

Administrative Civil Liability Complaint R5-2020-0510

Attachment A

Penalty Calculation

**Attachment A – ACL Complaint No. R5-2020-0510**  
**Specific Factors Considered for Administrative Civil Liability**  
**Kyle Terborg – Assessor’s Parcel 041-430-049-000, Shasta County**

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

The Water Boards should rely on the version of the Enforcement Policy’s substantive requirements in effect at the time of the violation to prosecute any violations; however, changes identified in the 2017 Enforcement Policy that are clarifications or procedural changes can be applied to enforcement actions that proceed under the 2010 Enforcement Policy.<sup>2</sup> 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, Monitoring, and Mitigation 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 R5-2016-0716 (CAO), a non-discharge violation.

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<sup>1</sup> The 2010 Enforcement Policy is can be found at:

[https://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

<sup>2</sup> The 2017 Enforcement Policy can be found at:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

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

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

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

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

### **Potential for Harm**

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

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

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

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

The Discharger failed to submit a Restoration, Monitoring, and Mitigation Plan (RMMP) in accordance with the deadline specified in the CAO, as required pursuant to Water Code section 13267. The CAO required the Discharger to submit an RMMP by 1 June 2017. 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 4 December 2014 Site inspection and the 21 December 2015 Site inspection, the conditions of the Site were creating conditions of erosion and discharges of sediment laden storm water to unnamed tributaries to the South Fork of Clear Creek. By not submitting an RMMP until 8 June 2018, 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 the deadline in the CAO. The Discharger submitted an RMMP 12 months past the submission deadline. By failing to timely submit the RMMP, as required under the CAO, 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*

The CAO required the Discharger to submit an RMMP by 1 June 2017. The Discharger failed to submit an RMMP by 1 June 2017. The Discharger did not submit an RMMP until 8 June 2018, which staff deemed acceptable for completion of remediation activities, although monitoring associated with the RMMP would be required in addition to any local permits required to complete the work. The Prosecution Team has utilized the deadline in the CAO, 1 June 2017, as the start date for purposes of calculating the days of violation for the Discharger's failure to timely submit an RMMP. Since the RMMP submitted on 8 June 2018 contained a sufficient work plan to address the remediation and mitigation measures required under the CAO, the Prosecution Team has selected 8 June 2018 as the end date for the violation. Therefore, the Discharger was in violation of the requirement for 373 days.

### **Initial Liability Amount:**

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

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

Initial Liability: \$1,000/day X 373 days X .35 = **\$130,550**.

#### **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 1 June 2017 deadline contained in the CAO. The Discharger was aware of the requirement to submit the RMMP and the need to hire a consultant to prepare the plan. Submittal of the RMMP, despite the Discharger's knowledge of the deadline, did not occur until 12 months after the deadline. 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 1 June 2017, the Discharger did ultimately submit an RMMP on 8 June 2018. While the submittal was 12 months past the deadline, staff determined the RMMP was adequate to mitigate the ground disturbance at the Site. Throughout the time period between 1 June 2017 and 8 June 2018, the Discharger acknowledged that he was past the deadline in the CAO and communicated with staff regularly. Therefore, in light of the fact that the Discharger undertook some efforts 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.

### **Multiple Day Violations**

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

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

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

Although the Discharger failed to submit an RMMP by the required deadline, the Discharger did ultimately submit an RMMP 12 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 18 days of violation for purposes of the penalty calculation.

### **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 after adjusting for collapsing of days ( $\$1,000 \times 18 \text{ days} \times .35$ ) x Adjustment Factors (1.2) (1.0) and is equal to **\$9,072**.

## **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 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. By not completing the RMMP, a requirement of the CAO, the Site continues to discharge or threatens to discharge earthen materials, soil, and sediment to surface waters of the state, impacting water quality and the beneficial uses of receiving waters. As documented during the 2014 and 2015 Site inspections (Attachment C and Attachment D), sediment discharges to a nearby Class III unnamed tributary to South Fork of Clear Creek are a result of grading activities performed at the Site to construct Terraces<sup>3</sup>, an Access Road, and a Switchback Road for cannabis cultivation operations. Because of the failure to implement the work that was required as part of the RMMP, erosion leading to sediment discharge has occurred, and threatens to continually occur, to waters of the state. Therefore, staff have determined that this violation presents a **Moderate** Potential for Harm.

#### *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).

In this case, the Discharger failed to complete the work contained in the RMMP, a requirement of the CAO. By not completing implementation of the RMMP as required, the CAO has been rendered ineffective in its essential function. 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 **0.4**.

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<sup>3</sup> Defined terms in this Attachment A have the same definition as in the Complaint.

### *Days of Violations*

As required in the CAO, the Discharger was to have completed the restoration and mitigation measures described in an RMMP by **1 August 2017**. However, the RMMP was not submitted until 8 June 2018. Although staff informed the Discharger that the 8 June 2018 RMMP lacked the required monitoring plan and Site maps under the CAO, the work plan for remediation and mitigation was adequate. During a phone call with the Discharger on 5 September 2018, staff directed the Discharger to complete implementation of the work plan contained in the 8 June 2018 RMMP in order to adequately mitigate potential discharges prior to the onset of the winter period. Although staff had not formally approved the 8 June 2018 RMMP, the 5 September 2018 conversation clearly conveyed to the Discharger that the work plan could be implemented, despite the missing monitoring plan and Site maps. Therefore, the Prosecution Team has selected 5 September 2018 as the start date for this violation. To date, the Discharger has not completed implementation of the restoration or mitigation measures contained in the RMMP, as required by the CAO. Utilizing a start date of 5 September 2018 and an end date of 9 March 2020, the issuance of the Administrative Civil Liability Complaint (ACLC), the Discharger has been in violation for 552 days.

### **Initial Liability Amount:**

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

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

Initial Liability: \$5,000/day X 552 days X .4 = **\$1,104,000**.

### **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, after the deadline required in the CAO, the Discharger failed to follow through with the plans and perform the required restoration

and mitigation work. A reasonable and prudent person would have begun steps towards implementation of the RMMP immediately upon the urging of Central Valley Water Board staff in order to mitigate the discharge of sediment laden stormwater during the winter period. The Discharger did not act as a reasonable or prudent person would have. Although the conduct may not have been intentional, it could fairly be characterized as grossly negligent. 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. In this case, the Discharger failed to implement the RMMP, or respond in a timely manner. A CAO was issued on 2 December 2016, and staff received a call from Mr. Terborg on 31 January 2017, during which Mr. Terborg indicated that he would be hiring a consultant to prepare the RMMP. The RMMP submittal due date (1 June 2017) and work start date (1 July 2017) passed before Mr. Terborg called again on 24 July 2017. The RMMP work completion date of 1 August 2017 passed before receiving an email on 17 October 2017 in which Mr. Terborg specified he had a consultant that would prepare an RMMP. Mr. Terborg called on 26 February 2018 stating he was entering into a contract with the consultant who would perform the work required in the CAO. On 8 June 2018, an incomplete RMMP was submitted. On 26 April 2019, an NOV was issued for non-compliance with the CAO. Staff communicated with Mr. Terborg on 10 May 2019, and attempted to email and call Mr. Terborg later in May and June of 2019, but received no reply. Although Mr. Terborg has communicated with staff sporadically, his statements of good intentions have yet to yield any results at the Site. To date, the RMMP has not been completed per the requirements of the CAO.

Although the Discharger initially showed willingness to cooperate, he has failed to implement the RMMP. Based on the Discharger's failure to fully cooperate and cleanup the Site, the Discharger was given a multiplier value of **1.4** for Cleanup and Cooperation.

#### *History of Violations*

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.

### **Multiple Day Violations**

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

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

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

Although the Discharger has failed to complete all restoration and mitigation work contained in the RMMP, imposition of administrative civil liability does not excuse the Discharger from complying with the final CAO. The Discharger is still required to complete the work contained in the RMMP. Therefore, any economic benefit that can be measured on a daily basis is limited to the time value of money only. Accordingly, the 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 52 days of violation for purposes of the penalty calculation.

### **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 after adjusting for collapsing of days ( $\$5,000 \times 52 \text{ days} \times .4$ ) x Adjustment Factors (1.3) (1.4) (1.0) and is equal to **\$189,280**.

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

### 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.

The Discharger's ability to pay and to continue in business must be considered when assessing an ACL, although the Central Valley Water Board is not required to ensure that an ACL amount is set at a level that would allow the Discharger to continue in business. 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. Based on reasonably available information regarding the Discharger's assets, it appears the Discharger may be able to pay a portion of the total base liability amount for both violations, a total of \$198,352. The Discharger appears to have at least one substantial asset to put towards the proposed ACL amount: The Site. Table 1 shows that the Site, owned in whole by the Discharger, has an assessed value of **\$96,589**, based upon the most recent available information from the Shasta County Assessor-Recorder's Office. Additionally, the Discharger's unenrolled cannabis cultivation operation at the Site is expected to have generated income for the Discharger that would not be easily traceable to the Discharger. It is possible that the Discharger has additional assets/income unknown to staff at this time.

Table 1

Property APN	County	Listed Owner	Assessment Year	Assessed Value
041-430-049-000	Shasta	Kyle D. Terborg	2019	\$ 96,589

### 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 (not including tax deductibility) 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 **\$598**.

The Discharger's economic benefit for failing to complete implementation of the RMMP, as alleged in Violation 2, 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 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 regard to Violation 2 is calculated to be **\$1,788**.

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 proposed administrative civil liability amount using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require" contained in the Water Code and Enforcement Policy but only if express findings are made to justify this. In this case, staff is not aware of any facts that would warrant adjusting the proposed administrative civil liability amount.

### **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 373 days, **the statutory maximum liability amount for Violation 1 is \$373,000**. 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 \$657**. 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 552 days, **the statutory maximum liability amount for Violation 2 is \$2,760,000**. Using economic benefit plus 10%, the minimum liability amount that must be recovered under the Enforcement Policy for Violation 2 is estimated to be \$1,966. 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 552 days, the statutory minimum liability amount is \$55,200. Since the statutory minimum liability amount is greater than the economic benefit plus 10%, **the minimum liability amount for Violation 2 is \$55,200.** 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 **\$198,352.**