
Lahontan Regional Water Quality Control Board

April 24, 2015

INTERESTED PERSONS

NOTICE OF PROPOSED SETTLEMENT WITH LOS ANGELES DEPARTMENT OF WATER AND POWER FOR ALLEGED VIOLATIONS AT LEE VINING CREEK DIVERSION STRUCTURE - WRITTEN COMMENTS DUE NO LATER THAN 5:00 P.M., MAY 26, 2015

The California Regional Water Quality Control Board, Lahontan Region (Water Board) Executive Officer will consider approval of a proposed settlement with Los Angeles Department of Water and Power (LADWP) to resolve violations alleged by Water Board staff and described in the enclosed settlement agreement. Water Board Prosecution Team considered and followed methodology set forth in the State Water Board's Water Quality Enforcement Policy (Resolution No. 2009-0083) to establish a proposed civil liability in the amount of \$95,000 for two alleged violations:

1. LADWP violated Water Code section 13376 and/or Clean Water Act section 301 by discharging rock rip rap, concrete, and earthen materials to Lee Vining Creek, portions of which are considered a water of the United States, without obtaining a dredge or fill material discharge permit and/or waste discharge permit from the Lahontan Water Board. Violation No. 1 occurred on eight different days during the period beginning on September 12, 2014 and ending on October 25, 2014.
2. LADWP violated the Basin Plan through its work within Lee Vining Creek and on the Lee Vining Creek Diversion Structure, which caused an increase in turbidity greater than 10 percent above background natural levels. The Basin Plan establishes a narrative Water Quality Objective for turbidity that limits increases in turbidity caused by projects and/or waste discharges to 10 percent above natural levels. Violation No. 2 occurred on September 18, 2014, which represents a single day of violation.

LADWP and the Prosecution Team have entered into a tentative settlement for these alleged violations and have agreed to jointly seek the Executive Officer's approval of the enclosed Settlement Agreement and Stipulation of Entry of Order. The proposed Order and related documents are available at the Water Board's website:

<http://www.waterboards.ca.gov/lahontan/>

The Settlement Agreement requires LADWP to submit a single payment of \$95,000 to the State Water Board *Cleanup and Abatement Account* no later than 30 days following the Lahontan Water Board executing the Order.

The Cleanup and Abatement Account (CAA) was created by Water Code Sections 13440-13443 to provide grants for the cleanup or abatement of a condition of pollution when there are no viable responsible parties available to undertake the work. Eligible entities that can apply for this funding include public agencies, as well as certain not-for-profit organizations and tribal governments that serve a disadvantaged community and that have the authority to clean up or abate the effects of a waste. The Lahontan Water Board has obtained funding from the CAA for numerous efforts including: 1) providing bottled water to private well owners in the Barstow area with perchlorate contaminated water, 2) conducting groundwater investigations where private wells were impacted with solvents and where no obvious source or responsible party was identified, and 3) conducting treatment of acid mine drainage at Leviathan Mine in Alpine County.

Persons may comment on the proposed settlement by submitting written comments so that they are received no later than 5:00 p.m. on May 26, 2015.

Written comments should include "LADWP Settlement Agreement" in the subject line, and should be submitted by email to RB6enfproceed@waterboards.ca.gov

If the Executive Officer does not adopt the proposed Order, the matter may be scheduled for Water Board consideration on whether to adopt or reject the settlement at the June 10-11, 2015 Board Meeting to be held in Bishop, California. Please check the Water Board's website for any updates on this matter.



Lauri Kemper, P.E.
Assistant Executive Officer

Enclosure

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

In the matter of:)
)
LOS ANGELES DEPARTMENT) Order No. R6V-2015-0018 (Proposed)
OF WATER AND POWER)
)
)
) **Settlement Agreement and Stipulation for**
) **Entry of Order; Order (Proposed)**
)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the California Regional Water Quality Control Board, Lahontan Region Prosecution Staff (“Prosecution Staff”) and the City of Los Angeles Department of Water and Power (“LADWP”) (collectively “Parties”) and is presented to the Lahontan Regional Water Quality Control Board (“Lahontan Water Board”) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. As a condition of its State Water Resources Control Board (“State Water Board”) licenses, LADWP implemented and maintains a sediment bypass system for its diversion structure on Lee Vining Creek (“Lee Vining Diversion Structure” or “Structure”) in Mono County. LADWP’s activities on Lee Vining Creek are mandated and regulated by State Water Board Orders WR 98-05 and WR 98-07, which amended Decision 1631.
2. The Structure is intended to ensure good condition of the downstream fishery. Operation of the Structure results in sediment bypass. However, during drought conditions, sediment accumulates and the Structure must be cleared from time to time to allow the Structure to continue to serve its environmental function.
3. In August 2014, LADWP started staging and delivering equipment to clear accumulated sediment from, and repair portions of, the Structure (the “Lee Vining Creek Project”). At the time, LADWP believed that it was not required to seek a permit from Lahontan Water Board for the project because the work was routine maintenance, was required by prior State Water Board Orders, and complied with the Routine Maintenance Agreement between LADWP and the California Department of Fish and Wildlife, dated August 20, 2008.

4. On August 29, 2014, Lahontan Water Board staff informed LADWP that the Lee Vining Creek Project required Clean Water Act section 401 water quality certification (“401 Water Quality Certification”) and requested that LADWP submit a 401 Water Quality Certification application. LADWP believed that the Lee Vining Creek Project was routine maintenance that was exempt from Clean Water Act sections 401 and 404 requirements.

5. On September 10, 2014, Lahontan Water Board staff requested LADWP to submit an application for 401 Water Quality Certification for the proposed work in Lee Vining Creek. Lahontan Water Board staff stated that they would work with LADWP to obtain a long-term maintenance permit (“General Permit”) for such work in the future.

6. On September 17, 2014, LADWP informed Lahontan Water Board staff of its intent to monitor water quality throughout the Lee Vining Creek Project and submitted a list of Best Management Practices (“BMPs”) it would implement to protect water quality and maintain beneficial uses.

7. On September 18, 2014, Lahontan Water Board staff conducted a site inspection of the Lee Vining Creek Project. Lahontan Water Board staff witnessed activities in and disturbance to Lee Vining Creek below the ordinary high water mark (“OHWM”). Lahontan Water Board staff observed the following: 1) the placement of new permanent rock rip-rap and recently poured concrete below Lee Vining Creek’s OHWM; and 2) an increase in turbidity downstream from the work area, as shown, below:

	Field Results	Lab Results
Upstream Turbidity	1 NTU	0.28 NTU
Downstream Turbidity	5 NTU	0.82 NTU

8. On September 25, 2014, Lahontan Water Board staff sent a Notice of Violation (the “NOV”) and an inspection report which detailed the above observations. The NOV cited violations of the California Water Code (“Water Code”) and the *Water Quality Control Plan for the Lahontan Region* (“Basin Plan”).

9. The Prosecution Staff alleges that LADWP violated the Water Code and Basin Plan as follows:

- a. Violation 1: LADWP violated Water Code section 13376 and/or Clean Water Act section 301 by discharging rock rip rap, concrete, and earthen materials below the OHWM of Lee Vining Creek, portions of which are considered a water of the United States, without obtaining a dredge or fill material discharge permit and/or waste discharge permit from the Lahontan Water Board. Violation No. 1 occurred on eight different days during the period beginning on September 12, 2014 and ending on October 25, 2014.

- b. Violation 2: LADWP violated the Basin Plan through its work within Lee Vining Creek and on the Lee Vining Diversion Structure, which caused an increase in turbidity greater than 10 percent above background natural levels, as shown in Paragraph 7, above. The Basin Plan establishes a narrative Water Quality Objective for turbidity that limits increases in turbidity caused by projects and/or waste discharges to 10 percent above natural levels. Violation No. 2 occurred on September 18, 2014, which represents a single day of violation.

10. 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. The Prosecution Staff considered and followed the methodology set forth in the Enforcement Policy for Violation Nos. 1 and 2, as shown in Exhibit A, which is attached hereto and incorporated by reference as though fully set forth herein.

11. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and present this Stipulation to the Lahontan Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff 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 specific violations alleged in the NOV except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

12. To resolve the proposed liability associated with the alleged violations expressed herein without formal administrative proceedings, the Parties have agreed that LADWP will pay \$95,000 (“Settlement Amount”). Pursuant to Enforcement Policy section VI.B (Settlement Considerations), the Parties agree to this Settlement Amount in consideration of hearing and/or litigation risks in addition to the additional considerations discussed below in Paragraph 13. Payment of \$95,000 to the State Water Board *Cleanup and Abatement Account* is due no later than 30 days following the Lahontan Water Board executing the Order.

13. **Additional Settlement Considerations:** The Parties agree to the following additional terms in entering this Stipulation:

- a. The Parties will work cooperatively to expedite the development and issuance of a General Permit for LADWP’s maintenance and/or construction activities within the Lahontan Region.
- b. LADWP will assume the role of “Lead Agency” under the California Environmental Quality Act (“CEQA”) for purposes of the above-referenced General Permit.

- c. The total Settlement Amount of \$95,000 is a result of the Prosecution Staff's negotiations with LADWP pursuant to Government Code section 11415.60 and Page 22 of the Enforcement Policy. Due to recent administrative considerations, staff costs are not being recovered as part of this settlement.

Section III: Stipulations

The Parties incorporate Paragraphs 1 through 13 by this reference, as if set forth fully herein, and stipulate to entry of the Order set forth below ("Order"), and recommend that the Lahontan Water Board issue the Order to effectuate the settlement:

14. **Administrative Civil Liability:** LADWP hereby agrees to the imposition of an administrative civil liability totaling **\$95,000** as set forth in Paragraph 12 of Section II herein. Within thirty (30) days of the effective date of the Order, LADWP agrees to remit NINETY-FIVE THOUSAND DOLLARS (\$95,000) by check, payable to the State Water Board *Cleanup and Abatement Account*, and shall indicate on the check the number of the Order. LADWP shall send the original signed check to the State Water Resources Control Board, attention: Accounting, P.O. Box 100, Sacramento, CA 95812-0100, and shall send a copy to Lauri Kemper, Assistant Executive Officer, Lahontan Regional Water Quality Control Board, 2501 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150.

15. **LADWP's Covenant Not to Sue:** LADWP covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to the alleged violations addressed by this Stipulation and the Order.

16. **Compliance with Applicable Laws:** LADWP understands that payment of administrative civil liability in accordance with the terms of this Stipulation and the Order or compliance with the terms of this Stipulation and the Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject them to further enforcement, including additional administrative civil liability.

17. **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.

18. **Matters Addressed by Stipulation:** Upon adoption by the Lahontan Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein. The provisions of this Paragraph are expressly conditioned on the full payment of the stipulated penalty amounts, in accordance with Paragraph 12.

19. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Lahontan Regional Board to enforce any provision of this Stipulation shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Order. The failure of the Prosecution Staff or Lahontan Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation.

20. **LADWP's Settling Denial of Liability:** In settling this matter, LADWP does not admit to any of the findings in this Stipulation or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance, provided, LADWP agrees that in the event of any future enforcement actions by the Lahontan Water Board, the Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.

21. **Public Notice:** The Parties agree that this Stipulation and proposed Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Lahontan Water Board for adoption. If the Lahontan Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulation to the Lahontan Water Board for adoption as an Order by settlement, the Parties agree to meet and confer concerning any such objections and comments, and may agree to revise or adjust the Stipulation as necessary or advisable under the circumstances. Alternatively, the Assistant Executive Officer may unilaterally declare this Stipulation void and decide not to present the Order to the Lahontan Water Board. LADWP agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

22. **Interpretation:** This Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

23. **No Oral Modification:** This Stipulation 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 the Lahontan Water Board.

24. **Integration:** This Stipulation constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided herein.

25. **If the Stipulation Does Not Take Effect:** In the event that this Stipulation does not take effect because it is not approved by the Lahontan Water Board, or its delegate, 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 Lahontan 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 the following objections:

- a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Lahontan 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 in 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.

26. **Waiver of Hearing:** LADWP has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to an evidentiary hearing before the Lahontan Water Board prior to the adoption of the Order. This Stipulation and the Order will be heard as a settlement agreement before the Lahontan Water Board, but the hearing will not be an evidentiary hearing.

27. **Waiver of Right to Petition or Appeal:** LADWP hereby waives its right to petition the Lahontan Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to the California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Lahontan Water Board or its delegate related to the Order, including, but not limited to time extensions and other terms contained in the Order.

28. **No Third Party Benefits:** Nothing in this Stipulation shall be deemed to create any rights in favor of, or to inure to the benefit of, any persons, who are not a signatory to this Stipulation (third party), or to waive or release any defense or limitation against third party claims.

29. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Stipulation shall be communicated to LADWP in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the LADWP of its obligation to obtain any final written approval required by this Stipulation or the Order.

30. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

31. **Authority of Executive Officer to Extend Due Dates:** The Executive Officer or the Executive Officer's delegee may extend any of the due dates in this Stipulation upon the joint request of the Parties. Such extensions must be in writing.

32. **Effective Date:** The obligations in this Stipulation are effective and binding only upon the entry of an Order by the Lahontan Water Board which incorporates the terms of this Stipulation.

33. **Severability:** This Stipulation is severable; should any provision be found invalid the remainder shall remain in full force and effect.

34. **Counterpart Signatories:** This Stipulation 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.

California Regional Water Quality Control Board Prosecution Team
Lahontan Region

By: *Lauri Kemper*
Lauri Kemper
Assistant Executive Officer

Date: April 24, 2015

Los Angeles Department of Water and Power

By: *Martin L. Adams*
NAME Martin L. Adams
TITLE Senior Assistant General Manager

Date: 4/23/15

APPROVED AS TO FORM AND LEGALITY
MICHAEL M. [Signature]

APR 23 2015
BY *Michelle Lyman*
MICHELLE LYMAN
DEPUTY CITY ATTORNEY

Order of the Regional Water Board

1. This Order incorporates the foregoing Stipulation.
2. In accepting the foregoing Stipulation, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board staff in investigating Violation Nos. 1 and 2 or otherwise provided to the Lahontan Water Board.
3. This is an action to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act ("CEQA") (Public Resources Code, sections 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321(a)(2).

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Lahontan Regional Water Quality Control Board.

Patty Z. Kouyoumdjian
Executive Officer

Date: _____

Exhibit(s):

- A. Administrative Civil Liability Methodology

EXHIBIT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

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ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

Lee Vining Creek Diversion Structure Unauthorized Discharges of Dredge and Fill Materials to Waters of the United States

There are two categories of violation, one involving multiple days of violation, resulting from Los Angeles Department of Water and Power's (LADWP) discharging dredge and fill materials to waters of the United States without a dredge/fill material discharge permit. The unauthorized discharges occurred as a result of LADWP's Lee Vining Creek Diversion Structure Project. The sources of information for the analysis, below, are Lahontan Water Board staff's observations during its September 18, 2014 site inspection, LADWP's Application for Clean Water Act section 401 Water Quality Certification (submitted November 7, 2014, after project completion), and the U.S. Army Corps of Engineers December 16, 2014 Nationwide Permit Verification.

Violation 1: **Water Code section 13376/Clean Water Act section 301** – LADWP discharged rock rip rap, concrete, and earthen materials below the ordinary high water mark (OHWM) of Lee Vining Creek, a water of the United States, without obtaining a dredge or fill material discharge permit and/or waste discharge permit from the Lahontan Water Board.

Violation 2: **Basin Plan Prohibition** – LADWP's work within Lee Vining Creek on September 18, 2014 caused between an approximately 300 - 500 percent increase in turbidity, which violates the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) prohibition against discharges that cause a narrative water quality objective to be exceeded. The Basin Plan establishes a narrative water quality objective for turbidity that limits increases in turbidity caused by projects and/or waste discharges to 10 percent above natural levels.

Lahontan Water Board staff has evidence that Violation No. 1 occurred on eight different days during the period beginning on September 12, 2014 and ending on October 25, 2014. Each day that an unauthorized discharge of dredged or fill materials occurred below the OHWM of Lee Vining Creek, including within portions of the diversion structure, represents an individual day of violation of Water Code section 13376 and/or Clean Water Act section 301. Lahontan Water Board staff has evidence that Violation No. 2 occurred on September 18, 2014, which represents a single day of a violation of the above-referenced Basin Plan prohibition. Each violation is independently subject to administrative civil liability of up to \$10,000 per day of violation, pursuant to Water Code 13385.

Following is the justification for the values inserted into the ACL Methodology Calculator (attached).

Violation 1a – Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Rock Rip Rap (September 18, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

The Basin Plan identifies the following beneficial uses for Lee Vining Creek:

Municipal and Domestic Supply	Agricultural Supply*
Groundwater Recharge	Freshwater Replenishment
Hydropower Generation	Water Contact Recreation
Non-Contact Water Recreation	Commercial and Sportfishing
Cold Freshwater Habitat	Wildlife Habitat
Spawning, Reproduction, and Development	

*Agricultural Supply is only identified for waters upstream of the diversion structure.

“**Minor (1)**” was selected due to the limited extent of waters and aquatic habitat affected by the unauthorized discharge of rock fill (80 cubic yards) below Lee Vining Creek’s OHWM. Lahontan Water Board staff did not observe any significant adverse effects during its September 18, 2014 inspection. However, placing the unwashed rock onto the creek bed has the potential to adversely affect several of Lee Vining Creek’s beneficial uses as identified above, and as discussed below.

- **Non-Contact Water Recreation (REC-2):** Dust blowing off the rock as it dropped into place indicates the rock was not washed prior to placement. The unwashed rock and disturbance to the creek bed subject to flow likely resulted in the observed and documented increase in turbidity. Increases in turbidity reduce water clarity. Many local residents and visitors enjoy viewing clear-flowing Sierra Nevada mountain creeks and streams, such as Lee Vining Creek. Reducing water clarity can adversely affect the aesthetic experience for those hiking or driving by waters they expect to be clear, and thus, adversely affect the REC-2 beneficial use. However, the increase in turbidity in this case was minor (field results: from 1 NTU to 5 NTU; lab results: from 0.28 NTU to 0.82 NTU), and likely had little effect on the REC-2 beneficial use due to the minor decrease in water clarity caused by placing rip rap within a flowing portion of Lee Vining Creek.
- **Commercial and Sportfishing (COMM):** Lahontan Water Board staff observed numerous fish (rainbow and brown trout inhabit Lee Vining Creek) in the project area during the September 18, 2014 inspection. There were no measures/structures in place to isolate project activities from flowing waters and the fish that Lahontan Water Board staff observed during the inspection. These conditions potentially exposed the fish that were in close proximity to the project site to injury and/or death. Fish injuries and/or mortality due to project activities would reduce fish populations and represent an adverse impact to the COMM beneficial use. Additionally, increases in turbidity levels can affect fish feeding behavior. Fish rely, in part, upon sight to locate food. When turbidity levels increase to the point of inhibiting a fish’s

ability to see its food, it also inhibits the fish's ability to see bait or a fishing lure. Therefore, activities such as placing unwashed rock in flowing waters has the potential to increase turbidity levels to the point of inhibiting a fish's ability to see bait or a lure, adversely affecting the COMM beneficial use.

The absence of any observations of fish injury, mortality, or diminished ability to see food sources, bait, or a lure during Lahontan Water Board staff's September 18, 2014 inspection does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could have occurred before, during, or after Lahontan Water Board staff's inspection, but at a level that could not be or was not measured, quantified, or observed. The potential for such adverse impacts is low, given the limited area affected by rock rip rap placement, fish mobility during such activity remaining high, and the resulting turbidity levels, which remained low.

- **Cold Freshwater Habitat (COLD):** The cold freshwater habitat beneficial use includes, but is not limited to, preserving and enhancing aquatic habitats, vegetation, fish, and wildlife, including invertebrates. As discussed above, placing the rock rip rap within the flowing waters of Lee Vining Creek exposed the fish that Lahontan Water Board staff observed during the September 18, 2014 inspection to potential injury and/or mortality. Placing the rock below Lee Vining Creek's OHWM also potentially buried and destroyed invertebrate habitat. Aquatic invertebrates provide a food source to fish inhabiting Lee Vining Creek and destroying invertebrate habitat can adversely affect fish growth, health and survivability. Fish injury and/or mortality, and invertebrate habitat destruction with its potential impacts to fish growth, health, and survivability, all represent adverse impacts to the COLD beneficial use. The absence of any observations of fish injury, mortality, or damage and/or destruction of invertebrate habitat during Lahontan Water Board staff's September 18, 2014 inspection does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could have occurred before, during, or after Lahontan Water Board staff's inspection, but at a level that could not be or was not measured, quantified, or observed. The potential for and extent of such impacts is low and limited, respectively, given the very limited area of Lee Vining Creek affected by rock rip rap placement.
- **Wildlife Habitat (WILD):** As discussed above, placing the rock below Lee Vining Creek's OHWM has the potential to destroy invertebrate habitat. In addition to fish, aquatic invertebrates provide food sources for other organisms, such as birds that inhabit or visit Lee Vining Creek and its surrounding habitat. Destroying invertebrate habitat by placing rock below Lee Vining Creek's OHWM has the ability to adversely affect a food source for birds and other animals; and therefore, represents an adverse impact upon the WILD beneficial use. However, such impact was likely minor given the limited extent of potential invertebrate habitat disturbed/destroyed by placing the rock rip rap below Lee Vining Creek's OHWM.

- **Spawning, Reproduction, and Development (SPWN):** Lee Vining Creek supports a trout fishery, including brown trout that spawn in the fall. Placing the rock rip rap below Lee Vining Creek's OHWM could have destroyed spawning habitat during or just prior to the brown trout spawning season. Additionally, the potential adverse impacts to invertebrate habitat and populations and their effect upon fish food sources can also affect early fish development. The absence of any observations of damage and/or destruction of spawning habitat and/or invertebrate habitat during Lahontan Water Board staff's September 18, 2014 inspection does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could have occurred before, during, or after Lahontan Water Board staff's inspection, but at a level that could not be or was not measured, quantified, or observed. The potential for and extent of such impacts is low and limited, respectively, given the very limited area of Lee Vining Creek affected by rock rip rap placement.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Moderate Risk (2)**” was selected due to the ability of rock rip rap and the fine sediment (dust) particles on the rock rip rap to smother spawning and invertebrate habitat. Aquatic invertebrate populations and fish eggs are not highly mobile and are therefore susceptible to the smothering characteristic of rock rip rap and fine sediment discharged into creek habitats. Adversely affecting these beneficial uses can lead to other beneficial uses, such as COMM, COLD, and WILD, being adversely impacted.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as more than 50 percent of the unauthorized rock fill and fine sediment (dust) is susceptible to cleanup (i.e., could be removed).

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected as LADWP's actions resulted in an unauthorized discharge and rendered the requirement to obtain a dredge/fill permit and/or waste discharge permit prior to discharging dredge or fill materials and/or wastes to waters of the United States and the requirement to obtain 401 Water Quality Certification ineffective by disregarding the requirement, even though Lahontan Water Board staff repeatedly brought the issue to LADWP's attention. While LADWP staff explained reasons why it believed such a permit was not required, LADWP staff could not/would not provide Lahontan Water Board staff documentation confirming LADWP staff's position when requested to do so by Lahontan Water Board staff.

Additional Factor, Culpability:

“**1.4**” was selected, as it is clearly LADWP's responsibility to obtain all necessary permits for projects conducted on its facilities. Lahontan Water Board staff repeatedly

brought it to LADWP staff's attention that a 401 Water Quality Certification or other Lahontan Water Board permit was required for the project. In spite of Lahontan Water Board staff's repeated requests to either submit documentation supporting LADWP staff's initial position that a 401 Water Quality Certification was not required, or to submit an application for 401 Water Quality Certification, LADWP went forward with its project without doing either. Additionally, the U.S. Army Corps of Engineers (Army Corps) issued a Nationwide Permit Verification Letter, dated December 16, 2014, providing after-the-fact authorization for the project under Nationwide Permit (NWP) Nos. 13 and 33, indicating that a dredge/fill permit was actually required for the project triggering the requirement to also obtain 401 Water Quality Certification. Both NWPs required project applicants to obtain individual 401 Water Quality Certification from the Lahontan Water Board, as the State Water Board has not adopted a Technically Conditional 401 Water Quality Certification for these two permits, among others.

LADWP had enough time to submit documentation supporting its position, but did not. Given that the project was underway on September 18, 2014, despite LADWP staff statements on September 17, 2014 that no work other than biological surveys were underway, it may have been more difficult to submit an application for and to obtain 401 Water Quality Certification prior to beginning project construction. This set of circumstances lends support to the real possibility that LADWP willfully decided to proceed without obtaining all necessary permits. Therefore, LADWP failed to exercise ordinary care in conducting its in-stream work.

Additional Factor, Cleanup and Cooperation:

“1.5,” the maximum value was selected given the lack of cooperation prior to and following the unauthorized discharge of rock fill into Lee Vining Creek, and the project in general. As discussed above, Lahontan Water Board staff repeatedly attempted to engage LADWP staff in an effort to ensure that LADWP had all necessary Lahontan Water Board permits. LADWP did not submit an application for 401 Water Quality Certification until November 7, 2014. This was 10 days following project completion on October 28, 2014, 43 days following Lahontan Water Board staff's September 25, 2014 Notice of Violation ordering LADWP to submit the application immediately, and 70 days following Lahontan Water Board staff's August 29, 2014 verbal notification to LADWP staff that a 401 Water Quality Certification was required for the project.

This failure to seek and obtain 401 Water Quality Certification also followed on-going discussions occurring for more than a year prior to the Lee Vining Creek Diversion Structure Project between Lahontan Water Board and LADWP staff regarding the Lahontan Water Board's 401 Water Quality Certification Program. Lahontan Water Board staff has clearly explained the types of project requiring 401 Water Quality Certification or other Lahontan Water Board permits during these discussions.

Additional Factor, History of Violations:

“1” was selected, as Lahontan Water Board staff has not been able to document similar

incidents, based upon a review of the California Integrated Water Quality System database.

Violation 1b - Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Concrete (September 12, 2014, October 7, 2014, and October 20, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

“**Minor (1)**” was selected based upon the lack of best management practices to isolate the areas for the new concrete low splash walls (10 cubic yards of concrete, September 12, 2014), weir walls (24 cubic yards of concrete, October 7, 2014), and downstream aprons (18 cubic yards of concrete, October 20, 2014), from creek flows during the concrete pours, and until the concrete could cure to the point it no longer presented a threatened waste discharge to Lee Vining Creek downstream of the diversion structure. The areas for the low splash walls, weir walls, and downstream aprons appear to be located within the diversion structure itself, but are also partially or totally located below Lee Vining Creek’s OHWM. The lack of isolation measures increases the potential for concrete waste discharges from within the diversion structure to creek waters either upstream or downstream of the structure. However, the use of concrete forms helps reduce the potential for such discharges and associated harm to beneficial uses.

Lahontan Water Board staff has greater concern regarding the September 12, 2014 and October 20, 2014 concrete pours for the low splash walls and downstream aprons, respectively. Staff’s concerns regarding the September 12, 2014 concrete pour rise from the fact that the creek above and below the diversion structure had not been isolated from project activities on/within the diversion structure. The failure to isolate the project area from the flowing creek significantly increased the potential for a concrete discharge to creek waters. Lahontan Water Board staff’s concerns regarding the October 20, 2014 concrete pour rise from the absence of any statement within the Construction Supervisor’s Log regarding the location of the pour. The Construction Supervisor’s Log specifically states “not in streambed” for the September 12, 2014 pour, and states “within the structure” for the October 7, 2014 pour. There is no similar statement in the Construction Supervisor’s Log for the October 20, 2014 pour. A concrete discharge to the creek could have caused the same adverse impacts to the COMM, COLD, WILD, and SPWN beneficial uses, as discussed above. Such impacts would occur as a result of the smothering (fine particles) and potentially hazardous (high pH) characteristics of concrete, and would likely be greater in severity, than those associated with the unauthorized rock rip rap placement below Lee Vining Creek’s OHWM. The absence of Lahontan Water Board staff observations of concrete discharges to creek waters and/or habitat during its September 18, 2014 inspection does not diminish the potential for such discharges and their associated potential adverse impacts to beneficial uses. The potential for such harm is partially reduced since most, if not all, of the concrete pour activities occurred within the diversion structure, and the diversion structure had been isolated from creek flows by the time the October 20, 2014 pour occurred.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Above Moderate Risk (3)**” was selected due to concrete’s ability to more completely smother invertebrate and spawning habitat than rock rip rap, and concrete’s high pH levels. The fine particle characteristic of wet concrete creates a much greater threat to the COLD, WILD, and SPWN beneficial uses than the rock and dust particles discussed above. Concrete is able to more completely cover invertebrate and spawning habitat, compared to rock that has specific contact points with the creek bed. An even greater threat to COMM, COLD, and WILD beneficial uses is concrete’s high pH characteristic. Concrete could introduce waste with pH levels near or potentially exceeding hazardous waste designation levels, which creates a direct threat to the fish that Lahontan Water Board staff observed in very close proximity to project activities, and other aquatic organisms inhabiting Lee Vining Creek upstream and downstream of the diversion structure. A concrete discharge to the creek, depending upon the discharge volume and creek flow conditions, creates substantial concern regarding receptor protection.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as more than 50 percent of the unauthorized concrete fill is susceptible to cleanup (i.e., could be removed).

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected for the same reason provided for Violation 1a, above.

Additional Factor, Culpability:

“**1.4**” was selected for the same reasons provided for Violation 1a, above.

Additional Factor, Cleanup and Cooperation:

“**1.5,**” the maximum value was selected for the same reasons provided for Violation 1a, above.

Additional Factor, History of Violations:

“**1**” was selected for the same reason provided for Violation 1a, above.

Violation 1c - Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Concrete Blocks (September 19, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

“**Minor (1)**” was selected due to the limited extent of waters and aquatic habitat (approximately 1,000 square feet) temporarily affected by the unauthorized placement

of concrete blocks immediately adjacent to the diversion structure's upstream apron, but below Lee Vining Creek's OHWM. Placing the concrete blocks on the creek bed to form the upstream coffer dam would have temporarily smothered any existing invertebrate and spawning habitat. Placing the concrete blocks on the creek bed would have also likely increased turbidity levels similar to those created by the September 18, 2014 unauthorized discharge of rock rip rap within Lee Vining Creek. Therefore, it is reasonable to expect that any adverse impacts to REC-2, COMM, COLD, WILD, and SPWN beneficial uses would have been similar to those potential impacts discussed for Violation 1a, above.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Minor Risk (1)**” was selected for the same reason provide for Violation 1a, above. Cured concrete blocks do not present the same threat level to potential receptors that fresh concrete does. Cured concrete blocks would have characteristics more similar to the rock and fine dust particles discussed, above.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as 100 percent of the unauthorized concrete blocks placed below Lee Vining Creek's OHWM were removed.

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected for the same reason provided for Violation 1a, above.

Additional Factor, Culpability:

“**1.4**” was selected for the same reasons provided for Violation 1a, above.

Additional Factor, Cleanup and Cooperation:

“**1.5,**” the maximum value was selected for the same reasons provided for Violation 1a, above.

Additional Factor, History of Violations:

“**1**” was selected for the same reason provided for Violation 1a, above.

Violation 1d - Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Earthen Materials (September 19, 2014, September 25, 2014, October 21, 2014, and October 25, 2014)

“**Moderate (3)**” was selected due to the greater extent of waters and aquatic habitat affected by the unauthorized discharges of earthen materials below Lee Vining Creek's

OHWL, upstream and downstream of the diversion structure. On September 19, 2014, approximately 112 cubic yards of sediment that had accumulated on the diversion structures upstream apron was discharged into Lee Vining Creek, upstream of the concrete block coffer dam. The Army Corps' December 16, 2014 Nationwide Permit Verification indicates that the material was initially used to further support the upstream concrete block coffer dam, and then "was graded to the original contours of the stream channel" after the upstream coffer dam was removed. The upstream coffer dam was removed on October 25, 2014, according to the Construction Supervisor's Log.

On September 25, 2014, the downstream coffer dam was constructed, using 40.4 cubic yards of earthen materials. The coffer dam covered approximately 4,900 square feet of creek bed, according to the Army Corps' December 16, 2014 Nationwide Permit Verification. The material used to construct the downstream coffer dam was "adjacent streambed material," as identified by the Army Corps' December 16, 2014 Nationwide Permit Verification. LADWP's application is unclear regarding the source of the material used to construct the downstream coffer dam. On October 21, 2014, the downstream coffer dam was "regraded under water at the site" according to the Construction Supervisor's Log.

LADWP does not identify the creek area affected by each of these four unauthorized discharge events. Therefore, it is difficult, at best, to understand the areal extent of these discharges. However, it is likely that the amount of earthen material placed across a minimum of two locations below Lee Vining Creek's OHWL has had significant impacts to beneficial uses. The same five beneficial uses (REC-2, COMM, COLD, WILD, AND SPWN) discussed in Violation 1a, above, have been affected, but likely to a much more significant level than identified in Violation 1a, above, because of the type of material discharged.

- **Non-Contact Water Recreation (REC-2):** Redistributing 112 cubic yards of earthen material upstream of the diversion structure and 40.4 cubic yards of earthen material downstream of the diversion structure likely created significantly higher turbidity levels than those observed by Lahontan Water Board staff during its September 18, 2014 site inspection. Neither LADWP's application nor the Army Corps' Nationwide Permit Verification identify any measures taken to mitigate or reduce the effects of redistributing the earthen materials within the creek. The downstream coffer dam was removed prior to the upstream coffer dam, thus, removing any settling potential for suspended sediment generated by redistributing 112 cubic yards of earthen material upstream of the diversion structure. Anticipated turbidity levels generated by such activities would have definitely been noticed by anyone hiking or driving adjacent to Lee Vining Creek below the diversion structure. The adverse impact to the REC-2 beneficial use would have been significantly greater than that associated with placing the 80 cubic yards of unwashed rock into Lee Vining Creek.
- **Commercial and Sportfishing (COMM):** The potential for adverse impacts to the fish that Lahontan Water Board staff observed during its September 18, 2014

inspection is significantly greater during earthen fill discharge and redistribution events than those associated with the conditions discussed in Violation 1a, above. The amount of earthen materials discharged into Lee Vining Creek and then “regraded under water” likely created turbidity levels that would have adversely affected fish’s ability to see bait or a lure. The suspended sediment concentrations could have been high enough to cause fish tissue damage. Fish could have also been injured or killed during the actual discharge or regrading of the earthen materials. There is a significant potential that the unauthorized earthen materials discharges had such effects upon fish species in the area, which represents at a minimum, a moderate adverse impact to the COMM beneficial use. It is unknown how long such impacts would persist.

- **Cold Freshwater Habitat (COLD):** As discussed in Violation 1a, above, the COLD beneficial use includes, but is not limited to, preserving and enhancing aquatic habitats, vegetation, fish, and wildlife, including invertebrates. Discharging the quantities of earthen materials associated with the upstream apron and downstream coffer dam, and then regrading the material likely resulted in a significant amount of creek bed disturbance and damage. Invertebrate habitat was undoubtedly disturbed and subsequently buried. Over time, invertebrates will recolonize these areas, but a food source for fish has likely been temporarily reduced by the unauthorized earthen material discharges to Lee Vining Creek. The likely reduction in food source may have adversely affected fish growth, health, and survivability as Lee Vining Creek fish populations were preparing for winter conditions. Fish injury and/or mortality, and invertebrate habitat destruction with its potential impacts to fish growth, health, and survivability, all represent adverse impacts to the COLD beneficial use. It is likely that adverse impacts to the COLD beneficial use occurred as a result of the unauthorized earthen material discharges to Lee Vining Creek. Such impacts likely occurred on a localized level for an unknown time period.
- **Wildlife Habitat (WILD):** As discussed above, discharging and redistributing earthen materials below Lee Vining Creek’s OHWM likely destroyed invertebrate habitat. In addition to fish, aquatic invertebrates provide food sources for other organisms, such as birds that inhabit or visit Lee Vining Creek and its surrounding habitat. Destroying invertebrate habitat by discharging and grading earthen materials below Lee Vining Creek’s OHWM likely adversely affected a food source for birds and other animals; as they were preparing for winter conditions. Such conditions represent at a minimum, a moderate adverse impact upon the WILD beneficial use, given the strong probability of resource damage over a significant area resulting from the unauthorized earthen material discharges.
- **Spawning, Reproduction, and Development (SPWN):** Lee Vining Creek supports a trout fishery, including brown trout that spawn in the fall. The creek bed disturbance associated with the unauthorized earthen material discharges would have likely destroyed any existing brown trout redds and the eggs that would have been in them. The discharge activities would have also likely disrupted any spawning activity in the creek near the diversion structure. Additionally, the potential

adverse impacts to invertebrate habitat and populations and their effect upon fish food sources can also affect early fish development. These are likely effects associated with the unauthorized earthen material discharges and represent, at a minimum, moderate adverse impacts to the SPWN beneficial use. It is unknown what the long-time, if any, impacts will be to the spawning, reproduction, and early development of the brown trout and other fish species near the project area.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Moderate Risk (2)**” was selected due the smothering characteristic the earthen materials can have on invertebrate populations and spawning habitat. Aquatic invertebrate populations and fish eggs are not highly mobile and are therefore susceptible to the smothering characteristic of creek bed and other earthen materials discharged into creek habitats.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as more than 50 percent of the unauthorized earthen material fill (dust) was susceptible to cleanup prior to the December 2014 storm events (i.e., could be removed).

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected for the same reason provided for Violation 1a, above.

Additional Factor, Culpability:

“**1.4**” was selected for the same reasons provided for Violation 1a, above.

Additional Factor, Cleanup and Cooperation:

“**1.5,**” the maximum value was selected for the same reasons provided for Violation 1a, above.

Additional Factor, History of Violations:

“**1**” was selected for the same reason provided for Violation 1a, above.

Violation 2 – Violation of a Basin Plan Prohibition (September 18, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

“**Minor (1)**” was selected given the low levels of turbidity. Based upon field data, the turbidity increased from 1 NTU to 5 NTU, comparing sampling results from upstream

and downstream of the project area. While this represents a 500 percent increase with the potential for harm (water quality objective limits increases to 10 percent), 5 NTU does not present an appreciable harm to beneficial uses given its low level and limited period.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Minor Risk (1)**” was selected due to the ability of fine sediment to smother spawning and invertebrate habitat. The fine sediment on the unwashed rock placed within the creek and the fine creek bed sediment that was likely re-suspended during the unauthorized rock placement have the ability to smother creek bed habitat further downstream. As discussed above, COLD, WILD, and SPWN beneficial uses can all be adversely affected by the fine sediment’s smothering (physical) characteristic. However, the unauthorized rock fill discharge poses only a minor threat to potential receptors given the limited area affected and limited amount of rock placed below Lee Vining Creek’s OHWM.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**1**” was selected, as none of the re-suspended creekbed sediments nor the fine sediment on the rock being placed into the creek was susceptible to cleanup or abatement.

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected as LADWP’s actions rendered the requirement to comply with the Basin Plan prohibition ineffective by disregarding the requirement. LADWP failed to take any steps, such as isolating the work area for rock slope protection from flowing waters or washing the rock to remove fine sediment and prevent it from being discharged to the creek. It is fortunate that the impact of LADWP’s failures were minor during Lahontan Water Board staff’s inspection; however, the lack of impact does not decrease LADWP’s disregard of the Lahontan Water Board’s Basin Plan prohibition.

Additional Factor, Culpability:

“**1.3**” was selected. LADWP is clearly responsible for implementing measures to maintain compliance with the Lahontan Water Board’s regulations and standards, with or without proper permits in hand. To that end, LADWP did provide a list of best management practices to be used during the project. Cofferdams and a temporary diversion around the work area to prevent the discharge of silt was identified for this project, but not implemented when LADWP was placing rock into the creek. LADWP’s Water Operations Labor Supervisor, Mr. Lee Powell, discussed with Lahontan Water Board staff plans to install two coffer dams and to isolate the work area from creek flows, but doing so was scheduled for the following week and prior to removing accumulated sediment on the upstream side of the diversion structure. Concrete repair

work was also to occur following installation of the coffer dam system; however, Lahontan Water Board staff observed during its inspection that concrete repair work had already started without the coffer dams in place. The failure to install identified measures intended to isolate the work area from creek flows could have been an oversight or scheduling error, rather than an intentional act to avoid the challenges and efforts to do so. As stated, above, LADWP staff intended to install the coffer dams the following week. Therefore, 1.3 was selected to reflect LADWP's known responsibility to comply with the Lahontan Water Board's regulations and standards, but delayed BMP implementation leading to the violation.

Additional Factor, Cleanup and Cooperation:

“1.5,” the maximum value was selected given the lack of cooperation prior to the project in general, which likely contributed to the violation. Lahontan Water Board staff would have emphasized the need to isolate the project area during the entire project period, in addition to washing the rock prior to placement. Implementing these and other measures would have likely been made conditions of approval.

Additional Factor, History of Violations:

“1” was selected, as Lahontan Water Board staff has not been able to document similar incidents, based upon a review of the California Integrated Water Quality System database.

Determination of Total Base Liability Amount:

The Total Base Liability Amount is determined by adjusting the initial liability amount by the adjustment factors analyzed above. The Total Base Liability Amount for Violation Nos. 1 and 2 is \$118,942.29. The attached ACL Methodology Calculator explains this calculation in greater detail.

Ability to Pay:

No adjustment was made, as LADWP has the ability through its rate structure to pay the Total Base Liability Amount of \$118,942.29.

Economic Benefit:

LADWP to date has realized, at a minimum, a \$294 economic benefit. This is the difference between the 401 Water Quality Certification fee due (\$1,391) and the amount (\$1,097) LADWP submitted with its 401 Water Quality Certification application. This represents the minimum economic benefit realized by LADWP. Lahontan Water Board staff may have required additional mitigation measures if the project had been properly permitted.

Maximum and Minimum Liability Amounts:

A person who violates Water Code section 13376, a Basin Plan prohibition, or a requirement of Clean Water Act section 301, shall be liable civilly in accordance with Water Code section 13385. The maximum liability the Lahontan Water Board may assess pursuant to Water Code section 13385(c) is ten dollars (\$10) per gallon discharged but not cleaned up minus the first 1,000 gallons plus ten thousand dollars (\$10,000) for each day in which the violation occurs. Therefore, the maximum liability the Lahontan Water Board may assess for Violation Nos. 1 and 2 is \$569,360.

Water Code section 13385(e) establishes the derived economic benefit as a minimum liability. The Enforcement Policy further requires that:

The adjusted Total Base Liability shall be at least 10 percent higher than the Economic Benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

Therefore, the Minimum Liability Amount for Violation Nos. 1 and 2 is \$323.40.

The attached ACL Methodology Calculator explains the above calculations in greater detail.

Final Liability Amount:

The total calculated civil liability amount in this matter is \$118,942.29. The attached ACL Methodology Calculator explains this calculation in greater detail.

Penalty Calculation Methodology Worksheet - Version Date: 2/4/2014

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item 1 = Minor
 Select Item 2 = Discharged material poses moderate risk
 Select Item 3 = 50% of Discharge Susceptible to Cleanup or Abatement
 Select Item Major

Select Item 1 = Minor
 Select Item 2 = Discharged material poses above moderate risk
 Select Item 3 = 50% of Discharge Susceptible to Cleanup or Abatement
 Select Item Major

Select Item 1 = Minor
 Select Item 2 = Discharged material poses minor risk
 Select Item 3 = 50% of Discharge Susceptible to Cleanup or Abatement
 Select Item Major

Select Item 3 = Moderate
 Select Item 2 = Discharged material poses moderate risk
 Select Item 3 = 50% of Discharge Susceptible to Cleanup or Abatement
 Select Item Major

Discharger Name/ID: LADWP Lee Vining Creek Diversion Structure (Sept. - Oct. 2014)

		Violation 1a-CWC 13376		Violation 1b-CWC 13376		Violation 1c-CWC 13376		Violation 1d-CWC 13376	
Discharge Violations	Step 1 Potential Harm Factor (Generated from Button)	3		4		2		5	
	Step 2 Per Gallon Factor (Generated from Button)	0.02		0.025		0.015		0.15	
	Gallons	16,157						30,779	
	Statutory Maximum	10,000						10,000	
	High Volume								
	Total		\$ 3,231		\$ -		\$ -		\$ 46,169
	Per Day Factor (Generated from Button)	0.02		0.025		0.015		0.15	
	Days	1		3		1		4	
	Statutory Max per Day	\$ 10,000		\$ 10,000		\$ 10,000		\$ 10,000	
	Total		\$ 200		\$ 750		\$ 150		\$ 6,000
Non-Discharge Violations	Step 3 Per Day Factor								
	Total Days								
	Multiple Day Violation Reduction								
	Statutory Max per Day								
	Total		\$ -		\$ -		\$ -		\$ -
	Initial Amount of the ACL		\$ 3,431.40		\$ 750.00		\$ 150.00		\$ 52,168.50
Add'l Factors	Step 4 Culpability	1.4	\$ 4,803.96	1.4	\$ 1,050.00	1.4	\$ 210.00	1.4	\$ 73,035.90
	Cleanup and Cooperation	1.5	\$ 7,205.94	1.5	\$ 1,575.00	1.5	\$ 315.00	1.5	\$ 109,553.85
	History of Violations	1	\$ 7,205.94	1	\$ 1,575.00	1	\$ 315.00	1	\$ 109,553.85
	Maximum for this Violation	\$ 171,570.00		\$ 30,000.00		\$ 10,000.00		\$ 347,790.00	
	Amount for this Violation		\$ 7,205.94		\$ 1,575.00		\$ 315.00		\$ 109,553.85

Step 5 Total Base Liability Amount		\$ 118,942.29
Step 6 Ability to Pay & to Continue in Business	1	\$ 118,942.29
Step 7 Other Factors as Justice May Require	1	\$ 118,942.29
Staff Costs		\$ 118,942.29
Step 8 Economic Benefit	\$ 294	
Step 9 Minimum Liability Amount	\$ 323.40	
Maximum Liability Amount	\$ 569,360.00	
Step 10 Final Liability Amount		\$ 118,942.29

Penalty Day Range Generator

Start Date of Violation= 9/18/14
 End Date of Violation= 9/18/14

Maximum Days Fined (Steps 2 & 3) = 1 Days
 Minimum Days Fined (Steps 2 & 3) = 1 Days

