

EXHIBIT A
FACILITY MAP

**EXHIBIT A
FACILITY LOCATION MAP**

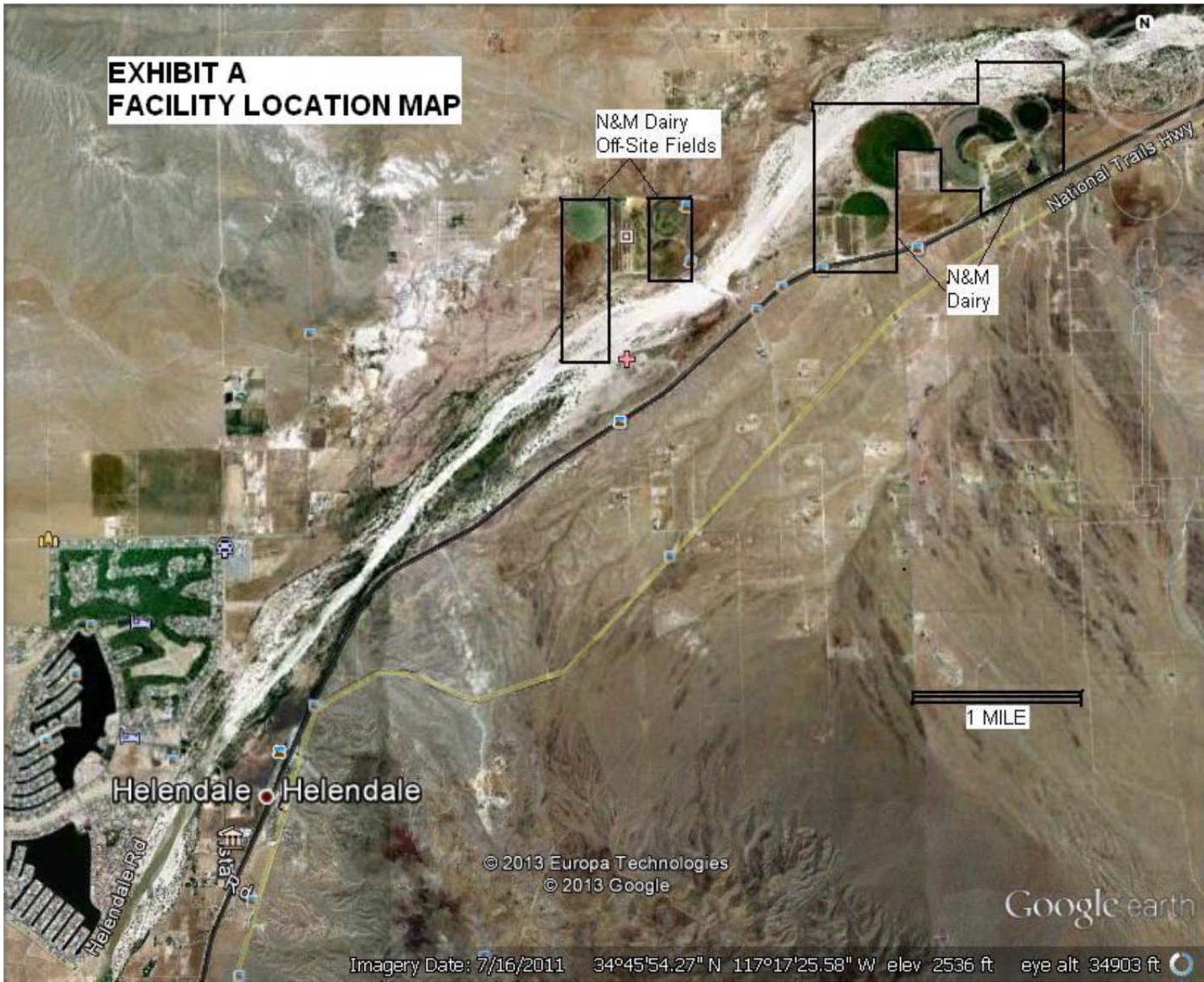


EXHIBIT B

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY FOR VIOLATION NOS. 1, 2, AND 3

EXHIBIT B

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY FOR VIOLATION NOS. 1, 2, AND 3 N&M DAIRY

On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy provides a methodology for determining administrative civil liability. The methodology includes an analysis of the factors in Water Code section 13327, and it enables fair and consistent implementation of the Water Code's liability provisions.

The Lahontan Water Board Prosecution Team alleges that the Discharger failed to comply with Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056 (CAOs). Below is a table listing the alleged violations of the CAOs.

Violation No.	Description	CAO No.	Days of Violation	Proposed Base Liability
1	Failure to remove all excess manure by January 17, 2012.	R6V-2010-0029A2	349	\$230,340
2	Failure to submit monthly manure progress reports for months of March through September, 2012.	R6V-2010-0029, R6V-2010-0029A2	800	\$28,210
3	Failure to complete drainage and corral grading, and eliminate storm water ponding in corrals.	R6V-2011-0056	16	\$8,800
			TOTAL	\$267,350

For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violations are non-discharge violations. Because the Complaint only alleges non-discharge violations, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not applicable.

Methodology Steps 3 through 5 are discussed relative to each violation. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all three violations, and these steps are discussed after the Total Base Liability amounts are discussed for each violation.

Violation No. 1
Remove Excess Manure by January 17, 2012

Step 3: Initial Liability Determination

1. Potential for Harm – **Minor**

The excess manure was located where rainfall and storm water runoff could come into contact with the manure and discharge to ground and surface waters of the Middle Mojave River valley. After contact with the manure, the storm water runoff contains concentrations of bacteria, Total Dissolved Solids (TDS or salts), and nutrients. The failure to remove all excess manure by January 17, 2012 allowed waste containing bacteria, TDS, and nutrients to be discharged to the ground and surface waters of the Middle Mojave River Valley. Such discharges, should they occur, can potentially adversely impact aquatic habitat beneficial uses, in addition to contact and non-contact recreational beneficial uses. Such discharges can also introduce nutrients such as nitrogen and phosphorus and TDS, to the ground water. The shallow ground water is the drinking water supply for a number of nearby residents, and discharges of nutrients and TDS may have a deleterious impact on the drinking water supply.

Downgradient and cross-gradient water sampling results confirm nitrate and TDS in ground water are exceeding the Maximum Contaminant Level (MCL) and the Secondary Maximum Contaminant Level (SMCL), respectively. However, the excess manure is not the sole source contributing to the existing and ongoing nitrate and TDS pollution of local groundwater resources. Other potential sources include the agricultural fields and wastewater lagoons.

Although the excess manure poses a potential threat to the groundwater quality, the Discharger actively worked to remove the excess manure from the facility. As of January 17, 2012, less than 11 percent (4,100 tons) of the excess manure remained on site. Water Board staff observed that old stockpiles of manure were mostly gone during a May 22, 2012 inspection. The amount of excess manure remaining after the January 17, 2012 deadline was likely not a substantial threat to water quality, and the Potential for Harm for the violation is determined to be minor.

2. Deviation from Requirement - **Minor**

The Discharger identified approximately 40,250 tons of excess manure that had to be removed in order to comply with the January 17, 2012 deadline. They ultimately removed 36,149 tons by this date. Less than 11 percent of the excess manure remained on site until it was ultimately removed by the end of 2012. The Discharger was unable to remove the remaining portion of the excess manure by the deadline due to wet conditions and because of equipment failure. However, the Discharger displayed a general intent to comply with the requirement, and the Discharger substantially complied with the requirement by removing approximately 89 percent of the excess manure by the deadline. The deviation from the requirement is determined to be minor.

Based upon a minor potential for harm and a minor deviation from the requirement, a per day factor of **0.1** was selected. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by statutory maximum daily penalty. For this violation, the statutory maximum penalty is \$5,000 (Water Code section 13350.e.1).

$$\begin{aligned}\text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.1) \times (349 \text{ days}) \times (\$5,000/\text{day}) \\ &= \$174,500\end{aligned}$$

Step 4: Adjustment Factors

Multiple Day Violations

The Enforcement Policy provides that, for violations lasting more than 30 days, the Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The Discharger has failed to comply with its cleanup and abatement order for 349 days. The continuance of this violation does result in an economic benefit that can be measured on a daily basis, the failure to remove all excess manure causes daily detrimental impacts to the environment, and the violation occurred with the knowledge and control of the Discharger. Because no express finding can be made justifying the reduction in the number of days of violations, the Discharger remains out of compliance for 349 days, and the revised initial liability remains at \$174,500.

Adjustment for Culpability - 1.2

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a Culpability multiplier of **1.2** has been selected.

The Facility's Waste Discharge Requirements issued in 2001 state that manure in excess of 3,100 dry tons per year (agronomic rate application for the Facility) must be removed from the Facility. The Discharger maintained approximately 4,300 cattle on the facility, which generated up to 40 tons per day of manure (14,600 tons per year of manure). Therefore, the Discharger should have been actively removing 11,500 tons per year of manure from the Facility. The Discharger's failure to comply with its permit condition and the requirement contained in Cleanup and Abatement Order No. R6V-2010-0029A2 to remove all excess manure by January 17, 2012 resulted in accumulation of manure which posed a threat to groundwater.

Furthermore, the Water Board's Prosecution Team has exercised significant discretion in deciding whether to pursue administrative civil liability for violating the initial cleanup and abatement order (No. R6V-2010-0029). Doing so is consistent with the Prosecution Team's message to the Lahontan Water Board and to the Discharger that its primary interest is compliance. On July 2, 2010, the Assistant Executive Officer extended the deadline by a year, until October 19, 2011 (Order No. R6V-2010-0029A1). On October 12, 2011, the Discharger requested the Water Board amend the due date of October 19, 2011 stating that the removal was not achievable, and the Assistant Executive Officer again extended the deadline a second time to January 17, 2012 (Order No. R6V-2010-0029A2) with an additional stipulation that the Discharger is to remove a minimum amount of 2,000 tons per month of excess manure.

Although the Discharger is culpable in failing to comply with the requirement for removing the excess manure, a larger factor than 1.2 is not warranted. This is based upon the fact that the Discharger removed approximately 89 percent of the excess manure by the January 17, 2012 compliance date, thereby demonstrating a general intent to comply with the requirement.

Adjustment for Cleanup and Cooperation - 1.1

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is appropriate for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is appropriate for situations where cleanup and/or cooperation is minimal or absent. In this case, a Cleanup and Cooperation multiplier of **1.1** has been selected for the reasons described below:

The Discharger has shown a degree of cooperation by removing approximately 89 percent of excess manure by the January 17, 2012 deadline. However, the Discharger still failed to remove all of the excess manure by the deadline, even though the January 17, 2012 deadline was the second deadline extension allowed to the Discharger from the original October 22, 2010 deadline. The Discharger did not achieve compliance until December 2012, almost a year after the deadline. The Discharger's inability to achieve compliance warrants a cleanup and cooperation factor of at least 1.1, but the Discharger's ability to achieve significant compliance warrants not imposing a greater factor.

Adjustment for History of Violations - 1.0

The Enforcement Policy suggests that where there is a history of repeat violations, a **minimum** multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the Violation represents the first violation of all CAOs.

Step 5: Determination of Total Base Liability Amount

The Total Base Liability for Violation No. 1 is **\$230,340**. The Total Base Liability for the violation is determined by multiplying the Initial Liability (no revisions warranted for multi-day violation) by the multipliers associated with each of the Adjustment Factors discussed above.

$$\begin{aligned}\text{Base Liability} &= (\text{Revised Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) \\ &= (\$174,500) \times (1.2) \times (1.1) \times (1.0) \\ &= \$230,340\end{aligned}$$

Violation No. 2**Provide monthly manure progress reports beginning January 3, 2012****Step 3: Initial Liability Determination****1. Potential for Harm – Minor**

The failure to submit monthly progress reports does not directly or immediately impact beneficial uses. Even though beneficial uses may not be directly or immediately impacted by the alleged violation, the failure to submit the required monthly progress report has an ancillary effect on beneficial uses. The Lahontan Water Board lacks the necessary information to monitor and evaluate the cleanup activities related to the management of excess manure which poses a threat to surface or ground waters of the Middle Mojave River Valley. The failure to submit a summary report poses a minor threat to the beneficial uses of potential receiving waters. Therefore, the potential for harm to beneficial uses is determined to be minor.

2. Deviation from Requirement - Moderate

The Discharger failed to submit the Monthly Manure Removal Progress Reports for March 2012 through September 2012 by the required deadlines. On October 26, 2012, the Discharger submitted the reports for March through September 2012. Self-reporting is a necessary part of the Lahontan Water Board's effectiveness to regulate of water quality. Self-reporting is a means for the Discharger to demonstrate its compliance with Water Board requirements. In this case, the Discharger disregarded the requirement to timely submit reports, thereby depriving the Lahontan Water Board of the ability to timely evaluate the Discharger's progress, or lack thereof, related to cleanup activities. The Discharger submitted the Monthly Manure Removal Progress Reports in January and February 2012 but failed to submit the monthly reports from March through September. Therefore the requirement to submit monthly reports starting January 2012 was only partially achieved.

Based on a minor potential for harm and a moderate deviation from the requirement, a per day factor of **0.25** was selected. This value is to be multiplied by the days of violation and the maximum per day penalty. Pursuant to Water Code section 13268, subdivision (b)(1), the statutory maximum penalty is \$1,000 for each day in which the violation occurs.

$$\begin{aligned}\text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.25) \times (800 \text{ days}) \times (\$1,000/\text{day}) \\ &= \$200,000\end{aligned}$$

Monthly Report	Days Submitted Late
March, 2012	206
April, 2012	176
May, 2012	144
June, 2012	115
July, 2012	84
August, 2012	52
September, 2012	23
Total Days	800

Step 4: Adjustment Factors

Multiple Day Violations

The Enforcement Policy provides that, for violations lasting more than 30 days, the Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The Discharger has failed to comply with its cleanup and abatement order requirement. Below is a table providing the days of violation for each report. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of submitting the report to the Regional Board. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. The table below reflects the total number of collapsed days for each missing report.

Monthly Report	Days Submitted Late	Compressed Days
March, 2012	206	12
April, 2012	176	11
May, 2012	144	10
June, 2012	115	9
July, 2012	84	8
August, 2012	52	7
September, 2012	23	5
Total Days	800	62

The Revised Initial Liability is then recalculated based upon the revised number of days of violation from the table above.

$$\begin{aligned}
 \text{Revised Initial Liability} &= (\text{Per Day Factor}) \times (\text{Compressed Days}) \times (\text{Maximum Penalty}) \\
 &= (0.25) \times (62 \text{ days}) \times (\$1,000/\text{day}) \\
 &= \$15,500
 \end{aligned}$$

Adjustment for Culpability - 1.3

The Discharger was aware of the requirement to submit the monthly progress reports. Indeed, the Discharger demonstrated its disregard for the regulatory program by timely submitting its monthly progress reports for January and February, 2012 but then failing to submit reports for March through September until October 26, 2012. Therefore, a Culpability multiplier of **1.3** is appropriate.

Adjustment for Cleanup and Cooperation - 1.4

In this case, a Cleanup and Cooperation multiplier of **1.4** has been selected because of the lack of cooperation exhibited by the Discharger to return to compliance and submit the missing reports. The reports from March through September were not submitted until October 26, 2012, after Water Board staff initiated discussions of a forthcoming Administrative Civil Liability Complaint against the Discharger. Even though the Discharger submitted the missing reports in October 2012, the Discharger's voluntary cooperation had been absent.

Adjustment for History of Violations – 1.0

In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the Violation represents the first violation of all CAOs.

Step 5: Determination of Total Base Liability Amount

The Total Base Liability for Violation No. 1 is **\$28,210**. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

$$\begin{aligned}\text{Base Liability} &= (\text{Revised Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) \\ &= (\$15,500) \times (1.3) \times (1.4) \times (1.0) \\ &= \$28,210\end{aligned}$$

Violation No. 3
**Re-grade Drainage Systems and Corrals to Eliminate Ponding
by December 15, 2012**

Step 3: Initial Liability Determination

1. Potential for Harm – **Minor**

The Discharger's failure to re-grade drainage systems and corrals at the Facility potentially allows storm water to pond in areas throughout the corrals within the facility. The ponded water potentially creates fly breeding habitat and exacerbates ongoing fly nuisance issues throughout the surrounding community. Furthermore, the ponded water potentially creates a source of nutrients and TDS to the ground water, thereby exacerbating ongoing groundwater contamination issues.

However, the Discharger recently closed one of its two dairy corral operations. A Water Board staff inspection in February 2013 documented the presence of minimal areas of ponded storm water. Inspection results at the time found that storm water runoff from the corrals drained to onsite agricultural fields and did not leave the facility. Furthermore, the potential impacts to ground water from the few observed ponded areas are minimal due to the hardpack conditions found throughout the corral areas that restrict downward migration of pollutants. More recent inspection of the Facility indicates the second dairy operation is closing, with most cows removed from the Facility. Potential discharges are reduced accordingly. Therefore, the circumstances of the violation indicate a minor potential for harm.

2. Deviation from Requirement - **Minor**

While the Discharger failed to comply with the requirement by the December 15, 2012 deadline, the Discharger took steps prior to the December 15, 2012 deadline which achieved the same goal to contain runoff away from surface waters. Additionally, the Discharger regularly graded and stockpiled manure at the active dairy corral in a manner that minimized areas of ponded storm water, as observed in February 2013 during a Water Board staff inspection. The remaining operating dairy has been observed to have areas of ponded storm water, but these areas are minimal and do not pose a threat to surface waters. These actions indicate a general intent to comply with the requirement. The deviation from the requirement is determined to be minor.

Based on a minor potential for harm and a minor deviation from the requirement, a per day factor of **0.1** was selected. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by the statutory maximum penalty. Pursuant to Water Code section 13350, subdivision (e)(1), the statutory maximum penalty is \$5,000 for each day the violation occurs.

$$\begin{aligned}\text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.1) \times (16 \text{ days}) \times (\$5,000/\text{day}) \\ &= \$8,000\end{aligned}$$

Step 4: Adjustment Factors

Multiple Day Violations

The Discharger has failed to comply with its cleanup and abatement order for 16 days. The continuance of this violation does result in an economic benefit related to savings in survey and grading expenditures, the failure to completely re-grade the corrals and drainages potentially causes detrimental impacts to the environment, and the violation occurred with the knowledge and control of the Discharger. Because no express finding can be made justifying the reduction in the number of days of violations, the Discharger remained out of compliance for 16 days, and no reduction in the initial liability can be justified using the alternate approach for calculating multiday violations.

Adjustment for Culpability - 1.1

The Discharger failed to grade the corrals and drainages to prevent storm water ponding. However, the Discharger regularly graded and stockpiled manure at the active dairy corral in a manner that minimized areas of ponded storm water, as observed in February 2013 during a Water Board staff inspection. Overall, storm water runoff drains to onsite agricultural fields and does not leave the property site. Therefore, a Culpability multiplier of **1.1** is appropriate.

Adjustment for Cleanup and Cooperation – 1.0

The Discharger has hired a consultant who has worked diligently in the recent months to ensure the overall goal of no discharges to waters of the state, has been met. While the Discharger has continued to stockpile manure from its remaining dairy operation, the manure stockpiles have been created in a manner that is consistent with the permit for the facility, and the corral area has been graded in a manner that reduces the amount of storm water ponding. Moreover, the Discharger has closed one of its dairy operations, thereby eliminating one of the sources of the potential threats to water quality, and is in the process of closing the other dairy. The Discharger's efforts to achieve compliance warrants a neutral cooperation multiplier of **1.0**.

Adjustment for History of Violations – 1.0

In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the Violation represents the first violation of all CAOs.

Step 5: Determination of Total Base Liability Amount

The Total Base Liability for the violation is **\$8,800**. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

$$\begin{aligned}\text{Base Liability} &= (\text{Revised Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) \\ &= (\$8,000) \times (1.1) \times (1.0) \times (1.0) \\ &= \$8,800\end{aligned}$$

Methodology Steps 6 through 10

Step 6: Ability to Pay and Ability to Continue Business

The Enforcement Policy provides that if the Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this case, the Lahontan Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability. To date, the Discharger has not provided information indicating the inability to pay the proposed liability. In the past few months, the Discharger notified Water Board staff that the dairy would be closing.

Step 7: Other Factors as Justice May Require

The Enforcement Policy provides that if the Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. Additionally, the staff costs for investigating the violation and preparing the Complaint should be added to the liability amount.

Although the Lahontan Water Board has incurred **\$109,500** in investigative costs to date associated with all of the alleged violations, pursuant to Government Code 11415.60 and Page 22 of the Enforcement Policy, Regional Board staff is not seeking to recover these costs in this action.

Step 8: Economic Benefit

The Enforcement Policy directs the Water Board to determine any Economic Benefit Amount of the violation based on the best available information. The Enforcement Policy suggests that the Water Board compare the Economic Benefit Amount to the Adjusted Total Base Liability and ensure that the Adjusted Total Base Liability is at a minimum, 10 percent greater than the Economic Benefit Amount. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business.

Violation No. 1

The economic benefit associated with Violation No. 1 is estimated to be \$243 based upon the interest savings for failing to remove the remaining 4,100 tons of manure by the January 17, 2012 deadline.

Violation No. 2

The economic benefit associated with Violation No. 2 is close to zero. The Discharger's benefit from delinquent submitting the monthly manure reports is negligible.

Violation No. 3

The economic benefit associated with Violation No. 3 is estimated to be \$5,000 based upon the costs for surveying and grading the area associated with the remaining operating dairy.

The total economic benefit for all three violations is **\$5,243**.

Step 9: Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Water Board to consider and maximum or minimum liability amounts set forth in the applicable statutes.

Violation No. 1

The Lahontan Water Board is authorized to impose an administrative civil liability of up to \$5,000 per day pursuant to Water Code section 13350(e)(1). However, Water Code section 13350(e)(1)(B) requires a minimum civil liability of \$100 per day when there is no discharge but an order of the Lahontan Water Board is violated. For the 349 days the Discharger failed to remove all the manure from the facility, the maximum potential civil liability is \$1,745,000, and the minimum required civil liability is \$34,900.

Violation No. 2

The Lahontan Water Board is authorized to impose an administrative civil liability of up to \$1,000 per day pursuant to Water Code section 13268(b). There is no statutory minimum associated with this violation. For the 800 days the Discharger failed to submit the monthly manure progress reports, the maximum potential civil liability is \$800,000.

Violation No. 3

The Lahontan Water Board is authorized to impose an administrative civil liability of up to \$5,000 per day pursuant to Water Code section 13350(e)(1). However, Water Code section 13350(e)(1)(B) requires a minimum civil liability of \$100 per day when there is no discharge but an order of the Lahontan Water Board is violated. For the 16 days the Discharger failed to grade the corrals and drainages at the facility, the maximum potential civil liability is \$80,000, and the minimum required civil liability is \$1,600.

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

The maximum potential liability for all three violations is **\$2,625,000**. The minimum required liability for all three violations is **\$36,500**.

Step 10: Final Liability Amount

The final liability amount for Violations Nos. 1 through 3 is \$376,850.

EXHIBIT C

SEP DESCRIPTION AND SCHEDULE FOR PERFORMANCE

EXHIBIT C

NEIL AND MARY DE VRIES (DBA N&M DAIRY) FLOODPLAIN AND HABITAT CONSERVATION EASEMENT

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION AND SCHEDULE FOR PERFORMANCE

1. Introduction

As part of the terms agreed upon in the Stipulation and Order between Neil and Mary de Vries (doing business as N&M Dairy) and the Prosecution Team of the Lahontan Regional Water Quality Control Board, a Supplemental Environmental Project (SEP) in the form of a Conservation Easement must be implemented and completed by Neil and Mary de Vries no later than the SEP Completion Date. The SEP would set aside land owned by the de Vries into a conservation easement, the goals of which would be to improve Mojave River floodplain function, restore floodplain and adjacent natural habitat within the easement, and improve water quality.

The N&M Dairy property is located on parcels within and adjacent to the Mojave River, approximately five miles northeast of the community of Helendale (Figure 1). Parcels comprising the Dairy include Assessor Parcel Numbers (APN) 466-041-01, -17, and -20 through -23; 466-101-06 and -07; and 466-111-02 (Figure 2). The Dairy includes irrigated fodder crop production, a portion of which is within the active channel and floodplain of the Mojave River. The Mojave River in this area is a broad, relatively flat channel that normally contains no surface water flow. However, during intense rainfall or sustained precipitation events, the Mojave River may fill the entire width of the active channel and portions of the floodplain in this area.

2. SEP Boundary Description

The proposed conservation easement contains the following parcels or portions, consisting of approximately 310 acres (Figure 3):

- a. The northern three-quarters of APN 466-041-01, consisting of that portion north of a line from the southwestern corner of the parcel to a point midway along the eastern boundary of the parcel.
- b. The northern half of APN 466-041-17.
- c. The entirety of APNs 466-041-20, -21, and -22.
- d. The northern approximately 60 percent of APN 466-041-23, consisting of that portion north of a line from the midway point along the eastern boundary of APN

466-041-17 to a point on the eastern boundary of APN 466-041-23 approximately 2000 feet south of the northeastern corner of APN 466-041-23.

The SEP Area boundaries will be finalized by the conservation easement demarcation milestone and shall not deviate substantially from the proposed boundary description. Minor adjustments of the SEP Area boundaries described above may be accepted in writing by the Water Board's Assistant Executive Officer.

3. SEP Conservation Easement Restrictions and Acceptable Uses

As stated above, the goals of the conservation area are to improve the floodplain functions of the Mojave River, restore floodplain and adjacent natural habitat within the easement, and improve water quality. In order to achieve these goals, the following activities must be complied with:

a. Prohibited Activities or Uses

- i. Agricultural operations of any type, including, but not limited to, agricultural crop planting, irrigation, and harvest, and grazing by domestic or commercial livestock animals.
- ii. Land surface grading or disturbance, except to improve floodplain function (such as removing berms or other man-made channel restrictions), to assist restoration of floodplain and natural habitat, or to facilitate wetland creation and maintenance. Any river channel or floodplain grading activities conducted by the San Bernardino County Flood Control District within the easement must be in accordance with a Lahontan Water Board-approved plan and/or Clean Water Act section 401 Water Quality Certification.
- iii. Residential, commercial, or industrial structures or activities.
- iv. Vehicular access.

b. Acceptable Activities or Uses

- i. Natural river channel and floodplain functions.
- ii. River channel, floodplain, and adjacent upland wildlife habitat.
- iii. Constructed wetlands for wetland wildlife habitat.
- iv. Conservation banking, such as wildlife habitat or wetland mitigation banking.
- v. Ground water pumping from existing wells.

To promote the return of natural conditions, the southern boundary of the conservation easement must be appropriately demarcated.

4. SEP Conservation Easement

The SEP must be devised in conformance with the Conservation Easement Act (Civil Code sections 815-816), requiring, in part, that the conservation easement be an interest in real property and be perpetual in duration. As outlined in Section 3, above, the substantive restrictions and acceptable uses must be contained in the instrument creating the conservation easement.

5. Schedule of Performance

a. Monthly Progress Reports

Progress reports detailing the actions taken to complete the SEP shall be submitted monthly, with the first report due on December 30, 2013, until the SEP Completion Date. The progress reports must detail the actions the Discharger has taken to survey the Conservation Easement boundary, record the easement with the San Bernardino County Assessor-Recorder, and demarcate the boundaries of the easement. Documentation of survey, recordation, and easement demarcation must be provided. Progress reports are required until the Discharger provides the Final Completion Report required by the SEP Policy.

b. Conservation Easement Boundary Survey

Survey of the Conservation Easement boundary shall be performed by a California-licensed Land Surveyor. A report from the Surveyor including the maps, plats, descriptions or other documents necessary to legally describe the Conservation easement for purposes of recording the Easement with the County Assessor-Recorder shall be provided to the Lahontan Water Board by **December 30, 2013**.

c. Conservation Easement Boundary Demarcation Proposal

A proposal acceptable to the Executive Officer of the Lahontan Water Board for identifying the boundaries of the Conservation Easement must be submitted by **December 30, 2013**. The Lahontan Water Board recognizes that fencing or other permanent boundary demarcation structures within the active channel of the Mojave River is not appropriate and may adversely affect river function.

d. Demarcation of the Conservation Easement

The Conservation Easement boundary shall be appropriately demarcated in accordance with the accepted Demarcation Proposal and documentation of proof of such demarcation shall be submitted to the Lahontan Water Board by **July 31, 2014**.

e. Recording the Conservation Easement

Proof of the execution of the Conservation Easement must be provided by **July 31, 2014**. The Conservation Easement must be recorded with the County Recorder by **July 31, 2014**.

Attachment: Figure 1

