

Attachment A to Administrative Civil Liability Complaint No. R8-2025-0069: Liability Methodology

A. Enforcement Policy Background

California Water Code (Water Code) section 13327, requires the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) to consider several factors in determining administrative civil liability, including the nature, circumstances, extent, and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, any economic benefit or savings, resulting from the violation, and other matters that justice may require.

The State Water Resources Control Board's Water Quality Enforcement Policy incorporates these factors in a methodology for determining administrative civil liability in instances of noncompliance. This document describes the methodology and factors determined by the Santa Ana Water Board's Prosecution Team (Prosecution Team) for each of the alleged violations against Daniel K. Musetti (Respondent). In calculating the proposed liability amount, the Prosecution Team used the 2017 Water Quality Enforcement Policy (hereafter referred to as the Enforcement Policy)¹ that was in effect at the time the violations occurred.

B. Violation 1: Failure to submit a proposed RMP acceptable to the Santa Ana Water Board.

The Prosecution Team alleges that the Respondent violated Required Action 1 of the Cleanup Order by failing to submit a proposed RMP acceptable to the Santa Ana Water Board, in violation of Water Code section 13267. The alleged violation is subject to administrative civil liability under Water Code section 13268.

Ten-Step Penalty Calculation Methodology

Step 1. Actual Harm or Potential for Harm for Discharge Violations

Violation 1 alleged in the Complaint and assessed herein involves failure to comply with a Water Code section 13267 reporting directive contained in the Cleanup Order. This is

¹ A copy of the 2017 Enforcement Policy is available at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_fi nal%20adopted%20policy.pdf

a “non-discharge violation” for purposes of the Enforcement Policy penalty methodology. As such, this step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering two factors: the potential for harm and the extent of deviation from the applicable requirements.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. A “moderate” potential for harm is appropriate when the characteristics of the violation have substantially impaired the Santa Ana Water Board’s ability to perform its statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

The Cleanup Order required submittal and approval of an RMP prior to implementation of the plan so that the Santa Ana Water Board or its delegated officer has the opportunity to review the scope of the proposed restoration and corrective actions to confirm the proposed work will adequately remediate Site conditions and prevent unauthorized discharges from further impacting beneficial uses. By failing to submit an RMP for review and approval, the Respondent has substantially impaired the Santa Ana Water Board’s ability to perform its regulatory functions under the Cleanup Order. Based on the circumstances of the violation, a score of **moderate** is appropriate for this factor.

Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A “major” deviation from requirement is appropriate when the requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

The Prosecution Team assigned a score of **major** for this factor because the requirement to submit an RMP with the necessary elements for approval was never satisfied. The Respondent failed to consult with a licensed professional engineer or geologist to produce an RMP. The Cleanup Order details the benefit to be obtained from submittal of an RMP for approval. The RMP is necessary to assess impacts to waters of the state resulting from the unauthorized grading and land disturbance activities and to determine appropriate restoration and abatement work to correct those impacts. By failing to develop a plan in accordance with the requirements of the Cleanup Order, the RMP has been rendered ineffective in its essential functions. Therefore, a major deviation from the requirement is appropriate.

Per Day Factor for Non-Discharge Violations = 0.55

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.4 to 0.7 for non-discharge violations with a moderate potential for harm and a major deviation from requirement. The Prosecution Team used **0.55**, which is the midpoint of the range.

Days of Violation = 930 (12/14/2022 - 7/1/2025)

The Cleanup Order required the Respondent to submit an RMP for approval by Santa Ana Water Board staff by August 28, 2022. Although the Respondent has been in violation of this requirement since that deadline, the Prosecution Team alleges days of violation beginning on December 14, 2022, the date the Cleanup Order was delivered to the Respondent. Therefore, using December 14, 2022 as the start of the days of violation and July 1, 2025, the date the Prosecution Team was preparing the Complaint, as the end date, the Respondent has violated Required Action 1 of the Cleanup Order for 930 days.

Alternate Approach to Calculate Liability for Multiple Day Violations (Collapsing Days):

For violations that are assessed a civil liability on a per day basis and last more than 30 days, the Enforcement Policy provides that the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. In such instances, the Santa Ana Water Board must make one of three findings. Finding (b) may be used to support an alternate approach to penalty calculation where the violation results in no discrete economic benefit that can be measured on a daily basis. Although the Enforcement Policy states that failure to timely submit a site conceptual model or corrective action plan under a cleanup and abatement order is not the type of violation for which the findings required by this section can ordinarily be made, the Enforcement Policy further states that finding (b) may be made, at the discretion of the Santa Ana Water Board, in cases where the sole economic benefit measurable on a daily basis is "the time value of money." (Enf. Policy, p. 19.) The Prosecution Team proposes use of the alternate approach to penalty calculation under finding (b). Because the Respondent is still required to submit an acceptable RMP under the Cleanup Order, the economic benefit gained from the violation is the time value of that money. Under the alternate approach to penalty calculation, the Enforcement Policy states that the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of violation, plus an assessment for each 5-day period of violation, until the 60th day, plus an assessment for each 30 days of violation thereafter. This calculation for collapsing days sets the maximum permitted approach for reducing the number of days of violation. Utilizing the maximum collapsed days, the Prosecution Team has calculated the Initial Liability Amount based on **65 days** of violation.

Initial Liability Amount = \$35,750

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

$[\$1,000 \text{ (per day statutory maximum)} \times 0.55 \text{ (factor)} \times 65 \text{ (days of violation)}] = \mathbf{\$35,750}$

Step 4. Adjustment Factors

The Santa Ana Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the Respondent's degree of culpability, the Respondent's prior violation history, and the Respondent's voluntary efforts to clean up or cooperate with regulatory authorities after the violation.

Degree of Culpability = 1.25

This factor assesses the Respondent's degree of culpability prior to the violation. Higher penalties should result from intentional or negligent violations as opposed to accidental violations. The test for whether a discharger is negligent is what a reasonable and prudent person would have done or not done under similar circumstances. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligent behavior.

A reasonable and prudent response would have made a more considerable effort to comply with the requirement to submit an RMP by the deadline contained in the Cleanup Order. Cannabis Program staff provided the Respondent a copy of the draft Cleanup Order and its transmittal letter, which informed the Respondent of the opportunity to comment on the corrective actions and deadlines proposed in the draft order within 30 days. The letter further informed the Respondent that after that time, the Santa Ana Water Board or its delegated officer would consider issuing a final order. After staff received no comments, the Cleanup Order was issued with the deadlines proposed in the draft order. It took five attempts for Cannabis Program staff to get delivery of the Cleanup Order. Staff transmitted a copy of the Cleanup Order via certified mail to the Respondent's P.O. Box in Homeland on June 29, 2022, July 25, 2022, and September 9, 2022, but none of these deliveries were successful. Following these attempts, staff attempted to contact the Respondent by phone. Staff left voicemails for the Respondent on September 30, 2022 and November 8, 2022, requesting that the Respondent call staff to discuss the Cleanup Order. The Respondent returned staff's call on November 8, 2022 and stated he had not received a copy of the Cleanup Order. He provided staff the Ritter Avenue address to use as an alternative mailing address. Although the certified deliveries had not been received, the Respondent was made aware that the Cleanup Order had been issued during this conversation. Staff subsequently retransmitted the Cleanup Order to the Respondent's P.O. Box and Ritter Avenue address on November 9, 2022, but this delivery was similarly unsuccessful. Staff then transmitted the Cleanup Order a fifth time on December 14, 2022, which was delivered and signed for at the Ritter Avenue address. By that date, the Respondent was already in violation of the deadline for Required Action 1 of the Cleanup Order; however, through his conversation with staff, the Respondent already knew the Cleanup Order had been issued and should have taken steps towards compliance prior to December 14, 2022. Accordingly, a **score of 1.25 for this factor** is appropriate due to the Respondent's degree of negligence.

History of Violations = 1.0

The Enforcement Policy provides that, where a discharger has no prior history of violations, this factor should be a neutral 1.0. The Prosecution Team has assessed a

score of 1.0 for this factor as the Respondent has no prior history of violations with the State Water Board or the Santa Ana Water Board.

Cleanup and Cooperation = 1.5

The cleanup and cooperation factor addresses a violator's voluntary efforts to clean up and/or to cooperate with regulatory authorities after the violation. Adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier for exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral adjustment.

In addition to the certified mail delivery of the Cleanup Order on December 14, 2022, Cannabis Program staff also provided a physical copy of the Cleanup Order to Janet Musetti, the Respondent's wife, during the second search warrant inspection of Riverside County Assessor Parcel Number (APN) 455-200-063 (the Site) on June 7, 2023. Despite these deliveries, the Respondent has failed to resolve the violation by submitting a proposed RMP. As a result, staff issued the Respondent a Notice of Violation via first-class mail and certified mail on July 6, 2023. Staff received no response. Given the Respondent's continued failure to submit an RMP for review and approval, Cannabis Program staff issued a notice to the Respondent on April 10, 2025, which expressed staff's intent to recommend formal enforcement unless the Respondent contacted staff to discuss the steps being taken to comply with the Cleanup Order. The Respondent left voicemails for staff on April 30, 2025 and May 1, 2025, stating he received the Notice of Intent letter but claiming that he had not received the Cleanup Order. Staff spoke with the Respondent on May 6, 2025 and informed him of the deliveries of the Cleanup Order. Staff explained the requirements of the Cleanup Order and encouraged the Respondent to hire a qualified professional, which he disputed the need for. The Respondent continuously diverted attention from the primary issue of noncompliance with the Cleanup Order. At the Respondent's request, Cannabis Program staff retransmitted the Cleanup Order for a sixth time on May 15, 2025, which was delivered on May 16, 2025. Despite these efforts, the Respondent has not made any attempt at complying with the Cleanup Order. Although the Respondent has had sporadic communication with Cannabis Program staff, the Respondent continues to feign ignorance of the Cleanup Order, challenge his obligations under the Cleanup Order, and has failed to submit an RMP to resolve the ongoing violation. Accordingly, the Prosecution Team has assigned a **score of 1.5 for this factor**.

Steps 5 through 10 will be discussed in Section D, following the Determination of Total Base Liability for Violation 2.

C. Violation 2: Failure to Complete Implementation of an Approved RMP by March 31, 2023.

The Prosecution Team alleges that the Respondent violated Required Action 3 of the Cleanup Order by failing to complete implementation of an approved RMP no later than

March 31, 2023, in violation of Water Code section 13304. The violation of this requirement is subject to administrative civil liability pursuant to Water Code section 13350.

Ten-Step Penalty Calculation Methodology

Step 1. Actual Harm or Potential for Harm for Discharge Violations

Violation 2 alleged in the Complaint and assessed herein involves failure to comply with implementation of cleanup and abatement activities contained in the Cleanup Order. This is a “non-discharge violation” for purposes of the Enforcement Policy penalty methodology. As such, step 1 is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering two factors: the potential for harm and the extent of deviation from the applicable requirements.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. A "moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the Santa Ana Water Board's ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

The Respondent failed to complete implementation of the cleanup, restoration, and monitoring work required to be contained in an approved RMP. Implementation of an approved RMP was required under the Cleanup Order to address damage resulting from discharges and to prevent future discharges from occurring. By not completing implementation of an approved RMP, the Respondent has allowed the discharges and threats of discharge to persist, which present a substantial threat to beneficial uses of the unnamed ephemeral streams that cross through the Site. Additionally, by failing to complete implementation of an approved RMP, the Respondent has substantially impaired the Santa Ana Water Board's ability to perform its statutory and regulatory functions under the Cleanup Order. Based on the circumstances of the violation, a score of **moderate** is appropriate for this factor.

Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A "major" deviation from requirement is appropriate when the requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

The Prosecution Team assigned a value of **major** for this factor because the requirement to complete implementation of an approved RMP has not been satisfied. The Respondent failed to submit an acceptable RMP to the Santa Ana Water Board or its delegated officer for approval such that no work can be implemented in accordance with an approved plan. Furthermore, the Respondent has not provided evidence that the restoration and mitigation measures expected to be contained in an acceptable RMP have otherwise been completed as required under the Cleanup Order. The RMP was intended to clean up the discharges of waste to waters of the state that were observed during inspections of the Site, restore the impacted stream channels and riparian habitat, and prevent future discharges at the Site. By failing to complete implementation of these measures, the Respondent has rendered this requirement ineffective in its essential functions. The Site has not been cleaned up and restored as intended. Therefore, a major deviation from requirement is appropriate.

Per Day Factor for Non-Discharge Violations = 0.55

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.4 to 0.7 for non-discharge violations with a moderate potential for harm and major deviation from requirement. The Prosecution Team used **0.55**, which is the midpoint of the range.

Days of Violation = 823 (3/31/2023 - 7/1/2025)

The Respondent failed to implement the restoration and mitigation measures expected to be contained in an approved RMP by March 31, 2023, and remains in violation of this requirement. As of July 1, 2025, the Respondent has violated Required Action 3 of the Cleanup Order for **823 days**.

Alternate Approach to Calculate Liability for Multiple Day Violations (Collapsing Days):

As Discussed under Violation 1, the Santa Ana Water Board has discretion to utilize the alternate approach to calculate liability for this violation if one of the three findings specific in the Enforcement Policy is made. The Prosecution Team proposes use of the alternate approach to penalty calculation under finding (b). Because the Respondent is still required to implement the restoration and mitigation measures to be contained in an approved RMP under the Cleanup Order, the economic benefit gained from the violation is the time value of that money. Utilizing the maximum collapsed days, the Prosecution Team has calculated the Initial Liability Amount based on **61 days** of violation.

Initial Liability Amount = \$167,750

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

$[\$5,000 \text{ (per day statutory maximum)} \times 0.55 \text{ (factor)} \times 61 \text{ (days of violation)}] = \mathbf{\$167,750}$

Step 4. Adjustment Factors

As discussed under Violation 1, this step considers three factors: the Respondent's degree of culpability, the Respondent's prior violation history, and the Respondent's voluntary efforts to clean up and cooperate with regulatory authorities after the violation.

Degree of Culpability = 1.4

As previously noted, this factor looks at the Respondent's conduct prior to the violation and can be assigned a multiplier between 0.75 and 1.5, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligent behavior. The test is what a reasonable and prudent person would have done or not done under similar circumstances.

A reasonable and prudent person would have ensured that all required restoration and mitigation measures were completed by March 31, 2023, pursuant to an approved RMP. The Respondent failed to act as a reasonable and prudent person in this case. The Respondent was informed, through multiple transmittals and phone calls, that the Cleanup Order had been issued on June 29, 2022 and that all required actions contained in the order were in effect and enforceable. As discussed under Violation 1, Cannabis Program staff had to retransmit the Cleanup Order several times before confirming delivery on December 14, 2022. Prior to that delivery, staff left voicemails for the Respondent on September 30, 2022 and November 8, 2022, asking him to call staff to discuss the Cleanup Order. During the November 8, 2022 call, staff informed the Respondent that the Cleanup Order had been issued and that the Respondent needed to comply with its required actions. Despite this call and the subsequent delivery of the Cleanup Order on December 14, 2022, the Respondent failed to complete implementation of cleanup and restoration measures, in accordance with an approved plan, by March 31, 2023. Despite Cannabis Program's efforts to communicate with the Respondent and inform him of his requirements, there has been no indication of progress towards implementation of an approved RMP. Therefore, a **score of 1.4 for this factor** is appropriate.

History of Violations = 1.0

The Prosecution Team has assessed a neutral **score of 1.0 for this factor** because the Respondent has no prior history of violations.

Cleanup and Cooperation = 1.5

This factor addresses a violator's voluntary efforts to clean up and/or to cooperate with regulatory authorities after the violation. Adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier for exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A timely response to a Water Board order should receive a neutral adjustment.

The Respondent did not respond to staff or resolve this violation of the Cleanup Order in a timely manner, as would be expected of a reasonable and prudent person. Following the missed deadline, Cannabis Program staff provided the Respondent another copy of the Cleanup Order on June 7, 2023, through physical delivery to his wife. Staff also transmitted a Notice of Violation to the Respondent on July 6, 2023 by first-class mail and certified mail, which informed him of his noncompliance with this requirement of the Cleanup Order. Staff received no communication from the Respondent in response to either of these actions. Given the Respondent's continued failure to comply with the Cleanup Order, staff issued a notice to the Respondent on April 10, 2025 that expressed staff's intent to recommend formal enforcement unless the Respondent

contacted staff to discuss the steps being taken to comply with the Cleanup Order. The Respondent left voicemails for staff on April 30, 2025 and May 1, 2025. Staff spoke with the Respondent on May 6, 2025; however, the Respondent again claimed to not have received the Cleanup Order despite the documented deliveries. The Respondent further disputed the need to hire a qualified professional to comply with the Cleanup Order. The Respondent's response did not identify sufficient steps that the Respondent was taking to resolve the violations of the order. To date, the Respondent has not completed implementation of the restoration and mitigations measures required to be contained in an approved RMP under the Cleanup Order. Accordingly, a **score of 1.5 for this factor** is appropriate.

D. Factors Associated With All Violations (Steps 5-10)

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount is determined by adding the amounts above for each violation including any adjustment for multiple day violations. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

The Total Base Liability Amount for Violations 1 and 2 is calculated on a per day basis as follows:

Violation 1: \$35,750 (initial liability amount) x 1.25 (degree of culpability) x 1.0 (history of violations) x 1.5 (cleanup and cooperation) = **\$67,031.25**

Violation 2: \$167,750 (initial liability amount) x 1.4 (degree of culpability) x 1.0 (history of violations) x 1.5 (cleanup and cooperation) = **\$352,275**

Total Base Liability Amount: \$67,031.25 + \$352,275 = \$419,306.25

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

The Enforcement Policy states that the Total Base Liability Amount may be adjusted to address ability to pay or to continue in business if the Santa Ana Water Board has sufficient financial information necessary to assess a violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on a violator's ability to continue in business. A violator's ability to pay an administrative civil liability is determined by its revenues and assets. Although it is often in the public interest for a discharger to continue in business, the Enforcement Policy provides that the Santa Ana Water Board is not required to ensure that civil liabilities are set at a level that allows a violator to continue in business. Rather, the Water Code only requires that the Santa Ana Water Board consider this factor when imposing civil liability.

The Respondent owns the Site, which has an assessed value of \$98,548. Riverside County property transaction records indicate that the Respondent purchased the Site on June 1, 1992. The Respondent is also associated with several other properties in

Riverside County that are held by the Daniel K Musetti Revocable Trust: APN 455-280-002, valued at \$44,225; APN 455-330-007, valued at \$54,641; APN 455-26-004, valued at \$49,685; and APN 455-250-002, valued at \$49,685. The Prosecution Team does not have any information regarding the Respondent's revenues or liabilities that would further inform his ability to pay. Based on the information available, the Prosecution Team proposes no adjustment to the Total Base Liability Amount.

Step 7. Economic Benefit

The Enforcement Policy provides that the Economic Benefit Amount shall be estimated for every violation. The economic benefit is any savings or monetary gains from noncompliance. There are two types of costs that should be considered: delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner but that a discharger implemented too late to avoid the violation and/or that a discharger is still obligated to perform. Avoided costs include expenditures that a discharger should have incurred to avoid the incident of noncompliance but that are no longer required.

For **Violation 1**, the cost of preparing an RMP (i.e., field inspection and report preparation) is comparable to the cost of preparing a combined Site Management Plan, Site Erosion and Sediment Control Plan, and a Disturbed Area Stabilization Plan, as presented in the State Water Resources Control Board, February 2017, Direct Cost Analysis for the Proposed Cannabis Cultivation Policy (2017 Direct Cost Analysis),² which is estimated to cost between \$3,660 and \$11,720. Because the Respondent will still need to submit a sufficient RMP for approval under the Cleanup Order, the costs estimated above are considered delayed. The Respondent gained an economic benefit from delayed expenditures associated with Violation 1 according to the EPA BEN model. Cannabis Program staff identified the midpoint in the estimated range of plan cost to be \$7,690. Staff used the U.S. Bureau of Labor Statistics' CPI Inflation Calculator³ to consider inflation between October 2017, issuance of the Cannabis Policy Cost Analysis, and June 2025, the latest available inflation data, and calculated the cost of submitting the RMP to be \$10,056.21. Staff entered this amount as a one-time non-depreciable expenditure with \$0 in capital investment and \$0 in annual recurring costs. Staff utilized a noncompliance date of December 14, 2022, the date staff used to begin counting days of violation in the Complaint, and an estimated compliance date of October 24, 2025, the anticipated hearing date. The resulting economic benefit from delaying the plan expenditures is \$1,720. Consistent with the Enforcement Policy, the Total Base Liability Amount for Violation 1 must be at least ten percent higher than the economic benefit derived from the violations. Economic benefit plus ten percent is calculated to be \$1,892 ($\$1,720 + \172), which the Total Base Liability Amount for this violation exceeds.

² The 2017 Direct Cost Analysis is available at:

https://www.waterboards.ca.gov/water_issues/programs/cannabis/docs/policy/20171017_cannabis_cultivation_policy_cost_analysis.pdf

³ The CPI Inflation Calculator is available at: https://www.bls.gov/data/inflation_calculator.htm

For **Violation 2**, implementation of the corrective actions required to be contained in an approved RMP would require Waste Discharge Requirements (WDR) from the Santa Ana Water Board that would require a one-time application fee of \$4,212. Without the Respondent having completed the assessment required to develop the RMP under the Cleanup Order, it is difficult to estimate what the cost will be to complete implementation of the corrective actions; therefore, Staff has not included implementation costs in the economic benefit analysis. Because the Respondent is still required to complete implementation of sufficient restoration and mitigation measures, these costs are considered delayed. Although implementation costs have not been estimated, the Respondent gained an economic benefit from delayed expenditures associated with the WDR application fee for Violation 2 according to the EPA BEN model. Cannabis Program staff identified the permit application cost of \$4,212, with an estimated implementation cost of \$0 as a one-time non-depreciable expenditure, \$0 in capital investment, and \$0 in annual recurring fees. Staff utilized a noncompliance date of March 31, 2023, the deadline contained in the Cleanup Order, and an estimated compliance date of May 27, 2026, which is based on the length of time provided in the Cleanup Order to complete implementation following approval of the RMP and using October 24, 2025 as the estimated date of approval of the RMP. The resulting economic benefit from delaying the permit application fees is \$760. Based on this calculation, economic benefit plus ten percent is calculated to be \$836 ($\$760 + 76$), which the Total Base Liability Amount for this violation exceeds.

Step 8. Other Factors as Justice May Require

The Enforcement Policy allows an adjustment to the administrative civil liability, in consideration of the costs of investigating and enforcing the matter. Here, Santa Ana Water Board staff expended over 119 staff hours and accrued \$18,965.03 in staff costs associated with the investigation and preparation of the Complaint. The Prosecution Team asserts that it is appropriate to increase the Total Base Liability Amount by \$18,965.03 in consideration of the costs of investigation and enforcement.

Step 9. Maximum and Minimum Liability Amounts

For all violations, the applicable statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amount of civil liabilities being proposed. For purposes of this step, the maximum liability does not include any reduction in the number of days for multiple day violations.

Violation 1: Pursuant to Water Code section 13268, subdivision (b)(1), civil liability may be administratively imposed by the Santa Ana Water Board in an amount that shall not exceed \$1,000 for each day in which the violation occurs. The Complaint alleges that this violation occurred for 930 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$930,000. Water Code section 13268 does not impose a minimum liability amount; however, the Enforcement Policy requires the Santa Ana Water Board to recover, at a minimum, the economic benefit derived from this violation plus ten percent. Therefore, the minimum liability that can be imposed for this

violation is \$1,464.10. The proposed liability of \$67,031.25 for Violation 1 falls within the minimum and maximum liability amounts.

Violation 2: Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be administratively imposed by the Santa Ana Water Board on a daily basis in an amount that shall not exceed \$5,000 for each day that the violation occurs. The Complaint alleges that this violation occurred for 823 days. Accordingly, the statutory maximum liability amount that can be imposed for this violation is \$4,115,000. Water Code section 13350, subdivision (e)(1)(B), further provides that “[w]hen 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.” Accordingly, the statutory minimum liability amount that can be imposed for this violation is \$82,300. The proposed liability of \$352,275 for Violation 2 falls within the statutory minimum and maximum liability amounts.

Step 10. Final Liability Amount

The Final Liability Amount consists of the added amounts for each violation, with any allowed adjustments. The Total Base Liability Amounts for Violations 1 and 2 are \$67,031.25 and \$352,275, respectively. After combining those amounts, and adding staff’s investigation and enforcement costs of \$18,965.03, the Final Liability Amount is calculated to be \$438,271.28.