariella Chelsky, [ariellac@sfei.org](mailto:ariellac@sfei.org), (510) 746-7336
- Financial: Jennifer Hunt, [jhunt@sfei.org](mailto:jhunt@sfei.org), (510) 746-7347

**5. Project Description**

The Regional Monitoring Program for Water Quality in San Francisco Bay (RMP) will conduct high speed mapping of water quality parameters covering the eastern shoals of South San Francisco Bay monthly over the course of four months. The mapping surveys will include information about water quality, nutrients, phytoplankton, and near field remote sensing of high spatial resolution on the shoals and into the channels.

The results will provide a quantitative understanding of phytoplankton and nutrient dynamics on the shoals and how they link to nutrient cycling processes in the channels of San Francisco Bay. The critical information will be available to inform current nutrient management actions as well as develop methods for monitoring phytoplankton blooms in the future.

**6. SEP Directly Benefits Surface Water Quality**

A SEP must directly benefit groundwater, surface water, or drinking water quality or quantity and the beneficial uses of waters of the State, and it must fit within one or more designated categories. This SEP directly benefits surface water quality and the beneficial uses of waters of the State, and it fits into the assessment and audit SEP category.

**7. Above and Beyond Settling Respondent's Obligations**

This SEP provides no direct benefit to the Settling Respondent, which has no obligation to provide financial or other support for this project, will receive no direct or indirect benefit from this effort, and will not directly or indirectly

exercise any control over the SEP. This SEP is above and beyond what is required in permits or orders issued by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) or what can be accomplished with required monetary contributions to the RMP.

**8. No Benefit to the Water Board Functions, Members, or Staff**

This SEP provides no direct fiscal benefit to the Regional Water Board's functions, its members, its staff, or any family of its members or staff.

**9. Nexus to Nature or Location of Violation**

This SEP has a nexus to the violation because it is located within the immediate geographic area (i.e., in the same watershed and within a 50-mile radius) of where the violation occurred.

**10. Study Milestones and Performance Measures**

A technical report of the findings of this SEP will be produced by SFEI on or before June 30, 2024. Data will be uploaded to the United States Geological Survey National Water Information System and Tableau.

**11. Study Budget and Reports to Water Board**

Pursuant to the October 2015 Supplement to the Memorandum of Understanding (MOU) between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or portions of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder. SFEI will provide notice to the Regional Water Board within one month after receiving funds from the Settling Respondent for the SEP, and the notice will state SFEI's agreement to use the funds received as described herein.

**12. Publicity**

Pursuant to the 2015 MOU, SFEI will indicate on its Regional Monitoring Program website, and annual and other reports, that funding for the study is the result of settlement of a "San Francisco Bay Water Board" enforcement action.