

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2017-0102  
IN THE MATTER OF

LAWRENCE GASPER

ASSESSOR PARCEL NUMBER 061-440-009-000  
SHASTA COUNTY

This Order is issued to Lawrence Gasper (hereafter referred to as Discharger) pursuant to California Water Code section 13350, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on evidence and findings that the Discharger violated Cleanup and Abatement Order R5-2016-0711.

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

**BACKGROUND**

1. On 25 July 2017, the Assistant Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint R5-2017-0543 (ACL Complaint) to the Discharger.
2. In November 1990, the Discharger purchased the property located at 11404 Deschutes Road, Bella Vista, Shasta County, Assessor Parcel Number (APN) 061-440-009-000 (hereafter referred to as the Site). The Discharger developed the Site to support a cannabis cultivation operation. As owner of the Site, the Discharger is ultimately responsible for the condition of the property and discharges of wastes emanating from the property.
3. The natural topography of the Site consists of gently sloping terrain sustaining ephemeral Class III watercourses. The soils on Site are classified as Inks-Pentz complex, 30 to 50 percent slopes and are described as erodible soils with a high runoff potential. The Site intersects and discharges to two unnamed Class III ephemeral watercourses (Tributaries) that are tributary to an irrigation canal and then to Little Cow Creek.
4. On 21 October 2014, California Department of Fish and Wildlife (CDFW), Shasta County Sheriff's Department, and Shasta County Code Enforcement served a warrant at the Site. Officials seized over 3,000 pounds of processed and partially processed cannabis during the operation.
5. On 17 December 2014 Central Valley Water Board staff (hereinafter referred to as Staff) observed turbid storm water runoff from the Site while travelling on Deschutes Road. Staff contacted Marc Pelote, Shasta County Building Code inspector, and Lieutenant Warden DeWayne Little of CDFW to inquire as to the status of the Site. Shasta County Records indicated that grading operations at the Site were conducted without applicable permits and subsequent conditions presented a threat to water quality.
6. On 18 December 2014, Marc Pelote provided Staff with photographs of the Site taken during the 21 October 2014 operation. The photos depicted various grading operations

that were conducted in apparent support of the cannabis cultivation operation. Additional descriptions of the grading activities and potential threats to water quality were provided by Lt. DeWayne Little. Lt. Little recommended that Staff, in coordination with CDFW and Shasta County officials, conduct an on-Site inspection.

7. On 3 February 2015, Staff obtained an administrative inspection warrant (Warrant) from the Shasta County Superior Court to perform an on-Site inspection. The Warrant allowed Staff and CDFW personnel access to the Site for the purpose of inspecting and documenting water quality violations.
8. On 5 February 2015, Staff conducted an inspection of the Site in accordance with the Warrant issued on 3 February 2015. (See Appendix A of Cleanup and Abatement Order R5-2016-0711 (final CAO))

### **SITE INSPECTION OBSERVATIONS**

9. During the 5 February 2015 inspection, Staff discovered an excavated sediment trap, a large constructed pad used to cultivate cannabis, and a poorly maintained access road. Using physical measurements obtained during the inspection, Staff estimates that approximately 341 cubic yards of native soil were excavated and disturbed in construction of the pad. Both the cutslope and fillslope of the pad showed evidence of erosion in the form of rills. Erosion of the access road, in the form of rills along the running surface of the road, was also noted during the inspection.
10. During the 5 February 2015 inspection, Staff documented turbid water in the excavated sediment trap, located near the intersection of the Tributaries. Staff collected several field turbidity measurements utilizing a Hach 2100 Q Portable Turbidimeter. Turbidity measurements were collected from the Tributaries both above and below the access road at the excavated sediment trap. Turbidity in the Tributaries above the access road was measured at 16.3 Nephelometric Turbidity Units (NTUs) and 63.4 NTUs. Turbidity within the excavated sediment trap, located below the access road, was measured at 439 NTUs. In addition to the field turbidity measurements, Staff collected a surface water sample at the excavated sediment trap for laboratory analysis of turbidity. Surface water samples for laboratory analysis were not collected in the Tributaries due to low flows that would not facilitate sample collection. Laboratory analysis of the surface water sample collected at the excavated sediment trap yielded a result of 838 NTUs.
11. The Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins, Fourth Edition, revised July 2016 (Basin Plan) objectives for turbidity state that where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent; and where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs. Utilizing the upstream turbidity of 16.3 NTUs and the conservative downstream turbidity of 439 NTUs represents an increase of over 2000 percent, well above the allowable increase of 20 percent. Utilizing the upstream turbidity of 63.4 NTUs and the conservative downstream turbidity of 439 NTUs represents an increase of 375.6 NTUs, well above the allowable increase of 10 NTUs.

### ENFORCEMENT ACTIONS

12. **13 March 2015 Notice of Violation.** Based on the findings documented in the 5 February 2015 Site inspection report, Staff issued the Discharger a Notice of Violation (NOV). The NOV requested a plan be submitted to Staff by 13 April 2015, pursuant to Water Code section 13267, for mitigation of the discharges associated with the access road and graded pad. The NOV was sent via certified mail and was signed for by Larry Gasper on 19 March 2015 (Appendix A of final CAO). The Discharger failed to submit the plan as required.
13. **13 May 2015 Notice of Violation.** Due to the Discharger failing to submit the requested plan detailed in the 13 March 2015 NOV, Staff issued a follow up NOV on 13 May 2015 notifying the Discharger that Staff had not received the plan by the requested date of 13 April 2015 (Appendix B of final CAO). Staff requested that the work plan be submitted no later than 1 June 2015. The 13 May 2015 NOV was sent via certified mail to the Discharger, however it was returned to Staff on 10 June 2015 as unclaimed.
14. **7 July 2015 Notice of Violation.** Due to the Discharger failing to submit the requested plan detailed in the 13 March 2015 NOV, and the 13 May 2015 NOV being returned to Staff as unclaimed, Staff issued a third NOV to the Discharger on 7 July 2015 (Appendix C of final CAO). The 7 July 2015 NOV was sent via certified mail and provided to a law enforcement officer for personal service on the Discharger. The 7 July 2015 NOV requested immediate submittal of a plan to address the discharges noted during the 5 February 2015 Site inspection. The 7 July 2015 NOV sent by certified mail was returned to Staff as unclaimed on 27 July 2015. The law enforcement officer provided the Discharger with a copy of the NOV on 7 July 2015 by taping it to the Discharger's gate. The Discharger did not acknowledge receipt of this NOV and did not submit a plan as required.
15. **13 January 2016 Draft Cleanup and Abatement Order.** Due to the Discharger's non-compliance with the three issued NOV's, a draft Cleanup and Abatement Order (draft CAO) was issued to the Discharger by Assistant Executive Officer Clint Snyder, on 13 January 2016. The draft CAO included a comment period of 30 days, or until 13 February 2016, for the Discharger to provide comments on the draft CAO to Staff. Due to the previous difficulties in delivery to the Discharger, the draft CAO was provided to a process server for personal service in addition to being sent via certified mail. The Discharger refused service or was otherwise unable to be contacted after four attempts. On 8 February 2016 the Discharger contacted ACE Attorney Services, Inc. (ACE), the process server, and requested information regarding the documents the process server attempted to serve. ACE then made four more attempts to serve the draft CAO to the Discharger with no success. On 22 February 2016 the Discharger accepted service and signed for the documents under the name *John Doe*.
16. **27 June 2016 Cleanup and Abatement Order.** On 27 June 2016, after receiving no comments on the draft CAO, the final CAO (Order No. R5-2016-0711) was issued to the Discharger by the Central Valley Water Board. The final CAO was sent via certified mail and via process server. The Discharger refused service and did not claim the certified mail. After multiple attempts at personal service the process server posted the final CAO

to the Dischargers front gate entrance on 23 August 2016. The final CAO contains a compliance schedule which includes a timeline for completion of mitigation and restoration work and submission of technical and monitoring reports as follows:

By 15 July 2016 the Discharger was required to submit an Interim Erosion and Sediment Control Plan (Interim Plan) to Staff, prioritizing immediate stabilization and mitigation efforts needed.

By 1 August 2016, the Discharger was required to have completed work outlined in the Interim Plan.

By 1 September 2016, the Discharger was required to submit a report of completion to Staff, including a summary and photographs of the work completed.

By 1 October 2016, the Discharger was required to submit a proposed Restoration Monitoring and Mitigation Plan (RMMP) to Staff, including an assessment of the impacts to Little Cow Creek and plans for complete Site restoration.

By 15 October 2016, the Discharger was required to begin implementing the RMMP.

By 15 November 2016, the Discharger was required to have completed the restoration and mitigation measures in the RMMP.

By 15 December 2016, the Discharger was required to have submitted a Completion Report to Staff.

By 15 October of each year (starting 15 October 2017), the Discharger is required to submit an annual monitoring report.

17. To date, the Discharger has not completed any of the required items outlined in the final CAO.
18. **13 February 2017 Notice of Violation:** On 13 February 2017 staff sent the Discharger a Notice of Violation for non-compliance with the issued final CAO. The NOV requested that the Discharger respond by submitting all documentation required of the final CAO no later than 6 March 2017 (Attachment C of ACL Complaint). The NOV was received by Jennifer Gasper, as evidenced by the certified mail return receipt, on 22 February 2017.
19. **25 July 2017 Administrative Civil Liability Complaint:** On 25 July 2017, Clint Snyder, the Assistant Executive Officer for the Redding office of the Central Valley Water Board, issued the ACL Complaint to Lawrence Gasper. The ACL Complaint was sent to the Discharger by process server for personal service and placed in the United States Mail for delivery by priority first class mail to an address at which the Discharger had received mail as recently as February 2017. The Discharger attempted to refuse personal service on 8 August 2017. On this date, the process server observed the Discharger inside the front gate at his residence. When the process server called out the Discharger's name, the Discharger affirmatively acknowledged it. The process server stated that he possessed "paperwork" and "legal documents" for the Discharger. The Discharger ignored the

process server, who then stated that he was leaving the “legal documents” at the gate. On 6 September 2017, the ACL Complaint was resent to the Discharger by certified mail. The Discharger has not claimed the certified mail. The first class mail has not been returned to the Central Valley Water Board and is presumed to have been delivered.

20. Personal service of the ACL Complaint was effectuated on 8 August 2017. Service by personal delivery usually contemplates actual delivery. However, the person on whom service is sought may not, by declining to take the document offered, deny the personal service on the ground of lack of delivery, where under the circumstances it would be obvious to a reasonable person that personal service was being attempted. Where one attempts to defeat service by rendering physical service impossible, service may be made by depositing the process in some appropriate place where it would be most likely to come to the attention of the person being served. In light of the Discharger’s attempt on 8 August 2017 to avoid service, the process server’s actions of describing the nature of the documents to the Discharger, followed by informing the Discharger that the documents would be left at the Discharger’s front gate and then, in fact, leaving the documents at that location satisfy the requirements of personal service.

**NON COMPLIANCE WITH CLEANUP AND ABATEMENT ORDER R5-2016-0711**

21. To date, the Discharger has yet to complete any of the requirements outlined in the final CAO. Table 1 outlines all of the potential violations associated with the final CAO.

Table 1. Potential violations associated with non-compliance with Cleanup and Abatement Order R5-2016-0711

<b>Potential Violations – Non-Compliance with Cleanup and Abatement Order R5-2016-0711</b>			
<b>Requirement</b>	<b>Due Date</b>	<b>Water Code Violation</b>	<b>Maximum Per Day</b>
Interim Plan	15 July 2016	13268	\$ 1,000
Interim Plan Completion	1 August 2016	13350	\$ 5,000
Interim Completion Report	1 September 2016	13268	\$ 5,000
RMMP Submission	1 October 2016	13268	\$ 1,000
RMMP Completion	15 November 2016	13350	\$ 5,000
RMMP Completion Report	15 December 2016	13268	\$ 1,000

22. As outlined in Table 1 (above) the Discharger is potentially in violation of six requirements of the final CAO. Water Code sections 13350 and 13268 authorizes the Water Boards to

impose civil liabilities in the amounts listed in Table 1 on a per day basis for each of the violations.

23. Although Central Valley Water Board staff had little to no communication with the Discharger, the Discharger was aware of the violations and was given ample opportunity to come into compliance as evidenced by the three Notice of Violation letters that were sent out between 13 March 2015 and 7 July 2015 (prior to issuance of the draft and final CAO), issuance of a draft and final CAO, and the final Notice of Violation received by Jennifer Gasper on 22 February 2017.
24. The Discharger failed to act on any of the Notice of Violation letters sent in 2015.
25. The Discharger was given opportunity to comment on the requirements of the draft CAO. Comments on the requirements of the draft CAO were not received from the Discharger, therefore the final CAO was issued. It is acknowledged, and reflected in the administrative record, that staff had very little to no communication with the Discharger, either verbal or written, from issuance of the final CAO on 27 June 2016 until a notice of violation was sent to the Discharger on 13 February 2017.
26. To date, Central Valley Water Board staff have not received a response from the Notice of Violation letter that was sent to the Discharger on 13 February 2017, notifying the Discharger that they were in violation of the issued final CAO. To the knowledge of Central Valley Water Board staff, the Discharger has not completed any of the required actions in the final CAO.
27. Based on the above information, Central Valley Water Board staff recommends imposing civil liabilities based on one violation of the final CAO as authorized by Water Code section 13350 for failure to complete a Restoration, Monitoring, and Mitigation Plan, beginning from 15 November 2016, the required date of completion. Staff is not recommending pursuing violations associated with the CAO's Interim Plan requirements based on the fact that Interim Plan requirements are intended to provide emergency stabilization measures during wet weather periods and in this specific case, the CAO deadlines for the Interim Plan occurred during the dry summer months and the final RMMP completion date was early in the wet season, minimizing the utility of the interim measures.

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

28. **Violation:** The Discharger has failed to comply with issued Cleanup and Abatement Order R5-2016-0711 (final CAO), issued on 27 June 2016. The Discharger failed to comply with any of the requirements outlined in the final CAO which included the requirement to implement and complete a Restoration, Mitigation, and Monitoring Plan by 15 November 2016.
29. **Responsible Parties:** The Discharger, as the property owner, operator, and responsible party named in the final CAO, is liable for conditions of the Site and is responsible for complying with the final CAO. The Discharger is liable as the owner of the Site and the

person who had the legal ability and legal responsibility to comply with the final CAO to clean up and abate any discharges or threatened discharge of waste into the water of the state from the Site.

### ADMINISTRATIVE CIVIL LIABILITY PROVISIONS

30. Water Code section 13350 states, in relevant part:

(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e). . . .

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. (A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated. (B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs. . .

(f) A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

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

### CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13350 FOR THE VIOLATION

#### Maximum Civil Liability for Violation of a CAO:

31. Per Water Code section 13350 civil liability administratively imposed by the Central Valley Water Board shall not exceed \$5,000 per day per violation. Staff utilized the required RMMP completion date of 15 November 2016 as a start date and uses 30 June 2017, the date of when the Civil Liability calculations were completed, as an end date. Therefore the maximum administrative civil liability that may be assessed pursuant to section 13350 is **one million one hundred forty thousand dollars (\$1,140,000)**.

**Minimum Civil Liability for Violation of a CAO:**

32. As provided above in paragraph 29, Water Code section 13350 requires a minimum daily penalty of \$500 per day for each day there is a CAO violation and a discharge occurs, and \$100 per day for each day there is a CAO violation without a discharge. Due to the Dischargers failures to implement requirements of the final CAO, it is reasonable to conclude that discharges of wastes to waters of the State occurred and that the beneficial uses of receiving waters were impacted. Regional Board staff, however, do not have sufficient information to determine how many days during the violation period that discharges occurred, nor can staff estimate volume of sediment laden water discharged from the Site. Accordingly, staff used the daily statutory minimum of \$100 per day. Since the Discharger has been in violation of the CAO requirement to complete a RMMP since 15 November 2016, the statutory minimum under 13350 is **twenty two thousand eight hundred dollars (\$22,800)**.
33. Additionally, the Enforcement Policy provides that civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The discharge violations associated with the work conducted at the Site were due to a failure to comply with Water Code section 13260. Using the US EPA's BEN model and highly conservative calculations for total delayed and avoided costs, the economic benefit gained by non-compliance is calculated to be approximately **\$1,561** which becomes the minimum civil liability which must be assessed pursuant to section 13350 and the Enforcement Policy. In addition, the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations, which is calculated to be approximately **\$1,717**.
34. Accordingly, the minimum liability that the Central Valley Water Board should impose for the Violation in accordance with Water Code section 13350 is **twenty two thousand eight hundred dollars (\$22,800)**.

**PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

35. Pursuant to Water Code section 13327, in determining the amount of any civil liability imposed, the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
36. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be



considered when imposing a civil liability as outlined in Water Code sections 13327 and 13350. The entire Enforcement Policy<sup>1</sup> can be found at:

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

37. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Order. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
38. As described above, the maximum penalty that can be imposed against the Discharger for the combined violations is **\$1,140,000** and the minimum penalty, in accordance with the Enforcement Policy and Water Code section 13350, is **\$22,800**. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$143,640**. The specific factors considered in this penalty are detailed in Attachment A of this Order.
39. Notwithstanding the issuance of this Order, the Central Valley Water Board retains the authority to assess additional penalties for violations of the final CAO for which penalties have not yet been assessed or for violations that may subsequently occur.
40. Issuance of this Administrative Civil Liability Order to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

**IT IS HEREBY ORDERED**, pursuant to Water Code sections 13323 and 13350 that:

1. **No later than 30 days from the date on which this Order is issued**, Lawrence Gasper shall pay the amount of **one hundred forty three thousand, six hundred and forty dollars (\$143,640)**. The liability imposed is based upon a review of the factors cited in Water Code section 13327 and the State Water Resources Control Board's 2010 Water

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<sup>1</sup> The State Water Board adopted a 2017 Water Quality Enforcement Policy on April 4, 2017 (2017 Policy). The Office of Administrative Law approved the 2017 Policy on October 5, 2017. A copy of the 2017 Policy can be viewed here:

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

Staff used the 2010 Enforcement Policy methodology to assess administrative civil liability because it was the version of the Enforcement Policy in effect when the violations at issue occurred.

Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.

2. Payment shall be made to the *Waste Discharge Permit Fund* (in accordance with Water Code section 13350 (k)) and shall be remitted to the Central Valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, 95670-6114.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulation, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 20 October 2017.

Original signed by

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PAMELA C. CREEDON, Executive Officer

Attachment A: Penalty Calculations

**Attachment A – ACL Order No. R5-2017-0102**  
**Specific Factors Considered for Administrative Civil Liability**  
**Lawrence Gasper Assessor Parcel Number 061-440-009-000, Shasta County**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13350, subdivision (e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

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

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

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

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

**Step 2 – Assessments for Discharge Violations**

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

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

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

**Potential for Harm**

The Potential for Harm categories in Table 3 are:

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

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

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

The Discharger failed to implement requirements of the issued final CAO, including implementation of a Restoration, Monitoring, and Mitigation Plan (RMMP) to mitigate for previous discharges of sediment and to prevent future discharges of sediment to waters of the State. By not implementing the requirements of the final CAO, the Site continues to discharge sediment to surface waters of the State, impacting water quality and Beneficial Uses of receiving waters. As documented during the Site inspection (Attachment B, Appendix A), the conditions of the Site were creating erosion and discharges of sediment laden stormwater to two unnamed tributaries to Little Cow Creek (Tributaries). During the Site inspection Staff documented an access road and graded pad, utilized for cannabis cultivation, which showed evidence of continual erosion and sediment discharge to the Tributaries. Additionally, Staff collected turbidity samples in the Tributaries. The documented turbidity levels within the Tributaries represented violations of the Basin Plan objective for turbidity. By not implementing the requirements of the final CAO, the Discharger has allowed the Site to continually discharge sediment into the Tributaries resulting in turbidity levels in violation of Basin Plan objectives. Therefore, the Potential for Harm for the violation is determined to be **Moderate**.

#### Deviation from Requirement

The categories for Deviation from Requirement in Table 3 are:

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

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

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

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

#### Per Day Factor

The Per Day Factor, utilizing a Moderate Potential for Harm and Major Deviation from Requirement is **0.4**. The per day factor utilized is on the lower range of Moderate Potential for Harm and Major Deviation from Requirement due to the relatively small scale of disturbed area that requires stabilization at the Site.

The maximum per day assessment for non-compliance with the final CAO, as allowed under Section 13350(e)(1), is \$5,000 per day. Utilizing an adjustment factor of 0.4, the per day assessment for the violation is \$2,000.

#### Days of Violation

As required in the final CAO, the RMMP was to be completed by 15 November 2016. To date the Discharger has not completed implementation of the RMMP, a requirement of the final

CAO. Therefore, the Discharger has been in violation for 228 days. (using 30 June 2017 as the end date)

**Initial Liability Amount:** The value is determined by the per day assessment, utilizing 228 days of violation at \$2,000 per day of violation. For this case, the total is **\$456,000**.

#### **Step 4 – Adjustment Factors**

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

##### Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of **1.4** because the Discharger did not comply with the Water Code requirement to apply for a permit before discharging wastes to waters of the State. The culpability was not assessed at a 1.5 because the total amount of ground disturbance was less than 1 acre and therefore would not have needed permitting through a stormwater permit, and the Central Valley Water Board at that time did not have any other permitting mechanism for cannabis cultivation sites.

##### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger has not been willing to cooperate with cleanup actions. The Discharger failed to act on the three separate Notices of Violation that were sent prior to issuance of the final CAO, subsequently failed to act on the requirements of the issued final CAO, and has actively attempted to refuse receiving mail sent by the Central Valley Water Board. Central Valley Water Board Staff attempted to work with the Discharger to avoid formal enforcement actions, however the Discharger has refused to comply after multiple attempts. Therefore, the Discharger was given a multiplier value of **1.5**.

##### History of Violation

When there is a history of repeat violations, the Enforcement Policy indicates a minimum multiplier of 1.1 to be used. The Discharger does not have a history of violations with the Central Valley Water Board. Therefore, the History of Violation factor is **1.0**.

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

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

**Total Base Liability Amount:** This value is calculated as the Initial Liability Amount (\$456,000) x Adjustment Factors (1.4) (1.5) (1) and is equal to **\$957,600**.

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

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

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. The only information that Staff has to suggest that the Discharger may be able to pay the total base liability amount of \$957,600 is the fact that he had over 3,000 pounds of processed and partially processed cannabis on the site that could be sold for excess of the total base liability amount. Since this product was confiscated by law enforcement, however, the Discharger did not profit from its sale and Staff does not have any evidence of other profits that the Discharger may or may not have received from cultivating cannabis. The Discharger does have the ability to pay some of the total base liability amount proposed based on the fact that the Discharger owns a number of real properties in joint tenancy with his wife, see Table 1 for list of properties and assessed values. The combined tax assessor value of those properties is \$304,820. Some or all of those properties are encumbered by loans and/or mortgages but the exact amount of those encumbrances is unknown. Accordingly, Staff used a multiplier of 0.15 to adjust the total base liability amount down to \$143,640 based on the Discharger’s apparently limited ability to pay. It is possible that the Discharger has additional assets/income unknown to Staff at this time.

Table 1

<b>Property APN</b>	<b>County</b>	<b>Listed Owner</b>	<b>Assessment Year</b>	<b>Assessed Value</b>
061-440-008	Shasta	Larry W and Jennifer Gasper	2015	\$ 120,190
061-440-009	Shasta	Lawrence W and Jennifer Lynn Gasper	2015	\$ 79,347
999-023-073	Shasta	Larry and Jennifer Gasper	Unknown	\$ 5,200
061-470-063	Shasta	Lawrence W and Jennifer L Gasper	2015	\$ 100,083
<b>Total Assessed Value for all Properties</b>				<b>\$ 304,820</b>

**Step 7 – Other Factors as Justice May Require**

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this.

**Step 8 – Economic Benefit**

Pursuant to the Enforcement Policy, the Economic Benefit Amount shall be estimated for every violation. The Economic Benefit is defined as any savings or monetary gain derived from the act or omission that constitutes the violation.

The Discharger’s economic benefit for non-compliance with the final CAO is calculated from the delayed and avoided costs that would have been accrued during completion of the

required actions in the final CAO, including development, completion and final completion report for implementation of the required Restoration, Monitoring and Mitigation Plan (RMMP). The calculation was completed using the US EPA's BEN computer program, and is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of non-compliance. The total Benefit of Noncompliance to the Discharger in regards to this violation is calculated to be **\$1,561**.

The Enforcement Policy states (p. 21) that the total base liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." Therefore, the economic benefit plus 10% is estimated to be **\$1,717**.

Additionally, Water Code section 13350 requires a minimum daily penalty of \$500 per day for each day there is a CAO violation and a discharge occurs, and \$100 per day for each day there is a CAO violation without a discharge. Since the Discharger has been in violation of the CAO requirement to complete a RMMP since 15 November 2016, the statutory minimum under 13350 is **\$22,800**.

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

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

Maximum Liability Amount: \$1,140,000

Minimum Liability Amount: \$22,800

#### **Step 10 – Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement policy, the final liability amount proposed for the violation is **\$143,640**.