

Administrative Civil Liability Complaint R5-2020-0505

Attachment A

Penalty Calculations

Attachment A – ACL Complaint No. R5-2020-0505
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 Policy¹), 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. The 2010 Enforcement Policy went into effect on 20 May 2010. 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.² For purposes of this enforcement action, the Prosecution Team utilized the substantive requirements of the 2010 Enforcement Policy to calculate the administrative civil liability for Violation 1 which occurred prior to the effective date of the 2017 Enforcement Policy and utilized the substantive requirements of the 2017 Enforcement Policy 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.

¹ The 2010 Enforcement Policy is can be found at:
https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

² The 2017 Enforcement Policy can be found at:
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 Prosecution Team has utilized the extended submission date of 31 May 2016 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 484 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 30th 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 Prosecution Team, 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 Prosecution Team has assessed 22 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:

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

$$\text{Initial Liability: } \$1,000/\text{day} \times 22 \text{ days} \times .35 = \mathbf{\$7,700}.$$

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 Prosecution Team 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 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 Prosecution Team 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 with 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. The Prosecution Team has conservatively selected 22 August 2019, to account for delays in approval of the County grading permit, as the start date for the days of violation for the Discharger's failure to implement the RMMP. 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 Prosecution Team has used the date of Administrative Civil Liability Complaint R5-2020-0505, issued on 9 March 2020, 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 60th 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 Prosecution Team, 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 Prosecution Team 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:

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

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 Prosecution Team 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 has not communicated 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. Staff 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, staff 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
Total Assessed Value for all Properties				\$1,061,074

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.

The Discharger’s economic benefit for submitting a late RMMP, as alleged in Violation 1, 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.

The Discharger's economic benefit for failing to complete the RMMP, as alleged in Violation 2, 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 Prosecution Team believes the proposed liability is appropriate and that no adjustment is warranted 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 Prosecution Team alleges the Discharger was in violation of the requirement for 484 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 proposed administrative liability amount 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 Prosecution Team alleges 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 Violation 2 alleges the Discharger has been in violation of the CAO for 201 days, the statutory minimum liability amount under 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 proposed administrative liability amount 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 proposed final liability amount is \$193,088.