

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER R4-2014-0016
IN THE MATTER OF
SHERWOOD DEVELOPMENT COMPANY
LAKE SHERWOOD, CA VENTURA COUNTY

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Team (Prosecution Team), and Sherwood Development Company (Discharger) (collectively known as the Parties) and is presented to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Recitals

1. Sherwood Development Company is a contractor that applied for and received a Water Quality Certification for the construction of the Carlisle Bridge Improvement Project (Project) in Carlisle Canyon Creek, in the Lake Sherwood Area of Ventura County (Army Corps of Engineers (Corps) Project No. 2006-019640JWM). The Clean Water Act 401 Certification application was deemed complete on December 13, 2006, and the Certification was issued by the Los Angeles Water Board on February 1, 2007. The Project was also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirement for Dredged and Fill Discharges that have received State Water Quality Certification."
2. The Project did not actually start until September 2011. On March 15, 2012, the Los Angeles Water Board issued the Discharger a Notice of Violation (NOV) for failure to submit water quality data reports and obtain a surface water diversion plan.
3. On February 4, 2013 the Los Angeles Water Board issued the Discharger an Order pursuant to Water Code Section 13267 seeking information relating to the Project and unauthorized construction activities.
4. The Discharger submitted a response on March 4, 2013. Thereafter, the Discharger and the Los Angeles Water Board met to discuss the resolution of the potential administrative liability for violations identified during inspections and in the NOV through confidential settlement discussions.

Regulatory Considerations

5. The Los Angeles Water Board staff has concluded that the Discharger has violated Water Code section 13385 for failure to obtain the proper permits and unpermitted discharges to land. The Los Angeles Water Board may assess administrative civil liability based on CWC Section 13385 for such discharges.

6. Water Code Section 13385(a) states: "(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(2) A waste discharge requirement or dredged and fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160."
7. Water Code Section 13385(c) states: "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."
8. Water Code Section 13385(e) states: "In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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 violation, and other matters that justice may require."

Settlement

9. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Los Angeles Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interests of the public.
10. After consideration of the penalty calculation factors, found in the State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy*, the Parties agreed that a penalty was appropriate in order to resolve the current dispute, given the potential threat to water quality and considering the goal of deterring future violations. To resolve the discharges by consent and without

further administrative proceedings, the Parties have agreed to the imposition of \$70,593.75 in liability against the Discharger.

Stipulations

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **seventy thousand five hundred ninety-three dollars and seventy-five cents (\$70,593.75)**. The total amount shall be paid not more than 30 days after the entry of an Order approving this Settlement Agreement by the Los Angeles Water Board by check to the State Water Board *Cleanup and Abatement Account*. The Discharger shall indicate on the check the number of this Stipulation and Order and send it to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California, 95814, and shall send a copy of the check to Julie Macedo, Staff Attorney, Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, California, 95814.
2. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.
3. **Party Contacts for Communications related to Stipulated Order:**

For the Los Angeles Water Board:

Julie Macedo - Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, 16th Floor
Sacramento, CA 95812
(916) 323-6847

Hugh Marley
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6375

For the Discharger:
Ted Harris, Principal
California Strategies
980 9th Street, Suite 2000
Sacramento, CA 95814
(916) 229-4575

Paul J. Titcher - Counsel
Cox Castle & Nicholson, LLP
2049 Century Park East, Suite 2800
Los Angeles, CA 90067
(310) 284-2255

4. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
5. **Matters Addressed by Stipulation:** Upon the Los Angeles Water Board's, or its delegee's, adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations discussed in settlement and herein pursuant to Water Code section 13385. To enumerate, this settlement covers the failure to obtain the proper authorizations from the Los Angeles Water Board prior to or during the Project as identified in Attachment A; the failure to fully implement the terms of the 401 Certification issued for the Project, including the inadequate water quality testing and failure to maintain or repair any best management practices (BMPs) installed on the Project, or any observed turbidity or sediment discharges. This settlement does not purport to resolve the liability of Discharger to any other agency for its work on the Project. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Stipulation Paragraph 1 herein.
6. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Los Angeles Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Los Angeles Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are

raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

8. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Los Angeles Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Los Angeles Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
9. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
10. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Los Angeles Water Board.
11. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles Water Board, or its delegatee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Los Angeles Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
12. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in this Stipulated Order, or that it has been or is in violation of

the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

13. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Los Angeles Water Board prior to the adoption of the Stipulated Order.
14. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Los Angeles Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
15. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any violation alleged herein.
16. **Los Angeles Water Board is Not Liable:** Neither the Los Angeles Water Board members nor the Los Angeles Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
17. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
18. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
19. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Los Angeles Water Board, or its delegee, enters the Order.
20. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be **deemed** to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

The Los Angeles Water Board Prosecution Team

By: Paula Rasmussen
Paula Rasmussen,
Assistant Executive Officer

Date: 2-20-2014

Sherwood Development Company

By: Tom Comber
Tom Comber

Date: 2-20-14

Order of the Los Angeles Water Board

1. In adopting this Stipulated Order, the Los Angeles Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327, 13351 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Los Angeles Water Board's staff in investigating the allegations concerning the dischargers discussed herein or otherwise provided to the Los Angeles Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, the Los Angeles Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, the Los Angeles Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement

action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.

3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Los Angeles Water Board.

Pursuant to CWC sections 13323, 13350, 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Los Angeles Region.

By: _____
Samuel Unger
Executive Officer

Date: _____

ATTACHMENT A

SHERWOOD DEVELOPMENT COMPANY

Lake Sherwood, CA, Ventura County
ADMINISTRATIVE CIVIL LIABILITY ORDER R4-2014-0016

The following summary of factors provides factual and analytical evidence to support the proposed Administrative Civil Liability (ACL) complaint against Sherwood Development Company (Discharger) for three violations: failure to submit a surface water diversion plan; failure to conduct adequate water quality testing pursuant to the 401 Certification (Certification) issued by the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) for the Carlisle Bridge Project (Project); and failure to obtain a construction dewatering permit for the Project.

1.0 Discharger Information

The Discharger is a contractor that applied for and received a Water Quality Certification for the construction of the Carlisle Bridge Improvement Project in Carlisle Canyon Creek, Lake Sherwood Area, Ventura County (Army Corps of Engineers (Corps) Project No. 2006-01964-JWM). The Clean Water Act 401 Certification application was deemed complete on December 13, 2006, and the Certification was issued by the Los Angeles Water Board on February 1, 2007. The Project was also regulated under State Water Resources Control Board (State Water Board) Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredged and Fill Discharges that have received State Water Quality Certification."

The Project did not actually start until September 2011. On March 15, 2012, Los Angeles Water Board issued the Discharger a Notice of Violation for the failure to submit water quality data reports and obtain a surface water diversion plan. On February 4, 2013, the Los Angeles Water Board issued the Discharger an Order pursuant to Water Code Section 13267 seeking information relating to the Project and unauthorized construction activities. The Discharger submitted a response on March 4, 2013. Thereafter, the Discharger and the Los Angeles Water Board met to discuss the resolution of the potential administrative liability through settlement negotiations.

2.0 Application of Water Board's Enforcement Policy¹

On November 17, 2009, 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 May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code section 13385(e). Water Code section 13385(e) requires the Regional Water Boards to consider several factors when determining the amount of civil liability to impose, including "...the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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

¹ State Water Board's Adopted Enforcement Policy available at:
http://www.swrcb.ca.gov/water_issues/programs/enforcement/policy.shtml

culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

Pursuant to the penalty calculation methodology set forth in the Enforcement Policy, the following is a summary for calculating the Los Angeles Water Board Prosecution Team’s recommended administrative liability for the subject violations. Corresponding scores for each factor are presented in Attachment B, which shows the corresponding calculation of the proposed ACL complaint. These factors were acceptable to the Discharger and incorporated into the Stipulated Order.

Violation #1 – Failure to Submit a Surface Water Diversion Plan

Days of Violation

Work on the Project started on October 10, 2011; work on the Project was completed on September 5, 2012 (332 days).

Because this is a non-discharge violation, the Prosecution Team must first identify the potential for harm as minor, moderate or major, and then consider whether the deviation from requirement is minor, moderate or major. The chart on page 16 of the Enforcement Policy provides a multiplier for the initial daily factor.

For this violation, the Prosecution Team recommended a **minor** potential for harm and a **moderate** deviation from requirement, resulting in a multiplier of **0.25**.

Potential for Harm

- Minor: The surface water was not impacted by the failure to obtain a plan; the more direct impacts were the use and maintenance of BMPs, which were documented by a Biological Monitor on-site. Since the BMPs were for the most part adequately utilized, the Prosecution Team selected “minor” for this factor.

Deviation from Requirement

- Moderate – the intended effectiveness of the requirement has been partially compromised.

Multiple Day Violations

The Prosecution Team has found that this violation did not result in an economic benefit from conduct that can be measured on a daily basis. Therefore, it is permissible to compress the 332 days of violation into 30-day increments. Doing so results in a violation lasting **17** days.

Culpability

- 1.1 (multiplying factor range - 0.5 to 1.5)
 - The Discharger failed to submit this plan, despite inspections on the Project by Los Angeles Water Board staff, issuance of an NOV and a 13267 Order, reminding it of the importance of Certification requirements.

Cleanup and Cooperation

- 0.75 (multiplying factor range – 0.75 to 1.5)
 - The Discharger was proactive in returning to compliance by working with the Los Angeles Water Board to provide this plan pursuant to the 13267 Order.

History of Violations

- 1.0 (repeat violations)
 - Other than this enforcement action, the Discharger has not had a history of non-compliance.

Ability to Pay

- The Los Angeles Water Board Prosecution Team's analysis indicates that the Discharger has applied for additional 401 Certifications for large construction projects in Southern California. Therefore, the burden would then shift to the Discharger to present evidence to the Prosecution Team of its inability to pay for use as an affirmative defense; however, because of the settlement reached as reflected in the Stipulated Order, this defense is considered waived.

Economic Benefit

- The economic benefit to prepare and submit the plan is estimated at \$2,500.

Other Factors As Justice May Require

- Staff costs were not applied to this action.

Violation #2 – Failure to Conduct Water Quality Testing Pursuant to 401 Certification

Days of Violation

The Discharger failed to collect samples as required by Item 20 in Attachment B of the Certification from October 10, 2011 to August 12, 2012. During this period, the Discharger was required to collect samples for 7 days during the first week and one day a week for 43 weeks for a total of 50 days. However, samples were collected only on two days. Therefore, the Discharger violated the Certification on 48 days.

Because this is a non-discharge violation, the Prosecution Team must first identify the potential for harm as minor, moderate or major, and then consider whether the deviation from requirement is minor, moderate or major. The chart on page 16 of the Enforcement Policy, this provides a multiplier for the initial daily factor. For this violation, the Prosecution Team recommended a minor potential for harm and a moderate deviation from requirement, resulting in a multiplier of **0.25**.

Potential for Harm

- Minor – The Prosecution Team selected minor because while a substantial number of required tests were not conducted, there was a monitoring program in place, and sampling results from that monitoring program indicated that water quality was meeting established criteria.

Deviation from Requirement

- Moderate – the intended effectiveness of the requirement has been partially compromised.
 - The testing requirements in the 401 Certification are clear and were not followed.

Multiple Day Violations

The Prosecution Team has found that this violation, due to the low potential of harm to water quality (see above) did not cause daily detrimental impacts to the environment. However, the failure to conduct water quality testing generated an economic benefit each and every time it was not collected. Therefore, it may not be prudent to collapse the 48 days of violation to a lower number under the multiple day violation factor. However, the Prosecution Team used “Other Factors as Justice May Require” (see below) to compress the number of days of violation, because the overall economic benefit plus at least 10% was recovered in the final penalty recommended by the Prosecution Team and agreed to by the Discharger. Forty-eight sampling events compresses to 7 days of violation.²

Culpability

- 0.75 (multiplying factor range – 0.5 to 1.5)
 - The Discharger did conduct some sampling and demonstrated a willingness to improve.

Cleanup and Cooperation

- 0.75 (multiplying factor range – 0.75 to 1.5)
 - The Discharger provided supplemental information when requested by the Los Angeles Water Board Prosecution Team. The Biological Monitor on site assisted in determining the actual harm and health of water quality; however, the hired Qualified Stormwater Pollution Prevention Plan Practitioner (QSP) Reports should be better prepared on future projects.

History of Violations

- 1.0 (repeat violations)

² See Page 18 of the Enforcement Policy for an explanation of the calculation of the initial thirty-day period and every five-day period thereafter.

- Other than this enforcement action, the Discharger has not had a history of non-compliance.

Ability to Pay

- The Prosecution Team's analysis indicates that the Discharger has applied for additional 401 Certifications for large constructions projects in Southern California. Therefore, the burden would then shift to the Discharger to present evidence to the Prosecution Team of its inability to pay for use as an affirmative defense; however, because of the settlement reached as reflected in the Stipulated Order, this defense is considered waived.

Economic Benefit

- At a minimum, would include cost of 48 sampling events and personnel time of same. Estimated costs for collecting this data are approximately \$15,000.

Other Factors As Justice May Require

- Staff Costs were not applied to this matter.
- Because the estimated economic benefit of this violation was \$15,000, the Prosecution Team felt it was inappropriate to have an initial liability of \$120,000. Instead, the initial liability before the adjustment factors, when compressed, was \$17,500, which captured the Discharger's complete economic benefit, and provides adequate deterrence.

Violation #3 – Failure to Obtain a Construction Dewatering Permit

Days of Violation

The construction dewatering basin was first used on November 17, 2011 and the permit was issued on April 18, 2012 (154 days).

Because this is a non-discharge violation, the Prosecution Team must first identify the potential for harm as minor, moderate or major, and then consider whether the deviation from requirement is minor, moderate or major. The chart on page 16 of the Enforcement Policy provides a multiplier for the initial daily factor. For this violation, the Prosecution Team recommended a **moderate** potential for harm and a **major** deviation from requirement, resulting in a multiplier of **0.55**.

Potential for Harm

- Major – the characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.
 - Construction dewatering required a permit separate and distinct from the General Order or the 401 Certification. This violation penalizes the Discharger for the failure to obtain the permit until after construction dewatering had been ongoing for over three months.

Deviation from Requirement

- Moderate – the intended effectiveness of the requirement has been partially compromised.

- The Discharger clearly did not understand the need for additional permits and misunderstood the limitations of the 401 Certification and other applicable permits issued by the Los Angeles Water Board. The Discharger did subsequently apply for and receive an NPDES permit with discharge limitations for the Project, under Order No. R4-2008-0032, *General National Pollutant Elimination System and Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties*. A 401 Certification is project specific, whereas a general permit covers a particular regulated entity.

Multiple Day Violations

The Prosecution Team has found that this violation did not result in an economic benefit from conduct that could have been measured on a daily basis. Therefore, it is permissible to compress the 154 days of violation into 30-day increments. Doing so results in **11** days of violation.

Culpability

- 1 (multiplying factor range – 0.5 to 1.5)
 - The Discharger did apply for a permit after the Los Angeles Water Board brought it to the Discharger's attention in the 13267 Order.

Cleanup and Cooperation

- 0.75 (multiplying factor range – 0.75 to 1.5)
 - Despite its failure to obtain a permit, the Discharger did provide all the requested paperwork during the settlement discussions as requested and explained their misunderstanding of the requirements.

History of Violations

- 1.0 (repeat violations)
 - Other than this enforcement action, the Discharger has not had a history of non-compliance.

Ability to Pay

- The Prosecution Team's analysis indicates that the Discharger has applied for additional 401 Certifications for large construction projects in Southern California. Therefore, the burden would then shift to the Discharger to present evidence to the Prosecution Team of its inability to pay for use as an affirmative defense; however, because of the settlement reached as reflected in the Stipulated Order, this defense is considered waived.

Economic Benefit

- The economic benefit of this violation would be the cost of applying for a construction dewatering permit, which is estimated at \$2,000.

Other Factors As Justice May Require

- Staff costs were not applied to this matter.

3.0 Recommendation

Recommended Administrative Penalty = \$70,593.75 (see Matrix, Attachment B).