

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2020-0046  
IN THE MATTER OF

HANOVER PROPERTIES, LLC  
ASSESSOR PARCEL 061-540-052-000 & 061-540-060-000  
BUTTE COUNTY

This Administrative Civil Liability Order (Order) is issued to Hanover Properties, LLC (Discharger) pursuant to California Water Code sections 13268 and 13350, which authorize the imposition of administrative civil liability. This Order is based on evidence that the Discharger violated requirements of Cleanup and Abatement Order R5-2015-0741.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) hereby finds the following:

**BACKGROUND**

1. On 9 March 2015, Warden Steven Crowl of the California Department of Fish Wildlife (CDFW) conducted an overflight of Butte County with staff from the Central Valley Water Board and observed a large scale grading operation located on Butte County Assessor Parcels (APNs) 061-540-052-000 and 061-540-060-000 (hereafter referred to as the Site). Based on his training and experience, Warden Crowl recognized the presence of infrastructure commonly associated with cannabis cultivation sites. Warden Crowl recommended Central Valley Water Board staff participate with CDFW in a follow-up on-site inspection.
2. According to Parcel Quest, the Discharger acquired the Site in April of 2013. It appears, based on Google Earth imagery, that shortly after the Discharger purchased the Site, grading, clearing, and road expansion activities were conducted. According to information gathered from the Butte County Department of Public Works, the county had issued notices of violation for grading violations at the Site and lack of erosion and sediment control plans. As of 2015, Butte County had not received any grading permit applications for either parcel.
3. On 6 April 2015, staff obtained an administrative inspection warrant from the Butte County Superior Court granting access to the Site to conduct an inspection. In support of the warrant application, the Assistant Executive Officer submitted an affidavit that incorporated Parcel Quest imagery of the Site and the declaration of Warden Crowl regarding the 9 March 2015 flyover.

4. **7 April 2015 Warrant Inspection:** CDFW and Central Valley Water Board staff conducted an inspection of the Site, in accordance with the warrant issued on 6 April 2015, and discovered evidence of a large-scale cannabis cultivation operation, evidence of turbid stormwater runoff from the Main Access Road into an unnamed tributary of Canyon Creek, improper road construction and lack of sediment control measures, and improper storage of chemicals and refuse. The inspection report is included herein as Attachment B.
5. **17 September 2015 Draft CAO:** Due to the conditions of the Site and the violations observed during the 7 April 2015 inspection, a draft cleanup and abatement order (draft CAO) was issued to the Discharger for the cleanup and abatement of discharges emanating from the Site, including the discharge of sediment-laden stormwater from grading activities and uncontrolled road drainage from Pritchett Drive into an unnamed tributary of Canyon Creek. The draft CAO also noted the need to stabilize cleared land on erodible soils. The draft CAO provided the Discharger until 9 October 2015 to submit comments to staff.
6. On 12 October 2015, staff contacted the Discharger's attorney, Mr. Johnson, to notify him that staff had received no comments from the Discharger on the draft CAO. Staff offered to accept comments until the end of the business day on 12 October 2015. Mr. Johnson informed staff that the Discharger had hired NorthStar Engineering to respond to the draft CAO at the beginning of October. Staff stated that Mr. Lowe, from NorthStar Engineering, had contacted staff to discuss the requirements of the draft CAO, and that staff advised him of the 9 October 2015 deadline to provide comments.
7. **CAO R5-2015-0741:** On 15 October 2015, after receiving no comments from the Discharger, the Executive Officer of the Central Valley Water Board issued Cleanup and Abatement Order R5-2015-0741 (final CAO) to Hanover Properties, LLC (included herein as Attachment B). The final CAO included the following time schedule and requirements:
  - a. By 13 November 2015, the Discharger shall submit an Interim Erosion and Sediment Control Plan (Interim Plan).
  - b. By 15 December 2015, the Discharger shall have completed work outlined in the Interim Plan.
  - c. By 15 January 2016, the Discharger shall provide a report of completion, for the Interim Plan, to staff with a summary and photographs of work completed and installed erosion and sediment control measures at the Site.
  - d. By 1 March 2016, the Discharger shall provide a proposed Restoration Monitoring and Mitigation Plan (RMMP).

- e. By 1 May 2016, the Discharger shall begin implementation of the RMMP.
  - f. By 15 October 2016, the Discharger will complete all approved restoration and mitigation measures described in the proposed RMMP.
  - g. By 1 December 2016, the Discharger must submit a Completion Report for the RMMP.
  - h. By 1 October of each year (Starting 1 October 2017) submit annual monitoring report for at least three years after successful completion of RMMP.
8. On 6 November 2015, Central Valley Water Board staff received an Interim Erosion Control Plan from NorthStar Engineering to address the Interim Plan requirement contained in the final CAO.
  9. On 12 November 2015, staff approved the 6 November 2015 Interim Plan. The Interim Plan included installation and armoring of rolling dips, outsloping of the road where feasible, and installation of erosion control measures in the graded cultivation areas in order to stabilize the Site for the 2015-2016 wet weather period. In accordance with the final CAO, interim treatments were to be installed by 15 December 2015.
  10. On 16 December 2015, staff emailed NorthStar Engineering requesting a status update on implementation of the Interim Plan. NorthStar Engineering indicated that, due to wet weather conditions, the contractor had been unable to mobilize heavy equipment at the Site, but that some water bars had been excavated by hand.
  11. On 25 January 2016, staff contacted NorthStar Engineering for an update on the status of the stabilization measures. NorthStar Engineering informed staff the Discharger's account was past due and that work at the Site would not continue until the account was settled. On 2 February 2016, NorthStar Engineering informed staff the Discharger had made payment on his account and that they could perform work at the Site during the next window of clear weather.
  12. **29 February 2016 Compliance Inspection:** On 29 February 2016, staff inspected the Site with consent from Mr. Waite of Hanover Properties, LLC. Staff observed the actions taken to implement the Interim Plan, and noted that the installed water bars did not meet the design specifications outlined in the Interim Plan. Staff determined additional erosion and sediment controls were needed to address drainage issues at the Site.
  13. **1 March 2016 RMMP Extension Request:** On 1 March 2016, staff received a letter from NorthStar Engineering requesting an extension to the 1 March 2016 deadline for submission of the RMMP because a final grading and erosion control plan for the roads had not been approved by Butte County Public Works. The letter included

communications between NorthStar Engineering and Butte County indicating that they had been working to resolve the issue. On 24 March 2016, the Assistant Executive Officer of the Central Valley Water Board granted the Discharger's request and extended the deadlines in the final CAO to the following:

- a. By 31 May 2016, submit to the Central Valley Water Board a final RMMP that incorporates requirements of Butte County.
  - b. Implementation of the RMMP shall begin immediately following approval of the RMMP, but no later than 1 July 2016.
  - c. All other deadlines as outlined in the final CAO remained unchanged
14. **4 May 2016 NOV:** Based on observations during the 29 February 2016 inspection, staff issued the Discharger a Notice of Violation (NOV) on 4 May 2016. The NOV identified the inadequate erosion and sediment control measures documented during the inspection and informed the Discharger that the deadlines to complete the Interim Plan and submit a completion report had passed. The final CAO required all work outlined in the Interim Plan to be completed by 15 December 2015 and a report of completion to be submitted to the Central Valley Water Board by 16 January 2016. The NOV required the Discharger to submit a completion report documenting the completed erosion and sediment controls by no later than 20 May 2016.
15. **20 May 2016 Interim Plan Completion Report:** On 20 May 2016, NorthStar Engineering submitted an Interim Plan Completion Report detailing the corrective actions taken in response to the 4 May 2016 NOV. The Interim Plan Completion Report documented findings from the applied Interim Plan, as well as corrective actions taken including a summary of the erosion and sediment controls that NorthStar Engineering had installed. Per documentation in the Interim Plan Completion Report, several corrective actions were identified in the report that were minor in nature and NorthStar Engineering did not observe any immediate threats to water quality, nor were any top soils or soil amendments at high risk of flowing offsite into surface drainage features via storm water runoff. Based on the information contained in the Interim Plan Completion Report, staff determined that the Interim Plan was adequately completed.
16. **8 June 2016 Incomplete RMMP:** On 8 June 2016, NorthStar Engineering emailed staff stating they were waiting for the Discharger to sign a contract addendum to complete the RMMP. Later that day, after receiving the signed contract addendum, NorthStar Engineering submitted a draft RMMP to staff with the acknowledgment that the RMMP was incomplete and still in development.
17. **11 January 2017 Turbidity Samples:** Staff obtained permission to sample Canyon Creek from property owners upstream and downstream of the confluence of the

unnamed tributary to Canyon Creek, where the Site is located. Staff collected samples on 11 January 2017. Staff received the lab results on 19 January 2017, which indicated samples collected immediately downstream from the Site significantly exceeded Basin Plan objectives for turbidity.

18. On 17 February 2017, staff contacted NorthStar Engineering to request an update on the completion of the RMMP. NorthStar Engineering informed staff that the Discharger had stopped paying their invoices in March of 2016 and that NorthStar Engineering had discontinued work for the Discharger shortly after submitting the 20 May 2016 Interim Plan Completion Report.
19. **Issuance of ACLC R5-2017-0544:** On 25 July 2017, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2017-0544 (2017 ACLC) to the Discharger for non-compliance with the final CAO.
20. On 25 August 2017, NorthStar Engineering contacted staff to discuss the status of the Site. NorthStar Engineering stated the Discharger had paid his past-due invoices and that NorthStar Engineering was currently working with the Discharger to complete the requirements of the final CAO. Staff informed NorthStar Engineering of the 2017 ACLC and asked NorthStar Engineering to encourage the Discharger to contact staff to discuss the 2017 ACLC. Later that day, NorthStar Engineering left staff a voicemail stating Mr. Waite, on behalf of the Discharger, was interested in discussing the 2017 ACLC and coming to a resolution. Staff further discussed the 2017 ACLC and status of the RMMP requirements with NorthStar Engineering on 28 August 2017 and 29 August 2017. On 29 August 2017, NorthStar Engineering forwarded staff the 8 June 2016 partial draft RMMP.
21. On 30 August 2017, NorthStar Engineering contacted staff and stated the Discharger signed a contract with NorthStar Engineering to complete the RMMP requirements. NorthStar Engineering asked staff to provide any comments on the 8 June 2016 partial RMMP so that they could incorporate staff comments into a revised RMMP.
22. On 5 September 2017, staff sent a letter to the Discharger providing staff comments on the draft RMMP. The letter provided the Discharger 30 days to submit a final RMMP that addressed staff comments.
23. **Rescission of ACLC R5-2017-0544:** On 20 September 2017, due to the Discharger's willingness to engage with staff and complete the RMMP, the Prosecution Team rescinded ACLC R5-2017-0544.
24. **Conditional Approval of the RMMP:** On 27 September 2017, NorthStar Engineering submitted a revised RMMP for staff review, which staff approved on 30 September 2017. Although staff deemed the RMMP sufficient, staff noted final approval of the RMMP was dependent on the Discharger obtaining a grading permit

from Butte County Public Works. Staff requested that NorthStar Engineering update staff as the Discharger's permit application progressed through the county review process.

25. On 29 December 2017, the Discharger notified staff that Butte County Assessor Parcel Number 061-540-060-00 had been foreclosed on and that the Discharger was no longer the property owner. The Discharger stated the property was transferred to the Estate of John Coppedge (Estate) and that the Discharger was having difficulty contacting and explaining the CAO requirements to the legal representative of the Estate.
26. On 29 March 2018, staff met with the Discharger and a representative of the Estate to discuss the changes in ownership and the required actions to come into compliance with the final CAO.
27. On 10 May 2018, staff called the Discharger and discussed the Discharger's intent to repurchase the Site. The Discharger also stated that they had contacted Butte County to resume the environmental review of the grading permit.
28. On 28 June 2018, the Discharger emailed staff to confirm they had regained ownership of the Site and intended to contact Butte County about the grading permit.
29. On 28 January 2019, staff took reconnaissance photos during a routine fly-over in Butte County. Staff identified evidence of recent cannabis cultivation activities and that the Site conditions remain similar to what was observed during the 29 February 2016 CAO compliance inspection. Per the conditionally approved RMMP, a section of road named Velma Way was to be decommissioned. Staff confirmed through the aerial photos that the road was still in use and showed no current evidence of maintenance or decommissioning activities.
30. **3 May 2019 NOV:** As of 3 May 2019, staff had not received confirmation that the Discharger obtained the county grading permit or implemented the approved RMMP. Staff issued a NOV notifying the Discharger of the failure to obtain the necessary permits to complete the restoration work required under the final CAO. The NOV provided the Discharger until 20 May 2019 to submit documentation that the required permits from Butte County were completed or under review for approval, documentation that the Discharger had acquired a contractor to complete the restoration work as required in the final CAO, an updated schedule for completion of the RMMP, and directed the Discharger to contact staff to discuss compliance with the final CAO.
31. On 6 May 2019, staff communicated with Butte County Planning Department staff regarding the grading permit. Butte county staff indicated the Discharger contacted their office on 3 May 2019. Prior to 3 May 2019, Butte County had last communicated

with the Discharger in October of 2018, during which time the county required sign off by the Estate for Assessor Parcel 061-540-060 in order to proceed with the California Environmental Quality Act (CEQA) document. After a phone call with the Discharger and additional research by the County, Butte County was able to determine that the parcel ownership had conveyed back to the Discharger on 26 February 2019. County staff stated that the delay was due to a lack of communication between County staff and the Discharger, and the County requirement that all owners sign off on the project. The County concluded that the ownership issue had been resolved and Butte County staff were proceeding with the Environmental Document.

32. On 28 June 2019, staff took reconnaissance photos during a routine fly-over in Butte County. Review of the aerial photos by staff identified evidence of active cannabis cultivation activities and that the Site conditions remained similar to what was observed during the 29 February 2016 CAO compliance inspection. Per the conditionally approved RMMP, a section of road named Velma Way was to be decommissioned. Staff confirmed through the aerial photos that the road was still in use and showed no current evidence of maintenance or decommissioning activities.
33. On 19 August 2019, staff from Butte County Department of Development Services contacted Central Valley Water Board staff to relay that the Dischargers' grading permit had gone through the appeal period without contest and that the grading permit, GRD17-0002, was approved on 31 July 2019. However, subsequent communications with Butte County representatives clarified that no final grading permit had been issued as of March 2020.
34. **RMMP Approval:** After receiving confirmation that the Butte County grading permit was in effect, staff sent the Discharger a letter on 22 August 2019, approving the 27 September 2017 RMMP. Staff directed the Discharger to immediately begin implementation of the RMMP. The letter asserted that the required actions and deadlines contained in the final CAO, including completion of the RMMP, had passed and that any continued delays in completion of the RMMP could result in formal enforcement, including the issuance of administrative civil liability.
35. On 6 September 2019, staff sent an email to the Discharger requesting the Discharger contact staff to schedule a meeting to discuss compliance with the CAO and implementation of the approved RMMP.
36. On 23 January 2020, staff took reconnaissance photos during a routine fly-over in Butte County. Further review of the aerial photos by staff identified evidence of recent cannabis cultivation activities and that the Site conditions remained similar to what was observed during the 29 February 2016 CAO compliance inspection. Per the approved RMMP, a section of road named Velma Way was to be

- decommissioned. Staff confirmed through the aerial photos that the road was still in use and showed no current evidence of maintenance or decommissioning activities.
37. On 4 February 2020, after receiving no response to staff's 22 August 2019 RMMP approval letter or staff's 6 September 2019 email, the Prosecution Team issued a letter inviting the Discharger to further discuss the status of the Discharger's compliance efforts prior to issuance of an administrative civil liability for failure to comply with the final CAO. The letter provided the Discharger until 4 March 2020 to contact the Prosecution Team to schedule a meeting. The Prosecution Team transmitted the letter via certified mail and email. The Prosecution Team received the signed delivery receipt on 11 February 2020.
  38. On 18 February 2020, the Prosecution Team received an email from the Discharger stating it could access Pritchett Drive and begin the required work. Staff replied to the email on 19 February 2020 and encouraged the Discharger to begin work pursuant to the approved RMMP as soon as soil conditions were deemed acceptable by the Discharger's contractor. Staff also reiterated the Discharger's deadline to contact the Prosecution Team to schedule a meeting to discuss the alleged violations prior to issuance of a complaint. Staff attached a copy of the 4 February 2020 letter to the email.
  39. On 3 March 2020, the Discharger emailed staff and agreed to a meeting with the Prosecution Team on 6 March 2020 to discuss potential settlement negotiations and to provide an update on the status of compliance with the final CAO.
  40. On 9 March 2020, Administrative Civil Liability Complaint R5-2020-0505 (Complaint) was issued to Hanover Properties, LLC, for the proposed liability of one hundred, ninety-three thousand, and eighty-eight dollars (\$193,088). The Complaint was served by certified mail, and the hearing for the Complaint was originally scheduled for 4/5 June 2020.
  41. On or about 7 May 2020, Governor Newsom signed Executive Order N-63-20 due to the ongoing COVID-19 pandemic. Executive Order N-63-20 suspended any statutes or regulations that, *inter alia*, permit a party to object to a presiding officer conducting all or part of a hearing by electronic means, provided (a) each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits; (b) a member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means; and (c) the presiding officer satisfies all requirements of the Americans with Disabilities Act and Unruh Civil Rights Act.
  42. On 18 May 2020, the Discharger's representative requested a 90-day hearing continuance, citing concerns attending a virtual hearing, and on 29 May 2020,

waived the Water Code section 13323, subdivision (b), right to a hearing within 90 days after being served the Complaint. Thereafter, the hearing was continued.

43. On 18 August 2020, the hearing for the Complaint was rescheduled for 15/16 October 2020. To accommodate any issues with virtual hearing attendance, Board staff offered to accommodate the Discharger's representative at its Redding office during the hearing.
44. On 7 October 2020, the Board's Advisory Team for this matter held a Prehearing Conference to discuss procedural matters. The Prosecution Team and Discharger were provided notice and opportunity to participate. A representative of the Discharger did not attend.
45. On 7 October 2020, the Discharger's representative requested to postpone the hearing, again citing concerns attending a virtual hearing and noting time spent addressing wildfire impacts. The Discharger did not provide further information supporting the postponement request. The Board's Advisory Team—in consultation with the Board Chair who serves as presiding officer for prehearing adjudicative matters—denied the postponement request based on the offered hearing accommodations and insufficient information to justify the postponement but invited the Discharger's representative to raise the request to the full Board at the hearing.
46. On 15 October 2020, a hearing before the Central Valley Water Board was held to consider the administrative civil liability proposed in the Complaint. Despite notice of the hearing, a representative of the Discharger did not attend.

## **LEGAL AND REGULATORY CONSIDERATIONS**

### **Water Code**

47. Water Code section 13268, subdivision (a) states, in relevant part:

Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

48. Water Code section 13268, subdivision (b) states,

(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

49. Water Code section 13350, subdivision (a) states, in relevant part:

A person who violates a cleanup and abatement order issued, reissued, or amended by a regional board or the state board may be liable civilly, and remedies may be proposed, in accordance with subdivision (e).

50. Water Code section 13350, subdivision (e) states,
- (1) The state board or a regional board may administratively impose civil liability in an amount not to exceed five thousand dollars (\$5,000) for each day the violation occurs.
- (1)(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.
51. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, a regional board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

### **Water Quality Enforcement Policy**

52. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (2010 Enforcement Policy). The 2010 Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The 2010 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability.
53. On 4 April 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on 5 October 2017. The 2017 Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability.
54. In determining the proposed liability amount, the Central Valley Water Board utilized the enforcement policy in effect at the time of each violation, as noted in Attachment A to this Order, hereby incorporated by reference.

### **California Environmental Quality Act**

55. Issuance of this Order is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Control Act (Pub. Res. Code § 21000 et seq.) in accordance with title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

### **VIOLATIONS**

56. **Violation 1:** The Discharger violated Water Code section 13267 by failing to submit an RMMP by the deadline required under the CAO, which was extended to 31 May 2016. This violation is subject to administrative civil liability under Water Code section 13268, subdivision (b)(1). The administrative civil liability for Violation 1 was developed using the 2010 Enforcement Policy since the violation occurred prior to adoption of the 2017 Enforcement Policy
57. **Violation 2:** The Discharger violated the CAO by failing to complete all approved restoration and mitigation measures described in the approved RMMP. This violation is subject to administrative civil liability under Water Code section 13350, subdivision (e)(1). The proposed administrative civil liability for Violation 2 was developed using the 2017 Enforcement Policy since the alleged violation occurred after adoption of the 2017 Enforcement Policy.

### **CALCULATION OF ADMINISTRATIVE LIABILITY AMOUNT**

58. The Central Valley Water Board orders that civil liability be imposed administratively in the amount of \$193,088 for Violations 1 and 2, as detailed in Attachment A to this Order. The administrative civil liability takes into account the factors cited in Water Code section 13327.
59. Payment of the assessed liability amount does not absolve the Discharger from complying with CAO R5-2015-0741. Notwithstanding adoption of this Order, the Central Valley Water Board retains the authority to assess additional civil liabilities for violations which have not yet been assessed or for violations that may subsequently occur.
60. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulation, title 23, section 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the 30th day falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the [law and regulations](#) applicable to filing petitions may be

found on the Internet ([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)) and will be provided upon request.

### MAXIMUM LIABILITY

61. **Violation 1:** Pursuant to Water Code section 13268, subdivision (b)(1), the statutory maximum administrative civil liability for Violation 1 is \$1,000 per day of violation. The Discharger accumulated 485 days of violation, from 31 May 2016 to 27 September 2017. The statutory maximum for Violation 1 is therefore \$485,000. The liability amount imposed for Violation 1 is below the statutory maximum.
62. **Violation 2:** Pursuant to Water Code section 13350, subdivision (e)(1), the statutory maximum administrative civil liability for Violation 2 is \$5,000 per day of violation. The Discharger accumulated 201 days of violation, from 22 August 2019 to 9 March 2020. The statutory maximum for Violation 2 is therefore \$1,005,000. The liability amount imposed for Violation 2 is below the statutory maximum.

### MINIMUM LIABILITY

63. The 2010 Enforcement Policy requires the Regional Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for Violation 1 is approximately \$541. The minimum liability that may be imposed is the economic benefit \$541 plus ten percent, which is equal to \$595.10. The liability amount imposed for Violation 1 is above the minimum liability amount.
64. The 2017 Enforcement Policy similarly requires the Regional Board to recover, at a minimum, the economic benefit plus ten percent. The economic benefit for Violation 2 is approximately \$4,361. The minimum liability permitted under the 2017 Enforcement Policy is the economic benefit \$4,361 plus ten percent, which is equal to \$4,797.10. However, Violation 2 is subject to a statutory minimum liability amount. Water Code section 13350, subdivision (e)(1)(B) provides, where an order of the regional board is violated but does not result in a discharge, the civil liability amount shall be no less than one hundred dollars (\$100) for each day in which the violation occurs. The Discharger accumulated 201 days of violation. Accordingly, the statutory minimum liability for Violation 2 is \$20,100. Since the statutory minimum exceeds the minimum liability required under the 2017 Enforcement Policy, the minimum liability for Violation 2 is \$20,100. The liability amount imposed for Violation 2 is above the statutory minimum liability amount.

**IT IS HEREBY ORDERED THAT, PURSUANT TO WATER CODE SECTIONS 13323, 13350, AND 13268:**

65. No Later than 30 days from the date on which this Order is issued, Hanover Properties, LLC shall pay **One Hundred Ninety-Three Thousand, and Eighty-Eight Dollars (\$193,088)**. The amount of the liability is based upon a review of the requirements of Water Code sections 13327, 13268, and 13350, as well as the 2010 and 2017 State Water Resources Control Board's Enforcement Policy and includes consideration of the economic benefit or savings resulting from the violations.
66. Payment for Violation 1, in the amount of \$11,088, shall be made to the Cleanup and Abatement Account (in accordance with Wat. Code, § 13441, subd. (c)) and shall be remitted to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, 95670-6114.
67. Payment for Violation 2, in the amount of \$182,000, shall be made to the Waste Discharge Permit Fund (in accordance with Wat. Code, § 13350, subd. (k)) and shall be remitted to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, 95670-6114.

I, Patrick Pulupa, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 15 October 2020.

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PATRICK PULUPA, Executive Officer

Administrative Civil Liability Order R5-2020-0046

Attachment A

Penalty Calculations

**Attachment A – ACL Order No. R5-2020-0046**  
**Specific Factors Considered for Administrative Civil Liability**  
**Hanover Properties, LLC Assessor Parcel Number 061-540-052-000 &**  
**061-540-060-000, Butte County**

Through Resolution No. 2009-0083, the Office of Administrative Law (OAL) adopted the State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy* (2010 Enforcement Policy<sup>1</sup>), which went into effect on 20 May 2010. The 2010 Enforcement Policy establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Through Resolution No. 2017-0020, OAL adopted the 2017 Enforcement Policy, which went into effect on 5 October 2017.

The Water Boards should rely on the version of the Enforcement Policy's substantive requirements in effect at the time of the violation to prosecute any violations; however, changes identified in the 2017 Enforcement Policy that are clarifications or procedural changes can be applied to enforcement actions that are related to conduct that occurred prior to the effective date of the 2017 Enforcement Policy.<sup>2</sup> For purposes of this enforcement action, the substantive requirements of the 2010 Enforcement Policy were used to calculate the administrative civil liability for Violation 1 which occurred prior to the effective date of the 2017 Enforcement Policy, and the substantive requirements of the 2017 Enforcement Policy were used for calculating the administrative civil liability for Violation 2 which occurred after the effective date of the 2017 Enforcement Policy. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score.

**Violation 1 – Failure to Submit a Restoration, Mitigation, and Monitoring Plan by the required deadline in the final CAO**

**Step 1 – Actual or Potential for Harm for Discharge Violations**

The Enforcement Policy states that calculating the actual harm or potential for harm of discharge violations is the initial step for discharge violations. In this case, this factor does not apply because the violation is for non-compliance with the issued Cleanup and Abatement Order (final CAO), a non-discharge violation.

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<sup>1</sup> [The 2010 Enforcement Policy](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf) is can be found at:  
([https://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf))

<sup>2</sup> [The 2017 Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) can be found at:  
([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf))

### **Step 2 – Assessments for Discharge Violations**

This step addresses per gallon and per day assessments for discharge violations. In this case, this factor does not apply because the violation is for non-compliance with the issued final CAO, a non-discharge violation.

### **Step 3 – Per Day Assessment for Non-Discharge Violation**

The Central Valley Water Board shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. While non-discharge violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. Using the matrix set forth in Table 3, a Per Day Factor multiplier is determined. The per day assessment for non-discharge violation is determined by multiplying the Per Day Factor by the maximum per day amount allowed under the California Water Code.

#### *Potential for Harm*

The 2010 Enforcement Policy provides the following definitions for potential for harm:

Minor – The characteristics of the violation present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The Discharger failed to submit a Restoration, Monitoring, and Mitigation Plan (RMMP) in accordance with the deadline specified in Cleanup and Abatement Order (CAO) R5-2015-0741, as required pursuant to Water Code section 13267. The CAO required the Discharger to submit an RMMP by 1 March 2016; however, the Assistant Executive Officer provided the Discharger an extension until 31 May 2016 by which to submit the RMMP. The RMMP was required to mitigate damages for previous discharges of sediment and to prevent future discharges of sediment to waters of the state. As documented during the 7 April 2015 Site inspection, the conditions of the Site were creating erosion and discharges of sediment-laden storm water to an unnamed tributary of Canyon Creek. Additionally, on 11 January 2017, staff collected turbidity samples above and below the confluence of the unnamed tributary to Canyon Creek and Lake Oroville. By not submitting an adequate RMMP until 27 September 2017, the Site continued to present a substantial threat to beneficial uses. Therefore, the Potential for Harm for the violation is determined to be **Moderate**.

### *Deviation from Requirement*

The 2010 Enforcement Policy provides the following categories for Deviation from Requirement:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

Major – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

The Discharger failed to submit the required RMMP by both the original due date in the final CAO and the extended due date provided by the Central Valley Water Board's Assistant Executive Officer. The Discharger submitted an RMMP 16 months past the extended submission deadline. By failing to timely submit the RMMP, as required under the final CAO and by the extended deadline for submission, the requirement was partially compromised. Therefore, the Deviation from Requirement for this violation is determined to be **Moderate**.

### *Per Day Factor*

The Per Day Factor, utilizing a Moderate Potential for Harm and Moderate Deviation from Requirement is **0.35**.

### *Days of Violation*

CAO R5-2015-0741 required the Discharger to submit an RMMP by 1 March 2016, which was later extended by the Assistant Executive Officer to 31 May 2016. The Discharger failed to submit a complete RMMP by 31 May 2016. The Discharger did not submit a complete RMMP until 27 September 2017, which staff deemed acceptable, although the final approval of RMMP was conditional upon the Discharger obtaining a grading permit from Butte County to complete the restoration and mitigation work detailed in the RMMP. The extended submission date of 31 May 2016 is utilized as the start date for purposes of calculating the days of violation for the Discharger's failure to timely submit an acceptable RMMP. Since the violation continued until the Discharger submitted the conditionally-approved RMMP on 27 September 2017, the Discharger was in violation of the requirement for 485 days.

### **Multiple Day Violations**

For violations that are assessed a civil liability on a per day basis and do not constitute a single operational upset, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty days, the daily assessment

can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Valley Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program;
- b. Resulted in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. Under the alternate approach, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of the violation until the 30<sup>th</sup> day, plus an assessment for each thirty (30) days of violation thereafter.

Although the Discharger failed to submit an RMMP by the extended deadline, the Discharger did ultimately submit an acceptable RMMP 16 months after the deadline. Therefore, any economic benefit that can be measured on a daily basis is limited to the time value of money only and not a discrete economic benefit that can be measured on a daily basis. Accordingly, the Central Valley Water Board, in its discretion, has applied the alternate approach to penalty calculation under finding (b) because the violation did not result in a discrete economic benefit from the illegal conduct that can be measured on a daily basis. Under the alternate approach, 22 days of violation are assessed for purposes of the penalty calculation.

**Initial Liability Amount:**

The initial liability amount for the violation calculated on a per-day basis is as follows:

$$(\text{Maximum per day liability}) \times (\text{Assessed number of days}) \times (\text{Per day factor})$$

Initial Liability: \$1,000/day X 22 days X .35 = **\$7,700.**

**Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the initial liability amount: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

*Culpability*

The Central Valley Water Board should consider a discharger’s degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. Under the 2010 Enforcement Policy, a

multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The test is what a reasonable and prudent person would have done or not done under similar circumstances. A reasonable person under similar circumstances would have taken steps to ensure the RMMP was submitted by the original deadline contained in the final CAO. The Discharger was aware of the requirement to submit the RMMP and hired a consultant to develop the plan. Additionally, a reasonable person under similar circumstances would have made its best efforts to meet the extended deadline granted by the Assistant Executive Officer and submit a complete RMMP by the end of that extended deadline. Although the Discharger failed to submit the plan prior to the deadline, the Discharger submitted a partial draft RMMP on 8 June 2016, shortly after the extended deadline. Submittal of the final RMMP, however, was stalled due to the Discharger failing to pay its consultant. The Discharger subsequently paid its past invoices to its consultant in 2017 and submitted a revised RMMP on 27 September 2017 that Central Valley Water Board staff deemed acceptable and complete. Therefore, the Central Valley Water Board has assessed a multiplier of **1.2** for culpability.

#### *Cleanup and Cooperation*

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. Under the 2010 Enforcement Policy, a multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Although the Discharger failed to submit a complete RMMP by 31 May 2016, the Discharger submitted a partial RMMP on 8 June 2016. After submittal of the partial RMMP, the consultant ceased working due to unpaid invoices. Central Valley Water Board staff informed the Discharger that it was in violation of the final CAO and issued ACLC R5-2017-0544 on 25 July 2017. Subsequently, after receiving the prior ACLC, the Discharger re-engaged with its consultant and paid its outstanding invoices. On 30 August 2017, the Discharger's consultant contacted Central Valley Water Board staff to request comments on the 8 June 2016 draft RMMP. The Prosecution Team in that matter elected to rescind ACLC R5-2017-0544 and assist the Discharger in complying with the requirements of the final CAO because the Discharger demonstrated willingness to engage with staff and complete the RMMP. The Discharger responded to staff's comments on the draft plan and submitted a revised RMMP on 27 September 2017, which staff conditionally approved. Therefore, in light of the efforts taken by the Discharger to correct the violation, the Central Valley Water Board has assigned a multiplier of **1.2** for cleanup and cooperation.

#### *History of Violation*

When there is a history of repeat violations, the 2010 Enforcement Policy indicates a minimum multiplier of 1.1 to be used. The Discharger was given a multiplier of **1.0** because there is no evidence that they have a history of violations with the Water Boards.

### **Step 5 - Determination of Total Base Liability Amount**

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

**Total Base Liability Amount:** This value is calculated as the Initial Liability Amount (\$7,700) x Adjustment Factors (1.2) (1.2) (1.0) and is equal to **\$11,088**.

## **Violation 2 – Failure to Complete all Corrective Actions Contained in the Approved RMMP**

### **Step 1 – Actual or Potential for Harm for Discharge Violations**

The Enforcement Policy states that calculating the actual harm or potential for harm of discharge violations is the initial step for discharge violations. In this case, this factor does not apply because the violation is for non-compliance with the issued Cleanup and Abatement Order (final CAO), a non-discharge violation.

### **Step 2 – Assessments for Discharge Violations**

This step addresses per gallon and per day assessments for discharge violations. In this case, this factor does not apply because the violation is for non-compliance with the issued final CAO, a non-discharge violation.

### **Step 3 – Per Day Assessment for Non-Discharge Violation**

The Central Valley Water Board shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. While non-discharge violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. Using the matrix set forth in Table 3, a Per Day Factor multiplier is determined. The per day assessment for non-discharge violation is determined by multiplying the Per Day Factor by the maximum per day amount allowed under the California Water Code.

#### *Potential for Harm*

The 2017 Enforcement Policy provides the following definitions for potential for harm:

**Minor** – The characteristics of the violation have little or no potential to impair the Water Boards' ability to perform their statutory and regulatory function, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

**Moderate** – The characteristics of the violation have substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

Major – The characteristics of the violation have wholly impaired the Water Boards' ability to perform their statutory and regulatory functions, present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Non-discharge violations involving failure to comply with directives in cleanup and abatement order, cease and desist orders, and investigative orders, involving reports relating to impaired water bodies and sensitive habitats, should be considered major.

The Discharger failed to complete the restoration, monitoring, and mitigation work required under the Discharger's approved RMMP. As previously discussed, the Site lacked erosion and sediment control measures. The RMMP was required to mitigate damages for previous discharges of sediment and to prevent future discharges of sediment to the unnamed tributary of Canyon Creek, which is a tributary of Lake Oroville. To date, completion of the work required by the RMMP remains outstanding. By failing to complete the work detailed in the approved RMMP, the Discharger has substantially impaired the Central Valley Water Boards' ability to perform their statutory and regulatory functions. Therefore, the Potential for Harm for the violation is determined to be **Moderate**.

#### *Deviation from Requirement*

The 2017 Enforcement Policy provides the following categories for Deviation from Requirement:

Minor – The intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised).

Moderate – The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).

Major – The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

The Discharger failed to complete the restoration, monitoring, and mitigation work contained in the approved RMMP, as required under the final CAO. To date, the Discharger has failed to complete implementation of the RMMP. The Discharger's failure to implement the RMMP as required has rendered the requirement ineffective in its essential functions. Therefore, the Deviation from Requirement for this violation is determined to be **Major**.

#### *Per Day Factor*

The Per Day Factor, utilizing a Moderate Potential for Harm and Major Deviation from Requirement is **0.5**.

### *Days of Violation*

CAO R5-2015-0741 required the Discharger to complete the RMMP by 15 October 2016. However, due to the Discharger's delay in submitting the plan, the RMMP was not approved by Central Valley Water Board staff until 30 September 2017, and the approval of the RMMP was conditioned upon the Discharger obtaining a grading permit from the County prior to implementation of the restoration and mitigation work contained in the RMMP. The County's review process was delayed, in part, because the property was foreclosed on and ownership of the property was transferred to an estate. Once the Discharger was able to regain ownership of the property, the County was able to process the grading permit application, which the County approved on 31 July 2019. Subsequently, Central Valley Water Board staff sent a letter on 22 August 2019 formally approving the RMMP and directing the Discharger to begin implementation immediately. A conservative start date of 22 August 2019 is utilized for this violation to account for delays in approval of the County grading permit. Central Valley Water Board staff did not receive any communication from the Discharger in response to the approval letter. Staff emailed the Discharger on 6 September 2019 requesting the Discharger contact staff to schedule a meeting to discuss compliance with the final CAO; however, staff received no response from the Discharger. As a result, staff conducted a visual flyover inspection of the Site on 23 January 2020 to document the condition of the Site. Based on staff's observations, the Discharger had not completed the RMMP implementation. For purposes of calculating days of violation, the Central Valley Water Board has used the 9 March 2020 issuance of Administrative Civil Liability Complaint R5-2020-0505 as the end date for this violation. Therefore, the Discharger has been in violation of this requirement for 201 days.

### **Multiple Day Violations**

For violations that are assessed a civil liability on a per day basis and do not constitute a single operational upset, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Valley Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program;
- b. Resulted in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on assessment of the initial Total Base Liability Amount for the first 30 days of the violations, plus an assessment for each 5-day period of violation, until the 60<sup>th</sup> day, plus assessment for each 30-day period thereafter.

Although the Discharger has failed to complete all restoration and mitigation work contained in the RMMP, imposition of administrative civil liability does not excuse the Discharger from complying with the final CAO. The Discharger is still required to complete the work contained in the RMMP. Therefore, any economic benefit that can be measured on a daily basis is limited to the time value of money only. Accordingly, the Central Valley Water Board, in its discretion, has applied the alternate approach to penalty calculation under finding (b) because the violation did not result in a discrete economic benefit from the illegal conduct that can be measured on a daily basis. Under the alternate approach, the Central Valley Water Board has assessed 40 days of violation for purposes of the penalty calculation.

**Initial Liability Amount:**

The initial liability amount for the violation calculated on a per-day basis is as follows:

(Maximum per day liability) X (Assessed number of days) X (Per day factor)

Initial Liability: \$5,000/day X 40 days X 0.5 = **\$100,000**.

**Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the initial liability amount: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

*Culpability*

The Central Valley Water Board should consider a discharger’s degree of culpability regarding the violation. Higher liabilities should result from intentional misconduct or gross negligence, as opposed to accidental violations or simple negligence. Under the 2017 Enforcement Policy, a multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for negligent or intentional violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. Although the Discharger submitted an RMMP, albeit after the required deadline, to the Central Valley Water Board and obtained a grading permit from Butte County, the Discharger failed to follow through with the plans and complete the required work. A reasonable and prudent person would have begun implementation after receiving staff’s 22 August 2019 letter and completed the work prior to the start of the 2019-2020 wet season in order for the RMMP to be effective in its essential function of protecting waters of the state from sediment laden stormwater runoff. The Discharger did not act as a reasonable or prudent person would have. Therefore, the Central Valley Water Board has assessed a multiplier of **1.3** for culpability.

### *Cleanup and Cooperation*

This factor reflects the extent to which a discharger voluntarily cooperated with regulatory authorities in returning to compliance and correcting environmental damage. Under the 2017 Enforcement Policy, a multiplier between 0.75 and 1.5 is to be used, with a lower multiplier where there is exceptional cleanup and cooperation compared to what could reasonably be expected and a higher multiplier when there is not. A reasonable and prudent response should receive a neutral multiplier of 1.0 as it is assumed a reasonable amount of cooperation is the warranted baseline. Despite working with Central Valley Water Board staff to obtain approval of the RMMP and working with Butte County to obtain the grading permit, the Discharger has failed to complete implementation of the approved RMMP and did not communicate with Central Valley Water Board staff in response to staff's 22 August 2019 approval letter or staff's 6 September 2019 email requesting to meet with the Discharger to discuss compliance with the final CAO. Therefore, the Discharger was given a multiplier value of **1.4** for cleanup and cooperation.

### *History of Violation*

When there is a history of prior violations within the last five years, the 2017 Enforcement Policy indicates a multiplier of 1.1 should be used. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. The Discharger was given a multiplier of **1.0** because there is no evidence that it has a history of violations with the Water Boards.

### **Step 5 - Determination of Total Base Liability Amount**

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

**Total Base Liability Amount:** This value is calculated as the Initial Liability Amount (\$100,000) x Adjustment Factors (1.3) (1.4) (1.0) and is equal to **\$182,000**.

Note: Steps 6 through 10 apply to both violations, so they are performed only once.

### **Step 6 - Ability to Pay and Ability to Continue in Business**

The 2017 Enforcement Policy did not substantively alter the analysis for ability to pay and ability to continue in business. The 2017 Enforcement Policy did contain clarifications to this section, which have been incorporated for both violations.

If the Central Valley Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business. The Central Valley Water Board has made a determination that the Discharger has the ability to pay the initial proposed liability amount for both violations, a total of \$193,088, based on the fact that the Discharger owns a number of real

properties (see Table 1 for list of properties and assessed values). The combined tax assessor value of those properties is \$1,061,074. Some or all of those properties are encumbered by loans and/or mortgages, but the exact amount of those encumbrances is unknown. However, based on the information available, the Central Valley Water Board does not believe an adjustment under this factor is warranted.

Table 1

Property APN	County	Listed Owner	Assessment Year	Assessed Value
028-370-013	Tehama	Hanover Properties LLC	2018	\$104,040
062-240-007	Tehama	Hanover Properties LLC	2018	\$16,158
028-340-008	Butte	Hanover Properties LLC	2018	\$111,426
015-450-099	Butte	Hanover Properties LLC	2018	\$269,344
060-050-021	Tehama	Hanover Properties LLC	2018	\$53,035
062-210-017	Tehama	Hanover Properties LLC	2018	\$44,152
062-220-006	Tehama	Hanover Properties LLC	2018	\$39,018
062-420-007	Tehama	Hanover Properties LLC	2018	\$32,963
072-480-011	Butte	Hanover Properties LLC	2018	\$76,842
028-180-055	Butte	Hanover Properties LLC	2018	\$59,607
061-540-052	Butte	Hanover Properties LLC	2018	\$66,232
061-540-060	Butte	Hanover Properties LLC	2018	\$109,140
910-001-251	Tehama	Hanover Properties LLC	2018	\$Unknown
910-001-455	Tehama	Hanover Properties LLC	2018	\$Unknown
060-010-005	Tehama	Hanover Properties LLC	2018	\$79,117
910-001-250	Tehama	Hanover Properties LLC	2018	\$Unknown
910-030-706	Butte	Hanover Properties LLC	2018	\$Unknown
<b>Total Assessed Value for all Properties</b>				<b>\$1,061,074</b>

**Step 7 – Economic Benefit**

The 2017 Enforcement Policy did not substantively alter the relevant analysis under this step. Pursuant to the 2010 and 2017 Enforcement Policies, the Economic Benefit Amount shall be estimated for every violation. The Economic Benefit is defined as any savings or monetary gain derived from the act or omission that constitutes the violation.

For Violation 1, the Discharger’s economic benefit for submitting a late RMMP was calculated based on the delayed cost in preparing the plan for submission. The calculation was completed using the USEPA’s BEN computer program and is equal to the “interest” on delayed costs. This calculation reflects the fact that the Discharger has had the use of the money that should have been used to avoid the instance of noncompliance. The total benefit of noncompliance with regards to Violation 1 is calculated to be \$541.

For Violation 2, the Discharger’s economic benefit for failing to complete the RMMP was calculated based on the delayed costs that would have accrued during the completion

of the required actions detailed in the RMMP. The calculation was completed using the USEPA's BEN computer program and is equal to the "interest" on the delayed costs. The total benefit of noncompliance with regards to Violation 2 is calculated to be \$4,361.

While calculating the economic benefit, due to recent changes in Federal tax law, the BEN computer program produced results that could not be considered accurate when including tax deductibility. Due to this, and that the Discharger was operating the cannabis cultivation Site illegally and outside of traditional business practices, the tax deductibility component was removed from the analysis.

### **Step 8 – Other Factors as Justice May Require**

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. The Central Valley Water Board believes the proposed liability is appropriate and has made no adjustment under this step.

### **Step 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being imposed.

Water Code section 13268 authorizes the Central Valley Water Board to impose administrative civil liability in an amount not to exceed \$1,000 for each day in which the violation occurs. Since the Discharger was in violation of the requirement for 485 days, **the statutory maximum liability amount for Violation 1 is \$485,000.** The Enforcement Policy states (p. 21) that the total base liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." Using economic benefit plus 10%, **the minimum liability amount for Violation 1 is \$595.10.** The administrative liability amount assessed for Violation 1 is within the minimum and maximum liability amounts permitted.

Water Code section 13350 subdivision (e)(1) authorizes the Central Valley Water Board to impose administrative civil liability in an amount not to exceed \$5,000 for each day in which the violation occurs. Since the Discharger was in violation of the requirement for 201 days, **the statutory maximum liability amount for Violation 2 is \$1,005,000.** Using economic benefit plus 10%, the minimum liability amount that must be recovered under the Enforcement Policy for Violation 2 is estimated to be \$4797.10. However, Water Code section 13350 subdivision (e)(1)(B) requires a minimum daily penalty of \$100 per day for each day there is a CAO violation without a discharge. Since the Discharger has been in violation of the CAO for 201 days, the statutory minimum liability amount under Water Code section 13350 is \$20,100. Since the statutory minimum liability amount is greater than the minimum liability amount required under the Enforcement Policy, **the minimum liability amount for Violation 2 is \$20,100.** The administrative liability amount assessed for Violation 2 is within the minimum and maximum liability amounts permitted.

**Step 10 – Final Liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts were within the statutory minimum and maximum amounts. The final liability amount was calculated by adding the Total Base Liability for both violations. Therefore, the final liability amount is \$193,088.