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8 BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD
9 CENTRAL VALLEY REGION

10 In the Matter of:) DONAHUE SCHRIBER ASSET
11) MANAGEMENT CORPORATION'S
12 Donahue Schriber Asset Management) SUBMISSION OF EVIDENCE AND
13 Corporation; Rocklin Crossing, Placer County) POLICY STATEMENTS AND
14 Administrative Civil Liability Complaint) DESIGNATION OF WITNESSES
15 No. R5-2013-0519)
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1 Pursuant to the "Submission of Evidence and Policy Statements," in the Advisory Team's
2 Second Revised Hearing Procedure ("Hearing Procedure") for Administrative Civil Liability Complaint
3 R5-2013-0519 ("ACL"), Donahue Schriber hereby submits the following: (1) evidence Donahue
4 Schriber would like the Central Valley Regional Water Quality Control Board ("Central Valley Water
5 Board") to consider; (2) Donahue Schriber's legal and technical arguments and analysis; (3) the names
6 of the witnesses Donahue Schriber intends to call at the hearing, the subject of each witness' proposed
7 testimony, and the estimated time required by each witness to present direct testimony; and (4) the
8 qualifications of Donahue Schriber's expert witnesses.

9 **I. DONAHUE SCHRIBER'S EVIDENCE LIST**

10 Donahue Schriber submits the evidence listed in Attachment "A" for consideration by the
11 Central Valley Water Board.

12 **II. LEGAL AND TECHNICAL ANALYSIS AND ARGUMENT**

13 **A. Introduction**

14 The ACL in this matter proposes a discretionary penalty that conflicts with and is inconsistent
15 with the State Water Resources Control Board's ("SWRCB's") Water Quality Enforcement Policy
16 ("Enforcement Policy"), approved on November 17, 2009 (effective May 20, 2010) for at least two
17 reasons. First, the Enforcement Policy directs the Regional Boards to use \$2.00 per gallon as the base
18 penalty amount for assessing civil liability penalties for construction stormwater discharges unless
19 exceptional circumstances warrant using a higher amount (up to \$10.00 per gallon) in its Penalty
20 Calculation Methodology for ACLs. (Exhibit D, Enforcement Policy, p. 10 ["The goal of this section
21 is to provide a consistent approach and analysis of factors to determine administrative civil liability.
22 Where violations are standard and routine, a consistent outcome can be reasonably expected using this
23 Policy."]; see also p. 14 [defining exceptional circumstances where more than a \$2.00 per gallon based
24 penalty amount may be appropriate].)¹

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27 ¹ / Donahue Schriber incorporates by reference the S.D. Deacon's Submission of Evidence and Policy
28 Statements, including but not limited to the "Legal Background Section," filed on this same date.

1 Nonetheless, without citing any evidence to support the express exceptions in the Enforcement
2 Policy for using a higher base penalty amount, the ACL uses the highest possible base penalty amount
3 (\$10.00 per gallon) to calculate the proposed penalty here. (Prosecution Team Exhibit 13, ACL,
4 Attachment A, p. 3.) Second, the ACL alleges that the potential harm to beneficial uses from the
5 alleged discharges at issue here “was determined to be moderate (i.e. a score of 3), which is defined as
6 a ‘moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to
7 beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).”
8 (*Id.*, Attachment A, p. 1.) The ACL, however, fails to cite any evidence of observed or reasonably
9 expected harm to beneficial uses to support this allegation. (*Ibid.*) The undisputed facts demonstrate
10 that the harm to beneficial uses, if any, was “minor” as that term defined by Enforcement Policy.

11 For these reasons, which are explained in detail below, the proposed ACL penalty is neither fair
12 nor consistent with the requirements of the Enforcement Policy. Such differential treatment raises
13 issues of equal protection and fundamental fairness. As set forth in the S.D. Deacon’s Submission of
14 Evidence and Policy Statements, principles of due process and equal protection require fundamental
15 fairness in adjudicatory hearings, and also require that persons subject to legislation or regulation that
16 are in the same circumstances be treated alike. (U.S. Const. amend. XIV, §1; Cal. Const. art. I, §§ 7,
17 15.)

18 Finally, Donahue Schriber (and Designated Party S.D. Deacon) made every effort possible to
19 resolve these issues with Water Board staff, including requesting alternative dispute resolution of this
20 matter (which was rejected by the Prosecution Team). Despite these efforts, Water Board staff insisted
21 on bringing this matter to a hearing before the Central Valley Water Board. Therefore, based on the
22 evidence provided herein, Donahue Schriber respectfully requests that the Central Valley Water Board
23 modify the proposed ACL penalty consistent with the Penalty Calculation Methodology in the 2010
24 Enforcement Policy and statewide precedent regarding the treatment of construction stormwater
25 discharges. A contrary ruling would create uncertainty statewide regarding application the
26 Enforcement Policy as well as precedent that could discourage future dischargers from undertaking
27 extraordinary efforts to stop construction stormwater discharges as addressed below.

1 **B. Factual Background**

2 Donahue Schriber incorporates the “Factual Background Section” from S.D. Deacon’s
3 Submission of Evidence and Policy Statements, filed on this same date.²

4 **C. Use of \$10 Per Gallon to Calculate the Proposed ACL Penalty Conflicts with and is
5 Inconsistent with the Enforcement Policy and Regional Board Precedent.**

6 The ACL states “[t]his administrative civil liability was derived from the use of the penalty
7 methodology in the Enforcement Policy, as explained in detail in Attachment A.” (See Exhibit 13,
8 ACL, ¶ 33.) Despite this statement, the ACL ignores express language in the Enforcement Policy
9 regarding stormwater discharges and improperly uses a \$10.00 per gallon base liability amount to
10 calculate the proposed penalty for the alleged discharge violations here. (See *id.*, Attachment A, p. 3.)
11 The undisputed facts demonstrate that the use of \$10.00 per gallon to calculate base liability for the
12 alleged discharges in this matter conflicts with and is inconsistent with the Enforcement Policy. The
13 Enforcement Policy expressly states that a maximum amount of \$2.00 per gallon should be used to
14 determine the per gallon penalty amount for storm water except, “where reducing these maximum
15 amounts results in an inappropriately small penalty, such as dry weather discharges or small volume
16 discharges that impact beneficial uses” and that, in those instances, “a higher amount, up to the
17 maximum per gallon amount, may be used.” (See Exhibit D, Enforcement Policy, p. 14 (emphasis
18 added).) Neither of the listed exceptions in the Enforcement Policy for using a higher base penalty
19 amount than \$2.00 per gallon are present here. Moreover, the ACL cites no evidence or argument that
20 using \$2.00 per gallon to determine the per gallon penalty amount for stormwater discharges would
21 result “in an inappropriately small penalty.” Finally, the ACL’s proposed use of \$10.00 per gallon to

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23 ² / The events leading to the stormwater discharges at issue in the matter are largely uncontested. To
24 the extent there are differences in the Prosecution Team’s and Donahue Schriber’s versions of the
25 events that led to the discharges, they do not impact Donahue Schriber’s legal arguments or analysis in
26 any way that Donahue Schriber can discern from the ACL served in this action. Donahue Schriber
27 notes that the “Submission of Evidence and Policy Statements,” included in the Hearing Procedure
28 applies to all parties (including the Prosecution Team) and that the Prosecution Team failed to provide
any legal or technical arguments, or analysis, or policy statements, when it submitted its Evidence List
and Witness Designation. Therefore, Donahue Schriber is limited to responding to the allegations in
the ACL.

1 calculate the ACL penalty under the Enforcement Policy: (1) is unprecedented in construction
2 stormwater ACLs throughout the State and inconsistent with how the Regional Board staff calculated
3 stormwater ACL penalties in the only other ACL that alleged construction stormwater discharge
4 violations since the Enforcement Policy was adopted; and (2) would create a perverse incentive for
5 future stormwater dischargers not to make extraordinary efforts to limit the amount of stormwater
6 discharges (i.e., a discharger would be better off ensuring the amount of any discharges qualified as
7 large volume discharges), thus resulting in bad public policy.

8 ***1. No Evidence Supports the ACL's Allegations Regarding "Small Volume Discharges" and***
9 ***Impacts to Beneficial Uses.***

10 The ACL does not allege or cite any evidence to support its conclusion that an exception to the
11 Enforcement Policy's maximum amount of \$2.00 per gallon penalty applies here. (See Exhibit 13,
12 ACL, Attachment "A", p. 3.) Instead, the ACL incorrectly suggests that the use of \$10.00 per gallon to
13 compute penalties for stormwater discharges is the default under the Enforcement Policy and that only
14 in exceptional circumstances should it be lower. (*Ibid.* ["[w]hile the Enforcement Policy states that a
15 lower initial per-gallon value *may be used* for "high volume" discharges, for this case, Water Board
16 staff do not recommend using less than \$10/gallon in the initial penalty calculation ..."] (emphasis
17 added).) The ACL's interpretation of this clause stands the Enforcement Policy, and the purpose
18 behind the Enforcement Policy's treatment of stormwater discharges, on its head. (Exhibit D,
19 Enforcement Policy, p. 10 ["The goal of this section is to provide a consistent approach and analysis of
20 factors to determine administrative civil liability."].) The same Enforcement Policy that the ACL cites
21 as the basis for its conclusion clearly states that \$2.00 per gallon "should be used" to determine the per
22 gallon penalty amount for "stormwater" discharges with the notable exceptions addressed above. (See
23 Enforcement Policy, p. 14 (emphasis added).)

24 The ACL attempts to rationalize this departure from the Enforcement Policy stating Water
25 Board staff recommends using \$10.00 per gallon "given the *relatively small volume of discharge* on 30
26 November 2012 *and the beneficial uses of the receiving water.*" (See ACL, Attachment A, p.3
27 (emphasis added).) This recommendation, however, again ignores the express language and
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1 requirements in the Enforcement Policy. First, the term “small volume discharges” in the Enforcement
2 Policy is modified by the phrase “that impact beneficial uses.” (See Enforcement Policy, p. 14.) As
3 discussed below, there is no evidence that the discharges at issue actually impacted beneficial uses.
4 (See Exhibit I, Bryan Tech Memo.) Therefore, this exception would not apply.

5 Second, even if such evidence did exist, defining the 76,613 gallon alleged discharge at issue
6 here as a “relatively small volume discharge” is inconsistent with the Enforcement Policy’s language
7 and the Regional Board’s calculation of penalties in every ACL Donahue Schriber could find on file
8 since the Enforcement Policy was adopted.

9 Third, a review of other ACLs issued since the adoption of the Enforcement Policy
10 demonstrates that this Central Valley Water Board has proposed to use \$2.00 as the base penalty
11 amount for a discharge that was even smaller than the discharges at issue here – i.e. Cascade Crossing
12 (Exhibit E [Order No. R5-2013-0520] (imposing \$2 per gallon on a 37,500 gallon discharge)). In
13 summary, the ACL’s allegation that the discharge at issue here is a small volume discharge has
14 absolutely no support.

15 ***2. The Proposed ACL Penalty Calculation Conflicts with the Express Purpose of the***
16 ***Enforcement Policy, Is Inconsistent with Treatment of Stormwater Discharges, and***
Would Create Bad Public Policy.

17 The Water Board Enforcement Policy emphasizes that:

18
19 Timely and consistent enforcement of these laws is critical to the success
20 of the water quality program and to ensure that the people of the State
21 have clean water. The goal of this Water Quality Enforcement Policy
22 (Policy) is to protect and enhance the quality of the waters of the State by
23 defining an enforcement process that addresses water quality problems in
24 the most efficient, effective, and consistent manner. In adopting this
25 Policy, the State Water Board intends to provide guidance that will
26 enable Water Board staff to expend its limited resources in ways that
27 openly address the greatest needs, deter harmful conduct, protect the
28 public, and achieve maximum water quality benefits. Toward that end, it
is the intent of the State Water Board that the Regional Water Boards’
decisions be consistent with this Policy.

1 (Exhibit D, Enforcement Policy, p. 1 (emphasis added).) The Enforcement Policy further states that
2 one of the goals the Policy is to establish “an administrative civil liability assessment methodology to
3 create a fair and consistent statewide approach to liability assessment.” (*Ibid.* (emphasis added).)

4 Using the highest possible \$10.00 per gallon base amount is unprecedented in construction
5 stormwater matters. With the exception of the ACL in this matter, Donahue Schriber has been unable to
6 locate any ACL where any Water Board has used a base penalty amount over \$3.00, and certainly not
7 the maximum of \$10.00 per gallon, to calculate penalties for a construction stormwater discharges since
8 the 2010 Enforcement Policy was adopted. Moreover, in the one instance where a higher amount was
9 used (\$3.00 as opposed to \$2.00), the ACL followed two Stop Work Orders, a Cease and Desist Order,
10 and a Notice of Violation that did not result in corrective actions by the discharger for failing to employ
11 effective erosion and sediment controls, effective tracking controls, perimeter controls, effective trash
12 and waste management controls, and storm drain protection among other violations. (See Exhibit G
13 [EI-PLA 75 LLC ACL (R8-2010-0025)].) Notably, the ACL here proposes a discharge computation
14 that results in a total final per gallon penalty (\$3.06 per gallon) that is more than twice the amount
15 imposed in the EI-PLA 75 LLC ACL, a case where numerous and repeated violations were
16 demonstrated as well as intentional violations of the CGP. There are simply no parallels between that
17 case and the facts here. Thus, even the use of a \$3.00 per gallon base amount to calculate the discharge
18 penalty in this matter would be inconsistent with the express goals and intent of the Enforcement
19 Policy. Given the stated purpose of the 2010 Enforcement Policy, a \$2.00 maximum per gallon base
20 amount must be used here.

21 In addition, imposing the maximum amount in this matter would create a perverse incentive for
22 future dischargers to ensure that any accidental discharges are large enough to clear the undefined
23 “large volume” hurdle being inconsistently used by the Prosecution Team. For example, had the
24 General Contractor S.D. Deacon not taken extraordinary efforts here to stop the discharges within 4
25 hours, or had they failed to work diligently throughout the rest of the major storm event to make sure
26 there weren’t further discharges (*see* Declaration of Andy Van Veldhuizen), the penalty here would
27 have been substantially less because the discharge volume was greater. Such a result is not only
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1 inconsistent with the Enforcement Policy, but it represents bad public policy. In sum, there is simply
2 no justification for using a base penalty amount higher than \$2.00 per gallon.

3 **D. The ACL Harm Factor Is Inconsistent with the Enforcement Policy and**
4 **Unsupported by Evidence.**

5 The ACL alleges that the potential harm to beneficial uses from the alleged discharges at issue
6 here “was determined to be moderate (i.e. a score of 3), which is defined as a ‘moderate threat to
7 beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are
8 moderate and likely to attenuate without appreciable acute or chronic effects).” (Exhibit 13, ACL,
9 Attachment A, p. 1.) The ACL, however, does not cite any evidence of “observed” impacts to
10 beneficial uses or explain why impacts are “reasonably expected” from the alleged discharges in
11 support this allegation. (Exhibit 13, ACL, Attachment 1, at p. 2; see also Michael Bryan, Ph.D.
12 Technical Memorandum (dated September 4, 2013), Exhibit I, p. 2.) Nor does the ACL provide or cite
13 to any scientific assessment of the potential for harm to beneficial uses from the alleged discharges.
14 (Exhibit 13 at p. 2.) Rather, the ACL simply proclaims that the alleged discharges resulted in moderate
15 harm to beneficial uses based on a response to comment on the Final EIR for the Rocklin Crossing
16 project stating “that uncontrolled soil erosion generated during project construction could indirectly
17 affect fish habitat and benthic macro-invertebrates by degrading the water quality within Secret Ravine
18 Creek.” (Exhibit 13, ACL, Attachment 1, at p. 2.) The Final EIR, however, was not placed into
19 evidence in this case by the Prosecution Team. (See Prosecution Team Evidence List [only listing
20 Draft EIR].) Moreover, even the Final EIR had been timely submitted as evidence, the Final EIR does
21 not support the ACL’s allegation that the harm (or potential for harm) to beneficial uses from the
22 alleged discharges was “Moderate” as that term is defined in the Enforcement Policy.
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24 The Enforcement Policy explains how the “Harm or Potential Harm to Beneficial Uses” should
25 be applied in calculating proposed penalties in ACLs. (Exhibit D, Enforcement Policy, p. 12.)
26 Regarding this factor, the Enforcement Policy states:
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1 **Factor 1: Harm or Potential Harm to Beneficial Uses**

2 The evaluation of the potential harm to beneficial uses factor *considers*
3 *the harm that may result from exposure to the pollutants or contaminants*
4 *in the illegal discharge*, in light of the statutory factors of the nature,
5 circumstances, extent and gravity of the violation or violations. The score
6 evaluates direct or indirect harm or potential for harm from the violation.
7 A score between 0 and 5 is assigned based on a determination of whether
8 the harm or potential for harm is negligible (0), minor (1), below
9 moderate (2), moderate (3), above moderate (4), or major (5).

10 0 = Negligible - no actual or potential harm to beneficial uses.

11 1 = Minor - low threat to beneficial uses (i.e., *no observed impacts but*
12 *potential impacts to beneficial uses with no appreciable harm*).

13 2 = Below moderate -- less than moderate threat to beneficial uses (i.e.,
14 *impacts are observed or reasonably expected*, harm to beneficial uses is
15 minor).

16 3 = Moderate - moderate threat to beneficial uses (i.e., *impacts are*
17 *observed or reasonably expected **and** impacts to beneficial uses are*
18 *moderate **and** likely to attenuate without appreciable acute or chronic*
19 *effects*).

20 4 = Above moderate – more than moderate threat to beneficial uses (i.e.,
21 *impacts are observed or likely substantial, temporary restrictions on*
22 *beneficial uses (e.g., less than 5 days), and human or ecological health*
23 *concerns*).

24 5 = Major - high threat to beneficial uses (i.e., *significant impacts to*
25 *aquatic life or human health, long term restrictions on beneficial uses*
26 *(e.g., more than five days), high potential for chronic effects to human or*
27 *ecological health*).

28 (*Ibid.* (emphasis added).)

Based on the Enforcement Policy definition of “Moderate” under the “Harm or Potential Harm to Beneficial Uses” factor, the Prosecution Team is not only required to demonstrate that impacts were observed or reasonably expected to beneficial uses, but also that the harm to beneficial uses was moderate. (*Ibid.*) Not only has the Prosecution Team failed to cite *any* evidence to support the ACL’s claim of “Moderate” harm, such a claim cannot be supported given the undisputed facts surrounding the alleged discharges at issue in this matter, as explained in the Michael Bryan, Ph.D. Technical Memorandum, dated September 4, 2013 (hereafter Bryan Memorandum). (See Exhibit I).

1 RSC Engineering, the QSD for the Rocklin Crossings site, determined that the approximate
2 flow rate in Secret Ravine from 8:15AM to 10:15AM on the morning of the discharge events varied
3 from 369 cubic feet per second (cfs) to 530 cfs. Assuming a very conservative discharge duration of 2
4 hours (as compared to the estimated 3.25 hours before the breach was repaired) between 8:15 am and
5 10:15 am yields an average flow rate of 450 cfs or 24,235,200 gallons that flowed past the project site
6 during the 76,613 gallon discharges to Secret Ravine. Thus, the volume of the off-site discharges
7 amounted to less than one third of one percent of the volume of water that flowed past the site in Secret
8 Ravine (0. 32%), or a dilution ratio of more than 300 to 1 (i.e., 1 to 316 dilution). (RSC Engineering
9 Memorandum, Exhibit K, p. 2.)

10 As explained in the Bryan Memorandum, because the alleged discharge violation was a single
11 3-4 hour event during a precipitation-driven high flow period as detailed in the RSC Engineering
12 Memorandum, there are just a few potential adverse effects to Secret Ravine's aquatic life, which are
13 limited to a short-term duration.(Bryan Memorandum, Exhibit I, p. 7.) As explained by Dr. Bryan,
14 there is no evidence of these possible short-term effects and it is highly unlikely that such harm would
15 have occurred based on alleged discharges at issue here. (See *id.*, pp. 7-10.) Therefore, the undisputed
16 facts demonstrate that harm to beneficial uses, if any, was "minor" as that term is defined by the
17 Enforcement Policy, and as explained in Dr. Bryan's testimony. (See *id.*, pp. 10-11.)³

18 For all of the above stated reasons, the ACL must be recalculated using a \$2.00 per gallon base
19 amount and a "Minor" factor for "Potential Harm" in order to be consistent with the Enforcement
20 Policy and fundamental principles of fairness.

21 **III. LIST OF WITNESSES**

22 Donahue Schriber provides the following information regarding the witnesses who will testify
23 on its behalf at the hearing on this ACL:
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27 ³ / This conclusion further demonstrates that the exception for "small discharges" in the Enforcement
28 Policy does not apply here. See discussion, *infra*, at section II. C.

1 1. Michael Bryan, Ph.D. – Dr. Michael Bryan can and will testify related to the lack of
2 potential harm to beneficial uses from the alleged discharges at the Rocklin Crossings construction site.
3 (10-15 minutes for direct testimony)

4 2. Richard Chavez, P.E. – Mr. Chavez can and will testify about the estimated volume (and
5 dilution) of alleged discharges from the Rocklin Crossings construction site. Time permitting, Mr.
6 Chaves will also testify as to his personal knowledge of the Storm Water Pollution Prevention Plan
7 (SWPPP) and BMPs for that site, pre-storm preparations, events during and after the 2012 rain event,
8 and other issues raised in the ACL Complaint. (5-10 minutes for direct testimony)

9 3. Janet L. Petersen – Ms. Petersen can and will provide testimony regarding Donahue
10 Schriber and provide an overview of the Rocklin Crossings construction project. Time permitting, Ms.
11 Petersen will also testify as to her personal knowledge of Rocklin Crossings construction site, the
12 Storm Water Pollution Prevention Plan (SWPPP), BMPs for that site, pre-storm preparations, events
13 during and after the 2012 rain events at issue in the ACL, communications with Water Board staff
14 regarding the construction site both before and after the 2012 rain events at issue in the ACL, and other
15 issues raised in the ACL Complaint. Ms. Petersen will also authenticate evidence provided by
16 Donahue Schriber, if necessary. (5 minutes for direct testimony)

17 **IV. EXPERT WITNESS QUALIFICATIONS**

18 Donahue Schriber designates Richard Chavez, P.E., and Michael Bryan, Ph.D., as expert
19 witnesses.

20 1. **Michael Bryan, Ph.D.**'s qualifications to opine on potential harm to beneficial uses from
21 the alleged discharges from the Rocklin Crossings construction site include over 25 years of combined
22 consulting and research experience primarily in water quality, toxicology, and fisheries biology. Dr.
23 Bryan has extensive expertise in data compilation and analysis, and permitting—particularly NPDES
24 permitting. Dr. Bryan applies his expertise to assist clients with strategic planning, compliance
25 monitoring, technical evaluations, project refinement, permitting, and implementation, and, when
26 needed, expert witness testimony. Recent work is focused on assessing the effects of effluent
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1 discharges on aquatic habitats, and resultant impacts to aquatic resources and other beneficial uses.
2 Currently, Dr. Bryan is working with the Central Valley Regional Water Quality Control Board staff to
3 develop and process region-wide amendments to the Central Valley Water Quality Control Plan (Basin
4 Plan) for pH and turbidity. Dr. Bryan's CV is attached as Exhibit J.

5 2. **Richard Chavez, P.E.**'s qualifications to opine about the estimated volume (and dilution)
6 of alleged discharges from the Rocklin Crossings construction site include 35 years of experience in
7 civil engineering. Mr. Chavez received a B.S. Civil Engineering from University of California,
8 Berkley in 1975 and is a Registered Professional Civil Engineer (No. 29033). Mr. Chavez has
9 extensive expertise in the planning and design of a broad range of projects. Mr. Chavez has worked on
10 projects for the Army Corps of Engineers, the US Department of the Navy, and the US Postal Service,
11 as well as major infrastructure projects including roadways, widening projects for state routes, surface
12 and underground drainage, sewer and water facilities. Mr. Chavez's CV is attached as Exhibit L.

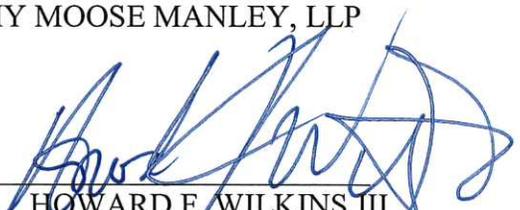
13 **V. CONCLUSION**

14 For the reasons set forth above, Donahue Schriber requests that the Regional Board adjust the
15 proposed ACL penalty consistent with the language and intent of the 2010 Enforcement Policy and
16 other ACLs issued thereunder around the State by (1) using \$2.00 per gallon as the based penalty
17 amount; and (2) using a Harm Factor of "Minor."

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19 Respectfully submitted,

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21
22 Dated: September 4, 2013

REMY MOOSE MANLEY, LLP

23
24
25 By: 

HOWARD F. WILKINS III
Attorneys for Donahue Schriber Asset
Management Corporation

Attachment A

DONAHUE SCHRIBER EVIDENCE LIST

September 4, 2013

**Attachment "A" to DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION'S
SUBMISSION OF EVIDENCE AND POLICY STATEMENTS FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2013-0519**

(DONAHUE SCHRIBER EVIDENCE LIST - September 4, 2013)

Pursuant to the Hearing Procedures governing this matter, California Code of Regulations, title 23, section 648.3, and the 1 August 2013 Ruling on Objections to the Hearing Procedures, Donahue Schriber hereby submits the following Exhibits.*

Exhibit Number	DATE	DOCUMENT
A	N/A	Site map delineating the pre-incident SWPPP map into several sub-shed areas.
B	11/26/2012-11/29/2012	Copies of the Rain Event Action Plans (REAPs) prepared by TSM on November 26-29, 2012 in preparation for the storm event discussed in the ACL Complaint.
C	11/01/2009-12/10/2012	Rain Gauge Log Sheet for the Rocklin Crossings site for November 1, 2012 to December 5, 2012 and other rainfall information.
D	11/17/2009	Water Quality Enforcement Policy, dated/adopted November 17, 2009 & approved by Office of Administrative Law on May 20, 2010 http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
E	3/04/2013	ACL Complaint No. R5-2013-0520 ACL issued by the Central Valley Regional Water Quality Control Board to HBT of Saddle Ridge LLC for the Cascade Crossing construction site on March 4, 2013 which was downloaded from the site: www.swrcb.ca.gov/.../cascade_crossing/r5-2013-0520_enf.pdf and Attachment A from downloaded from the site: http://www.swrcb.ca.gov/rwqcb5/board_decisions/tentative_orders/cascade_crossing/r5-2013-0520_att_a.pdf
F	6/10/2010	ACL Complaint No. R8-2010-0024 issued to the Placentia-Yorba Linda Unified School District on June 10, 2010, which was downloaded from the following website: http://www.swrcb.ca.gov/rwqcb8/board_decisions/adopted_orders/orders/2010/10_024_ACLC_Placentia-Yorba_Linda_USD.pdf
G	5/27/2010	Administrative Civil Liability Complaint (R8-2010-0025) for EI-PLA 75 LLC, including Attachment A. Also available at: http://www.waterboards.ca.gov/rwqcb8/board_decisions/adopted_orders/orders/2010/10_025_ACLC_EI-PLA75LLC.pdf
H	N/A	SWRCB Order No. 2009-0009-DWQ, amended by 2010-0014-DWQ & 2012-0006-DWQ, located from http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf
I	9/4/2013	Michael Bryan, Ph.D. Technical Memorandum
J	undated	Michael Bryan, Ph.D. CV
K	9/4/2013	RSC Engineering, Inc. Memorandum with attachments A, B, and C.

Exhibit Number	DATE	DOCUMENT
L	undated	Richard Chavez, P.E.

* Exhibits A-H are submitted by S.D. Deacon as attachments to the Declaration of Andy Van Veldhuizen in support of S.D. Deacon's Submission of Evidence and Policy Statements and Designation of Witnesses. Exhibits I-L are submitted by Donahue Schriber Asset Management Corporation as attachments to the Declaration of Howard F. Wilkins III in support of Donahue Schriber's Submission of Evidence and Policy Statements and Designation of Witnesses.

1 **CERTIFICATE OF SERVICE**

2 I, Rachel Jackson, declare that I am over 18 years of age. I am employed in Sacramento
3 County at 455 Capitol Mall, Suite 210, Sacramento, California 95814. My mailing address is 455
4 Capitol Mall, Suite 210, Sacramento, California 95814. My email address is
rjackson@rmmenvirolaw.com.

5 On September 4, 2013, I sent the following documents:

6 **DONAHUE SCHRIBER ASSET MANAGEMENT CORPORATION'S**
7 **SUBMISSION OF EVIDENCE AND POLICY STATEMENTS**

8 by electronic and regular mail to the following persons in the matter of Donahue Schriber Asset
Management Corporation Administrative Civil Liability Complaint No. R5-2013-0519:

9 Patrick Pulupa
10 Office of Chief Counsel
11 State Water Resources Control Board
12 1001 I Street, 22nd Floor
Sacramento, CA 95814
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David Boyers
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13 Ken Landau
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15 Control Board
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Mayumi.Okamoto@waterboards.ca.gov

17 Melissa Thorme
18 Downey Brand
19 621 Capitol Mall, 18th Floor
20 Sacramento, CA 95814
mthorme@downeybrand.com

21
22 I certify and declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct and that this document was executed on September 4, 2013 at
Sacramento, California.

24 _____
25 Rachel Jackson
26
27
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