Exhibit 13

Prosecution Team Evidence List Exhibits for:

Rocklin Crossings

APPROVED
author
senior

8 July 2013

Donahue Schriber Asset Management Corporation
Janet Petersen, Vice President
Donahue Schriber
200 East Baker Street, Suite 100
Costa Mesa, CA 92626

CERTIFIED MAIL
7012 0470 0000 9903 9218

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0519, ROCKLIN CROSSINGS, SOUTHEAST CORNER OF INTERSTATE 80 AND SIERRA COLLEGE BOULEVARD, ROCKLIN, PLACER COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued to Donahue Schriber Asset Management Corporation (hereafter Discharger) pursuant to Water Code section 13385, for violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ*. The Complaint proposes administrative civil liability in the amount of **two hundred eleven thousand and thirty eight dollars ($211,038)** for violations that occurred in November and December 2012.

Pursuant to Water Code section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form); or
- Appear before the Water Board for a hearing on this matter.

If the Central Valley Water Board does not receive payment and a signed waiver by **29 July 2013**, a hearing will be scheduled for the **3-4 October 2013** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Patrick Pulupa, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 15 July 2013.**

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are

not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:
http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Steve Rosenbaum at (916) 464-4631 or srosenbaum@waterboards.ca.gov.

WENDY S. WYELS, Supervisor
Compliance and Enforcement Section

Enclosures: ACL Complaint R5-2013-0519
Waiver Form
Hearing Procedures

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Mayumi Okamoto, Office of Enforcement, SWRCB, Sacramento
David Boyers, Office of Enforcement, SWRCB, Sacramento
Ken Landau, Central Valley Water Board Advisory Team, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Howard Wilkins, Remy Moose Manley, Sacramento
Melissa Thorme, Downey Brand, Sacramento
Bob Aroyan, S. D. Deacon Corporation of California, Citrus Heights
Jeff Guerrero, City of Rocklin Community Development, Rocklin

8 July 2013

Donahue Schriber Asset Management Corporation
Janet Petersen, Vice President
Donahue Schriber
200 East Baker Street, Suite 100
Costa Mesa, CA 92626

CERTIFIED MAIL
7012 0470 0000 9903 9218

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0519, ROCKLIN CROSSINGS, SOUTHEAST CORNER OF INTERSTATE 80 AND SIERRA COLLEGE BOULEVARD, ROCKLIN, PLACER COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued to Donahue Schriber Asset Management Corporation (hereafter Discharger) pursuant to Water Code section 13385, for violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ*. The Complaint proposes administrative civil liability in the amount of **two hundred eleven thousand and thirty eight dollars ($211,038)** for violations that occurred in November and December 2012.

Pursuant to Water Code section 13323, the Discharger may:

- Pay the proposed administrative civil liability and waive its right to a hearing (Option #1 on the attached waiver form); or
- Appear before the Water Board for a hearing on this matter.

If the Central Valley Water Board does not receive payment and a signed waiver by **29 July 2013**, a hearing will be scheduled for the **3-4 October 2013** Board meeting in Rancho Cordova. This hearing will be governed by the attached Hearing Procedures, which have been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedures must be received by Patrick Pulupa, whose contact information is listed in the Hearing Procedures, by **5 p.m. on 15 July 2013.**

If the Discharger chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. The settlement will be considered final pending a 30-day comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Executive Officer may withdraw the complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are

not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

In order to conserve resources, this letter transmits paper copies of the documents to the Discharger only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/.

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Steve Rosenbaum at (916) 464-4631 or srosenbaum@waterboards.ca.gov.

Wendy Wyels

WENDY S. WYELS, Supervisor
Compliance and Enforcement Section

Enclosures: ACL Complaint R5-2013-0519
Waiver Form
Hearing Procedures

cc w/o encl: Kenneth Greenberg, USEPA, Region 9, San Francisco
Mayumi Okamoto, Office of Enforcement, SWRCB, Sacramento
David Boyers, Office of Enforcement, SWRCB, Sacramento
Ken Landau, Central Valley Water Board Advisory Team, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Howard Wilkins, Remy Moose Manley, Sacramento
Melissa Thorme, Downey Brand, Sacramento
Bob Aroyan, S. D. Deacon Corporation of California, Citrus Heights
Jeff Guerrero, City of Rocklin Community Development, Rocklin

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0519

IN THE MATTER OF

DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION
FOR
ROCKLIN CROSSINGS
PLACER COUNTY

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

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

Background

1. Rocklin Crossings, LLC and Rocklin Holdings, LLC are the property owners of Rocklin Crossings and Rocklin Crossings Detention Basin construction sites, and Donahue Schriber Asset Management Corporation (Donahue Schriber) is the property owner of the Dominguez Loop Road and Center at Secret Ravine construction sites. Collectively, all four construction sites will be referred to as the Rocklin Crossings construction sites, or Site(s) in this Complaint.

2. All four Sites are contiguous and are located southeast of the intersection of Interstate 80 and Sierra College Boulevard in Placer County. The Sites cover 59.4 acres and are being developed for two anchor tenants (Walmart and Home Depot), multiple smaller retail stores and restaurants, parking lots, and a two-acre storm water detention basin.

3. S.D. Deacon Corporation of California (S.D. Deacon) is the general contractor and is responsible for all phases of construction under contract to Donahue Schriber.

4. On 2 September 2009, the State Water Resources Control Board adopted the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ (NPDES No. CAS000002) (General Permit). This Order became effective on 1 July 2010.

5. On 16 July 2012, Donahue Schriber, acting as the property owners' representative, applied for permit coverage under the General Permit for the Rocklin Crossings construction sites by filing four Notice of Intent applications on the Water Board's SMARTS (Storm Water Multiple Application and Tracking System) data management system. Donahue Schriber determined that all four projects are Risk Level 2 sites based on Project Sediment Risk and Receiving Water Risk under the terms of the General Permit. Janet Petersen, Vice President of Development Services with Donahue Schriber, is listed as the legally responsible person (LRP) for the Rocklin Crossing construction sites, and Donahue Schriber is responsible for complying with all elements of the General Permit at all four Sites. This Complaint is being issued to Donahue Schriber, only, because of its status as the LRP for the Sites.

6. On 18 July 2012, the Notices of Intent for the four Rocklin Crossings construction sites were approved and the Sites were assigned the following Waste Discharge Identification Numbers (WDID #).

Site Name	WDID #
Rocklin Crossings	5S31C364098
Rocklin Crossings Detention Basin	5S31C364108
Dominguez Loop Road	5S31C364102
Center at Secret Ravine	5S31C364105

7. Among other items, the General Permit requires that:

   (a) 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 (best available technology economically achievable) for toxic and non-conventional pollutants and BCT (best conventional control technology) for conventional pollutants. (General Permit, Section V.A.2);

   (b) Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff and soil stabilization) in conjunction with sediment control BMPs for areas under active construction (General Permit, Attachment D, Section E);

   (c) A State-certified Qualified SWPPP Developer (QSD) shall prepare a site-specific Storm Water Pollution Prevention Plan (SWPPP) and dischargers identify the Risk Level prior to construction (General Permit, Sections XIV, A. and VIII); and

   (d) Risk Level 2 dischargers shall ensure a Qualified SWPPP Practitioner (QSP) develops a Rain Event Action Plan (REAP), a written document specific for each rain event, that when implemented is designed to protect all exposed portions of a site within 48 hours prior to any likely precipitation event. A REAP must be developed when there is a forecast of 50% or greater probability of precipitation in the project area (General Permit, Attachment D, Section H) and is to be implemented no later than 24 hours prior to the likely precipitation event

8. The Discharger completed site-specific SWPPPs for all four Rocklin Crossings sites and uploaded the SWPPPs to the SMARTS data management system between 12 July and 13 July 2012. As listed in SMARTS, construction activities for all four Sites were scheduled to begin on 25 July 2012 and are to be completed by 15 October 2013.

9. Section 3 of the site-specific SWPPP for the Rocklin Crossings construction sites states that the entire site will be disturbed during the rough grading phase, and that straw mulch will be applied to all disturbed soils prior to any forecast rain event. The SWPPP states that straw mulch will be applied as a temporary erosion control BMP and shall be applied in conformance with the CASQA (California Stormwater Quality Association) BMP Factsheet EC-6. However, as described below, the Discharger did not follow its SWPPP because it failed to apply straw mulch to disturbed soils prior to a rain event and failed to implement appropriate erosion and sediment control BMPs.

Chronology

10. On 22 October 2012, Water Board staff conducted an inspection at the Site following an approximate one inch rain event in the Rocklin area. No construction activity was observed from the construction entrance at Sierra College Boulevard. Ponding was observed on graded lots,

and staff observed that no erosion controls were installed on active construction areas visible from the construction entrance. The lack of erosion control BMPs on a Risk Level 2 site prior to a rain event is a violation of the General Permit. Staff contacted Janet Petersen on 25 October 2012 and arranged a site meeting for 31 October 2012.

11. On 31 October 2012, Water Board staff met with Janet Petersen and S.D. Deacon staff and completed a thorough inspection of the four Sites. Staff observed that perimeter sediment controls were in place and appeared to be working; however, no erosion control best management practices (BMPs) were installed across the active construction sites. The Discharger was in the process of stabilizing completed building pads with tree mulch, and covering some perimeter slopes with tree mulch. Following the inspection, staff discussed stabilizing all active construction areas prior to rain events as required by the General Permit.

12. Starting on 2 November 2012 and continuing weekly to 18 February 2013, S.D. Deacon provided a weekly summary of construction activities and activities completed to stabilize the Sites. Active construction through November 2012 included drilling and blasting granite outcrops and using the rock and soil to fill portions of the Center at Secret Ravine and the Dominguez Loop Road sites. As of 26 November 2012, S.D. Deacon reported in its weekly summary that multiple areas were stabilized with rock, tree mulch, or hydro-mulch, and that future parking lot areas had not been graded and would contain all storm water in low spots. As documented in later weekly summary reports, between 26 and 28 November 2012, three earthen berms were added to the temporary haul roads in the parking lot areas, and an area at the southwest end of the Dominguez Loop Road site was excavated for temporary water storage during the forecasted rain events.

13. Temporary water storage was not addressed in the SWPPP, although updated SWPPP maps provided in weekly summaries showed the water storage features described above. However, Board staff did not find documentation in the record that the temporary storage basin or the earthen berms were designed with consideration of the size of the impending storm event or that they were equipped with overflow protection such as a rocked spillway to protect the structures from failure. The installation of temporary water storage areas, if engineered and designed correctly, is considered a BMP. However, the General Permit requires that *both* erosion control and sediment control BMPs be installed. The Discharger did not install the appropriate combination of BMPs.

14. From 28 November 2012 through 5 December 2012, multiple rainfall events occurred throughout northern and central California. In the Rocklin area, the heaviest rainfall occurred on 30 November (Friday) and 2 December (Sunday). This storm was forecast by NOAA (National Oceanic and Atmospheric Administration) National Weather Service a minimum of five days prior to the first rainfall on 28 November. As stated above, the General Permit requires that Risk Level 2 dischargers develop and implement a Rain Event Action Plan (REAP) to protect all exposed portions of a site within 48 hours prior to a precipitation event when there is a forecast of 50% or greater probability of precipitation in the project area. The Discharger's REAPs completed for the four construction Sites on 26 November 2012 stated that site erosion and sediment control BMPs were deployed at each of the four construction Sites. However, as noted below, the Water Board staff inspection on 30 November 2012 found that BMPs were not adequately deployed across the southern portion of the Rocklin Crossing site, the Center at Secret Ravine site, and the Dominguez Loop Road site.

15. On 30 November 2012, Water Board staff completed a site inspection during a heavy rain event. The rain event started on 28 November 2012 and produced approximately 0.75 inches of rainfall within the first two days, and then 2.25 inches of rainfall within the first 11 hours on 30 November. Water Board staff subsequently determined that the 30 November to 2 December storm event

was approximately equivalent to a 25 year recurrence interval as provided by NOAA Precipitation Frequency Data Server.[1]

During the inspection, staff observed turbid storm water discharging from two locations at the Site. First, from the Dominguez Loop Road site where an earthen berm, constructed for perimeter control, had breached allowing stored storm water to flow to Secret Ravine. Staff collected a grab sample of turbid storm water below the Dominguez Loop Road discharge point and a grab sample from Secret Ravine upstream of the discharge point. Both samples were analyzed for turbidity using a portable turbidimeter. The Dominguez Loop Road sample result was greater than 1,000 NTU, and the Secret Ravine sample result was 153 NTU.

Staff then met with the QSP for the site and reviewed the Rocklin Crossings Detention Basin site. Staff observed a second turbid storm water discharge from the Detention Basin site into a ditch that leads to Secret Ravine. It was later identified by the Discharger that a plug was placed in the detention basin outlet, but this plug failed, allowing turbid storm water to flow into Secret Ravine. The QSP collected a grab sample from within the ditch and identified the turbidity at 2,425 NTU. This sample represents the turbidity in storm water discharging from the Detention Basin Site into Secret Ravine. Due to the high flows in Secret Ravine, it was not safe for staff to collect an upstream or downstream sample directly from the creek. However, photographs taken at the time of the discharge show that the storm water flowing off the construction site was visibly turbid while the water upstream of the discharge point in Secret Ravine was much clearer.

16. Based on the 30 November 2012 inspection, Board staff determined that the Site did not have appropriate erosion or sediment control BMPs installed prior to the 28 November through 5 December 2012 rain events as required by the SWPPP and the General Permit. This lack of soil stabilization led to the discharge into Secret Ravine from two separate locations on the same day.

17. During the 28 November to 5 December 2012 rain events, the Discharger pumped storm water collected across the Site to both of the existing on-site detention basins to minimize potential discharges to Secret Ravine. On 18 December 2012, the Discharger started operating an on-site active treatment system (ATS) to treat suspended sediment in storm water. Treated effluent was discharged to the storm drain system on Schriber Way, which flows to Secret Ravine.

18. On 21 December 2012, Board staff issued a Notice of Violation (NOV) and Water Code section 13267 Order for the General Permit violations observed during the inspection on 30 November 2012. The Notice of Violation required a response from the Discharger by 18 January 2013, which was later extended to 25 January 2013. The NOV and 13267 Order required the Discharger to install appropriate erosion and sediment control BMPs throughout the Sites and submit a complete Numeric Action Level (NAL) Exceedance Report for the 28 November 2012 through 5 December 2012 storm events.

19. On 24 December 2012, Board staff conducted an inspection following a storm event which started on 21 December (Friday) and continued through 25 December 2012 (Tuesday) and produced approximately 2.75 inches of precipitation as of 24 December. The Center at Secret Ravine site was still actively being graded and compacted prior to the start of the storm event on 21 December 2012, and S.D. Deacon staff stated that disturbed soils across the Center at Secret Ravine site were treated with an "Earthguard" product prior to the rain event. However, the Earthguard-treated areas were not covered with mulch, straw, or fibers to prevent soil particles

[1] http://hdsc.nws.noaa.gov/hdsc/pfds/

from detaching and becoming transported in storm water runoff, and evidence of erosion was observed across portions of the Center at Secret Ravine site. Based on the lack of soil coverage and erosion observed across the active site, it appeared to Board staff that the Earthguard product was not effective in stabilizing soils during rainfall events, and staff concluded that this application was not an appropriate erosion control and therefore a violation of the General Permit. In addition, staff reviewed the SWPPP to determine if the QSD had evaluated whether the Earthguard product was appropriate for use as a soil stabilization BMP at the Rocklin Crossings construction sites. However, this evaluation was not conducted. As presented in Finding 9 above, the site-specific SWPPP for the Rocklin Crossings construction sites stated that straw mulch, not Earthguard, would be applied to all disturbed soils prior to any forecast rain event.

Staff also observed the active treatment system in operation and the system operator reported that approximately 523,000 gallons of turbid storm water had been treated and discharged since the system became operational on 18 December 2012.

20. On 25 January 2013, the Discharger submitted a NOV Response, and on 17 February 2013, the Discharger provided additional responses following staff's initial review. The Discharger's NOV Response with additions stated that the Site received seven inches of rainfall between 28 November and 2 December 2012, and estimated that approximately 76,613 gallons of turbid storm water discharged from the Site to Secret Ravine on 30 November 2012 between 8:00 AM and 12 noon. The Discharger states that BMP repairs were completed at the two discharge points by 12 noon and the remaining volume of storm water was contained on-site in low areas, road depressions, and detention basins. Board staff reviewed the Discharger's estimates and calculations and agrees that the estimated discharge volume from the Site is reasonable.

Violations at Rocklin Crossings Construction Sites

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

    Violation 1: The Discharger is alleged to have violated this requirement of the General Permit by discharging 76,613 gallons of turbid storm water to Secret Ravine on 30 November 2012.

22. General Permit Attachment D, Provision E.3. Sediment Controls, states in part: *Additional Risk Level 2 Requirement: Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.*

    Violation 2: The Discharger is alleged to have violated this requirement of the General Permit for a period of eight days (28 November to 5 December 2012) for failure to implement appropriate erosion control BMPs for areas under active construction.

    Violation 3: The Discharger is alleged to have violated this requirement of the General Permit for a period of five days (21 December to 25 December 2012) for failure to implement appropriate erosion control BMPs for areas under active construction.

Surface Water Beneficial Uses

23. Surface water drainage from the Rocklin Crossings construction sites flows to Secret Ravine, which is a tributary to Miners Ravine, which is tributary to Dry Creek, which is tributary to the Sacramento River between Colusa Drain and the I Street Bridge.

24. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. The existing and potential beneficial uses for the Sacramento River from Colusa Basin Drain to the "I" Street Bridge, and tributary streams, are municipal and domestic supply, agricultural supply for irrigation, contact water recreation, other non-contact water recreation, warm and cold freshwater aquatic habitat, warm and cold fish migration habitat, warm and cold spawning habitat, wildlife habitat, and navigation..

Calculation of Penalties Under Water Code Section 13385

25. Water Code section 13385 states, in relevant part:

(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(2) A waste discharge requirement ... issued pursuant to this chapter...(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

26. The General Permit was adopted by the State Water Board on 2 September 2009, pursuant to Clean Water Act sections 201, 208(b), 302, 303(b), 304, 306, 307, 402, and 403. Section IV(A)(1) of the General Permit, states in part:

Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from General Permit coverage.

27. The Discharger's failure to implement the elements of the General Permit described above violated the General Permit and therefore, violated the Clean Water Act and the Porter-Cologne Water Quality Control Act. Water Code section 13385 authorizes the imposition of administrative civil liability for such violations.

28. Water Code section 13385 states, in relevant part:

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

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

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

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

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

- The Discharger failed to comply with Sediment Control Provision E.3 from 28 November through 5 December 2012, a period of 8 days, and from 21 December through 25 December 2012, a period of 5 days. Therefore, the maximum penalty is $10,000 X 13 days, or $130,000.

- A total of 76,613 gallons of turbid storm water discharged from the Site to Secret Ravine on 30 November 2012. The maximum penalty for this discharge is (76,613– 1,000) gallons X $10 per gallon plus $10,000 (for one day of violation), or $766,130.

The maximum liability for these violations is **eight hundred ninety six thousand one hundred and thirty dollars ($896,130).**

30. **Minimum Administrative Civil Liability under Water Code Section 13385:** Pursuant to Water Code section 13385(e), at a minimum, civil liability must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to failure to implement appropriate erosion and sediment control BMPs as listed in the site specific SWPPP. CASQA estimates installation and maintenance of straw mulch at $1,823 to $4,802 per acre (July 2007 data), and this range is generally dependent on slope and soil type. The economic benefit received by the Discharger by not installing and maintaining appropriate erosion control BMPs is estimated to be $2,000 per acre, based on a generally flat site that can be easily accessed by wheeled vehicles. Based on information submitted by the Discharger, Board staff estimated that approximately 40 acres of disturbed area was not adequately protected with BMPs. Therefore, the cost to stabilize this construction site is estimated to be $80,000. The economic benefit incurred by the Discharger is the failure to spend $80,000 between 28 November and 25 December 2012; the value can be calculated as the interest on a loan to complete the work. Using the US EPA's BEN model, the economic benefit gained by non-compliance is calculated to be approximately one hundred seventeen dollars ($117), which becomes the minimum civil liability which must be assessed pursuant to section 13385.

Proposed Administrative Civil Liability

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

32. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement

Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385(e).

33. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
34. As described above, the maximum penalty for the violations is $896,130. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher that the estimated economic benefit of $117, so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. In this case, the economic benefit amount, plus 10%, is $129. Based on consideration of the above facts and after applying the penalty methodology and allowing for staff costs pursuant to the Enforcement Policy, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **$211,038**. The specific factors considered in this penalty are detailed in Attachment A.

Regulatory Considerations

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

DONAHUE SCHRIBER IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Central Valley Water Board proposes an administrative civil liability in the amount of **two hundred and eleven thousand and thirty eight dollars ($211,038)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.

2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **3-4 October 2013**, unless the following occurs by **29 July 2013:**

   The Discharger waives the hearing by completing the attached form (checking off the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two hundred and eleven thousand and thirty eight dollars ($211,038).**

3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

for PAMELA C. CREEDON, Executive Officer

8 July 2013

Date

Waiver Form
Attachment A: Specific Factors Considered for Civil Liabilty

WMH/SER/WSW: 8 July 2013

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

I am duly authorized to represent Donahue Schriber Asset Management Corporation (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2013-0519 (hereafter Complaint). I am informed that Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

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

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

b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **two hundred and eleven thousand and thirty eight dollars ($211,038)** by check that references "ACL Complaint R5-2013-0519" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **29 July 2013**.

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

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

_____
(Print Name and Title)

_____
(Signature)

_____
(Date)

Attachment A to ACL Complaint R5-2013-0519:
Specific Factors Considered for Civil Liability
Rocklin Crossings, Placer County

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (CWC) section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Violation 1: Two Separate Discharges of Turbid Water on 30 November 2012

Step 1 – Potential for Harm for Discharge Violations
The "potential harm to beneficial uses" factor considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses
A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5). In this case the potential harm to beneficial uses was determined to be **moderate** (i.e. a score of **3**), which is defined as a "moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects)."

The Discharger failed to implement appropriate erosion control BMPs prior to the 28 November to 5 December 2012 (8 days) storm event(s) as required by the General Permit. This failure resulted in a sediment-laden discharge to Secret Ravine, a sensitive water body with cold, spawn, and migratory beneficial uses. Both erosion and sediment control BMPs are required to be implemented on active construction sites to prevent soil particles from detaching and to contain any soil particles that become entrained in storm water runoff. These BMPs need to be designed by the Qualified SWPPP Developer (QSD) to work in unison and prevent or reduce sediment discharging from the site. In lieu of erosion control BMPs, the Discharger implemented a strategy to contain storm water on site which was not designed for the predicted storm event and ultimately failed.

The failure to implement appropriate erosion control BMPs has the potential to impact beneficial uses in Secret Ravine. The beneficial uses of Secret Ravine, as a tributary to the Sacramento River between Colusa Drain and "I" Street Bridge via Miners Ravine and Dry Creek, include municipal and domestic supply, agricultural supply for irrigation, contact water recreation, other non-contact water recreation, warm and cold freshwater aquatic habitat, warm and cold fish migration habitat, warm and cold spawning habitat, wildlife habitat, and navigation. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease.

In April 2008, the consulting firm EDAW (now called AECOM – Design + Planning) completed a Final Environmental Impact Report (EIR) for the Rocklin Crossings Project[1]. EDAW identified that Secret Ravine Creek provides spawning and rearing habitat for the federally threatened Central Valley Steelhead and spawning habitat for the federal candidate species and state species of special concern Central Valley fall- and late fall-run Chinook Salmon. EDAW received a number of comments on the Draft EIR regarding the project's potential effect on Secret Ravine and the creek's salmon population. In response, the Final EIR states that uncontrolled soil erosion generated during project construction could indirectly affect fish habitat and benthic macro-invertebrates by degrading the water quality within Secret Ravine Creek. However, EDAW added that the project's runoff, erosion, and subsequent sedimentation issues would be minimized or eliminated through preparation and implementation of an erosion control plan and stormwater pollution prevention plan (SWPPP) and the installation of appropriate Best Management Practices (BMPs).

Section 2 of the Final EIR, Master Response on Water Quality, states the following: "The BMPs proposed to be implemented during construction include: the use of soil stabilizers, fiber rolls, inlet filters, and gravel bags to prevent pollutants from being carried off-site in stormwater generated on the project site. The erosion control plan would ensure that proper control of siltation, sedimentation, and other pollutants would be implemented per the National Pollution Discharge Elimination System (NPDES) permit requirements and City ordinance standards. Debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products or other organic or earthen material would not be allowed to enter into or be placed where it may be washed by rainfall or runoff into Secret Ravine Creek."

Section 4 of the Final EIR states that construction techniques shall be identified that would reduce the potential runoff, the SWPPP shall identify the erosion and sedimentation control measures to be implemented, and BMPs identified in the SWPPP shall be used in subsequent site development activities. As discussed below, erosion and sediment control measures were identified in the SWPPP; however, erosion control measures were not implemented, and sediment controls were not effective in preventing sediment discharges from the site.

As discussed in the EIR, the discharge of sediment to surface waters can negatively impact aquatic organisms. However, the discharges took place over a four hour period during a time of high flow in Secret Ravine, and the impacts are expected to attenuate without appreciable acute or chronic effects. Therefore a moderate score of 3 was assigned to this factor.

Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge
A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. In this case, a score of 2 was assigned, which means that the chemical and/or physical characteristics of 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 concern regarding receptor protection). 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.

[1] http://www.rocklin.ca.us/depts/develop/planning/publications_n_maps/rocklin_crossings_environmental_impact_report/default.asp

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, sediment laden storm water discharged into Secret Ravine and was carried downstream with the current. Cleanup or abatement is not possible and therefore, a factor of **1** is assigned.

Final Score – "Potential for Harm"

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a final score of **6** was calculated. The total score is then used in Step 2 below.

Step 2 – Assessment for Discharge Violations

This step addresses penalties based on both a per-gallon and a per-day basis for the discharge violation.

Per Gallon Assessments for Discharge Violations

When there is a discharge, the Central Valley Water Board is to determine the initial liability amount on a per gallon basis using the Potential Harm score from Step 1 and the Extent of Deviation from Requirement of the violation. The Potential Harm score from Step 1 is **6** and the Extent of Deviation from Requirements is considered to be **Major** because the Discharger failed to implement appropriate erosion control BMPs and rendered the requirement ineffective. General Permit requires both erosion and sediment control BMPs on active construction sites to prevent soil particles from detaching and to contain any soil particles that become entrained in storm water runoff. The installation of temporary water storage areas as done by the Discharger, if engineered and designed correctly, is considered a BMP. However, the General Permit requires that both erosion control and sediment control BMPs be installed. The Discharger did not install an appropriate combination of BMPs.

Table 1 of the Enforcement Policy (p. 14) is used to determine a "per gallon" factor based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the per gallon factor is 0.22. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below.

An estimated volume of 76,613 gallons of turbid storm water was discharged from two locations on 30 November 2012. The maximum civil liability allowed under Water Code section 13385 is $10 per gallon for discharges. While the Enforcement Policy states that a lower initial per-gallon value may be used for "high volume" discharges, for this case, Water Board staff do not recommend using less than $10/gallon in the initial penalty calculation, given the relatively small volume of discharge on 30 November 2012 and the beneficial uses of the receiving water.

Water Code section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged but not cleaned up, over 1,000 gallons for each spill or discharge event. As shown in the table below, there was one discharge event on 30 November 2012 with an estimated volume of 76,613 gallons. The Per Gallon Assessment is calculated as: (Factor from Table 1) x (discharge volume-1,000) x ($10 per gallon).

Per Day Assessments for Discharge Violations
When there is a discharge, the Central Valley Water Board is to determine the initial liability amount on a per day basis using the same Potential Harm score from Step 1 and the same Extent of Deviation from Requirement used in the per-gallon analysis. The Potential Harm score from Step 1 is 6 and the Extent of Deviation from Requirements is considered to be **Major**. Therefore, the "per day" factor is **0.22** as determined from Table 2 in the Enforcement Policy. The Per Day Assessment is calculated as (factor from Table 2) x (number of days) x $10,000 per day.

Violation 1 – Per Gallon and Per Day Assessment for Discharge Violations

The initial liability amount for the discharge violations of the General Permit, Section V., A.2.(Narrative Effluent Limitations) on 30 November 2012 is as follows:

Per Gallon Liability:
a) 0.22 x (76,613 gallons discharged - 1000 gallons) x $10 per gallon = $166,349

Per Day Liability:
b) 0.22 x (1day) x $10,000 = $2,200

Total Initial Liability (a+b) = **$168,549**

Step 3 – Per Day Assessment for Non-Discharge Violations
In this case, this factor does not apply because Violation 1 is related to a discharge to surface waters and the liability was determined in Step 2.

Step 4 – Adjustment Factors
There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history.

Culpability
Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.1** because of the Discharger failed to implement erosion control BMPs as required by the Construction General Permit for a forecasted multi-day storm event. Although the Discharger utilized low areas to hold water, there is no documentation in the record that the temporary storage basins and earthen berms were designed with consideration of the size of the impending storm event or that they were equipped with overflow protection such as a rocked spillway to protect the structures from failure.

The General Permit requires that Risk Level 2 dischargers develop and implement a Rain Event Action Plan (REAP) to protect all exposed portions of a site within 48 hours prior to a precipitation event when there is a forecast of 50% or greater probability of precipitation in the project area. The Discharger's REAPs completed for the four construction Sites on 26 November 2012 stated that site erosion and sediment control BMPs were deployed at each of the four construction Sites. However, the Water Board staff inspection on 30 November 2012 found that straw and tack erosion control BMPs were not implemented across the southern portion of the Rocklin Crossing site, the Center at Secret Ravine site, and the Dominguez Loop Road site. This failure to implement appropriate BMPs led to the discharge of

turbid water which should have been avoided based on the strength of the storm forecast. The Discharger did not anticipate what a reasonable person would have and did not implement appropriate measures to avoid the discharge.

Cleanup and Cooperation
This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of **0.75** because of the cooperation exhibited by the Discharger to return to compliance. Following discovery of discharges off the construction site, the Discharger deepened a failed temporary detention basin at the Center at Secret Ravine site and pumped accumulated storm water to larger on-site detention basins and stopped the discharges off the construction site within four hours.

History of Violations
This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used, and is to be increased as necessary. In this case, a multiplier of **1** was used because there have been no previous unauthorized discharge violations at this Site other than the alleged violations currently at issue in this Complaint.

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 2.

Violation 1 – Total Base Liability Amount

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

$168,549 x 1.1 x 0.75 x 1 = $139,053

Total Base Liability = **$139,053**

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

Violation 2: Failure to Implement Appropriate BMPs on Active Construction Areas during a rain event prior to installation of the Active Treatment System.

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

Board staff considered the Discharger to be in violation of the erosion control BMP requirements only on the days when rain occurred at the site because the General Permit distinguishes between active and inactive construction areas. Active construction areas are defined in the General Permit as: *"areas undergoing land surface disturbance. This includes construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage."* Active areas must

have appropriate erosion and sediment controls installed prior to and during rain events, but not between rain events. The General Permit defines inactive areas of construction as "*areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.*" Inactive areas must have effective soil cover during the entire period of inactivity, regardless of rainfall.

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

Violation 2 is for the period of 28 November through 5 December 2012 (8 days) when the Discharger failed to have appropriate erosion control BMPs installed at the site during a rain event prior to installing an Active Treatment System (ATS). The ATS began operation on 18 December 2012.

Step 1 – Potential for Harm for Discharge Violations
This step is not applicable because the violation is a not a discharge violation.

Step 2 – Assessment for Discharge Violations
This step is not applicable because the violation is a not a discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations
The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

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

The Discharger failed to implement appropriate erosion control BMPs prior to the 28 November to 5 December 2012 (8 days) storm event(s) as required by the General Permit. Temporary erosion controls such as straw and tack cover disturbed soils and protect soil particles from detaching, which helps lock the soil particles in place and reduces turbidity in storm water runoff. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease. This failure to implement appropriate erosion control BMPs has the potential to impact beneficial uses of a sensitive habitat. As described in the EIR, "*The BMPs proposed to be implemented during construction include: the use of soil stabilizers, fiber rolls, inlet filters, and gravel bags to prevent pollutants from being carried off-site in stormwater generated on the project site. The erosion control plan would ensure that proper control of siltation, sedimentation, and other pollutants would be implemented per the National Pollution Discharge Elimination System (NPDES) permit requirements and City ordinance standards. Debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products or other organic or earthen material would not be allowed to enter into or be placed where it may be washed by*

rainfall or runoff into Secret Ravine Creek." However, the Discharger did not follow the mitigation measures identified in the EIR or the erosion control BMPs required by the General Permit.

Deviation from Requirement
The violation represents either a minor, moderate, or major deviation from the applicable requirements. The Deviation from Requirement is considered **Major**, which is defined in the Enforcement Policy as "The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions)."

General Permit requires both erosion and sediment control BMPs on active construction sites to prevent soil particles from detaching and to contain any soil particles that become entrained in storm water runoff. The installation of temporary water storage areas as done by the Discharger, if engineered and designed correctly, is considered a BMP. However, the General Permit requires that both erosion control and sediment control BMPs be installed. The Discharger did not install an appropriate combination of BMPs.

The Discharger failed to implement appropriate erosion controls as required by the General Permit and rendered the permit requirements ineffective. There was a high potential for sediment laden storm water to discharge from the construction site to Secret Ravine, and it is appropriate to select a "Major" Deviation from Requirement.

Using Table 3 in the Enforcement Policy, the range of factors for a **Moderate** Potential for Harm and a **Major** Deviation from Requirement is 0.4 to 0.7, and the middle of the range (0.55) was used for the Per Day Factor. This value is multiplied by the days of violation and the maximum per day penalty, as shown below.

Violation 2 –Per Day Assessment for Non-Discharge Violations

The initial liability amounts for the violations of the General Permit, Att. D., Section E.3. (Sediment Controls) calculated on a per-day basis, are as follows:

a) 28 November to 5 December 2012 (8 days): 8 days x $10,000 per day x 0.55 = $44,000

Total Initial Liability = **$44,000**

Step 4 – Adjustment Factors
There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history.

Culpability
Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.1** because of the Discharger's failure to implement appropriate BMPs prior to a forecasted multi-day storm event. This failure to implement BMPs led to the

discharges of turbid water which could have been avoided had appropriate BMPs been in place prior to the forecasted storm event. Again, as presented above, the General Permit requires that Risk Level 2 dischargers develop and implement a Rain Event Action Plan (REAP) to protect all exposed portions of a site within 48 hours prior to a precipitation event when there is a forecast of 50% or greater probability of precipitation in the project area. The Discharger's REAPs completed for the four construction Sites on 26 November 2012 stated that site erosion and sediment control BMPs were deployed at each of the four construction Sites. However, the Water Board staff inspection on 30 November 2012 found that straw and tack erosion control BMPs were not implemented across the southern portion of the Rocklin Crossing site, the Center at Secret Ravine site, and the Dominguez Loop Road site. This failure to implement appropriate BMPs led to the discharge of turbid water which should have been avoided based on the strength of the storm forecast. The Discharger did not anticipate what a reasonable person would have and did not implement appropriate measures to avoid the violations.

Cleanup and Cooperation
This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of **0.9** because of the cooperation exhibited by the Discharger to implement structural BMPs that reduce the potential for future discharges. Following notification of turbid storm water discharging off the construction site, the Discharger deepened a failed temporary detention basin and pumped accumulated storm water to larger on-site detention basins, and discharges off the construction site were stopped within four hours. However, the Discharger did not implement appropriate erosion control BMPs on active construction areas for the eight days identified in this violation.

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

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation 2 - Total Base Liability Amount

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

$44,000 x 1.1 x 0.9 x 1.0 = $43,560

Total Base Liability = **$43,560**

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

Violation 3: Failure to Implement Appropriate BMPs on Active Construction Areas following Installation of the Active Treatment System.

Violation 3 is for the period of 21 December to 25 December 2012 (5 days) when the Discharger failed to have adequate erosion control BMPs installed at the site during a rain event after the Active Treatment System was installed. Again, Board staff considered the requirements for installation of erosion control BMPs on active construction areas in determining these violations.

Step 1 – Potential for Harm for Discharge Violations
This step is not applicable because the violation is a not a discharge violation.

Step 2 – Assessment for Discharge Violations
This step is not applicable because the violation is a not a discharge violation.

Step 3 – Per Day Assessment for Non-Discharge Violations
The "per day" factor is calculated for each non-discharge violation or group of violations considering the 1) potential for harm and 2) the extent of the deviation from the applicable requirements.

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

The Discharger applied an Earthguard product to disturbed soils prior to the 21 December to 25 December 2012 storm event. During a 24 December 2012 site inspection, Board staff identified that the Earthguard-treated areas were not covered with mulch, straw, or fibers to prevent soil particles from detaching and becoming transported in storm water runoff, and evidence of erosion was observed across portions of the Center at Secret Ravine site. Based on the lack of soil coverage and erosion observed across the active site, it appeared to Board staff that the Earthguard product was not effective in stabilizing soils during rainfall events, and concluded that this application was not an appropriate erosion control and therefore a violation of the General Permit.- This failure to implement appropriate erosion control BMPs has the potential to impact beneficial uses.

The Discharger substantially mitigated the potential for harm by implementing structural BMPs that reduce the potential for future discharges. Although these efforts do not negate the requirement to implement appropriate erosion control BMPs at the Sites during rain events, the effective combination of erosion and sediment control BMPs combined with a strategy to pump accumulated storm water from temporary detention basins to larger on-site basins significantly reduced the potential for discharges off the construction site. Therefore, the Potential for Harm is "minor".

Deviation from Requirement
The violation represents either a minor, moderate, or major deviation from the applicable requirements. The Deviation from Requirement is considered **Minor**, which is defined in the Enforcement Policy as "The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement)."

The Discharger implemented an Earthguard product to disturbed soils prior to the 21 December to 25 December 2012 storm event; however, as discussed above, Board staff determined that the Discharger failed to implement appropriate erosion control BMPs as required by the General Permit. The Discharger implemented structural BMPs that reduce the potential for future discharges, and these BMPs combined with a strategy to pump accumulated storm water from temporary detention basins to larger on-site basins significantly reduced the potential for discharges off the construction site.

Using Table 3 in the Enforcement Policy, the range of factors for a **Minor** Potential for Harm and a **Minor** Deviation from Requirement is 0.1 to 0.2, and the middle of the range (0.15) was used for the Per Day Factor. This value is multiplied by the days of violation and the maximum per day penalty, as shown below.

Violation 3 –Per Day Assessment for Non-Discharge Violations

The initial liability amounts for the violations of the General Permit, Att. D., Section E.3. (Sediment Controls) calculated on a per-day basis, are as follows:

a) 21 December to 25 December 2012 (5 days): 5 days x $10,000 per day x 0.15 = $7,500

Total Initial Liability = **$7,500**

Step 4 – Adjustment Factors

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

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.1** because of the Discharger's failure to implement appropriate BMPs prior to a forecasted multi-day storm event.

The Center at Secret Ravine site was still actively being graded and compacted prior to the start of the storm event on 21 December 2012, and S.D. Deacon staff stated that disturbed soils across the Center at Secret Ravine site were treated with an "Earthguard" product prior to the rain event. However, the Earthguard-treated areas were not covered with mulch, straw, or fibers to prevent soil particles from detaching and becoming transported in storm water runoff, and evidence of erosion was observed across portions of the Center at Secret Ravine site. Based on the lack of soil coverage and erosion observed across the active site, it appeared to Board staff that the Earthguard product was not effective in stabilizing soils during rainfall events. Staff concluded that this application was not an appropriate erosion control and therefore a violation of the General Permit. In addition, staff reviewed the SWPPP to determine if the QSD had evaluated whether the Earthguard product was appropriate for use as a soil stabilization BMP at the Rocklin Crossings construction sites. Board staff found no evidence that this evaluation was conducted. Instead, the site-specific SWPPP for the Rocklin Crossings construction sites stated that straw mulch, not Earthguard, would be applied to all disturbed soils prior

to any forecast rain event. The Discharger did not anticipate what a reasonable person would have and did not implement appropriate measures to avoid the violations.

Cleanup and Cooperation
This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of **0.9** because of the cooperation exhibited by the Discharger to implement additional BMPs and reduce the potential for sediment discharges to surface waters. However, the Discharger did not implement appropriate erosion control BMPs on active construction areas for the five days identified in this violation.

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

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violation 3 - Total Base Liability Amount

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

$7,500 x 1.1 x 0.9 x 1.0 = $7,425

Total Base Liability = **$7,425**

COMBINED TOTAL BASE LIABILITY AND FACTORS APPLIED TO ALL VIOLATIONS
The combined Total Base Liability Amount for the two violations is **$190,038** ($139,053 + $43,560 + $7,425).

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

STEP 6 – Ability to Pay and Continue in Business
The Order is only being issued to the Legally Responsible Party (LRP), Donahue Schriber, therefore Central Valley Water Board staff considered only Donahue Schriber's ability to pay and to continue in business when determining the administrative civil liability amount.

According to a March 2013 press release[2], Donahue Schriber is a private Real Estate Investment Trust (REIT) operating on the West Coast. The company owns and manages 76 neighborhood, community, and power shopping centers representing over 11 million square feet of retail space. The shopping centers are located throughout California, Arizona, Nevada, Oregon, and Washington. When completed, the Crossings site will consist of approximately 544,000 square feet of new retail and restaurant space with Walmart and Home Depot as the anchor tenants.

In 2013, the company's major investors, the New York State Teacher's Retirement System and J.P. Morgan Strategic Property Fund approved an additional $100 million in common equity for growth capital to allow the Company to "take advantage of new market opportunities". In 2012, Donahue Schriber disposed of $250 million of non-strategic assets and acquired four shopping centers valued at over $200 million.

Given the size of the Discharger's company and the scale of the Rocklin Crossings project, the Discharger has the ability to pay the combined Total Base Liability Amount.

Although the Order only names Donahue Schriber as the responsible party, Board staff are aware that some LRPs have contract provisions in which any civil liability is passed to the contractor. The record for this case does not include the contract between Donahue Schriber and the contractor, S.D. Deacon, but staff still completed a brief review of the contractor's ability to pay. According to its website[3], S. D. Deacon is the largest retail contractor on the West Coast and fifth largest in the U.S. The company projected $400 million in business volume in 2012, and employs 400 people in five offices, including one in Sacramento. Given the size of the company, S.D. Deacon has the ability to pay the penalty, if it were to be passed on by Donahue Schriber by any indemnity provisions in the contract.

STEP 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. The Central Valley Water Board has incurred $21,000 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents approximately 140 hours of staff time devoted to investigating and drafting the complaint at $150 an hour. In accordance with the Enforcement Policy, this amount is added to the Combined Total Base Liability Amount.

It should be recognized that the Discharger, Donahue Schriber, also violated the Storm Water General Permit at its Rocklin Commons construction site, which is across the freeway from Rocklin Crossings. In that matter, the Executive Officer issued an Administrative Civil Liability Complaint in the amount of $51,550 for the failure to install appropriate erosion controls from 28 November to 5 December 2012, and for the failure to collect storm water samples. Donahue Schriber paid the liability and waived its right to a hearing before the Central Valley Water Board. Given the history of violations for this Discharger, it could be argued that a higher "history of violations" multiplier would be more appropriate than the neutral multiplier of 1 which the Prosecution Team is currently proposing.

[2] http://www.donahueschriber.com/newsdetails.aspx?newsid=126
[3] http://www.sddeacon.com/

STEP 8 – Economic Benefit

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The violations of the General Permit were due to a failure to implement appropriate erosion and sediment control BMPs as required by the General Permit and listed in the site specific SWPPP. The California Stormwater Quality Association (CASQA) estimates installation and maintenance of straw mulch at $1,823 to $4,802 per acre (July 2007 data), and this range is generally dependent on slope and soil type. The economic benefit received by the Discharger by not installing and maintaining appropriate erosion control BMPs is estimated to be $2,000 per acre, based on a generally flat site that can be easily accessed by wheeled vehicles. Based on information submitted by the Discharger, Board staff calculated that approximately 40 acres of disturbed area were not adequately protected with BMPs. Therefore, the cost to stabilize this acreage is estimated to be $80,000 (40 acres x $2,000/acre). The Discharger realized some cost savings by not spending $80,000 prior to the 28 November 2012 or 21 December 2012 storm events. However, the Discharger started using an active treatment system on 18 December 2012. Therefore, the economic benefit can be calculated as the interest saved by not spending $80,000 for a period of 20 days from 28 November to 18 December 2012. Water Board Senior Economist staff used the US EPA's BEN model to determine the economic benefit, as required by the Enforcement Policy. The estimated value is $117.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." The economic benefit plus $10% is $129.

STEP 9 – Maximum and Minimum Liability Amounts

a) Minimum Liability Amount: Economic Benefit plus 10%: **$129**
Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Central Valley Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in this Complaint is $117. Therefore, the minimum liability amount pursuant to the Enforcement Policy is $129.

b) Total Maximum Liability Amount: **$896,130**
   i. Maximum liability amount Violation 1: $766,130 (76,613 gallons discharged (-1,000 gallons) x $10 per gallon, plus 1 day x $10,000/day)
   ii. Maximum liability amount Violation 2: $80,000 (8 days x $10,000/day)
   iii. Maximum liability amount Violation 3: $50,000 (5 days x $10,000/day)

   Discussion: The maximum administrative liability amount is the maximum amount allowed by CWC section 13385. Without the benefit of the alternative approach for calculating liability for multiday violations under the Enforcement Policy, the Discharger could be assessed up to $896,130 in administrative civil liabilities for the alleged violations.

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

STEP 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the alleged violations is **$211,038** ($190,038 + $21,000).

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2013-0519

ISSUED TO
DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION
ROCKLIN CROSSINGS
PLACER COUNTY

SCHEDULED FOR 3-4 OCTOBER 2013

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Overview

Pursuant to Water Code section 13323, the Executive Officer has issued an Administrative Civil Liability (ACL) Complaint to Donahue Schriber Asset Management Corporation (hereafter Discharger), alleging violations of Water Code section 13385 for violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ*. The ACL Complaint proposes that the Central Valley Water Board impose administrative civil liability in the amount of $211,038. A hearing is currently scheduled to be conducted before the Board during its 3-4 October 2013 meeting.

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount. The Board may also decline to assess any liability, or may continue the hearing to a later date. If less than a quorum of the Board is available, this matter may be conducted before a hearing panel. The public hearing will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Board's meeting agenda. The meeting will be held at:

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure, which has been approved by the Board Chair for the adjudication of such matters. The procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available at

http://www.waterboards.ca.gov

Copies will be provided upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in section 648(b) and herein, Chapter 5 of the Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

The Discharger shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

Separation of Prosecutorial and Advisory Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Board (the "Prosecution Team") have been separated from those who will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Advisory Team are: Kenneth Landau, Assistant Executive Officer and Patrick Pulupa, Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Andrew Altevogt, Assistant Executive Officer; Wendy Wyels, Environmental Program Manager; Steve Rosenbaum, Senior Engineering Geologist; Marty Hartzell, Engineering Geologist; Mike Fischer, Water Resources Control Engineer; Mayumi Okamoto, Staff Counsel, and David Boyers, Supervising Senior Staff Counsel.

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Hearing Participants

Participants in this proceeding are designated as either "Designated Parties" or "Interested Persons." Designated Parties may present evidence and cross-examine witnesses and are subject to cross-examination. Interested Persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested Persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). At the hearing, both Designated Parties and Interested Persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff, or others, at the discretion of the Board Chair.

The following participants are hereby designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Donahue Schriber Asset Management Corporation

Requesting Designated Party Status

Persons who wish to participate in the hearing as a Designated Party must request designated party status by submitting a request in writing so that it is received no later than the deadline listed under "Important Deadlines" below. The request shall include an explanation of the basis for status as a Designated Party (i.e., how the issues to be addressed at the hearing affect the person, the need to present evidence or cross-examine witnesses), along with a statement explaining why the parties listed above do not adequately represent the person's interest. Any objections to these requests for designated party status must be submitted so that they are received no later than the deadline listed under "Important Deadlines" below.

Primary Contacts

Advisory Team:
Kenneth Landau
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

Patrick Pulupa, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5189; fax: (916) 341-5896
ppulupa@waterboards.ca.gov

Prosecution Team:
Wendy Wyels, Environmental Program Manager
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4835; fax: (916) 464-4645
wwyels@waterboards.ca.gov

Mayumi Okamoto, Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
Phone: (916) 341-5674; fax: (916) 341-5896
mokamoto@waterboards.ca.gov

Discharger
Donahue Schriber Asset Management Corporation
Janet Petersen, Vice President
Donahue Schriber
200 East Baker Street, Suite 100
Costa Mesa, CA 92626
Phone: (714) 966-6426
jpetersen@dsrg.com

Ex Parte Communications

Designated Parties and Interested Persons are forbidden from engaging in ex parte communications regarding this matter. An ex parte communication is a written or verbal communication related to the investigation, preparation, or prosecution of the ACL Complaint between a Designated Party or an Interested Person and a Board Member or a member of the Board's Advisory Team (*see* Gov. Code, § 11430.10 et seq.). However, if the communication is copied to all other persons (if written) or is made in a manner open to all other persons (if verbal), then the communication is not considered an ex parte communication. Communications regarding non-controversial procedural matters are also not considered ex parte communications and are not restricted.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each Designated Party shall have a combined **30** minutes to present evidence (including evidence presented by witnesses called by the Designated Party), to cross-examine witnesses (if warranted), and to provide a closing statement. Each Interested Person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than the deadline listed under "Important Deadlines" below. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments, or legal argument requires extra time, and why it could not have been provided in writing by the applicable deadline.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following information in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference, as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will not generally receive copies of materials incorporated by reference unless copies are provided, and the referenced materials are generally not posted on the Board's website.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the Designated Party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

Prosecution Team: The Prosecution Team's information must include the legal and factual basis for its claims against each Discharger; a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the ACL Complaint, Staff Report, or other material submitted by the Prosecution Team; and the witness information required under items 3-4 for all witnesses, including Board staff.

Designated Parties (including the Discharger): All Designated Parties shall submit comments regarding the ACL Complaint along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team no later than the deadline listed under "Important Deadlines" below.

Rebuttal: Any Designated Party that would like to submit evidence, legal analysis, or policy statements to rebut information previously submitted by other Designated Parties shall submit this rebuttal information so that it is received no later than the deadline listed under "Important Deadlines" below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other submissions. Rebuttal shall be limited to the scope of the materials previously submitted. Rebuttal information that is not responsive to information previously submitted may be excluded.

Copies: Board members will receive copies of all submitted materials. The Board Members' hard copies will be printed in black and white on 8.5"x11" paper from the Designated Parties' electronic copies. Designated Parties who are concerned about print quality or the size of all or part of their written materials should provide an extra nine paper copies for the Board Members. For voluminous submissions, Board Members may receive copies in electronic format only. Electronic copies will also be posted on the Board's website. Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) and will respond to all significant comments. The Summary Sheet and the responses shall clearly state that they were prepared by the Prosecution Team. The Summary Sheet and the responses will be posted online, as will revisions to the proposed Order.

Interested Persons: Interested Persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the deadline listed under "Important Deadlines" to be included in the Board's agenda package. Interested Persons do not need to submit written comments in order to speak at the hearing.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will *not* be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of other submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony shall appear at the hearing to affirm that the testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The ACL Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Rancho Cordova, CA 95670. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above) for assistance obtaining copies.

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the respective due date.

8 July 2013	▪ Prosecution Team issues ACL Complaint, Hearing Procedure, and other related materials.
15 July2013	▪ Objections due on Hearing Procedure. ▪ Deadline to request "Designated Party" status. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
19 July 2013	▪ Deadline to submit opposition to requests for Designated Party status. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
29 July 2013	▪ Discharger's deadline to submit payment and waiver or proceed to Hearing . Electronic *or* Hard Copy to: Prosecution Team Primary Contact
1 August 2013	▪ Advisory Team issues decision on requests for designated party status. ▪ Advisory Team issues decision on Hearing Procedure objections.
9 August 2013	▪ Prosecution Team's deadline for submission of information required under "Submission of Evidence and Policy Statements," above. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons Electronic *and* Hard Copies to: Advisory Team Primary Contact, Advisory Team Attorney
29 August 2013	▪ Remaining Designated Parties' (including the Discharger's) deadline to submit all information required under "Submission of Evidence and Policy Statements" above. This includes all written comments regarding the ACL Complaint. ▪ Interested Persons' comments are due. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
6 September 2013	▪ All Designated Parties shall submit any rebuttal evidence, any rebuttal to legal arguments and/or policy statements, and all evidentiary objections. ▪ Deadline to submit requests for additional time. ▪ If rebuttal evidence is submitted, all requests for additional time (to respond to the rebuttal at the hearing) must be made within 3 working days of *this* deadline. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons, Prosecution Team Attorney, Advisory Team Attorney Electronic *and* Hard Copies to: Prosecution Team Primary Contact, Advisory Team Primary Contact
11 September 2013[†]	▪ Prosecution Team submits Summary Sheet and responses to comments. Electronic *or* Hard Copies to: All other Designated Parties, All known Interested Persons Electronic *and* Hard Copies to: Advisory Team Primary Contact, Advisory Team Attorney
3-4 October 2013	▪ Hearing

[†] *This deadline is set based on the date that the Board compiles the Board Members' agenda packages. Any material received after this deadline will not be included in the Board Members' agenda packages.*