

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0544
IN THE MATTER OF

HANOVER PROPERTIES LLC

ASSESSOR PARCEL NUMBERS 061-540-052-000 & 061-540-060-000
BUTTE COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to Hanover Properties, LLC (hereafter referred to as Discharger) pursuant to California Water Code section 13350, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorized the Assistant Executive Officer to issue this Complaint. This Complaint is based on evidence that the Discharger violated Cleanup and Abatement Order No. R5-2015-0741, and seeks administrative civil liabilities pursuant to Water Code section 13350.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) hereby finds the following:

BACKGROUND

1. On 09 March 2015, Warden Steven Crowl of California Department of Fish Wildlife (CDFW) conducted an overflight of Butte County with Pat Vellines, Engineering Geologist with the Central Valley Water Board and observed a large scale grading operation located off of Pritchett Drive in Butte County. Two parcels were identified as being impacted by grading as observed in the overflight. The properties, Butte County Assessor Parcel Numbers (APNs) 061-540-052-000 and 061-540-060-000 (hereafter referred to as the Site), are both owned by the Discharger. According to Parcel Quest, the Discharger acquired the properties in April of 2013. According to Google Earth imagery dated 2 May 2013, grading, clearing, and road expansion appears to have occurred shortly after the property had been acquired by the Discharger. Based on his training and experience, Warden Crowl recognized the presence of infrastructure commonly associated with cannabis cultivation sites. He believed that the grading and excavation work completed at the Site may be deleterious to fish and aquatic life pursuant to Fish and Game Code section 5650 and recommended that the Central Valley Water Board participate with CDFW in a follow-up on-site inspection. Based on Warden Crowl's training and experience, he believed that the Discharger developed the Site to support a large scale cannabis growing operation. As owner of the Site, the Discharger is ultimately responsible for the condition of the Site and discharges of wastes emanating from the Site.
2. The natural topography of the Site consists of moderately to steep sloping terrain sustaining ephemeral swales and an intermittent class III watercourse. The soils on the Site are classified as mounthope-hartsmill soil series – a well-drained soil with high to severe susceptibility to erosion. The Site discharges to an unnamed class III ephemeral tributary (Unnamed Tributary) to Canyon Creek, a class I tributary of Lake Oroville, and then the Feather River, an anadromous tributary to the Sacramento River.

3. According to Google Earth imagery, grading, clearing, and road expansion appears to have occurred in May 2013, shortly after the property had been acquired by the Discharger. Documents provided by the Butte County Public Works indicate that Pritchett Drive (Main Access Road) and adjunctive roads on the Site were created as a private easement for parcel access when parcels were subdivided in 1977. The maintenance of these roads falls under the responsibility of the property owner(s). Initial information gathered from the Butte County Department of Public Works indicates that notices of violation were issued for the Site for grading violations and lack of erosion and sediment control plans. Grading permit applications had not been received by Butte County for either parcel. These notices of violation, issued 10 October 2013, also notified the Discharger of construction storm water permit requirements of the California Regional Water Quality Control Board, for which no application had been received by Central Valley Water Board staff (hereafter referred to as Staff). Staff documented in the 7 April 2015 inspection report that the completed road extension and grading disturbed approximately 2.53 acres adjacent to the Unnamed Tributary.
4. Based on the photographic evidence and declaration of Warden Crowl, on 6 April 2015, Staff obtained an administrative inspection warrant (Warrant) from Butte County Superior Court granting access to the Site to conduct an inspection.
5. Based on precipitation data from Department of Water Resources CDEC Oroville Dam Weather Station (ORO Oroville Dam Station; Latitude 39.54; Longitude -121.493) located approximately 6.64 miles south southwest of the Site, the area received 0.28 inches of rainfall in the 24 hour period preceding the 7 April 2015 inspection.

Initial Site Inspection Observations

6. **7 April 2015 Inspection**, CDFW and Water Board Staff conducted an inspection of the Site in accordance with the Warrant issued 6 April 2015, and discovered evidence of a large-scale cannabis cultivation operation, evidence of turbid storm water runoff from the Main Access Road, improper road construction and lack of sediment control measures, and improper storage of chemicals and refuse (Attachment 1 of Cleanup and Abatement Order, R5-2015-0741, included herein as Attachment B).
7. During the inspection, Staff collected information using a Garmin Rino 655t GPS Unit. Staff collected two GPS perimeter tracks around the Upper and Lower Cultivation Sites (perimeter and disturbed soils area) to estimate the disturbed area associated with the grow sites on each parcel. Staff collected 2 soil samples for classification and 5 surface water samples to be analyzed for turbidity.
8. Based on the results of the investigation it was determined that the greatest potential threats to waters of the state were associated with the poor quality of the Main Access Road on parcel 061-540-060-000. During the inspection, Staff observed erosion of the Main Access Road surface, leading to discharges of sediment-laden storm water to Canyon Creek. Minimal sediment/erosion control practices were in place, including staked straw wattles along a few areas of the road and several other areas at the Site.

9. During the inspection, Staff documented the discharge of sediment-laden storm water from the Main Access Road to the Unnamed Tributary. Active erosion was evident as shown by an increase in turbidity between the sample collected at the top of the road and the sample collected further down the Main Access Road (Table 1). Staff tracked the turbid runoff to where it exited the Main Access Road and entered into a wooded area that had been littered with tires and trash before rejoining with a lower section of the road. Sediment-laden storm water exited the Main Access Road and flowed northeast via the Unnamed Tributary towards Canyon Creek. Staff was granted permission on three separate properties to access Canyon Creek to collect samples for turbidity, both upstream and downstream of the confluence of the Unnamed Tributary and Canyon Creek. Staff collected a downstream turbidity sample after all confluences of road runoff from the Site behind Canyon Creek Roadhouse. Staff established the confluence of the Unnamed Tributary with Canyon Creek to be located on Parcel 061-540-062-000 which was owned by Mr. Robert Burns at the time, but is presently under new ownership. Staff then collected turbidity samples upstream and downstream of the confluence of the Unnamed Tributary with Canyon Creek. The two downstream samples exceeded the Canyon Creek background sample by far greater than the maximum allowed by objectives prescribed in the Basin Plan. Turbidity measurements collected downstream of the Site significantly exceeded Basin Plan objectives for turbidity increases where natural turbidity upstream is measured between 5 and 50 NTUs.

Table 1 below summarizes field and lab analyzed turbidity samples and turbidity exceedance values for the samples discussed above.

Table 1 – Laboratory Analyzed Turbidity Samples

	Natural Turbidity	Increases Shall Not Exceed
Basin Plan Objectives	<i>Between 1 and 5 NTUs</i>	<i>1 NTU</i>
	<i>Between 5 and 50 NTUs</i>	<i>20%</i>
	<i>Between 50 and 100 NTUs</i>	<i>10 NTU</i>
	<i>Greater than 100 NTUs</i>	<i>10%</i>
Sample ID	Sample Turbidity (NTU)	Exceedance (If Applicable)
001 -Top of Road	203	N/A
002 - Road	528	N/A
003 - Downstream (~776 ft. downstream from sample 004)	200	419.5%
004 - Upstream	38.5	Background Sample
005 - Downstream (~23 ft. downstream from sample 004)	99.1	157.4%
NTU, Nephelometric Turbidity Unit		

10. Lack of adequate erosion and sediment controls along the steeply graded Main Access Road led to concentrated stormwater runoff, causing erosion and discharge of sediment

laden stormwater to Canyon Creek. Discharge of the sediment-laden stormwater caused turbidity increases in violation of Basin Plan objectives.

11. Based on the findings of the 7 April 2015, inspection Staff determined that the following items needed to be addressed to prevent future discharge from the Site:
 - The Main Access Road requires significant redesign/maintenance including installation of adequate erosion and sediment control measures.
 - Other sensitive areas on the Site need to be stabilized, including additional road maintenance to the Terrace Access Road to prevent discharges to Canyon Creek as well as stabilization of cut-banks from the terraced Lower Cultivation Site.
 - Existing erosion control measures need to be maintained to be effective.
 - Potting soil, other soil amendments, and fertilizers need to be properly stored to prevent spills and discharges.
 - Used containers need to be disposed of properly and at the proper disposal facility.
 - Continued use of erosion control measures during the rainy season to stabilize nutrient rich potting soils in the terraces and other stockpiled areas.

Enforcement

12. **On 17 September 2015**, due to the conditions of the Site and the observed Basin Plan violations, Staff issued a Draft Clean up and Abatement Order (draft CAO) to the Discharger for the cleanup and abatement of the effects of the discharges of sediment-laden storm water from grading activities and uncontrolled road drainage from Pritchett Drive into the Unnamed Tributary of Canyon Creek, a class I tributary to Lake Oroville, and eliminate the threat of future discharges. The draft CAO also stated that the Site had approximately 1.8 acres of graded and cleared land on erodible soils, most of which lies un-vegetated and unprotected from weathering; leaving high potential for further sediment discharge to the Unnamed Tributary and Canyon Creek, during wet weather events. Existing sediment control measures were insufficient and failing allowing sediment to be discharged off-site into waters of the state. The draft CAO contained a comment period which ended on 9 October 2015.
13. On 12 October 2015, Staff contacted Mr. Johnson, the legal representative of the Discharger, to notify him that no comments had been received by Staff regarding the draft CAO issued 17 September 2015. Staff offered to accept comments by the end of the business day on 12 October 2015. Mr. Johnson replied stating that Mr. Waite engaged NorthStar Engineering to respond to the proposed order 10 days prior to 12 October 2015. Staff stated that Mr. Lowe, with NorthStar Engineering, contacted Staff a week prior to discuss requirements of the draft CAO, and that Staff discussed the order with Mr. Lowe and advised him that the comment period deadline was 9 October 2015.
14. **On 15 October 2015**, the Central Valley Water Board issued a final Cleanup and Abatement Order, R5-2015-0741 (final CAO) to Hanover Properties, LLC (Attachment B). At the time of the issuance no comments were submitted. 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.
15. To date, the Discharger has not proposed an RMMP, implemented the RMMP, or submitted an RMMP Completion Report, as further detailed in Findings 25-31.
16. On 9 November 2015, Central Valley Water Board Staff received an Interim Erosion Control Plan from NorthStar Engineering to address item a of the Required Actions listed in the final CAO.
17. 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 to 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. It was advised that if earthwork and grading for the proposed project exceed one or more acres, that the Discharger may be required to apply for coverage under the Construction General Permit and submit a storm water pollution prevention plan (SWPPP) prior to commencing construction activities.
18. **29 February 2016 Final CAO Compliance Inspection.** On 29 February 2016, Staff inspected the Site with consent from Mr. Waite from Hanover Properties, LLC. Mr. Waite accompanied Central Valley Water Board Staff and CDFW staff throughout the duration of the Site inspection. Staff observed the following actions taken to implement the Interim Plan: fertilizers, soil amendments, and fuels were cleaned up, and temporary erosion control measures along the Main Access Road were installed. The final CAO required that, by 15 December 2015, all work outlined in the Interim Plan shall be completed, and by 16 January 2016, a report of completion shall be submitted to the Central Valley Water Board. (Attachment 1 of the 4 May 2016 Notice of Violation, included herein as Attachment C)
- a. Main Access Road: Staff observed evidence of erosion on the road surface along the lower sections of the Main Access Road leading up to the Site. Upon arrival, Staff encountered an operator performing maintenance work on one of the water

bars near the intersection of Velma Way and Pritchett Drive with a small tractor/backhoe. Staff counted 17 temporary water bars installed to redirect flows from the road surface in an attempt to control erosion, as detailed in the Interim Plan.

- i. Engineering recommendations included in the Interim Plan specify that water bars shall be installed at least every 40 feet on steep road sections. With the exception of two water bars, all water bars installed along the Main Access Road exceeded these spacing recommendations. Staff calculated that some water bars were over 600 feet apart as measured in ArcGIS 10.2. Deep erosional rills along the Main Access Road surface and evidence of sediment discharge indicated that additional erosion control measures were needed to prevent concentration of storm water runoff along the road surface. The Interim Plan also indicates that installed water bars should be constructed with a minimum one-foot trough depth and one-foot rise, which was not observed on most water bars constructed at the Site. Per requirements of Butte County's grading ordinance, the disturbance of 50 yd³ or more would require a grading permit. The Discharger indicated to Staff that the project was near its 50 cubic yard limit at the time of inspection. With these limitations to earthwork activities, and installed measures falling short of their engineering recommendations, it was noted that interim controls outside of constructed water bars may still be necessary to prevent or reduce erosion along the road surface and prevent future discharges of sediment-laden storm water to Canyon Creek and its tributaries during the wet weather period.
- ii. Email communications between Staff and the Discharger's consultant, NorthStar Engineering, also indicated that interim measures were to include the installation of fiber rolls at locations where water exited the road surface; however, Staff only observed wattles/fiber rolls installed at the outlet of a single water bar. While no additional fiber rolls were observed at any of the other water bar locations during the on-site inspection, Staff did observe that several of the water bars directed runoff into well-vegetated areas or slash piles.
- iii. Staff expressed concerns regarding the adequacy of the erosion control measures employed. It was suggested that additional temporary measures were likely needed to prevent sediment-laden storm water discharges during storm events capable of generating overland flow. It was noted that at a minimum, sediment control should be implemented at the outlets of the water bars, as recommended by the engineering consultant, to prevent sediment-laden storm water from discharging to Canyon Creek and tributaries thereto.
- iv. During the initial inspection, the extended portion of the Main Access Road had exhibited heavy erosional scarring including a 6-8 inch-deep rill along the road surface which had severely restricted access to the top of

the Site. At the time of the 29 February 2016 inspection, this area of the road had been filled and repaired, including the addition of 6 water bars along this section of the Main Access Road. As of the 29 February 2016 inspection, this upper portion of the Main Access Road appeared to be effectively stabilized.

- v. Due to limitations in conducting additional earthwork at the Site, it is likely that alternative measures (such as wattles, silt fences, straw bales, etc.) would have been necessary to prevent discharges to Canyon Creek before more permanent measures can be conducted.
- b. Butte County APN 061-540-052-000. During the inspection of this parcel, Staff observed two primary areas of concern, as identified during the initial inspection for compliance with items outlined in the CAO; these were the Terrace Access Road and the Lower Cultivation Site.
- i. Terrace Access Road: Provides access to APN 061-540-052-000 by means of connecting the two inspected parcels from the southern border of APN 061-540-060-000 to the western edge of APN 061-540-052-000 and continuing down to access other adjacent parcels.
 - ii. The Discharger stated to Staff that this was an original access road for surrounding property access that was also likely constructed during the original subdivision of properties in the area. Staff confirmed the Discharger's statement that this Terrace Access Road was in existence prior to Google Earths oldest available historical imagery in August of 1993.
 - iii. Staff noted that even though conditions changed little along the Terrace Access Road, preventative measures were advised to protect the condition of the road against future erosion. It was advised that these measures were especially important in the event that a decision is made to abandon the newly constructed portion of the Main Access Road, as the Terrace Access Road will be the only means to gain access to the Site.
19. At the time of the 29 February 2016 inspection, Staff had not yet received monthly monitoring reports required by the final CAO or a completion report for the Interim Plan implementation. Staff had been aware that, due to poor weather conditions following Interim Plan approval, access had been limited along the Main Access Road. Even though Interim Plan measures were unable to be completely implemented prior to the deadline outlined in the final CAO, monthly monitoring is still required to monitor Site conditions and compliance with the final CAO. The conclusion of the 29 February 2016 Site inspection report indicated that a completion report for the Interim Plan implementation should be submitted as soon as possible.
20. 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 (Butte County). It also stated that the Discharger and its consultant were working with Butte County to resolve which sections of the road exist as legacy roads and may be exempt from Public Resources Code (PRC) 4290, requiring incorporation of additional road construction standards. The letter included communications between NorthStar Engineering and Butte County indicating that they have been working to resolve the issue.

21. On 24 March 2016, Staff granted an extension for the RMMP submittal required under the final CAO. The following dates were revised for required actions:
 - a. By 31 May 2016 submit to Central Valley Water Board office 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.
22. **4 May 2016 Notice of Violation (NOV).** Staff determined that the Discharger failed to comply with required actions included in the final CAO. Requirements of the final CAO included full implementation of the Interim Plan to be completed no later than 15 December 2015, and a completion report was due 15 January 2016. Additionally, for the final CAO Interim Plan requirement, the Discharger was required to submit monthly monitoring reports detailing site conditions and any failures or improvements to temporary measures installed at the Site. As of 4 May 2016, Staff had yet to receive any monthly monitoring reports from the Discharger or a completion report for the Interim Plan. In the NOV, Staff requested that, by no later than 20 May 2016, the Discharger submit to Central Valley Water Board Staff a report of completion including a summary and photographs of the completed and installed erosion and sediment controls at the Site. Included in the NOV was the complete inspection report from the 29 February 2016 CAO compliance inspection. Staff stated that failure to comply with the issued final CAO may result in the assessment of an administrative civil liability up to \$10,000 per violation per day.
23. **25 May 2016 Interim Plan Completion Report from NorthStar Engineering.** Staff received, on 25 May 2016, an Interim Plan Completion Report from NorthStar Engineering. The Interim Plan Completion Report documented observations and findings from the applied Interim Plan, as well as corrective actions taken. It was reported that, while preparing the Interim Plan Completion Report, NorthStar Engineering and the Discharger observed a construction crew with light equipment removing water bars that were installed by the Discharger as part of the Interim Plan. NorthStar Engineering and the Discharger requested that the construction crew immediately halt the removal of the water bars. NorthStar Engineering informed the crew that they were installed as emergency temporary erosion controls in compliance with the final CAO order issued by the Central Valley Regional Water Quality Control Board. The crew stated they had no knowledge of the final CAO and that they were hired by an individual associated with APN 061-540-061-000. The crew agreed to stop work until the Discharger and the individual that hired the construction crew came to a resolution. NorthStar Engineering also informed the crew that any and all work to the roads had to be approved both by Butte County Public Works and Central Valley Regional Water Control Board. NorthStar Engineering in

conclusion stated that although water bars needed additional material to raise their height, and that some needed additional maintenance; they did appear to be functioning to a certain degree. There was evidence that water bars were directing flow off the roadway into vegetated areas where sediment was allowed to settle out. Additional maintenance to the water bars would reduce flow velocities and lengths. Several corrective actions were needed regarding housekeeping but it was stated they 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 completed to a satisfactory level.

24. **11 January 2017 Canyon Creek Turbidity Sampling Event.** Due to the Discharger’s failure to supply or implement the RMMP, Staff completed a turbidity sampling event at the Site. Staff obtained permission from property owners along previously used sampling locations on Canyon Creek. Staff then collected turbidity samples upstream and downstream of the confluence of the Unnamed Tributary with Canyon Creek. Turbidity measurements collected downstream from the Site significantly exceeded Basin Plan objectives for turbidity increases where natural turbidity upstream is measured between 5 and 50 NTUs; see Table 2 below for results.

Table 2 – Laboratory Analyzed Turbidity Samples

		Natural Turbidity		Increases Shall Not Exceed	
Basin Plan Objectives		<i>Between 1 and 5 NTUs</i>		<i>1 NTU</i>	
		<i>Between 5 and 50 NTUs</i>		<i>20%</i>	
		<i>Between 50 and 100 NTUs</i>		<i>10 NTU</i>	
		<i>Greater than 100 NTUs</i>		<i>10%</i>	
Sample ID	Collection Time	Sample Turbidity (NTU)		Exceedance (If Applicable)	
		Field Sample	Lab Sample	Field	Lab
Upstream	1123	34.8	32.4	Background	Background
Downstream 1 (~23 ft. downstream from upstream sample)	1132	55.6	41.9	60%	29%
Downstream 2 (~776 ft. downstream from upstream sample)	1214	108	71.0	211%	119%
NTU, Nephelometric Turbidity Unit					

As indicated by the sampling conducted on 11 January 2017, the Site continues to discharge sediment-laden storm water to Canyon Creek, and tributaries thereto, due to non-compliance with the final CAO.

NON COMPLIANCE WITH CLEANUP AND ABATEMENT ORDER R5-2016-0741

25. To date, the Discharger has yet to complete numerous requirements outlined in the final CAO. Table 3 outlines all of the potential violations associated with the final CAO.

Table 3. Potential violations associated with non-compliance with Cleanup and Abatement Order R5-2015-0741

Potential Violations – Non-Compliance with Cleanup and Abatement Order R5-2016-0741			
Requirement	Due Date	Water Code Violation	Maximum Per Day
RMMP Submission	31 May 2016	13268	\$ 1,000
RMMP Completion	15 October 2016	13350	\$ 5,000
RMMP Completion Report	1 December 2016	13268	\$ 1,000

26. As outlined in Table 3 (above) the Discharger is potentially in violation of three requirements of the final CAO. Water Code section 13350 and 13268 authorizes the Water Boards to impose civil liabilities in the amounts listed in Table 3 on a per day basis for each of the violations.
27. The Discharger was given opportunity to comment on the requirements of the draft CAO. Comments were not received by the Discharger on the requirements of the draft CAO, therefore the final CAO was issued.
28. The Discharger was aware of the violations and was given opportunity to come into compliance, as evidenced by the 24 March 2016 extension granted by Staff for the RMMP required under the final CAO.
29. It is acknowledged, and reflected in the administrative record, that Staff had little to no communication with the Discharger, either verbal or written after the submission of the 25 May 2016 Interim Plan Completion Report from NorthStar Engineering.
30. To date, Central Valley Water Board staff have not received any correspondence regarding submission of the RMMP, completion of the RMMP, or a completion report of the RMMP by the required extended due dates issued on 24 March 2016, and to the knowledge of the Central Valley Water Board, the Discharger has not completed these required actions.
31. Based on the above information, Central Valley Water Board staff recommends imposing civil liabilities based on one violation of the final CAO as authorized by Water Code

section 13350 for failure to complete the RMMP, beginning from the required date of completion, 15 October 2016.

VIOLATION – NON COMPLIANCE WITH ISSUED CLEANUP AND ABATEMENT ORDER R5-2016-0741

32. **Violation:** The Discharger has failed to comply with the final CAO, issued on 15 October 2015. The Discharger failed to complete requirements outlined in the final CAO, which included the requirement to develop, implement, and complete a Restoration, Mitigation, and Monitoring Plan by 15 October 2016.
33. **Responsible Parties:** The Discharger, as the property owner, operator, and the responsible party named in the final CAO, is liable for conditions of the Site and responsible for complying with the required actions contained in the final CAO. The Discharger is liable as the owner of the Site and the person who had the legal ability and responsibility to comply with the final CAO to clean up and abate any discharges or threatened discharges of waste into waters of the state from the Site.

ADMINISTRATIVE CIVIL LIABILITY PROVISIONS

34. Water Code section 13350 states, in relevant part:
- (a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e). . . .
- (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. (A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated. (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. . .
- (f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

The violations alleged herein are subject to liability in accordance with Water Code section 13350.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13350 FOR VIOLATION 1

35. **Maximum Civil Liability for Violation of the Final CAO:** Per Water Code section 13350 civil liability administratively imposed by the Central Valley Water Board shall not exceed \$5,000 per violation per day of violation. Staff utilized the required RMMP completion date of 15 October 2016 as a start date and an end date of 30 June 2017, when the Civil Liability calculations were completed. Therefore the maximum administrative civil liability that may be assessed pursuant to section 13350 is **One million, two hundred ninety-five thousand dollars (\$1,295,000)**.
36. **Minimum Civil Liability for Violation of the Final CAO:** As provided above in paragraph 39, Water Code section 13350 requires a minimum daily penalty of \$500 per day for each day there is a CAO violation and a discharge occurs, and \$100 per day for each day there is a CAO violation without a discharge. Due to the Discharger's failure to implement requirements of the final CAO, it is reasonable to conclude that discharges of wastes to waters of the state occurred and that the beneficial uses of receiving waters were impacted. However, Central Valley Water Board Staff has only documented one day of discharge during the violation period, and does not have sufficient information to determine how many additional days of discharge occurred during the violation period. Since the Discharger has been in violation of the CAO requirement to complete an RMMP since 15 October 2016, Staff is using the statutory minimum of \$100 per day per violation for 258 days, and the statutory minimum of \$500 per day per violation for the one day of documented discharge. Therefore, the statutory minimum under section 13350 is **twenty-six thousand three hundred dollars (\$26,300)**.
37. Additionally, the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) provides that, civil liability, at a minimum, must be assessed at least 10% higher than the economic benefits, if any, derived from the acts that constitute the violation so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations. The CAO violations are based on the Discharger's failure to submit the RMMP, implement the plan, and submit a completion report. Using the US EPA's BEN model and highly conservative calculations for total delayed and avoided costs, the economic benefit gained by non-compliance is calculated to be approximately **\$9,970**. Imposing 10% on to the economic benefit, as referenced in the Enforcement Policy, yields approximately **\$10,967**. Accordingly, the minimum liability that the Central Valley Water Board could impose for the violation in accordance with Water Code section 13350 is **twenty six thousand three hundred dollars (\$26,300)**.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

38. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, and other matters that justice may require.
39. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The 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 as outlined in Water Code sections 13327. The entire Enforcement Policy¹ can be found at:

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
40. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
41. As described above, the maximum penalty that can be imposed against the Discharger for the combined violations is **\$1,295,000** and the minimum penalty in accordance with the Enforcement Policy and Water Code section 13350 is **\$26,300**. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$205,128**. The specific factors considered in this penalty are detailed in Attachment A of this Complaint.
42. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the CAO for which penalties have not yet been assessed or for violations that may subsequently occur.
43. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub.

¹ The State Water Board adopted a 2017 Water Quality Enforcement Policy on April 4, 2017 (2017 Policy). The 2017 Policy is not in effect until it receives final approval from Office of Administrative Law. A copy of the 2017 Policy can be viewed here:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

HANOVER PROPERTIES LLC IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **two hundred and five thousand one hundred and twenty-eight dollars (\$205,128)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code sections 13327 and 13350, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **19 and 20 October 2017**, unless one of the following occurs by **16 August 2017**:
 - a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and it is received by the Central Valley Water Board by 16 August 2017, along with payment for the proposed civil liability of **two hundred and five thousand one hundred and twenty-eight dollars (\$205,128)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option #2 or Option #3 on the attached form, and it is received by the Central Valley Water Board by 16 August 2017 along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

Original Signed by

CLINT E. SNYDER, Assistant Executive Officer

25 July 2017

Date

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0544
HANOVER PROPERTIES, LLC
ASSESSOR PARCEL NUMBERS 061-540-052-000 & 061-540-060-000
BUTTE COUNTY

-15-

Attachment A: Penalty Calculations

Attachment B: Final CAO

Attachment 1: 7 April 2015 Inspection Report

Attachment C: Notice of Violation

Attachment : 29 February 2016 Inspection Report

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Hanover Properties, LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2017-0544 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **two hundred and five thousand one hundred and twenty-eight dollars (\$205,128)** by check that references "ACL Complaint R5-2017-0544" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **16 August 2017**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2017-0544
HANOVER PROPERTIES, LLC
ASSESSOR PARCEL NUMBERS 061-540-052-000 & 061-540-060-000
BUTTE COUNTY

Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

Administrative Civil Liability Complaint R5-2017-0544

Attachment A

Penalty Calculations

Attachment A – ACL Complaint No. R5-2017-0544
Specific Factors Considered for Administrative Civil Liability
Hanover Properties LLC Assessor Parcel Number 061-540-052-000 & 061-540-060-000,
Butte County

The State Water Board's *Water Quality Enforcement Policy* (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 13350, subdivision (e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

VIOLATION – NON-COMPLIANCE WITH CLEANUP AND ABATEMENT ORDER R5-2016-0711

Step 1 – Potential for Harm for Discharge Violations

The Enforcement Policy states that calculating the Potential for Harm for 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 No. R5-2015-0741 (final CAO), a non-discharge violation.

Step 2 – Assessments for Discharge Violations

The Enforcement Policy states that 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 Enforcement Policy states that the Board shall calculate an initial liability for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. Using the matrix set forth in TABLE 3, a Per Day Factor multiplier is determined. The per day assessment is determined by multiplying the Per Day Factor by the maximum per day amount allowed under the California Water Code.

Potential for Harm

The Potential for Harm categories in Table 3 are:

Minor – The characteristics of the violation present 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 implement requirements of the issued final CAO, including implementation of a Restoration, Monitoring, and Mitigation Plan (RMMP) to mitigate for previous discharges of sediment and to prevent future discharges of sediment to waters of the State. By not implementing the requirements of the final CAO, the Site continues to discharge sediment to surface waters of the State, impacting water quality and Beneficial Uses of receiving waters. As documented during the Site inspection (Attachment B, Attachment 1), the conditions of the Site were creating erosion and discharges of sediment-laden storm water to an unnamed tributary to Canyon Creek. During the Site inspection, Staff documented an access road and two large graded terraced pads, utilized for cannabis cultivation. Staff documented erosional discharge from the access road into an Unnamed Tributary of Canyon Creek. Additionally, Staff collected turbidity samples above and below the confluence of the unnamed tributary with Canyon Creek. The documented turbidity levels within the tributary represented violations of the Basin Plan objectives for turbidity. By not implementing the requirements of the final CAO, the Discharger has allowed the Site to continually discharge sediment into the tributary, resulting in turbidity levels in violation of Basin Plan objectives. Therefore, the Potential for Harm for the violation is determined to be **Moderate**.

Deviation from Requirement

The categories for Deviation from Requirement in Table 3 are:

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 complete the required RMMP outlined in the final CAO. By not completing the RMMP, a requirement of the final CAO, the final CAO has been rendered ineffective in its essential function. Therefore the Deviation from Requirement for this Violation 1 is determined to be **Major**.

Per Day Factor

The Per Day Factor, utilizing a Moderate Potential for Harm and Major Deviation from Requirement is **0.6**. The per day factor utilized is on the upper range of moderate Potential for Harm and Major Deviation from Requirement due to the relatively large scale of disturbed area and potential for threat to water quality.

The maximum per day assessment for non-compliance with the final CAO, as allowed under Section 13350(e)(1), is \$5,000 per day. Utilizing an adjustment factor of 0.6, the per day assessment for the violation is \$3000.

Days of Violation

As required in the final CAO, the Restoration Monitoring and Mitigation Plan (RMMP) was to be completed by 15 October 2016. To date the Discharger has not completed this requirement. Therefore the Discharger has been in violation of the final CAO for 259 days. (Using 30 June 2017 as the end date)

Initial Liability Amount: The value is determined by the per day assessment. For this case, the total is **\$777,000**.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: 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

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.1** because the Discharger was aware of the requirements of the final CAO and was given opportunity to comply with the requirements, however the Discharger chose to not do so.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger had showed willingness to initially cooperate with cleanup actions and actively attempted to implement temporary erosion control measures; however, the Discharger has since failed to complete the RMMP by the required deadline. Staff contacted the Discharger's consultant, NorthStar Engineering, on 17 February 2017 to address any updates with implementation of the RMMP. Jay Lowe of NorthStar Engineering stated that Hanover Properties, LLC stopped paying his invoices in March of 2016, but that they continued to perform work on the Site until shortly after 20 May 2016, the date of their last correspondence with the Central Valley Water Board (transmitting the Interim Plan Completion Report). Mr. Lowe noted that the Discharger did not like the actions that would be required to fix the roads, but that NorthStar Engineering had been in contact with Cal Fire and Butte County Public Works to reach an agreement to perform the work; however, those discussions ended shortly after May 2016 due to the Discharger failing to pay NorthStar Engineering. To this date, there has been no further correspondence between the Discharger and NorthStar Engineering, or with the Central Valley Water Board. Therefore, in light of the Discharger's failure to fully clean up the Site and cooperate with the Central Valley Water Board, the Discharger was given a multiplier value of **1.2**.

History of Violation

When there is a history of repeat violations, the Enforcement Policy indicates a minimum multiplier of 1.1 to be used. Aside from the final CAO, the Discharger does not have a history

of violations with the Central Valley Water Board. Therefore, the History of Violation factor is **1.0**.

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 (\$777,000) x Adjustment Factors (1.1) (1.2) (1) and is equal to **\$1,025,640**.

The following factors apply to the Total Base Liability Amount for the violation discussed above.

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

A discharger’s ability to pay and to continue in business must be considered when assessing administrative civil liabilities. Staff has made a determination that the Discharger has the ability to pay the initial proposed liability amount of \$1,025,640 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 \$1,905,194. 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
072-330-060	Butte	Hanover Properties LLC	2016	\$ 127,947
028-370-013	Tehama	Hanover Properties LLC	2016	\$ 187,241
062-210-014	Tehama	Hanover Properties LLC	Unknown	\$ 81,219
062-240-007	Tehama	Hanover Properties LLC	Unknown	\$ 15,288
028-340-008	Butte	Hanover Properties LLC	2015	\$ 105,000
015-450-099	Butte	Hanover Properties LLC	2015	\$ 253,812
072-530-001	Butte	Hanover Properties LLC	2015	\$ 97,971
060-050-021	Tehama	Hanover Properties LLC	2015	\$ 49,979
062-210-017	Tehama	Hanover Properties LLC	2015	\$41,607
062-220-006	Tehama	Hanover Properties LLC	2015	\$ 36,770
028-180-004	Butte	Hanover Properties LLC	2015	\$ 474,112

062-420-007	Tehama	Hanover Properties LLC	2015	\$ 31,064
062-240-050	Tehama	Hanover Properties LLC	2015	\$ 9,360
062-240-006	Tehama	Hanover Properties LLC	2015	\$ 9,360
062-150-026	Tehama	Hanover Properties LLC	2015	\$ 16,588
072-480-011	Butte	Hanover Properties LLC	2015	\$ 72,413
028-180-055	Butte	Hanover Properties LLC	2015	\$ 57,210
061-540-052	Butte	Hanover Properties LLC	2016	\$ 61,476
061-540-052	Butte	Hanover Properties LLC	2015	\$ 62,413
061-540-060	Butte	Hanover Properties LLC	2015	114,424
Total Assessed Value for all Properties				\$ 1,905,194

Step 7 – 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. Staff has considered several factors that it believes warrant an adjustment under this step. Application of the penalty methodology has resulted in a very large total base liability amount, one that Staff finds disproportionate in light of the nature of the violation, the threat to water quality and economic benefit obtained from the violation. The total base liability amount is largely driven by the number of days during which the violation is alleged to have occurred. Staff acknowledges that restraints on resources and the limited number of staff within the Cannabis Regulation and Enforcement Unit prevented the Central Valley Water Board from bringing this Complaint as soon as it otherwise could have under ideal circumstances. Additionally, although the Enforcement Policy aims to achieve consistency through the application of the penalty methodology and does not require a Regional Water Board to compare a proposed penalty to other actions the Board has taken, Staff believes it is appropriate to look at penalties imposed in other similar actions for this matter which involves a new regulatory program with relatively few enforcement actions. The level of liability that has previously been imposed by the Central Valley Water Board in cannabis cases with demonstrated discharge violations has been significantly less than the total base liability amount calculated for this violation. Therefore, Staff concludes that these factors justify an adjustment under this provision, and that a multiplier of **0.2** is appropriate.

Step 8 – Economic Benefit

Pursuant to the Enforcement Policy, 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 noncompliance with the final CAO is calculated from the delayed and avoided costs that would have been accrued during completion of the required actions in the final CAO, including the development, completion, and submission of a final completion report of the Restoration, Monitoring and Mitigation Plan (RMMP). The calculation was completed using the USEPA's BEN computer program, and is equal to the present value of the avoided costs plus 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 to the Discharger in regards to this violation is calculated to be \$9,970.

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." Therefore, the economic benefit plus 10% is estimated to be **\$10,967**, which becomes the minimum civil liability which must be assessed pursuant to the Enforcement Policy.

Additionally, Water Code section 13350 requires a minimum daily penalty of \$500 per day for each day there is a CAO violation and a discharge occurs, and \$100 per day for each day there is a CAO violation without a discharge. Due to the Discharger's failure to implement requirements of the final CAO, it is reasonable to conclude that discharges of wastes to waters of the state occurred and that the beneficial uses of receiving waters were impacted. However, Central Valley Water Board Staff only documented one day of discharge during the violation period, and does not have sufficient information to determine how many additional days of discharge occurred during the violation period. Since the Discharger has been in violation of the final CAO requirement to complete an RMMP since 1 July 2016, staff is using the statutory minimum of \$100 per day per violation for 258 days, and the \$500 per day per violation minimum for the one day of documented discharge. Therefore, the statutory minimum under section 13350 is twenty six thousand three hundred dollars (\$26,300).

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: \$1,295,000

Minimum Liability Amount: \$26,300

Step 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement policy, the final liability amount proposed for the violation is **\$205,128**