

Lahontan Regional Water Quality Control Board

July 1, 2016

WDID 6SSO11425

Doug Robertson, City Manager
City of Victorville
P.O. Box 5001
Victorville, CA 92393-5001

CERTIFIED MAIL 7009 0820 0001 6630 3676
RETURN RECEIPT REQUESTED

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6V-2016-0042 FOR CITY OF VICTORVILLE – SAN BERNARDINO COUNTY

Enclosed please find Administrative Civil Liability Complaint No. R6V-2016-0042 (Complaint) issued pursuant to California Water Code section 13385, alleging violations by the City of Victorville (City or Discharger) of State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ and its monitoring and reporting program contained in Order No. WQ 2013-0058-EXEC, the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), and section 301 of the Clean Water Act. The violations are the result of six separate unauthorized discharges of raw sewage into the surface waters of the Mojave River and/or its tributaries between March, 2014 and May, 2016. The violations also address the City's failure to clean up raw sewage debris in a timely manner from the September, 2015 discharge and the City's failure to properly manage, operate, and maintain all portions of its sanitary sewer system between March, 2014 and December, 2015.

Raw sewage has high levels of suspended solids, pathogens, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. Raw sewage discharges may cause a public nuisance, particularly when its discharged to areas with high public exposure such as streets, rivers, and washes. Raw sewage discharges can pollute surface and/or ground waters, threaten public health, adversely impact aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters.

The Complaint proposes that the Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) assess an administrative civil liability against the City in the amount of **\$6,300,250.00** pursuant to California Water Code section 13385.

Unless waived, a hearing before the Lahontan Water Board or a Lahontan Water Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to Water Code section 13323. If a Hearing Panel is selected, the Hearing Panel will provide its recommendations to the Lahontan Water Board. At the Lahontan Water Board hearing, the Lahontan Water Board will consider whether to adopt the Hearing Panel's recommendation (if a Hearing Panel is assembled) and impose the recommended administrative civil liability, modify the administrative civil liability amount, decline the administrative civil liability, or refer the matter to the Attorney General for judicial enforcement.

The City may contest the proposed administrative civil liability at the hearing, may waive its right to the hearing and pay the full amount, request to extend the 90-day hearing date by a specified amount of time, or waive its right to hold a hearing within 90 days of this letter and enter into confidential settlement negotiations. Enclosed is a Waiver of Hearing form for this matter.

AMY L. HORNE, PHD, CHAIR | PATTY Z. KUYUOUMIJIAN, EXECUTIVE OFFICER

Should the City choose to waive its right to a hearing within 90 days, an authorized agent must sign the enclosed Waiver of Hearing form and return it to the Lahontan Water Board's South Lake Tahoe office by **5:00 p.m. on July 29, 2016**.

Should the City choose to enter into confidential settlement negotiations, the Lahontan Water Board notes that such settlement negotiations may take several months, and final disposition of this matter may not occur until an unspecified date in 2017. Confidential settlement negotiations may include a commitment to implement a supplemental environmental project (SEP). SEPs are projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger. Additional information on the State Water Board's SEP Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_fin_alpolicy.pdf.

If the Lahontan Water Board does not receive the waiver with either full payment of the liability, a request to extend the hearing date by a specified amount of time, or a request to waive the 90-day hearing requirement and enter into settlement negotiations by this date and time, the matter will be heard before the Lahontan Water Board or a Hearing Panel within 90 days of the Complaint's issuance date. Public hearing procedures and an agenda containing the date, time, and location of the hearing will be mailed to the City at least 10 days prior to the hearing date.

If you have any questions regarding this matter, please contact Eric J. Taxer, Water Resources Control Engineer, at (530) 542-5434 (eric.taxer@waterboards.ca.gov), or Cathe Pool, Senior Water Resources Control Engineer, at (530) 542-5460 (Catherine.pool@waterboards.ca.gov).



Lauri Kemper, P.E.
Assistant Executive Officer

Enclosures: 1. Administrative Civil Liability Complaint No. R6V-2016-0042
2. Waiver of Hearing Form

cc (w/enc): Regional Board Members
Patty Z. Kouyoumdjian, Executive Officer, Lahontan Water Board
Kim Niemeyer, Staff Counsel, State Water Board, Office of Chief Counsel
Laura Drabandt, Staff Counsel, State Water Board, Office of Enforcement
Bryan Elder, State Water Board, Office of Enforcement
Brian Gengler, City Engineer, City of Victorville
Doug Mathews, Director of Public Works, City of Victorville
Keith Metzler, Assistant City Manager, City of Victorville
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Andre de Bortnowsky, City Attorney
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Logan Olds, Victor Valley Wastewater Reclamation Authority
Stacy Toynbee, San Bernardino County Dept. of Public Health
Jack Silver, Esq.
Cathe Pool, Lahontan Water Board
Eric Taxer, Lahontan Water Board

Lahontan Regional Water Quality Control Board

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the Matter of
City of Victorville

WDID No. 6SSO11425

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**COMPLAINT NO. R6V-2016-0042
FOR
ADMINISTRATIVE CIVIL LIABILITY**

CITY OF VICTORVILLE IS HEREBY GIVEN NOTICE THAT:

1. This administrative civil liability complaint (Complaint) is issued under the authority of California Water Code section 13323 to the City of Victorville (City or Discharger) to assess administrative civil liability pursuant to Water Code section 13385, subdivision (c).
2. If this matter proceeds to hearing, the Water Board's Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

REGULATORY BACKGROUND

3. The City was incorporated on September 21, 1962, as a general law city in the State of California with a population of approximately 105,000. The City is located in southwestern San Bernardino County, within the Victor Valley. The City is within a sub region of the Mojave Desert.
4. The City operates its own wastewater collection system and associated infrastructure facilities within the City limits. The wastewater collection system consists of 1.1 miles of force mains/pressure lines, and 437 miles of gravity lines. There are approximately 27,400 service lateral connections to the system [CIWQS SSO Questionnaire for WDID No. 6SSO11425]. The City's Sanitary/Drainage and Rights of Way Division is responsible for the operation and maintenance of the wastewater collection system.
5. The City of Victorville discharges an average of 9.6 million gallons per day to the Victor Valley Wastewater Reclamation Authority (VWVRA) interceptor system at six locations. The City is a partner in the VWVRA Joint Powers Authority along with five other member entities. ["Gap Analysis for Waste Discharge Requirements Compliance (Final Report)," September 30, 2014, Hall & Foreman, Inc., Page 5]

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2501 Lake Tahoe Blvd., So. Lake Tahoe, CA 96150 | 14440 Civic Dr., Ste 200, Victorville, CA 92382
e-mail Lahontan@waterboards.ca.gov | website www.waterboards.ca.gov/lahontan

APPLICABLE PROHIBITIONS AND REQUIREMENTS

6. On May 2, 2006, the State Water Resources Control Board (State Water Board) adopted Order No. 2006-0003-DWQ and its monitoring and reporting program contained in Order No. WQ 2013-0058-EXEC (combined, referenced as the Permit), prescribing statewide general waste discharge requirements for all sanitary sewer systems greater than one mile in length that collect and/or convey untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. The Permit establishes requirements for enrollees to operate and maintain their collection systems. The City is an enrollee under this Permit. The Permit contains the following prohibition and requirements:
 - A. Permit Order No. C.1 prohibits sanitary sewer overflows (SSOs) that result in a discharge of untreated wastewater to waters of the United States.
 - B. Permit Order No. D.7.(iii) requires,

When a sanitary overflow occurs, the Enrollee shall take all feasible steps and necessary remedial actions to 1) control or limit the volume of untreated or partially treated wastewater discharged, 2) terminate the discharge, and 3) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water.

The Enrollee shall implement all remedial actions to the extent they may be applicable to the discharge and not inconsistent with an emergency response plan, including the following:

...

(iii) Cleanup of debris at the overflow site...
 - C. Permit Order No. D.8 requires, "The Enrollee shall properly manage, operate, and maintain all parts of the sanitary sewer system owned or operated by the Enrollee..."
 - D. Permit Order No. D.13.(vi)(f) requires the City to develop and implement an Overflow Emergency Response Plan that includes, among other items, a program to, "...correct any adverse impact on the environment resulting from the SSOs..."
7. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit.
8. The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) was adopted on March 31, 1995, pursuant to Water Code section 13243, and it was most recently amended on September 10, 2015. The Basin Plan prohibits, "The discharge of untreated sewage, garbage, or other solid wastes into surface waters of the Region ..." [Basin Plan, at page 4.1-1].

ALLEGED VIOLATIONSViolation No. 1

9. On or about March 5 through 10, 2014, and for six days, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 89,075 gallons of untreated wastewater (raw sewage) to waters of the United States.

Violation No. 2

10. On or about March 26, 2015, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 211,450 gallons of raw sewage to waters of the United States.

Violation No. 3

11. On or about September 6 through 14, 2015, and for nine days, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 11,686,149 gallons of raw sewage to waters of the United States.

Violation No. 4

12. On or about November 20 through 25, 2015, and for six days, the City violated Permit Order C.1, the Basin Plan, and section 301 of the Clean Water Act by discharging approximately 73,200 gallons of raw sewage to waters of the United States.

Violation No. 5

13. On or about December 9, 2015, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 5 gallons of raw sewage to waters of the United States.

Violation No. 6

14. On or about May 11, 2016, the City violated Permit Order C.1, the Basin Plan, and section 301 of the Clean Water Act by discharging approximately 28,925 gallons of raw sewage to waters of the United States.

Violation No. 7

15. On or about September 6, 2015, through March 8, 2016, and for 176 days, the City violated Permit Order D.7.(iii) by failing to clean up the raw sewage debris within Turner Wash from the September 6-14, 2015 SSO event.

Violation No. 8

16. On or about March 5, 2014 through December 9, 2015, and for 645 days, the City violated Permit Order D.8 by failing to properly manage, operate, and maintain all parts of its sanitary sewer.

WATER CODE SECTIONS UPON WHICH ADMINISTRATIVE CIVIL LIABILITY IS BEING ASSESSED FOR THE ALLEGED VIOLATIONS

17. Pursuant to Water Code section 13385, subdivision (a)(2), a discharger is subject to civil liability for violating a waste discharge requirement. Pursuant to Water Code section 13385, subdivision (a)(4), a discharger is subject to civil liability for violation the Basin Plan. Pursuant to Water Code section 13385, subdivision (a)(5), a discharger is subject to civil liability for violating section 301 of the Clean Water Act.
18. Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Water Board in an amount not to exceed the sum of both of the following:
- (1) *Ten thousand dollars (\$10,000) for each day in which the violation occurs.*
 - (2) *Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.*

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

21. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability, the Water Board is required to take into account factors that are incorporated into the State Water Board Water Quality Enforcement Policy. The required factors have been considered for each of the eight violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachments A through D, incorporated herein by reference.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

22. Pursuant to Water Code Section 13385, subdivision (c), the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$127,178,104**, as shown in the table below:

Violation #	Description	Days of Violation	Maximum Potential Liability
1	SSO discharge of 89,075 gallons from Manhole No. 149 in undeveloped easement area of Karen Drive, south of Hook Boulevard.	6	\$940,750.00

2	SSO discharge of 211,450 gallons from Manhole No. 110 in the dirt easement approximately 350 feet east of Grant Street and Lambert Lane.	1	\$2,114,500.00
3	SSO discharge of 11,686,149 gallons from GIS Manhole No. 143 (Sewer Atlas Book Manhole No. 120) in sewer easement located in Turner Wash.	9	\$116,941,490.00
4	SSO discharge of 73,200 gallons from Manhole No. 131 within the sewer easement west of 16711 Chalon Road.	6	\$784,450.00
5	SSO discharge of 5 gallons from an air release valve located on an 8-inch force main under a private railroad trestle and above the Mojave River. Latitude 34.56066, Longitude -117.29904.	1	\$10,000.00
6	SSO discharge of 28,925 gallons from Manhole No. 127, on Yates Road approximately 100 feet east of Cypress Avenue.	1	\$289,250.00
7	Failure to cleanup waste and debris within Turner Wash from the September 6-14, 2015 SSO event.	176	\$1,760,000.00
8	Failure to properly manage, operate, and maintain all parts of the sanitary sewer system	645	\$6,450,000.00
		TOTAL	\$127,178,104.00

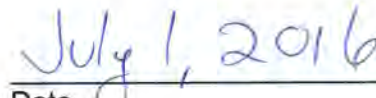
PROPOSED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

23. Based on consideration of the above facts, the applicable law, and after applying the administrative civil liability methodology as described in Attachments A through D of this Complaint, the Assistant Executive Officer of the Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$6,300,250.00**

CALIFORNIA ENVIRONMENTAL QUALITY ACT

24. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15308 and section 15321, subsection (a)(2). The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, issuance of this Complaint is not considered subject to the provisions of CEQA as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project."


Lauri Kemper
Assistant Executive Officer


Date

Attachments:

- A. Administrative Civil Liability Methodology
- B. Enforcement Policy Penalty Methodology Spreadsheet
- C. Economic Benefit Analysis Table
- D. USEPA MUNIPAY Output Table

EJT/ma/T: City of Victorville, ACL Complaint, 2016-06-30 EJT
File Under: ECM / WDID 6SSO11425

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

Lahontan Regional Water Quality Control Board

July 1, 2016

WDID 6SSO11425

Doug Robertson, City Manager
City of Victorville
P.O. Box 5001
Victorville, CA 92393-5001

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5. The City of Victorville discharges an average of 9.6 million gallons per day to the Victor Valley Wastewater Reclamation Authority (VWRA) interceptor system at six locations. The City is a partner in the VWRA Joint Powers Authority along with five other member entities. ["Gap Analysis for Waste Discharge Requirements Compliance (Final Report)," September 30, 2014, Hall & Foreman, Inc., Page 5]

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7. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) Permit. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit.
8. The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) was adopted on March 31, 1995, pursuant to Water Code section 13243, and it was most recently amended on September 10, 2015. The Basin Plan prohibits, "The discharge of untreated sewage, garbage, or other solid wastes into surface waters of the Region ..." [Basin Plan, at page 4.1-1].

ALLEGED VIOLATIONSViolation No. 1

9. On or about March 5 through 10, 2014, and for six days, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 89,075 gallons of untreated wastewater (raw sewage) to waters of the United States.

Violation No. 2

10. On or about March 26, 2015, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 211,450 gallons of raw sewage to waters of the United States.

Violation No. 3

11. On or about September 6 through 14, 2015, and for nine days, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 11,686,149 gallons of raw sewage to waters of the United States.

Violation No. 4

12. On or about November 20 through 25, 2015, and for six days, the City violated Permit Order C.1, the Basin Plan, and section 301 of the Clean Water Act by discharging approximately 73,200 gallons of raw sewage to waters of the United States.

Violation No. 5

13. On or about December 9, 2015, the City violated Permit Order C.1, the Basin Plan, and/or section 301 of the Clean Water Act by discharging approximately 5 gallons of raw sewage to waters of the United States.

Violation No. 6

14. On or about May 11, 2016, the City violated Permit Order C.1, the Basin Plan, and section 301 of the Clean Water Act by discharging approximately 28,925 gallons of raw sewage to waters of the United States.

Violation No. 7

15. On or about September 6, 2015, through March 8, 2016, and for 176 days, the City violated Permit Order D.7.(iii) by failing to clean up the raw sewage debris within Turner Wash from the September 6-14, 2015 SSO event.

Violation No. 8

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WATER CODE SECTIONS UPON WHICH ADMINISTRATIVE CIVIL LIABILITY IS BEING ASSESSED FOR THE ALLEGED VIOLATIONS

17. Pursuant to Water Code section 13385, subdivision (a)(2), a discharger is subject to civil liability for violating a waste discharge requirement. Pursuant to Water Code section 13385, subdivision (a)(4), a discharger is subject to civil liability for violation the Basin Plan. Pursuant to Water Code section 13385, subdivision (a)(5), a discharger is subject to civil liability for violating section 301 of the Clean Water Act.
18. Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Water Board in an amount not to exceed the sum of both of the following:
- (1) *Ten thousand dollars (\$10,000) for each day in which the violation occurs.*
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FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

21. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability, the Water Board is required to take into account factors that are incorporated into the State Water Board Water Quality Enforcement Policy. The required factors have been considered for each of the eight violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachments A through D, incorporated herein by reference.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

22. Pursuant to Water Code Section 13385, subdivision (c), the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$127,178,104**, as shown in the table below:

Violation #	Description	Days of Violation	Maximum Potential Liability
1	SSO discharge of 89,075 gallons from Manhole No. 149 in undeveloped easement area of Karen Drive, south of Hook Boulevard.	6	\$940,750.00

2	SSO discharge of 211,450 gallons from Manhole No. 110 in the dirt easement approximately 350 feet east of Grant Street and Lambert Lane.	1	\$2,114,500.00
3	SSO discharge of 11,686,149 gallons from GIS Manhole No. 143 (Sewer Atlas Book Manhole No. 120) in sewer easement located in Turner Wash.	9	\$116,941,490.00
4	SSO discharge of 73,200 gallons from Manhole No. 131 within the sewer easement west of 16711 Chalon Road.	6	\$784,450.00
5	SSO discharge of 5 gallons from an air release valve located on an 8-inch force main under a private railroad trestle and above the Mojave River. Latitude 34.56066, Longitude -117.29904.	1	\$10,000.00
6	SSO discharge of 28,925 gallons from Manhole No. 127, on Yates Road approximately 100 feet east of Cypress Avenue.	1	\$289,250.00
7	Failure to cleanup waste and debris within Turner Wash from the September 6-14, 2015 SSO event.	176	\$1,760,000.00
8	Failure to properly manage, operate, and maintain all parts of the sanitary sewer system	645	\$6,450,000.00
		TOTAL	\$127,178,104.00

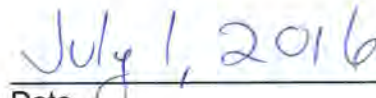
PROPOSED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

23. Based on consideration of the above facts, the applicable law, and after applying the administrative civil liability methodology as described in Attachments A through D of this Complaint, the Assistant Executive Officer of the Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$6,300,250.00**

CALIFORNIA ENVIRONMENTAL QUALITY ACT

24. Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15308 and section 15321, subsection (a)(2). The method of compliance with this enforcement action consists entirely of payment of an administrative penalty. As such, issuance of this Complaint is not considered subject to the provisions of CEQA as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project."


Lauri Kemper
Assistant Executive Officer


Date

Attachments:

- A. Administrative Civil Liability Methodology
- B. Enforcement Policy Penalty Methodology Spreadsheet
- C. Economic Benefit Analysis Table
- D. USEPA MUNIPAY Output Table

EJT/ma/T: City of Victorville, ACL Complaint, 2016-06-30 EJT
File Under: ECM / WDID 6SSO11425

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

Administrative civil liability may be imposed pursuant to the procedures described in California Water Code section 13323. The Complaint alleges the acts or failures to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Lahontan Regional Water Quality Control Board (Lahontan Water Board) in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and*
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.*

Water Code section 13385, subdivision (e) requires the Lahontan Water Board to consider several factors when determining the amount of civil liability to impose. These factors include:

...the nature, circumstances, extent, and gravity of the violation or 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, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy provides a calculation methodology for determining administrative civil liability. The calculation methodology includes an analysis of the factors in Water Code section 13385, subdivision (e), and it enables fair and consistent implementation of the Water Code's liability provisions.

The Lahontan Regional Water Quality Control Board (Lahontan Water Board) Prosecution Team prepared this methodology and the Penalty Worksheet in Attachment

B to the Complaint consistent with the Enforcement Policy's administrative civil liability calculation methodology.

The City of Victorville (Discharger or City) violations alleged in the Complaint are a combination of discharge and non-discharge violations of State Water Resources Control Board Order No. 2006-003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, and its amendment, Order No. WQ 2013-0058-EXEC (Permit), and of the *Water Quality Control Plan for the Lahontan Region* (Basin Plan).

Violations 1 through 6 are discharges resulting from unauthorized Sanitary Sewer Overflows (SSOs) of untreated wastewater (raw sewage) on various dates from March 5, 2014 through May 11, 2016 (see Table 1, below). The associated analysis for each of these discharge violations omits Step No. 3 of the Enforcement Policy's administrative civil liability methodology, which addresses non-discharge violations.

Violations 7 and 8 are non-discharge violations resulting from the City's failure to comply with the Permit. The City failed to clean up an SSO discharge in a timely manner and the City failed to properly maintain its sewer collection system. The associated analysis for each of these non-discharge violations omits Steps Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology, which addresses discharge violations.

Methodology Steps Nos. 6 through 10 apply to the Combined Total Initial Base Liability Amount for all eight violations. These steps are discussed after the Total Base Liability amounts are discussed for each violation.

Table 1, below, lists the alleged violations along with their respective Initial Base Liability amounts (Step 1 through Step 5 of the Methodology). The final recommended liability amount is provided in Table 2 at the end of this document.

Table 1. Violations and Initial Base Liability.

Violation No.	Description	Date of Violation	Days of Violation	Initial Base Liability
1	SSO discharge of 89,075 gallons from Manhole No. 149 in undeveloped easement area of Karen Drive, south of Hook Boulevard.	March 5-10, 2014	6	\$206,965.00
2	SSO discharge of 211,450 gallons from Manhole No. 110 in the dirt easement approximately 350 feet east of Grant Street and Lambert Lane.	March 26, 2015	1	\$604,747.00

3	SSO discharge of 11,686,149 gallons from GIS Manhole No. 143 (Sewer Atlas Book Manhole No. 120) in sewer easement located in Turner Wash.	September 6-14, 2015	9	\$7,999,961.62
4	SSO discharge of 73,200 gallons from Manhole No. 131 within the sewer easement west of 16711 Chalon Road.	November 20-25, 2015	6	\$224,352.70
5	SSO discharge of 5 gallons from an air release valve located on an 8-inch force main under a private railroad trestle and above the Mojave River. Latitude 34.56066, Longitude -117.29904.	December 9, 2015	1	\$4,290.00
6	SSO discharge of 28,925 gallons from Manhole No. 127, on Yates Road approximately 100 feet east of Cypress Avenue.	May 11, 2016	1	\$63,635.00
7	Failure to cleanup waste and debris within Turner Wash from the September 6-14, 2015 SSO event.	September 14, 2015 through March 8, 2016	176	\$1,760,000.00
8	Failure to properly manage, operate, and maintain all parts of the sanitary sewer system	March 5, 2014 through December 9, 2015	465	\$4,469,850.00
			TOTAL	\$15,333,801.32

Violation No. 1

SSO Discharge of 89,075 Gallons

Synopsis

Based on the City's March 11, 2014 "Mainline Stoppage Report," on March 5 through March 10, 2014, an SSO occurred from the City's manhole No. 149, located within an undeveloped easement area of Karen Drive, south of Hook Boulevard. This synopsis is based on that report.

91,875 gallons of raw sewage were discharged during the event. Of this amount, 2,800 gallons were bermed, recovered, and returned back to the sewer system. The remaining 89,075 gallons flowed across the land surface and into a concrete-lined drainage channel. The channel is tributary to the Mojave River, a water of the United States. The channel did not carry surface water flows at the time of the SSO discharge event.

The City received a report of sewage odors in the area of concern on Thursday, March 6, 2014. City staff investigated the area on March 6. City staff did not detect any odors or evidence of an SSO. City staff then attempted to contact the complainant later that day, and left a voice mail message.

City staff returned to the area four days later on Monday, March 10 and observed the SSO at 8:30 a.m. City staff constructed a berm to contain the discharge until the discharge could be stopped. It was determined that the SSO was caused by a blockage formed from non-dispersible wipe towels/rags. The blockage was cleared by 8:50 a.m. on March 10. 2,800 gallons were recovered from the bermed area and from catchment basins, and the affected catchment basins and concrete drainage channel were disinfected.

The City estimates that the SSO event began approximately 24 hours prior to the time of day the reporting party detected the odor (7:00 a.m.). Based on this assumption, the City calculated the total discharge quantity based upon an average flow rate of 245 gallons per day per unit for the 75 residential units serviced by this segment of sewer main pipe.

Step 1: Potential for Harm for Discharge Violations

Actual or threatened impacts to beneficial uses are determined using a three-factor scoring system. The three factors include: (a) the harm or potential harm to beneficial uses; (b) the physical, chemical, biological, or thermal characteristics of the discharge; and (c) the susceptibility to cleanup or abatement of the discharge(s). A numeric score is determined for each of the three factors. These scores are then added together to determine a final Potential for Harm score. Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of **6** (six) is assigned to Step 1 of the calculation methodology.

A. Factor 1: Harm or Potential Harm to Beneficial Uses

This factor evaluates direct or indirect harm or potential for harm to beneficial uses that may result from exposure to the pollutants or contaminants in the unauthorized discharge of raw sewage. A score between 0 (negligible) and 5 (major) is assigned in accordance with the statutory factors of the nature, circumstances, extent and gravity of the violation.

The Basin Plan was adopted pursuant to Water Code section 13243 on March 31, 1995, and was most recently amended on September 10, 2015. Chapter 2 of the Basin Plan (Table 2.1, Page 2-39) lists the designated beneficial uses for the Mojave River and its tributaries. The designated beneficial uses of the Mojave River and its tributaries that could be impacted by the unauthorized discharge include municipal and domestic supply, agricultural supply, groundwater recharge, contact recreation (swimming, water skiing, wading, and fishing), non-contact recreation (picnicking, sunbathing, hiking, boating, kayaking, sightseeing, aesthetic enjoyment), warm and cold freshwater habitats, wildlife habitat.

As noted in Finding No. 2 of the Permit, the raw sewage in domestic wastewater, as well as industrial and commercial wastewater, "...often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease and other pollutants." Discharges of raw sewage, "...may cause a public nuisance, particularly when raw untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking fishing or body contact recreation." Discharges of raw sewage can also, "...pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters."

The discharge of raw sewage occurred within an unlined catchment area and in a concrete-lined drainage channel. The channel is tributary to the Mojave River. The drainage channel was dry at the time of the raw sewage discharge, and a portion of the discharge infiltrated into the unlined catchment basin. It is likely that the discharge resulted in no impacts to contact and non-contact recreation beneficial uses. The Lahontan Water Board is not aware of any complaints or other evidence of impact to such uses resulting from the spill. However, the infiltration of raw sewage potentially impacted local groundwater resources.

The discharge of 89,075 gallons of raw sewage on March 5-10, 2014 resulted in **below moderate harm** to the beneficial uses of the Mojave River and its tributary areas. The Enforcement Policy defines below moderate as:

Below Moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

Based on the circumstances described above, a score of **2** (two) is assigned to Factor 1 of the calculation methodology.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

This factor evaluates the degree of toxicity of the discharge by evaluating the physical, chemical, biological, and/or thermal nature of the discharge. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. A score between 0 (negligible risk) and 4 (significant risk) is assigned based on a determination of the risk or threat of the discharged material on potential receptors. Potential receptors are those identified considering human, environmental and ecosystem health exposure pathways.

Raw sewage typically has elevated concentrations of biochemical oxygen demand (BOD), total suspended solids, high levels of viruses and bacteria, and toxic pollutants (such as heavy metals, pesticides, personal care products, and pharmaceuticals). These pollutants exert varying levels of impact on water quality and beneficial uses of receiving waters. High BOD reduces the amount of dissolved oxygen available for fish habitat. Just one virus, bacterium or worm can reproduce to cause a serious infection, especially in individuals with impaired immune systems. These considerations suggest a potential significant risk for this factor.

The high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors. The characteristics of the discharged raw sewage therefore posed an **above-moderate** risk or threat to potential receptors. The Enforcement Policy defines above-moderate as:

Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection).

Accordingly, a score of **3** (three) is assigned to Factor 2.

C. Factor 3: Susceptibility to Cleanup or Abatement

Pursuant to the Enforcement Policy a score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of one is assigned if less than 50 percent or more of the discharge is susceptible to cleanup or abatement.

The City was able to recover 2,800 gallons (approximately 3 percent) of the 91,875 gallons initially discharged. Because less than 50 percent of this SSO discharge is susceptible to cleanup and abatement, a score of **1** (one) is assigned to this factor.

Step 2: Assessments for Discharge Violations

The Enforcement Policy provides that the initial liability amount shall be determined on a per day and a per gallon basis per Water Code section 13385, subdivision (c), using the Potential for Harm score from Step 1 in conjunction with the Extent of Deviation from the Requirement of the violation. (See Enforcement Policy, Tables 1 and 2.)

A. Extent of Deviation from the Requirement

Permit Order No. C.1 prohibits, "Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States..."

The Basin Plan prohibits, "The discharge of untreated sewage, garbage, or other solid wastes into surface waters of the Region ..." [Basin Plan, at page 4.1-1].

Section 301 of the Federal Water Pollution Control Act (33 U.S.C. § 1311) (Clean Water Act) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

The raw sewage discharge rendered the prohibitions on discharging untreated wastewater to waters of the United States ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred, or if 100 percent of the discharge was cleaned up and abated.

The Enforcement Policy defines a major deviation as,

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

Accordingly, based on the Potential for Harm score of 6 and major deviation from the requirements, the per-gallon and per-day factors for the discharge are both **0.22**.

B. Initial Amount of ACL

The initial base liability amount for the discharge is calculated by multiplying and adding:

$$\begin{aligned} & (\text{per gallon factor}) \times (\text{gallons discharged but not cleaned up over 1000 gallons}) \times \\ & (\text{maximum per gallon liability}) + (\text{per day factor}) \times (\text{days of violation}) \times (\text{maximum per} \\ & \quad \text{day liability}) \\ & = \text{Initial Base Liability} \end{aligned}$$

$$(0.22) \times (88,075 \text{ gallons}) \times (\$10/\text{gallon}) + (0.22) \times (6 \text{ day}) \times (\$10,000/\text{day}) =$$

\$206,965.00

Step 3: Per Day Assessments for Non-Discharge Violations

Non-discharge violations are not applicable for this alleged violation.

Step 4: Adjustment Factors

The Enforcement Policy describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, 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.

A. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a culpability multiplier of **1.0** has been selected for the reasons described below:

The City commissioned a Gap Analysis for its sewer collection system and associated infrastructure facilities, which was completed on September 30, 2014 ["Gap Analysis for Waste Discharge Requirements Compliance (Final Report)" prepared by Hall & Foreman, Inc.]. The purpose of the Gap Analysis is to examine systemic factors that have contributed to, or caused, a gap between the current state of the system and the future and desired state outlined the Permit compliance requirements. The Gap Analysis identified several areas the City needed to complete in order to come into compliance with the Permit.

The Gap Analysis noted (page 28) that the City had adopted an Operations and Maintenance (O&M) Plan pursuant to its 2009 Sanitary Sewer Management Plan – approximately 5 years prior to the March 5-10, 2014 SSO event. The O&M Plan stipulated the cleaning and inspection of all sewer segments within a 7-year cycle. However, the Gap Analysis states that **the City does not own the necessary cleaning and inspection equipment**. The City only conducts the required maintenance, cleaning, and inspections, "...when there is a specific need to do so." The City's failure to properly maintain its sewer collection system in accordance with its own plans and procedures for the five years prior to the March, 2014 SSO event justifies a culpability factor that is higher than neutral.

Violation No. 8, discussed later in this analysis, addresses the City's overall failure to properly maintain its sewer collection system in accordance with its Permit. The City's culpability for failing to follow its own O&M Plan is considered in the culpability section associated with that violation. Therefore, the Lahontan Water Board Prosecution Team is recommending a neutral culpability multiplier of 1.0 for Violation No. 1.

The City is ultimately responsible for the proper operations and maintenance of its sewer collection system. While a neutral culpability multiplier of 1.0 is presently

being considered for this violation, the Lahontan Water Board has ample justification to use a higher factor for the reasons noted above.

B. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is for situations where cleanup and/or cooperation is minimal or absent. In this case, a neutral Cleanup and Cooperation multiplier of **1.0** has been selected.

Lower values are typically reserved for dischargers who immediately identify a discharge and implement exceptional cleanup measures, abatement, or mitigation beyond what is expected.

As noted in the previous synopsis discussion, while the City initially responded to the call received regarding potential odors, the City failed to adequately follow up with the caller and identify the active discharge until four days later. Once identified, the City then finally stopped the discharge and cleaned up what it could.

C. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$206,965.00** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$206,965.00) \times (1.0) \times (1.0) \times (1.0) &= \$206,965.00 \end{aligned}$$

Violation No. 2

SSO Discharge of 211,450 Gallons

Synopsis

On March 26, 2015, an SSO occurred from the City's manhole No. 110, located within an undeveloped easement area east of the intersection of Grant Street and Lambert Lane. 214,450 gallons of raw sewage were discharged into a wash during the event. The City constructed three dirt berms in the wash to contain the discharge of the raw sewage. 3,000 gallons were collected behind the berms and returned back to the sewer system. The remaining 211,450 gallons infiltrated into the ground surface of the wash. Based upon a GIS Map of the effluent flow provided by the City, the raw sewage flowed through over 4,500 feet of the wash bed. The wash is tributary to the Mojave River, but it did not carry surface water flows at the time of the SSO discharge event. [City of Victorville – SSO Technical Report, CIWQS Spill Event ID No. 814130]

A City employee initially observed the discharge on Thursday, March 26, 2015 at approximately 9:30 a.m. The employee observed water flowing on Coad Road. The employee thought the water was from a meter flushing or from the City's Water Department and did not report the observed discharge until after the SSO event had been resolved. [City's March 26, 2015 "Mainline Stoppage Report" and March 31, 2015 Employee Statement of Tom Morales, Maintenance Worker III]

Another City employee directly observed the discharge occurring at approximately 3:00 p.m. on Thursday, March 26, 2015 in the earthen drainage channel east of Grant Street and Lambert Lane, along Coad Road. City cleanup crews arrived at the scene at approximately 3:20 p.m. A front-end loader was brought to the scene at approximately 3:45 p.m. to install dirt berms at three locations within the wash. The discharge ended at approximately 4:00 p.m., when the blockage was removed from the sewer system downgradient from the point of discharge. The raw sewage that had been collected behind the constructed berms was collected in a vacuum truck and directed back into the City's sewer collection system. [City's March 26, 2015 "Mainline Stoppage Report"]

City crews returned on Friday, March 27, at 6:30 a.m. to continue the cleanup and disinfection process. Solids were raked, collected, and properly disposed at the Victor Valley Wastewater Reclamation Authority (VWRA) treatment plant. Disinfectant was applied to all remote spill areas throughout the flow path of the discharge. The constructed berms were removed from the drainage channels, and the soil was scarified. Sewer manholes that were surcharged from the SSO event were rinsed down and cleaned up. [City's March 26, 2015 "Mainline Stoppage Report"]

The City determined the cause of the SSO event to be a buildup of fats, oils, and greases. This was determined based upon the City's observation of grease and debris on the shelves of the downstream sewer manholes (Nos. 116 and 117) that were surcharged during the event. [City's March 26, 2015 "Mainline Stoppage Report"]

The City calculated the spill volume based upon an electronic meter that had been installed downgradient from the point of discharge. The City has a total of six locations where the City's sanitary sewer system connects to the VVWRA's trunk line. These connection points are continuously metered. The City, as a member of the Joint Powers Authority of VVWRA, has access to each of these electronic metering stations. The diurnal graphs plotted from the metering station identify the discharge start and end times on March 26. Comparing the flow data from March 26 to typical flows that occur during the time of day that the SSO event occurred, the City calculated a total loss of 214,450 gallons of raw sewage during the SSO event. [City of Victorville – SSO Technical Report]

In its SSO Technical Report for this discharge, the City states on page 5, "...not knowing an overflow was occurring was the biggest deficiency." The report goes on to state that City staff has met with VVWRA and their flow meter vendor to implement an alarm system alert the City of unusually low flow or high level readings from the continuous-read flow meters.

The City did not report the SSO event to the Lahontan Water Board until April 7, 2015 – 12 days after the event occurred. Additionally, the City failed to report the SSO event to the California Department of Emergency Services (CAL-OES) until December 21, 2015 – almost nine months after the SSO event. A City employee did make two attempts to call Cal-OES twice on March 26, but the employee reported that there was no answer when he placed the calls¹. [City's March 26, 2015 "Mainline Stoppage Report"]

Step 1: Potential for Harm for Discharge Violations

Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of **6** (six) is assigned to Step 1 of the calculation methodology.

A. Factor 1: Harm or Potential Harm to Beneficial Uses

The discharge of raw sewage occurred within a 4,500-foot stretch of an earthen wash, which is tributary to the Mojave River. The wash was dry at the time of the raw sewage discharge, and the entire amount of the discharge infiltrated into the earthen wash.

It is likely that the discharge resulted in no impacts to contact and non-contact recreation beneficial uses. The Lahontan Water Board is not aware of any complaints or other evidence of impact to such uses resulting from the spill.

These delayed reports also violate the Permit subject to Water Code section 13267. In light of the already significant penalties associated with the alleged violations, the Prosecution Team is exercising its discretion in no seeking administrative civil liability for the reporting violations. The Lahontan Water Board reserves the right to take any enforcement action authorized by law.¹

However, the infiltration of raw sewage potentially impacted local groundwater resources. Further, impacts to recreational and wildlife resources from the discharge of the raw sewage along the 4,500-foot length of its flow path within the earthen wash may be reasonably expected.

The discharge of 211,450 gallons of raw sewage on March 26, 2015 resulted in **below moderate harm** to the beneficial uses of the Mojave River and its tributary areas. The Enforcement Policy defines below moderate as:

Below Moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

Based on the circumstances described above, a score of **2** (two) is assigned to Factor 1 of the calculation methodology.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Identical to this factor analysis for Violation 1, the high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors. The characteristics of the discharged raw sewage therefore posed an **above-moderate** risk or threat to potential receptors. Accordingly, a score of **3** (three) is assigned to Factor 2.

C. Factor 3: Susceptibility to Cleanup or Abatement

The City was able to recover 3,000 gallons (approximately one percent) of the 214,450 gallons initially discharged. Because less than 50 percent of this SSO discharge is susceptible to cleanup and abatement, a score of **1** (one) is assigned to this factor.

Step 2: Assessments for Discharge Violations

A. Extent of Deviation from the Requirement

The raw sewage discharge rendered the prohibitions on discharging untreated wastewater to waters of the United States ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred, or if 100 percent of the discharge was cleaned up and abated. The violation is a major deviation from the requirements.

Accordingly, based on the Potential for Harm score of 6 and major deviation from the requirements, the per-gallon and per-day factors for the discharge are both **0.22**.

B. Initial Amount of ACL

The initial base liability amount for the discharge is calculated by multiplying and adding:

(per gallon factor) x (gallons discharged but not cleaned up over 1000 gallons) x
(maximum per gallon liability) + (per day factor) x (days of violation) x (maximum per
day liability)
= Initial Base Liability

(0.22) x (210,450 gallons) x (\$10/gallon) + (0.22) x (1 day) x (\$10,000/day) =
\$465,190.00

Step 3: Per Day Assessments for Non-Discharge Violations

Non-discharge violations are not applicable for this alleged violation.

Step 4: Adjustment Factors

A. Adjustment for Culpability

In this case, a culpability multiplier of **1.0** has been selected.

As noted in the culpability discussion for Violation No. 1, the City commissioned a Gap Analysis for its sewer collection system and associated infrastructure facilities, which was completed on September 30, 2014. The Gap Analysis identified that the City had not been implementing the O&M Plan that had been identified in its 2009 Sanitary Sewer Management Plan. The Gap Analysis also identifies (pages 38-39) the need for the City to develop and implement an effective FOG (fats, oils, greases) program based on the requirements described in the Permit and in accordance with the City's own ordinances. The Gap Analysis recommends the City to inventory and characterize potential FOG sources, develop legal authority to impose FOG program requirements, and to develop and implement an associated monitoring and enforcement program.

The City's failure to properly maintain its sewer collection system in accordance with its own plans and procedures, and the City's failure to implement an effective FOG program in accordance with the Permit and the City's own ordinances justifies a culpability factor that is higher than neutral.

Violation No. 8, discussed later in this analysis, addresses the City's overall failure to properly maintain its sewer collection system in accordance with its Permit. The City's culpability for failing to follow its own O&M Plan is considered in the culpability section associated with that violation. Therefore, the Lahontan Water Board Prosecution Team is recommending a neutral culpability multiplier of 1.0 for Violation No. 2.

The City is ultimately responsible for the proper operations and maintenance of its sewer collection system. While a neutral culpability multiplier of 1.0 is presently being considered for this violation, the Lahontan Water Board has ample justification to use a higher factor for the reasons noted above.

B. Adjustment for Cleanup and Cooperation

In this case, a Cleanup and Cooperation multiplier of **1.3** has been selected.

As noted in the previous synopsis discussion, while the City quickly implemented appropriate containment, cleanup, and corrective measures once they determined an SSO was occurring, their own staff (a Maintenance Worker III position) failed to recognize a spill was occurring when he observed the spill in progress. The City did not fully recognize that an SSO event was occurring until almost six hours after the initial observation. Had the employee bothered to investigate the cause of the running water he observed, the discharge amount could have been greatly reduced.

The City has the ability to collect data from the continuous-read flow meters installed at their connection points to the VVWRA trunk line, which they collected after the SSO event to determine the spill volume. However, the City failed to develop an appropriate communication system with VVWRA to implement an alarm system to alert City staff of unusually low flow or high level readings from the flow meters. The City did not begin to explore this option until after the SSO event occurred, as noted in the associated SSO Technical Report prepared by the City. However, the City has been voluntarily installing smart manholes at key locations which can detect high water levels and alert City staff.

Finally, the City did not report the SSO event to the Lahontan Water Board until April 7, 2015 – 12 days after the event occurred. The City also failed to report the SSO event to the California Department of Emergency Services (CAL-OES) until December 21, 2015 – almost nine months after the SSO event.

The City's failure to recognize that a spill was occurring directly resulted in a much larger volume of discharge. The City's failure to properly notify the Lahontan Water Board and Cal-OES increases the risk of receptor exposure. The City's failure to adequately coordinate with the VVWRA prior to the SSO to develop an alarm notification system from the installed continuous-read flow meters directly resulted in exacerbating the volume of discharge that occurred.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$604,747.00** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$465,190.00) \times (1.0) \times (1.3) \times (1.0) &= \$604,747.00 \end{aligned}$$

Violation No. 3

SSO Discharge of 11,686,149 Gallons

Synopsis

Based on the City of Victorville – SSO Report [CIWQS Spill Event ID No. 818116], on September 6 through 14, 2015, an SSO occurred from the City's manhole No. 143 (identified via Victorville City GIS Sewer Manhole system, and this is also known as manhole No. 120 in the Victorville Sewer Atlas Book), located approximately 240 feet northwest from the intersection of Happy Valley Lane and Royston Street. 11,688,149 gallons of raw sewage were discharged into Turner Wash during the event. The City constructed two dirt berms in the wash to contain the discharge of the raw sewage. 2,000 gallons were collected behind the berms and returned back to the sewer system. The remaining 11,686,149 gallons infiltrated into the soil surface of the wash. Based upon a GIS Map of the effluent flow provided by the City, the raw sewage flowed through over 3,000 feet of the wash bed. Turner Wash is a direct tributary to the Mojave River, but it did not carry surface water flows at the time of the SSO discharge event.

City Public Works Supervisor Sam Arvizu directly observed flowing water in a portion of Turner Wash on Monday morning at approximately 9:45 a.m., September 14, 2015. Mr. Arvizu followed the water stream in the otherwise dry wash bed, and he observed overflowing raw sewage from a sewer manhole. He immediately contacted other City staff at 9:58 a.m. City crews arrived on site at 10:10 a.m., and they were able to stop the discharge by 11:55 a.m.

City crews observed that the sewer manhole was vandalized. The frame and cover had been removed, and debris was deposited in the manhole. Upon arrival, City crew members found an auto tire on top of the riser cone, along with a length of four-inch PVC or SDR 35 pipe protruding from the overflowing manhole. While removing the debris, City crew members found a second four-inch pipe standing upright in the overflowing manhole, along with a small tire and wheel that was lodged in the channel.

A temporary earthen berm was constructed in the immediate vicinity of the overflowing sewer manhole to stop the flow of raw sewage from continuing to flow in Turner Wash. A second earthen berm was constructed at the far northerly edge of the raw sewage flow (approximately 3,000 feet downgradient from the overflowing manhole) to curtail further downstream impacts.

Heavy equipment used to flush the sewer pipe could not maneuver the sandy soil of Turner Wash until a necessary access road could be constructed. Once access was provided, the equipment began removing debris from the sewer pipe by 11:00 a.m.

Although manual clean-up and monitoring of the area continued for several days after the spill event, the site was not entirely cleaned up until March 8, 2016 (discussed later in Violation No. 8).

The City determined that the discharge began at approximately 11:00 a.m. on September 6, 2015. This is based upon a review of the diurnal graphs plotted from the metering station that had previously been installed at the City's sewer line connection to the VVWRA Trunk line, downstream from the point of discharge. Using this same chart, the City calculated the total spill volume to be 11,688,140 gallons.

In its SSO Technical Report for this discharge, the City states on page 4, "...not knowing an overflow was occurring was the biggest deficiency." The report goes on to state that City staff has met with VVWRA and their flow meter vendor to implement an alarm system alert the City of unusually low flow or high level readings from the continuous-read flow meters. However, this section of the SSO Technical Report for this SSO event repeats, verbatim, the language stated in the SSO Technical Report for the March 26, 2015 SSO event [CIWQS Spill Event ID No. 814130].

Step 1: Potential for Harm for Discharge Violations

Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of **7** (seven) is assigned to Step 1 of the calculation methodology.

A. Factor 1: Harm or Potential Harm to Beneficial Uses

The discharge of raw sewage occurred within a 3,000-foot stretch of Turner Wash, which is tributary to the Mojave River. Turner Wash was dry at the time of the raw sewage discharge, and the entire amount of the discharge infiltrated into the sandy soils of the wash.

It is likely that the discharge resulted in no impacts to contact and non-contact recreation beneficial uses. The Lahontan Water Board is not aware of any complaints or other evidence of impact to such uses resulting from the spill.

However, the discharge of over eleven million gallons of raw sewage over a nine-day period could adversely impact local groundwater resources, especially since the entire discharge infiltrated into the sandy soils of the wash. Based upon the GeoTracker database, a drinking water well is located approximately 1,000 feet downgradient from the point of discharge. Further, impacts to recreational and wildlife resources from the discharge of the raw sewage along the 3,000-foot length of its flow path within the earthen wash may be reasonably expected. The site of the discharge occurred in an area where any member of the public may be present (walking, bicycling, etc.), creating a potentially significant health hazard.

At a minimum, the discharge of 11,686,149 gallons of raw sewage on September 6 through 14, 2015 resulted in **moderate harm** to the beneficial uses of the Mojave River and its tributary areas. The Enforcement Policy defines below moderate as:

Moderate –moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).

Based on the circumstances described above, a score of **3** (three) is assigned to Factor 1 of the calculation methodology.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Identical to this factor analysis for Violation No. 1, the high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors. The characteristics of the discharged raw sewage therefore posed an **above-moderate** risk or threat to potential receptors. Accordingly, a score of **3** (three) is assigned to Factor 2.

C. Factor 3: Susceptibility to Cleanup or Abatement

The City was able to recover 2,000 gallons (approximately 0.02 percent) of the 11,688,149 gallons initially discharged. Because less than 50 percent of this SSO discharge is susceptible to cleanup and abatement, a score of **1** (one) is assigned to this factor.

Step 2: Assessments for Discharge Violations

A. Extent of Deviation from the Requirement

The raw sewage discharge rendered the prohibitions on discharging untreated wastewater to waters of the United States ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred, or if 100 percent of the discharge was cleaned up and abated.

The Enforcement Policy defines a major deviation as,

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

Accordingly, based on the Potential for Harm score of 7 and major deviation from the requirements, the per-gallon and per-day factors for the discharge are both **0.31**.

B. Initial Amount of ACL

The initial base liability amount for the discharge is calculated by multiplying and adding:

$$\begin{aligned} & (\text{per gallon factor}) \times (\text{gallons discharged but not cleaned up over 1000 gallons}) \times \\ & (\text{maximum per gallon liability}) + (\text{per day factor}) \times (\text{days of violation}) \times (\text{maximum per} \\ & \text{day liability}) \\ & = \text{Initial Base Liability} \end{aligned}$$

$$(0.31) \times (11,685,149 \text{ gallons}) \times (\$2/\text{gallon}) + (0.31) \times (9 \text{ day}) \times (\$10,000/\text{day}) =$$

\$7,272,692.38

Step 3: Per Day Assessments for Non-Discharge Violations

Non-discharge violations are not applicable for this alleged violation.

Step 4: Adjustment Factors

A. Adjustment for Culpability

As noted in the culpability discussion for Violation No. 1, the City commissioned a Gap Analysis for its sewer collection system and associated infrastructure facilities, which was completed on September 30, 2014. The Gap Analysis identified that the City had not been implementing the O&M Plan that had been identified in its 2009 Sanitary Sewer Management Plan. The Gap Analysis also identifies (page 30) the need for the City to include easement right-of-way surface inspections to monitor for, among other items, vandalism.

The City's failure to properly maintain and monitor its sewer collection system in accordance with its own plans and procedures and in accordance with the recommendations of the 2014 Gap Analysis justifies a culpability factor that is higher than neutral.

Violation No. 8, discussed later in this analysis, addresses the City's overall failure to properly maintain its sewer collection system in accordance with its Permit. The City's culpability for failing to follow its own O&M Plan is considered in the culpability section associated with that violation. Therefore, the Lahontan Water Board Prosecution Team is recommending a neutral culpability multiplier of 1.0 for Violation No. 3.

The City is ultimately responsible for the proper operations and maintenance of its sewer collection system. While a neutral culpability multiplier of 1.0 is presently being considered for this violation, the Lahontan Water Board has ample justification to use a higher factor for the reasons noted above.

B. Adjustment for Cleanup and Cooperation

In this case, a Cleanup and Cooperation multiplier of **1.1** has been selected.

The City quickly implemented appropriate containment, cleanup, and corrective measures once they determined an SSO was occurring.

The City has the ability to collect data from the continuous-read flow meters installed at their connection points to the VVWRA trunk line, which they collected after the SSO event to determine the spill volume. However, the City failed to develop an appropriate communication system with VVWRA to implement an alarm system to alert City staff of unusually low flow or high level readings from the flow meters. The City previously stated that they would be meeting with VVWRA and its contractor to develop such an alarm system as a corrective action measure to address the March 25, 2015 SSO event. However, almost six months after that SSO event, the alarm system had still not been developed and implemented, and the City continues to state that they still intend to develop and implement the alarm system as a corrective measure to address the September, 2015 SSO event.

The City's failure to adequately and timely coordinate with VVWRA to develop an alarm notification system from the installed continuous-read flow meters prior to the September, 2015 SSO directly resulted in significantly increasing the volume of raw sewage that discharged.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$7,999,961.62** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} &(\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) = \text{Total Base Liability} \\ &(\$7,272,692.38) \times (1.0) \times (1.1) \times (1.0) = \$7,999,961.62 \end{aligned}$$

Violation No. 4

SSO Discharge of 73,200 Gallons

Synopsis

On November 20-25, 2015, an SSO occurred from the City's manhole No. 131, located west of an apartment complex at 16711 Chalon Road. 73,500 gallons of raw sewage were discharged into an earthen drainage during the event. The City was able to recover 55 gallons of the amount that was discharged and returned that volume back to the sewer system. The remaining 73,445 gallons infiltrated into the ground surface of the drainage. Based upon a GIS Map of the effluent flow provided by the City, the raw sewage flowed through over 1,500 feet of the wash surface. The wash is tributary to the Mojave River and is a water of the United States, but it did not carry surface water flows at the time of the SSO discharge event. [December 9, 2015 "Report of Unauthorized Waste Discharge Information Form"]

The City initially received a call of standing water and sewer odors in the area of the SSO event at 10:20 a.m. on Wednesday, November 25, 2015. The reporting party stated that he had noticed the odors for five or six days prior to reporting the incident, indicating the SSO likely began on or around November 20, 2015. A City staff person arrived on site at approximately 11:10 a.m., and he discovered the overflowing manhole at approximately 11:25 a.m. Additional City crew staff arrived to the site at approximately 11:40 a.m., and they were able to stop the discharge completely by 1:45 p.m. The overflow was momentarily halted between 12:30 p.m. and 12:55 p.m. when the blockage was partially cleared. [CIWQS Spill ID Form 819880 Version 2, December 9, 2015 "Report of Unauthorized Waste Discharge Information Form," and Mainline Stoppage Report]

The cause of the SSO discharge was determined to be from vandalism and from FOG. Several plastic bags of garbage, a bread toaster, a rubber ball, and other debris were manually removed from the manhole. A total of 100 pounds of debris were removed manually, and 75 pounds of FOG and debris was vacuumed out of the affected manhole. [December 9, 2015 "Report of Unauthorized Waste Discharge Information Form"]

City staff returned on Thursday, November 26, prior to 7:00 a.m. The worker used hand tools to remove additional FOG from the channel of manhole No. 131 and ensured sewage was appropriately flowing in the sewer collection system. Additional City crews returned on Friday, November 27, prior to 7:00 a.m. The crews flushed the sewer mains in the area of the discharge and vacuumed an additional 150 pounds of FOG, debris, and grit. Additionally, 55 gallons of standing raw sewage was vacuumed from the area where the initial spill deposited and pooled within the earthen wash area. The area was disinfected at that time, two days after the spill occurred. [December 9, 2015 "Report of Unauthorized Waste Discharge Information Form"]

The City did not contact Cal-OES until December 16, 2015 – 21 days after the SSO event occurred. [Mainline Stoppage Report]

The City calculated the spill volume based upon the number of residential units contributing flow to manhole No. 131 over the 6 days, using an average of 240 gallons per unit per day. [Mainline Stoppage Report]

Step 1: Potential for Harm for Discharge Violations

Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of **6** (six) is assigned to Step 1 of the calculation methodology.

A. Factor 1: Harm or Potential Harm to Beneficial Uses

The discharge of raw sewage occurred within a 1,500-foot stretch of an earthen wash, which is tributary to the Mojave River. The wash was dry at the time of the raw sewage discharge, and the entire amount of the discharge infiltrated into the earthen wash.

It is likely that the discharge resulted in no impacts to contact and non-contact recreation beneficial uses. The Lahontan Water Board is not aware of any complaints or other evidence of impact to such uses resulting from the spill. However, the infiltration of raw sewage potentially impacted local groundwater resources.

The discharge of 73,445 gallons of raw sewage on November 20 through 25, 2015 resulted in **below moderate harm** to the beneficial uses of the Mojave River and its tributary areas. Based on the circumstances described above, a score of **2** (two) is assigned to Factor 1 of the calculation methodology.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Identical to this factor analysis for Violation No. 1, the high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors. The characteristics of the discharged raw sewage therefore posed an **above-moderate** risk or threat to potential receptors. Accordingly, a score of **3** (three) is assigned to Factor 2.

C. Factor 3: Susceptibility to Cleanup or Abatement

The City was able to recover 55 gallons (approximately 0.07 percent) of the 73,500 gallons initially discharged. Because less than 50 percent of this SSO discharge is susceptible to cleanup and abatement, a score of **1** (one) is assigned to this factor.

Step 2: Assessments for Discharge Violations

A. Extent of Deviation from the Requirement

The raw sewage discharge rendered the prohibitions on discharging untreated wastewater to waters of the United States ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred, or if 100 percent of the discharge was cleaned up and abated. The violation is a major deviation from the requirements.

Accordingly, based on the Potential for Harm score of 6 and major deviation from the requirements, the per-gallon and per-day factors for the discharge are both **0.22**.

B. Initial Amount of ACL

The initial base liability amount for the discharge is calculated by multiplying and adding:

$$\begin{aligned} & (\text{per gallon factor}) \times (\text{gallons discharged but not cleaned up over 1000 gallons}) \times \\ & (\text{maximum per gallon liability}) + (\text{per day factor}) \times (\text{days of violation}) \times (\text{maximum per} \\ & \text{day liability}) \\ & = \text{Initial Base Liability} \end{aligned}$$

$$(0.22) \times (72,445 \text{ gallons}) \times (\$10/\text{gallon}) + (0.22) \times (6 \text{ day}) \times (\$10,000/\text{day}) =$$

\$172,579.00

Step 3: Per Day Assessments for Non-Discharge Violations

Non-discharge violations are not applicable for this alleged violation.

Step 4: Adjustment Factors

A. Adjustment for Culpability

Identical to this factor analysis for Violation No. 3, a culpability multiplier of **1.0** has been selected. However, the Lahontan Water Board has ample justification to use a higher factor for the reasons noted in the analysis for Violation No. 1.

B. Adjustment for Cleanup and Cooperation

In this case, a Cleanup and Cooperation multiplier of **1.3** has been selected.

The City quickly implemented appropriate containment and corrective measures once they determined an SSO was occurring. However, the City did not collect the raw sewage that had pooled within the wash area and disinfect the area until two days after they were notified of the discharger and initially mobilized crews to address the SSO event. Had the City collected and disposed the pooled raw sewage on the day they initially mobilized crews, then the amount they collected would likely have been much more than 55 gallons, thereby reducing the amount that likely infiltrated through the ground surface. Further, failing to immediately clean up the raw sewage increased the risk of exposure to receptors for an additional two days.

Finally, the City did not report the SSO event to CAL-OES until December 21, 2015 21 days after the SSO event.

The City's failure to recognize that a spill was occurring directly resulted in a much larger volume of discharge. The City's failure to immediately clean up the pooled raw sewage for two days increased the amount of sewage that likely infiltrated the ground surface and potentially adversely impacted area groundwater resources. The City's failure to immediately clean up the pooled raw sewage and properly notify Cal-OES increases the risk of receptor exposure.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$224,352.70** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$172,579.00) \times (1.0) \times (1.3) \times (1.0) &= \$224,352.70 \end{aligned}$$

Violation No. 5

SSO Discharge of 5 Gallons

Synopsis

On December 9, 2016, at 2:45 p.m., an SSO was observed by State Water Board staff member Bryan Elder while conducting a routine Permit inspection. The leak was observed from an air relief valve on a section of force main located under a private railroad trestle crossing over the Mojave River. The valve was located on the eastern side of the crossing and was corroded. The State Water Board inspection report notes that the valve appeared to be weathered, had exceeded its useful life, and discharged raw sewage directly into the Mojave River. The inspection report states approximately one to two gallons of raw sewage discharge were observed during the inspection, but that it was unknown how long the discharge had actually been occurring. [State Water Board Compliance Inspection Report, dated February 19, 2016]

City staff initially arrived at the site and temporarily ceased further discharges by closing the ball valve. This occurred at 3:20 p.m. on December 9. The City replaced the valve with a new valve the following day on December 10 at 10:45 a.m. The City also increased its number of regular inspections for this area and adjusted its schedule of preventative maintenance. The City estimated a total of 5 gallons likely discharged on December 9, 2015. [December 10, 2015 "Report of Unauthorized Waste Discharge Information Form"]

Step 1: Potential for Harm for Discharge Violations

Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of **6** (six) is assigned to Step 1 of the calculation methodology.

A. Factor 1: Harm or Potential Harm to Beneficial Uses

The discharge of raw sewage occurred directly above and into the Mojave River. The river had flowing water at the time of the raw sewage discharge.

It is likely that the discharge resulted in no impacts to contact and non-contact recreation beneficial uses. The Lahontan Water Board is not aware of any complaints or other evidence of impact to such uses resulting from the spill.

However, the site of the discharge occurred in an area where the public has access. Although the discharge seems relatively small, the discharge of raw sewage directly above the Mojave River in an area where any member of the public may be walking creates a health hazard.

The discharge of 5 gallons of raw sewage on December 9, 2015 resulted in **below moderate harm** to the beneficial uses of the Mojave River and its tributary areas. Based on the circumstances described above, a score of **2** (two) is assigned to Factor 1 of the calculation methodology.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Identical to this factor analysis for Violation No. 1, the high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors. The characteristics of the discharged raw sewage therefore posed an **above-moderate** risk or threat to potential receptors. Accordingly, a score of **3** (three) is assigned to Factor 2.

C. Factor 3: Susceptibility to Cleanup or Abatement

For this violation, all of the raw sewage flowed directly into the Mojave River (and infiltrated into the river bed). The discharge was unrecoverable, and therefore a factor of **1** (one) is assigned.

Step 2: Assessments for Discharge Violations

A. Extent of Deviation from the Requirement

The raw sewage discharge rendered the prohibitions on discharging untreated wastewater to waters of the United States ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred, or if 100 percent of the discharge was cleaned up and abated. The violation is a major deviation from the requirements.

Accordingly, based on the Potential for Harm score of 6 and major deviation from the requirements, the per-gallon and per-day factors for the discharge are both **0.22**.

B. Initial Amount of ACL

The initial base liability amount for the discharge is calculated by multiplying and adding:

$$\begin{aligned} & (\text{per gallon factor}) \times (\text{gallons discharged but not cleaned up over 1000 gallons}) \times \\ & (\text{maximum per gallon liability}) + (\text{per day factor}) \times (\text{days of violation}) \times (\text{maximum per} \\ & \quad \text{day liability}) \\ & = \text{Initial Base Liability} \end{aligned}$$

$$(0.22) \times (0 \text{ gallons}) \times (\$10/\text{gallon}) + (0.22) \times (1 \text{ day}) \times (\$10,000/\text{day}) = \mathbf{\$2,200.00}$$

Step 3: Per Day Assessments for Non-Discharge Violations

Non-discharge violations are not applicable for this alleged violation.

Step 4: Adjustment Factors

A. Adjustment for Culpability

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

As noted in the culpability discussion for Violation No. 1, the City commissioned a Gap Analysis for its sewer collection system and associated infrastructure facilities, which was completed on September 30, 2014. The Gap Analysis identified that the City had not been implementing the O&M Plan that had been identified in its 2009 Sanitary Sewer Management Plan. The Gap Analysis also recommended (page 29) that the City develop a proactive maintenance program which would include inspecting its sewer collection system for areas of deterioration, such as that due to corrosion.

For other SSO violations in this analysis, culpability for failing to properly maintain its system is considered in the analysis associated with Violation No. 8. But for Violation No. 5, the City is directly culpable for failing to properly inspect a force main line that is directly over the Mojave River. Indeed, the State Water Board inspection report notes that other areas of this force main also appear to be corroded. Further, the duration and volume of the actual discharge is unknown because of the City's lack of inspecting this vulnerable area on a frequent basis. The City was not able to provide evidence of when this section was last inspected other than indicating that the air relief valve was installed in 1994 when this section of force main was replaced [see inspection report].

The City's failure to properly inspect and maintain its sewer collection system in accordance with its own plans and procedures, especially a section of exposed force main located directly above the Mojave River, justifies a high culpability factor in this matter.

B. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is for situations where cleanup and/or cooperation is minimal or absent. In this case, a neutral Cleanup and Cooperation multiplier of **1.3** has been selected.

Lower values are typically reserved for dischargers who immediately identify a discharge and implement appropriate cleanup measures.

The City did quickly respond once it was realized that a discharge was occurring. However, the City did not know the discharge was occurring until State Water Board

staff pointed it out to them during a routine Permit inspection. Because the City had not regularly been inspecting this section of vulnerable force main that is directly above the Mojave River, the City was unaware that sections of the pipe (including the air relief valve) were corroding and failing.

The City's failure to properly inspect and maintain its system in general, and this section of vulnerable force main specifically, resulted in a discharge of raw sewage into the Mojave River for an unknown extent of time.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$4,290.00** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$2,200.00) \times (1.5) \times (1.3) \times (1.0) &= \$4,290.00 \end{aligned}$$

Violation No. 6

SSO Discharge of 28,925 Gallons

Synopsis

On May 11, 2016, an SSO occurred from the City's manhole No. 127, located on Yates Road, 100 feet east of Cypress Avenue. 30,125 gallons of raw sewage were discharged along a 200-foot section of Yates Road, into a 2,850-foot section of a concrete-lined drainage that flows through the Green Tree Golf Course, an 1,100-foot portion of a concrete-lined channel through Doris Davies Park, and then into a 650-foot section of an earthen wash during the event. The total flow length was 4,800 feet. The City recovered 1,200 gallons of the amount that was discharged and returned that volume back to the sewer system. The remaining 28,925 gallons infiltrated into the ground surface of the drainage. The wash is tributary to the Mojave River, but it did not carry surface water flows at the time of the SSO discharge event. A temporary earthen berm was constructed approximately 60 feet south of Hughes Road contained the raw sewage flow within the wash and prevented the discharge from flowing further toward the Mojave River. [May 25, 2016 "City of Victorville SSO Event Technical Report," and CIWQS Report for Spill ID No. 824530]

The spill was initially reported to the City at approximately 6:00 a.m. on Wednesday, May 11, 2015 by the local Sheriff Dispatch. City crews arrived on the site at approximately 6:30 a.m., and additional crew arrived on the site at approximately 6:45 a.m. At 7:20 a.m., City crew constructed the temporary earthen berm to curtail further flow of the raw sewage. The overflow of raw sewage was stopped at approximately 8:53 a.m. Crew members began removing debris and sanitizing the affected flow path at 9:00 a.m. Additional cleanup and disinfection occurred on May 12 and again on May 16.

The City determined the cause of the SSO to be due to vandalism. The City removed approximately 75 pounds of debris consisting of garbage, plastic, and a railroad tie.

Step 1: Potential for Harm for Discharge Violations

Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of **6** (six) is assigned to Step 1 of the calculation methodology.

A. Factor 1: Harm or Potential Harm to Beneficial Uses

The discharge of raw sewage occurred within a 4,800-foot drainage system, 650 feet of which is an earthen wash. The drainage system is tributary to the Mojave River. The drainage system was dry at the time of the raw sewage discharge, and the entire amount of the discharge infiltrated into the 650-foot section of the earthen wash.

It is likely that the discharge resulted in no impacts to contact and non-contact recreation beneficial uses. The Lahontan Water Board is not aware of any complaints or other evidence of impact to such uses resulting from the spill.

However, the site of the discharge occurred within a public street, a golf course, and through a public park – all of which area areas where the public has access. The discharge of raw sewage within these established public access areas where any member of the public may be present creates a potentially significant health hazard. Impacts to recreational and wildlife resources from the discharge of the raw sewage along the 4,800-foot length of its flow path within the Golf Course, Park, and earthen wash may be reasonably expected. Additionally, the infiltration of raw sewage could potentially impact local groundwater resources.

The discharge of 28,925 gallons of raw sewage on May 11, 2016 resulted in **below moderate harm** to the beneficial uses of the Mojave River and its tributary areas. Based on the circumstances described above, a score of **2** (two) is assigned to Factor 1 of the calculation methodology.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

Identical to this factor analysis for Violation 1, the high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors. The characteristics of the discharged raw sewage therefore posed an **above-moderate** risk or threat to potential receptors. Accordingly, a score of **3** (three) is assigned to Factor 2.

C. Factor 3: Susceptibility to Cleanup or Abatement

The City was able to recover 1200 gallons (approximately four percent) of the 30,125 gallons initially discharged. Because less than 50 percent of this SSO discharge is susceptible to cleanup and abatement, a score of **1** (one) is assigned to this factor.

Step 2: Assessments for Discharge Violations

A. Extent of Deviation from the Requirement

The raw sewage discharge rendered the prohibitions on discharging untreated wastewater to waters of the United States ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred, or if 100 percent of the discharge was cleaned up and abated. The violation is a major deviation from the requirements.

Accordingly, based on the Potential for Harm score of 6 and major deviation from the requirements, the per-gallon and per-day factors for the discharge are both **0.22**.

B. Initial Amount of ACL

The initial base liability amount for the discharge is calculated by multiplying and adding:

$$\begin{aligned} & (\text{per gallon factor}) \times (\text{gallons discharged but not cleaned up over 1000 gallons}) \times \\ & (\text{maximum per gallon liability}) + (\text{per day factor}) \times (\text{days of violation}) \times (\text{maximum per} \\ & \text{day liability}) \\ & = \text{Initial Base Liability} \end{aligned}$$

$$(0.22) \times (27,925 \text{ gallons}) \times (\$10/\text{gallon}) + (0.22) \times (1 \text{ day}) \times (\$10,000/\text{day}) =$$

\$63,635.00

Step 3: Per Day Assessments for Non-Discharge Violations

Non-discharge violations are not applicable for this alleged violation.

Step 4: Adjustment Factors

A. Adjustment for Culpability

Identical to this factor analysis for Violation No. 3, a culpability multiplier of **1.0** has been selected. However, the Lahontan Water Board has ample justification to use a higher factor for the reasons noted in the analysis for Violation No. 1.

B. Adjustment for Cleanup and Cooperation

In this case, a Cleanup and Cooperation multiplier of **1.0** has been selected.

Lower values are typically reserved for dischargers who immediately identify a discharge and implement exceptional cleanup measures, abatement, or mitigation beyond what is expected.

The City quickly implemented appropriate containment and corrective measures once they were notified that an SSO was occurring. The City took all appropriate follow up measures to clean up and disinfect the affected area, and they implemented measures to prevent further migration of the discharge.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$63,635.00** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$63,635.00) \times (1.0) \times (1.0) \times (1.0) &= \$63,635.00 \end{aligned}$$

Violation No. 7

Failure to Cleanup November, 2015 SSO Discharge of 11,686,149 Gallons

Synopsis

On September 6 through 14, 2015, an SSO occurred from the City's manhole No. 143, as described earlier in the analyses for Violation No. 3. Two temporary earthen berms were constructed to stop the flow of raw sewage from continuing to flow in Turner Wash. Although manual clean-up and monitoring of the area continued for several days after the spill event, the site was not entirely cleaned up until March 8, 2016. [City of Victorville – SSO Technical Report]

When an SSO occurs, Permit Order D.7.(iii) requires the City to clean up debris at the overflow site. State Water Board staff inspected the site of this SSO event during a routine Permit inspection on December 9, 2015 – approximately two months after the overflow occurred. The associated February 19, 2016 Compliance Inspection Report states, "Evidence of the spill was still present at the location – debris was still noted down gradient of the manhole, and berming was still partially in place that served as temporary containment...paper solids were noted on the step rungs of the riser..." [page 13 of the Compliance Inspection Report].

The City's May 23, 2016 letter responding to instances of non-compliance noted in the inspection report states, "The final grading and cleanup of this site was performed on March 8, 2016. Future grading and cleanup operations will be addressed in a more expeditious manner, per protocols identified in a Public Works Overflow and Emergency Response Plan that will be developed to establish standard procedures to follow for emergency responses."

Steps 1 and 2: Potential for Harm and Assessments for Discharge Violations

Discharge violations are not applicable for this alleged violation.

Step 3: Initial Liability Determination

A. Potential for Harm

The City did not completely clean up Material of Sewage Origin (MOSO, or sewage debris) until March 8, 2015 – 176 days after the SSO event occurred. Failure to properly clean up raw sewage debris poses a significant threat to public health, water quality and beneficial uses in the Mojave River basin.

Failing to clean up the raw sewage debris outside the collection system presents an unacceptable risk of exposure to the general public, and it may contribute to water

quality degradation. Excessive solid accumulation in the riser can cause or contribute to SSO events.

The failure to clean up the raw sewage debris for 176 days following a raw sewage overflow creates, at a minimum, a **moderate potential for harm** to the beneficial uses of the Mojave River and its tributary, Turner Wash.

B. Deviation from Requirement

Permit Order No. D.7.(iii) requires the City to clean up all debris at raw sewage overflow sites. Permit Order No. D.13(vi)(f) requires the City to develop and implement an Overflow Emergency Response Plan that includes, among other items, a program to, "...correct any adverse impact on the environment resulting from the SSOs..."

The City discharged raw sewage into Turner Wash, a tributary of the Mojave River, in September, 2015. The City failed to clean up the debris from the raw sewage until 176 days after the raw sewage discharge – a statement the City made in its May 23, 2016 response letter.

The City's failure to clean up the raw sewage debris from the September, 2015 SSO event resulted in a **major** deviation from the requirement.

Based upon a moderate potential for harm and a major deviation from the requirement, a per day factor of **0.55** was selected. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by statutory maximum daily penalty. For this violation, the statutory maximum daily penalty is \$10,000 (Water Code section 13385). Lahontan Water Board staff considered the violation to have occurred from September 15, 2015 (the day after the discharge) to March 8, 2016. Total number of days of violation between September 15, 2015 and March 8, 2016 is 176 days.

$$\begin{aligned} \text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.55) \times (176 \text{ days}) \times (\$10,000/\text{day}) \\ &= \$968,000.00 \end{aligned}$$

Step 4: Adjustment Factors

A. Adjustment for Culpability

In this case, a culpability multiplier of **1.5** has been selected.

Under similar circumstances, any other permittee would have cleaned up the raw sewage debris from the impacted soils within one day of the discharge, with possibly a second day of cleanup to ensure all debris has been removed and all impacted areas disinfected when a major spill occurs. Indeed, the City on numerous other

occasions demonstrated its capability to comply with the Permit and clean up the impacts from raw sewage discharges from many other SSO events.

In this case, the City decided to wait for 176 days (from September 15, 2015 until March 8, 2016) to clean up all the raw sewage debris, despite being reminded of its obligation to do so during the State Water Board's December 9, 2015 Permit compliance inspection.

Further, the City's May 23, 2016 response letter indicates that it had not developed an appropriate Overflow Emergency Response Plan as required. The City stated, "Future grading and cleanup operations will be addressed in a more expeditious manner, per protocols identified in a Public Works Overflow and Emergency Response Plan that will be developed to establish standard procedures to follow for emergency responses." The City's failure to develop such a plan likely contributed to its failure to consistently and appropriately clean up the raw sewage debris from the September 2015 SSO event in a timely manner.

The City had received prior notification from the Lahontan Water Board of its duty to comply with the Permit and clean up debris after a discharge. On July 21, 2011 the Lahontan Water Board issued a Notice of Violation to the City for its failure to promptly and adequately clean up the affected soil following an SSO event that had occurred on July 1, 2011.

Even though the City had received a prior NOV in 2011, and even though the City received a verbal notification from the State Water Board on December 9, 2015, the City still intentionally and deliberately delayed cleanup of a serious SSO event until March 8, 2016.

The City is ultimately responsible for operational aspects of its sewer collection system, including the cleanup after SSO events. The City's reluctance to develop and implement standard protocol justifies a high culpability factor.

B. Adjustment for Cleanup and Cooperation

In this case, a Cleanup and Cooperation multiplier of **1.5** has been selected. As noted in the previous synopsis discussion, the City deliberately waited 176 days to clean up the raw sewage debris that resulted from the September 2015 SSO event. The City could have acted appropriately at the time of the discharge, but did not. The City had another opportunity to appropriately act after being reminded of its obligation to do so during a December 9, 2015 State Water Board Permit inspection, but again it chose not to do so.

The City's rationale to wait a full 176 days (and 90 days after the State Water Board staff's verbal notification) defies explanation, but it does justify a high Cleanup and Cooperation factor.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$1,760,000.00** is determined by multiplying the initial liability amount for the violation from Step 2 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$968,000.00) \times (1.5) \times (1.5) \times (1.0) &= \$2,178,000 \end{aligned}$$

However, it is noted that the maximum liability allowed is \$10,000 per day, or \$1,760,000.00. Since the liability cannot exceed the maximum amount, the Total Base Liability is therefore the maximum potential liability.

Violation No. 8

Failure to properly manage, operate, and maintain all parts of the sanitary sewer system.

Synopsis

Condition D.8 of the Permit requires that the City properly manage, operate, and maintain all parts of the collection system. Findings observed during the December 9, 2015 inspection by Regional and State Board staff, and in other documents provided by the City, indicate an ongoing failure to comply with this condition. Furthermore, the City's deficient collection system program has likely caused or contributed to several of the SSOs discussed in Violations Nos. 1 through 7.

The Gap Analysis indicates the City has failed to properly manage, operate, and maintain all parts of the collection system since 2009. The City's failure to manage and maintain its system likely contributed to all of the SSO violations alleged in the Complaint, starting with the March 5-10, 2014 event. The Lahontan Water Board Prosecution Team recommends using March 5, 2014 as a start date for Violation No. 8.

Additionally, the Lahontan Water Board Prosecution Team recommends using December 9, 2015 as the end date for Violation No. 8. This is the date of the Water Boards' inspection.

Steps 1 and 2: Potential for Harm and Assessments for Discharge Violations

Discharge violations are not applicable for this alleged violation.

Step 3: Initial Liability Determination

A. Potential for Harm

Failure to properly manage, operate and maintain the collection system poses a significant threat to public health, water quality and beneficial uses in the Mojave River Basin. During the inspection, several issues related to operations and maintenance were documented in the associated State Water Board's Compliance Inspection Report.:

- Material of sewage origin (MOSO) was observed on the ground in the immediate vicinity of a manhole located on Coad Road. There was no indication of the timeframe or cause of debris occurrence.
- Excessive MOSO solids accumulation in the wet well and lack of maintenance records were noted at the Stoddard Wells Road Lift Station.

- Excessive corrosion/poor condition noted on the force main air relief valve. The valve failed at the time of inspection (See Violation No. 5).
- MOSO was observed on the ground in the immediate vicinity of a manhole located in Turner Wash, the location of a recent SSO (See Violation No. 3). In addition, spill containment berms were also still in place within the wash.
- Excessive solids accumulation in the wet well and lack of maintenance records were noted at for SCLA Lift Station No. 2.
- 10 SSOs have occurred since 2007 that were caused by vandalism.
- Poor communication with the tributary collection system owned by Victor Valley Waste Reclamation Authority was a contributing factor to the spill volume associated with a SSO occurring in September 2015. Had the City and VVWRA developed a shared flow meter alarm system using existing infrastructure, abnormally reduced flows as a result of the SSO would have likely improve the response time and reduced the spill duration.
- The City has not conducted a condition assessment on the collection system.
- The City has not conducted a capacity evaluation since 2008.

The deficient conditions noted during the December 2015 audit are the result of a deficient and ineffective operations and maintenance program. Occurrences of MOSO outside the collection system present an unacceptable risk of exposure to the general public, and may contribute to degradation of water quality. Excessive solid accumulation in the lift station wet wells can cause or contribute to SSO events. Similarly, lack of maintenance or repair on the air relief valve can (and did) result in premature failure, reduced force main longevity, and corrosive gas accumulation within the collection system. Collection system failures as a result of these conditions risk significant impacts to water quality and beneficial uses, in addition to public exposure to raw sewage. The City's failure to manage, operate, and maintain the collection system resulted in **moderate potential for harm** to the beneficial uses of the Mojave River and its tributary areas.

B. Deviation from Requirement

Condition D.8 of the Permit requires that the City "properly manage, operate, and maintain all parts of the sanitary sewer system owned or operated by the Enrollee". To maintain compliance with this provision, it is expected that the City have an adequate Sewer System Management Plan (SSMP) that is effectively implemented and managed. Specifically, the SSMP should meet the minimum subparts described in Order Condition D.13. During the audit conducted on December 9, 2015, Regional and State Board staff found the City's SSMP to be outdated and ineffective. The 2009 SSMP provided by the City was found to be significantly deficient in the

following areas:

- Operation and Maintenance Program
- Rehabilitation and Replacement Plan (Capital Improvement Plan)
- Overflow Emergency Response Plan
- System Evaluation and Capacity Assurance Plan (SECAP)
- Communication Program

Under the Operation and Maintenance Program, the most recent version of the SSMP (2009) describes the City's inspection and cleaning schedule for the entire collection system to be seven years. During the audit, City staff described the cleaning cycle to be longer, approximately 10 years. Furthermore, due to limited staff resources, cleaning is focused primarily on "hot spots," or areas previously identified as problematic. This prioritized scheduling combined with limited staff resources may result in significantly longer cleaning cycles for those pipe segments that have not experienced any historical issues. For example, the pipe segment containing Manhole No. 106 located on Coad Road was reportedly cleaned in November 2003 and May 2015, with nearly 13 years between events. The City indicated during the audit that changes to this schedule (e.g. increased frequency of cleaning) do not occur unless a problem is identified in a line segment (e.g. SSO is observed).

The 2009 SSMP also fails to adequately describe routine preventative operation and maintenance activities. No specific details are provided as to maintenance practices at the seven lift stations owned and operated by the City. Although the City explained during the audit that the stations are inspected at least once per week, no maintenance records were provided to document what activities are performed (only logs showing weekly visits), and the field inspection identified serious concerns related to solids accumulation in the wet wells – indicative of a lack of maintenance.

Additionally, at least 10 SSOs have occurred since 2007 that have been attributed to vandalism (two in 2015 alone); however, the SSMP excludes any mention of preventative measures being undertaken by the City to address the issue, even though the plan identifies vandalism as the primary cause of SSOs within the collection system. Although some preventative measures such as locking manhole covers, Smart Covers, and manhole burying in remote areas have been documented in several of the SSO technical reports and during the December 2015 inspection, incidences of vandalism continue to occur at alarming frequency and volume, warranting additional measures be taken.

The Rehabilitation and Replacement Plan is required as part of the Operation and Maintenance Program. The Plan is required to address the identification and prioritization of system deficiencies through regular visual and video inspection. The City has yet to complete a condition assessment of the collection system since at least 2007. The 2009 SSMP describes an inspection goal of seven years for the system. The City has currently inspected approximately 25 miles (less than four percent of entire collection system) of pipe via closed-circuit television. At this rate, completion of the entire system would take over 27 years, which is clearly a

deviation from requirement. As a result, a detailed plan for short and long-term rehabilitation actions has not been prepared, and capital improvement projects related to structural deficiencies can only be completed on an “as-identified” basis.

This ineffective plan is likely the cause of irregular annual capital spending. For example, only \$40,000 was spent on capital expenditures in the fiscal year preceding the 2015 audit and the City admitted during the inspection that the \$1.7 million budgeted for the current fiscal year would also not likely be spent. This failure to accurately budget and undertake capital projects illustrates the City’s failure to properly manage the collection system.

As part of the System Evaluation and Capacity Assurance Plan (SECAP), the City initially developed a Sewer Master Plan in 2008 that identified capacity enhancing projects to meet projected system demands for 2014 and 2030 with a proposed budget for the two phases totaling \$43 million. The City contends that as a result of economic downturn, the Master Plan was no longer relevant or necessary; however, the most recent capital improvement projects relate to capacity enhancement. The City currently has no effective SECAP in place as no flow monitoring has been conducted since the Master Plan was prepared and is instead addressing capacity issues on an as-needed and as-identified basis. Additional monitoring is necessary to more accurately determine the City’s capacity issues.

Other issues identified during the inspection relate to inadequate procedures for spill response in remote locations or off-road terrain, post-spill cleanup procedures, and communication plans with tributary collection systems. These issues were found to contribute to increased spill volumes and unnecessary public exposure to MOSO that would likely have been reduced or eliminated had a more effective SSMP and/or standard operating procedures been in place (See Violations No’s. 3 and 7).

The failures to properly manage, operate, and maintain the collection system resulted in a **major** deviation from the requirement.

Based upon a moderate potential for harm and a major deviation from the requirement, a per day factor of **0.55** was selected. This factor is the average of the range allowed by the Enforcement Policy as the City has made some voluntary efforts to improve the collection system program. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by statutory maximum daily penalty. For this violation, the statutory maximum daily penalty is \$10,000 (Water Code section 13385). Lahontan Water Board staff considered the violation to have occurred from March 5, 2014, the start date of Violation No. 1 to December 9, 2015, the audit date. Total number of days of violation between March 5, 2014 and December 9, 2015 is 645.

$$\begin{aligned} \text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.55) \times (645 \text{ days}) \times (\$10,000/\text{day}) \\ &= \$3,547,500 \end{aligned}$$

Step 4: Adjustment Factors

A. Adjustment for Culpability

In this case, a culpability multiplier of **1.4** has been selected.

The City's failure to implement an appropriate and current SSMP has likely caused or contributed to frequent, high volume SSOs. Internal performance metrics such as cleaning and inspection frequencies, capital improvement, and condition assessment actions developed by the City were consistently ignored. The City made few changes to the program until the Gap Analysis was prepared in 2014, which identified critical deficiencies in the collection system program and proposed significant investments in both the City's operations and maintenance program, as well as a system-wide condition assessment program. It was not until the Regional Board issued the December 2015 inspection report that the City reassured staff in their response letter received May 23, 2016 that significant investments and program changes will be made in the near future.

Repeated SSO events from 2007 to present indicate the City had knowledge of ongoing issues related to vandalism and inadequate maintenance. However, the City has no formal plan to resolve the ongoing issues in place, and its reaction to vandalism incidences is limited in scope and therefore ineffective. Furthermore, a proper communication plan with tributary systems is required as part of the SSMP. The City failed to develop such a plan, which likely contributed to a completely avoidable high-volume SSO. Modifications to the SSMP should have been completed in 2014, as part of the required five-year update. This update has not been completed to date.

B. Adjustment for Cleanup and Cooperation

In this case, a Cleanup and Cooperation multiplier of **0.9** has been selected.

The City's May 2016 inspection report response included an action plan addressing program deficiencies. Although the violations identified in the audit report are likely what prompted the City to respond, it is recognized that the City intends to invest substantial resources in the near term into the collection system program. For example, the annual budget for fiscal year 2016-2017 was approved during a special City Council meeting on June 14, 2016, which included a capital expenditure budget specific to the sewer program of approximately \$3.3 million. In addition, the City has been extremely cooperative with Regional and State Board staff throughout the investigation process.

C. Adjustment for History of Violations

There are no adjudicated cases of this nature against the City. Therefore, a neutral multiplier of **1.0** has been selected.

Step 5: Determination of Total Base Liability Amount

Total Base Liability Amount of **\$4,469,850** is determined by multiplying the initial liability amount for the violation from Step 3 (as adjusted in Step 4) by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$3,547,500) \times (1.4) \times (0.9) \times (1.0) &= \$4,469,850 \end{aligned}$$

Methodology Steps 6 through 10

Step 6: Ability to Pay and Ability to Continue Business

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

In this case, the Lahontan Water Board Prosecution Team has sufficient information to recommend the City has the ability to pay the proposed liability. To understand an agency's ability to pay, review of the agency's operating costs and availability of funds is necessary. The fiscal year 2014-2015 Comprehensive Annual Financial Report (CAFR) was available for review on the City's website. Collection system operation and maintenance expenses are managed and budgeted under the City's Sanitary Fund. Based on data available in the CAFR, the City's Sanitary Fund had over \$18 million in current assets at the end of the 2014-2015 fiscal year, of which nearly \$14 million in cash and investments. Current liabilities totaled less than \$900,000. The City's Sanitary Fund had an unrestricted net position of nearly \$16 million. These figures indicate that the City has liquid funds available that could be used to satisfy unanticipated expenses including penalties or accelerated compliance.

In addition to the analysis above, the Lahontan Water Board used the MUNIPAY software provided by the United States Environmental Protection Agency to determine whether the City has the ability to pay. Attachment C to the Complaint contains the affordability conclusions synopsis from MUNIPAY. MUNIPAY uses the information available in the CAFR and demographic data retrieved from United States Census Bureau to determine whether the City can afford the penalty expenditure, as well as one-time and recurring compliance expenses. For the analysis, the one-time compliance expenditure was assumed to be the cost of updating the SSMP, estimated at \$16,000. Recurring costs include annual cleaning and inspection expenses in addition to the City's current program, totaling \$1,448,269. Based on the input data, MUNIPAY has confirmed the City's ability to pay the \$6,300,250.00 penalty and future compliance expenses.

Step 7: Other Factors as Justice May Require

Adjustment for Staff Costs

The Lahontan Water Board has suspended the practice of adding staff cost into administrative civil liabilities based upon the California State Auditor's findings stated in its 2012-120 Audit Report. Specifically, one of the findings in the Audit Report is that staffing costs in penalty actions for water quality certification violations are, "generally not supported and are inaccurate because of inflated cost rates." (California State Auditor Report 2012-120 State Water Resources Control Board, *It Should Ensure a*

More Consistent Administration of Water Quality Certification Program, June 2013). This enforcement action does not involve violations of a 401 Water Quality Certification, as was the focus in Audit Report 2012-120. However, staff believes the justification in the Audit Report still applies to this enforcement action where the staff cost rate has yet to be revised to reflect actual staff salaries and overhead cost for each program. In an abundance of caution, the Lahontan Water Board, in consultation with the State Water Resources Control Board, has suspended adding staff cost into administrative civil liabilities until the issues identified by the State Auditor can be addressed.

Adjustment for Potential Duplication of Assessments

The Lahontan Water Board Prosecution Team notes that the proposed liability associated with Violation No. 8 considers the City's failure to properly manage, operate, and maintain all parts of its sanitary sewer system. The City's response to adequately address ongoing maintenance needs, ongoing inspections, and responses to deter vandalism are considered in the adjustment factors to determine the proposed liability for Violation No. 8.

The Lahontan Water Board Prosecution Team recognizes potential duplication of factors considered in Violations Nos. 1 through 6 with those considered in Violation No. 8. The SSO events addressed in Violations Nos. 1 through 6 are all caused by the City's failure to adequately maintain and inspect its system and/or the City's failure to implement preventative measures to deter vandalism. The causal factors that led to the SSO events are incorporated in determining a large proposed liability for Violation No. 8. Indeed, the days of violation associated with Violation No. 8 could not be compressed (as allowed by the State Water Board Enforcement Policy) partially due to the potentially daily detrimental impacts to the environment or the regulatory program – as evidenced by the six SSO incidents. Therefore, assessing liabilities on a per gallon basis may be unreasonable in this circumstance.

However, many of the SSO events were exacerbated by the City's lack of performance. Violation Nos. 1 and 5 were aggravated by the City's failure to ensure that its staff could recognize the visual signs of a potential SSO and respond accordingly. Violation No. 4 was intensified by City's failure to collect the discharged raw sewage for two days. Violations Nos. 2, 3, and 6 were particularly made worse because the City persistently failed for more than a year to coordinate with the Joint Powers Authority of VVWRA to implement an alarm/communication system from existing flow monitors (telemetry system) for alerting the City of unusually low or high flows from the City's sewer collection system into the VVWRA trunk line. At a minimum, liabilities associate with violations Nos. 1 through 6 should be assessed on a per day basis for each violation to reflect the City's ongoing inability to effectively recognize, be alerted to, and clean up raw sewage spills.

The Prosecution Team proposes to assess a proposed liability for Violations Nos. 1 through 6 on a per day basis only, and is recommending reducing the liability from \$15,333,801.32 to \$6,300,250.00. This reduced amount is the minimum the Prosecution Team can support and is consistent with the minimum liability associated with the eight

violations. It is reasonably based on the conduct alleged in the Complaint and is consistent with the Enforcement Policy. The violations alleged and the recommend liability reflect the need to deter the City and similarly situated municipalities from routinely failing to comply with the Permit, Basin Plan objectives, and the Clean Water Act.

Step 8: Economic Benefit

The Enforcement Policy directs the Water Board to determine any Economic Benefit Amount of the violation based on the best available information. Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The Enforcement Policy suggests that the Water Board compare the Economic Benefit Amount to the Adjusted Total Base Liability and ensure that the Adjusted Total Base Liability is, at a minimum, 10 percent greater than the Economic Benefit Amount. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business. [Enforcement Policy pages 20-21] As stated in the Complaint, the City failed to properly manage, operate, and maintain the wastewater collection system that has caused and/or contributed to several sanitary sewer overflows, in addition to causing detriment to the regulatory program. Several actions have been significantly delayed or avoided that could have prevented the violations presented in this complaint. As a result, the City realized a significant economic benefit as summarized below:

The City's 2009 SSMP stipulates a seven-year cleaning and inspection cycle of all segments within the City's sewer collection system. During the 2015 State Water Board inspection, the City explained that the actual cleaning and inspection cycle is approximately 10 years. Additionally, the Gap Analysis identifies a non-existent cleaning and inspection cycle noting that this activity only occurs on an as-needed basis. The City's failure to comply with its own seven-year cleaning and inspection cycle has likely contributed to accumulation of roots, FOG, and other debris that can cause or contribute to SSOs. The reduced system-wide cleaning also exposes areas of the collection system to vandalism, as these areas are not routinely patrolled or inspected. The difference in annual cleaning costs for seven-year and 10-year cleaning cycles is approximately \$616,163 based on the total length of gravity sewer line owned and operated by the City. This difference represents the annual avoided cost of cleaning. Cost estimate assumptions and sources of information are detailed in the Economic Benefit Analysis table contained in Attachment D to the Complaint.

The 2009 SSMP further describes a collection system inspection and condition assessment strategy in which the entire system would be assessed over a seven-year period. Based on information provided during the State Water Board inspection, the City has inspected by CCTV approximately 25 miles of the system. It is estimated that the remaining assessment would cost approximately \$5,824,744. As the City is still obligated to develop an appropriate Rehabilitation and Replacement Plan, which includes a Capital Improvement Plan, the Lahontan Water Board Prosecution Team considers this expense as a delayed cost that will be expended in the future. The estimated compliance date is assumed to be September 14, 2016 for computational

purposes. It should be noted that system-wide assessment may take considerably longer to complete and therefore a higher economic benefit would likely be realized.

Other delayed expenses include the City's failure to update its SSMP with effective and relevant programs and procedures as described in Violation No. 8. The cost to update the SSMP is estimated at approximately \$16,000 based on 160 hours of labor for development at \$100 per hour. Furthermore, based on the City's actions following the SSO described in Violation No. 3, an accessible flow monitoring program was implemented allowing City staff to view VVWRA flow data and receive alarms related to upsets and anomalies,. [State Water Board Inspection Report, page 5] Although this technology was available prior to the SSO event, it had not been utilized by either agency. Had the system been in place, it is likely that the SSO would have been detected sooner, and therefore the volume would have been significantly reduced. The cost for implementing the program and training City staff is estimated at \$4,000 based on 40 hours of labor for program setup at \$100 per hour.

The BEN financial model provided by the United States Environmental Protection Agency was used to compute the total economic benefit of noncompliance. For computational purposes, the penalty payment date was established as the projected hearing date, September 14, 2016. Changes to this date will affect the total economic benefit.

The total economic benefit of noncompliance was determined to be \$1,931,594. To ensure the adjusted Total Base Liability is, at a minimum, 10 percent greater than the economic benefit amount, the Total Base Liability must be greater than \$2,124,753.

Step 9: Maximum and Minimum Liability Amounts

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

Violations No. 1 through 6

The maximum liability amount the Lahontan Water Board may assess administratively pursuant to Water Code section 13385, subdivision (c), is \$10,000 per day of violation plus \$10 per gallon discharged but not cleaned up in excess of 1,000 gallons. The violations are not subject to minimum mandatory penalties.

Violations Nos. 7 and 8

The maximum liability amount the Lahontan Water Board may assess administratively pursuant to Water Code section 13385, subdivision (c), is \$10,000 per day of violation. These violations are not subject to a mandatory minimum amount.

Table 2, below, summarizes the initial base liability, the potential maximum liability, the initially-calculated liability, and the proposed revised liability associated with each of the 8 violations.

Table 2. Summary of Initial Base, Minimum, Maximum, and Proposed Liabilities for Each Violation.

Violation No.	Initial Base Liability	Maximum Amount	Calculated Liability	Recommended Liability
1	\$206,965.00	\$940,750.00	\$206,965.00	\$13,200.00
2	\$604,747.00	\$2,114,500.00	\$604,747.00	\$2,860.00
3	\$7,999,961.62	\$116,941,490.00	\$7,999,961.62	\$30,690.00
4	\$224,352.70	\$784,450.00	\$224,352.70	\$17,160.00
5	\$4,290.00	\$10,000.00	\$4,290.00	\$4,290.00
6	\$63,635.00	\$289,250.00	\$63,635.00	\$2,200.00
7	\$1,760,000	\$1,760,000.00	\$1,760,000	\$1,760,000.00
8	\$4,469,850.00	\$6,450,000.00	\$4,469,850.00	\$4,469,850.00
TOTAL	\$15,333,801.32	\$127,178,104.00	\$15,333,801.32	\$6,300,250.00

The maximum potential liability for all eight violations is \$127,178,104.00. The minimum required liability for all violations is the economic benefit derived from the violations, plus ten percent (\$2,124,753). The recommended liability falls within these maximum and minimum liability amounts.

Step 10: Final Liability Amount

The final liability proposed is \$6,300,250.00 for Violations Nos. 1 through 8, based on consideration of the penalty factors discussed above.

ATTACHMENT B

ENFORCEMENT POLICY PENALTY METHODOLOGY SPREADSHEET

Instructions
 1. Select Potential Harm for Discharge Violations
 2. Select Characteristics of the Discharge
 3. Select Susceptibility to Cleanup or Abatement
 4. Select Deviation from Standard
 5. Click "Calculate Harm & per Gallon/Day..."
 6. Enter Values into the Yellow highlighted fields

Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate	Select Item	<input type="checkbox"/> 1 - Minimal Moderate
Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate	Select Item	<input type="checkbox"/> 2 - Moderate
Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High	Select Item	<input type="checkbox"/> 3 - High
Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High	Select Item	<input type="checkbox"/> 4 - High

Discharger Name/ID:		Violations 1		Violations 2		Violations 3		Violations 4		Violations 5		Violations 6		Violations 7		Violations 8		
Discharge Violations	Step 1	Potential Harm Factor (Generated from Buttons)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Step 2	Per Gallon Factor (Generated from Buttons)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		Statutory Maximum	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00
		High Volume	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		Total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	Step 3	Per Day Factor (Generated from Buttons)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		Days	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
		Statutory Max per Day	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200	13,200
		Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Initial Amount of the AGI	Per Day Factor																
Total Days																		
Multiple Day Violation Reduction																		
Statutory Max per Day																		
AGI Penalty	Step 4	Penalty	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
	Culpability	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	
	Cleanup and Cooperation	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	
	History of Violations	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	
AGI Penalty	Maximum for this Violation	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	60,000.00	
	Amount for this Violation	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	13,200.00	
	Step 5	Total Base Liability Amount	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	
	Ability to Pay & to Continue in Business	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
Step 7	Other Factors as Justice May Require	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	
	Statutory Costs	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00		
Step 8	Economic Benefit	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	1,031,004	
	Minimum Liability Amount	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	2,174,245.00	
Step 10	Maximum Liability Amount	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	8,450,000.00	
	Final Liability Amount	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	6,300,250.00	

Penalty Day Range Generator

Start Date of Violation: 8/15/15

End Date of Violation: 8/15/15

Maximum Days Fined (Steps 2 & 3): 126 Days

Minimum Days Fined (Steps 2 & 3): 17 Days

ATTACHMENT C

ECONOMIC BENEFIT ANALYSIS TABLE

Economic Benefit Analysis

City of Victorville

Compliance Action	One-Time Non-Depreciable Expenditure				Annual Cost			Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Amount	Basis	Date					
Adequate line cleaning					\$ 616,163	ECI	1/1/2015	3/4/2014	9/14/2016	9/14/2016	3.80%	\$ 1,646,278
CCTV and condition grade entire system	\$ 5,824,744	ECI	1/1/2015	Y				3/4/2014	9/14/2016	9/14/2016	3.80%	\$ 284,339
Flow monitoring software	\$ 4,000	ECI	1/1/2015	Y				3/4/2014	9/14/2016	9/14/2016	3.80%	\$ 196
SSMP updates	\$ 16,000	ECI	1/1/2015	Y				3/4/2014	9/14/2016	9/14/2016	3.80%	\$ 781

Income Tax Schedule: Municipality **Analyst:** Bryan Elder **Total Benefit:** \$ 1,931,594
USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 6/23/2016 14:29

Assumptions:

- 1 Line cleaning based on 683.83 miles of gravity sewer piping with a mean diameter less than 12-inches. Annual avoided costs estimated as difference between 7 and 10 year cleaning cycle. Source: RSMMeans, 2015 Heavy Construction Cost Data, 33 01 30.16.6140. Cost also includes a location adjustment factor of 102.1 for San Bernardino region.
- 2 CCTV and condition grading based on 658.83 (683.83 - 25 miles previously inspected) miles of gravity sewer piping with a 7 year inspection cycle. Source: RSMMeans, 2015 Heavy Construction Cost Data, 33 01 30.16.9060. Cost also includes a location adjustment factor of 102.1 for San Bernardino region.
- 3 Flow Monitoring Software based on existing availability of monitoring program. Costs assume 40 hours of program setup and staff training at \$100 per hour.
- 4 SSMP updates include modifications and development of rehabilitation and replacement plan, capital improvement plan, communication plan, spill response plan, and system evaluation and capacity assurance plan. Costs based on 160 hours at \$100 per hour.
- 5 Costs included are assumed to be mainly comprised of labor expenses and therefore have been indexed using the Employment Cost Index (ECI).
- 6 Non-compliance date is assumed to be March 4, 2014, state date of violations included in this compliant.
- 7 Compliance date assumes the City will have satisfied the compliance actions by the penalty payment date.
- 8 Penalty payment date is assumed to be the hearing date, which is 'to be determined'. For computational puposes, the hearing date has been entered as October 1, 2016.
- 9 The City of Victorville is a municipality, which is the agency type used for the BEN calculation.

ATTACHMENT D

USEPA MUNIPAY OUTPUT TABLE

AFFORDABILITY CONCLUSIONS for run = 1

Victorville can afford the entire \$15,327,438 penalty expenditure.

Victorville can afford the entire \$16,000 compliance expenditure.

AFFORDABILITY SUMMARY

Expenditure Priority	Amount Sought	Currently Enterpr. Fund	Available General Fund	Available Through Financing	Total Affordable Amount
Penalty	\$15,327,438	\$14,192,368	\$0	\$1,135,070	\$15,327,438
Compliance	\$16,000	\$0	\$0	\$16,000	\$16,000
Superfund	\$0	\$0	\$0	\$0	\$0

*\$1,448,269 in compliance annual costs are included in calculations.***Currently Available Details**

	<u>Enterpr. Fund</u>	<u>General Fund</u>
Most Recent Balance	\$17,583,290	\$3,433,399
Recommended Balance	\$3,390,922	\$8,863,934
Available	\$14,192,368	\$0

User Fee Details

	<u>Initial</u>	<u>Final</u>
Most Recent Balance	\$323	\$308

Financial Inputs

General Fund, sum of Assigned + Unassigned balances:	\$3,433,399
Anticipated General Fund Expenditures Plus Net Transfers:	\$53,077,451
Median Household Income: (Year of Estimate)	(2014) \$43,589
Current Assets:	\$18,471,050
Current Liabilities:	\$887,760
Annual Debt Payments:	\$0
Operating Revenues:	\$16,022,089
Operating Expenses:	\$13,403,121
Anticipated Expenses Plus Net Transfers:	\$13,563,689
Average Annual Residential Charge:	\$323
Serviced Households:	40,043

Run Parameters

Maturity periods/schedule for Compliance, Superfund, Penalty	25, 5, 3
Interest Rate:	3.4%
Min General Fund balance as % of anticipated expenditures + transfers:	16.7%
Max avg user charge increase as % of median household income:	1.0%
Max avg user charge total as % of median household income:	2.0%
Min working capital as % of anticipated expenses + transfers:	25.0%

AFFORDABILITY DETAIL for run = 1

	Existing Values	Threshold Values	Projected Values		Projected Values		Projected Values		Projected Values												
			Sought Penalty	Affordable Penalty	Sought Compliance	Affordable Compliance	Sought Superfund	Affordable Superfund	Penalty +	Compliance +	Penalty +	Compliance +									
<i>All figures already account for:</i>																					
-- funds currently available																					
-- annual compliance costs																					
			\$15,327,438	\$15,327,438	\$16,000	\$16,000	\$16,000	\$16,000	\$0	\$0	\$16,000	\$16,000	\$16,000	\$16,000	\$0	\$0	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000
<u>Enterprise Fund Criteria</u>																					
User fee increase as % of MHI	N/A	1.00%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%	-0.03%
User fee total as % of MHI	0.73%	2.00%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%	0.70%

WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

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

I am duly authorized to represent The City of Victorville (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R6V-2016-0042 (hereinafter the "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 [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

- 1.0 (Check here if the Discharger waives the hearing requirement and will pay the liability.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Lahontan Regional Water Quality Control Board (Lahontan Water Board).
 - b. I certify that the Discharger will remit payment for the civil liability imposed in the total amount of six million three hundred thousand two hundred fifty dollars (**\$6,300,250.00**) by check that references "ACL Complaint No. R6V-2016-0042" made payable in the amount of **\$6,300,250.00** to the "*State Water Pollution Cleanup and Abatement.*" Payment must be received by the Lahontan Water Board by **5:00 p.m. on July 31, 2016**, or the Lahontan Water Board may adopt an Administrative Civil Liability Order requiring payment.
 - 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 the 30-day public notice and comment period mandated by the State Water Resources Control Board's Water Quality Enforcement Policy expires. Should the Lahontan Water Board receive significant new information or comments from any source (excluding the Lahontan Water Board's Prosecution Team) during this comment period, the Lahontan Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Lahontan Water Board, and that the Lahontan Water Board may consider this proposed settlement in a public meeting or hearing. 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 Dischargers to further enforcement, including additional civil liability.
- 2.0 (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.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Lahontan Water Board within 90 days after service of the Complaint. By checking this box, the

Discharger requests that the Lahontan 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 Lahontan Water Board Advisory Team to approve the extension.

3.0 (Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

- a. I hereby waive any right the Discharger may have to a hearing before the Lahontan 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 contact the Lahontan Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). As part of a settlement discussion, the Discharger may propose a supplemental environmental project to the extent such a project is authorized by law and the State Water Resources Control Board Policy on Supplemental Environmental Projects. By checking this box, the Discharger requests that the Lahontan Water Board Advisory Team delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. The Prosecution Team may choose to engage in settlement discussions but keep the hearing on calendar, despite receiving a waiver. It remains within the discretion of the Lahontan Water Board Advisory Team to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1c and d."

(Print Name and Title)

(Signature)

(Date)