

April 18, 2017

Cambria Community Services District
Jerry Gruber, General Manager
P.O. Box 65
Cambria, CA 93428
Email: JGruber@cambriacsd.org

CERTIFIED MAIL NO. 7011 2970 0000 2418 6963
RETURN RECEIPT REQUESTED

Dear Mr. Gruber:

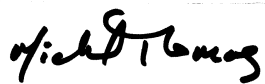
**ENFORCEMENT PROGRAM: CAMBRIA COMMUNITY SERVICES DISTRICT, CAMBRIA,
SAN LUIS OBISPO COUNTY – TRANSMITTAL OF ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R3-2017-0015 REGARDING VIOLATIONS OF WASTE DISCHARGE
REQUIREMENTS ORDER NO. R3-2014-0050**

The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) prosecution staff hereby issues Administrative Civil Liability Complaint No. R3-2017-0015 (Complaint). The Complaint alleges that Cambria Community Services District (Discharger) has violated Water Code section 13267 by failing to submit timely self-monitoring reports (SMRs) as required by Waste Discharge Requirements Order No. R3-2014-0050 and revised Monitoring and Reporting Program No. R3-2014-0050. The Central Coast Water Board may impose a penalty for the above violations pursuant to the California Water Code. The Complaint includes a recommendation for a penalty amount of **\$53,596**.

The Complaint is enclosed, along with a Complaint Waiver Form and Complaint Hearing Procedures that sets forth important requirements and deadlines for participation in the Complaint hearing. Additionally, a Fact Sheet describing the Complaint process is attached, which explains what you can expect and your obligations. **Please read each document carefully. The Complaint may result in the issuance of an order by the Central Coast Water Board that requires you to pay a penalty.**

If you have questions about the Complaint, or the other enclosed documents, please contact Thea Tryon at (805) 542-4776 or Thea.Tryon@waterboards.ca.gov, Jon Rokke at (805) 549-3892 or Jon.Rokke@waterboards.ca.gov, or State Water Board Office of Enforcement attorney Paul Ciccarelli at (916) 322-3227 or Paul.Ciccarelli@waterboards.ca.gov.

Sincerely,



Michael J. Thomas
Assistant Executive Officer

Digitally signed by Michael Thomas
Date: 2017.04.18 15:35:15 -07'00'

- Enclosures:
1. Administrative Civil Liability Complaint No. R3-2017-0015, with attachments
 2. Complaint Waiver Form
 3. Proposed Notice of Public Hearing and Procedures
 4. Fact Sheet for Administrative Civil Liability Complaint Process

cc:

By Email

John M. Robertson
Executive Officer
Central Coast Water Board
john.robertson@waterboards.ca.gov

Michael Thomas
Assistant Executive Officer
Central Coast Water Board
michael.thomas@waterboards.ca.gov

Jessica Jahr
Office of Chief Counsel
State Water Board
jessica.jahr@waterboards.ca.gov

Thea Tryon
Enforcement Coordinator
Central Coast Water Board
thea.tryon@waterboards.ca.gov

Paul Ciccarelli
Office of Enforcement
State Water Board
paul.ciccarelli@waterboards.ca.gov

Harvey Packard
Permitting Unit
Central Coast Water Board
harvey.packard@waterboards.ca.gov

Todd Stanley
Enforcement Staff
Central Coast Water Board
todd.stanley@waterboards.ca.gov

Jon Rokke
Permitting Unit
Central Coast Water Board
jon.rokke@waterboards.ca.gov

Chris Adair
Permitting Unit
Central Coast Water Board
chris.adair@waterboards.ca.gov

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2017-0015

IN THE MATTER OF:

**CAMBRIA COMMUNITY SERVICES DISTRICT
SAN LUIS OBISPO COUNTY**

CAMBRIA COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. This Administrative Civil Liability Complaint (Complaint) is issued pursuant to Water Code section 13323 to Cambria Community Services District (Discharger), the owner and operator of the Cambria Emergency Water Supply Project (EWS Project) located at 990 San Simeon-Monterey Creek Road, north of Cambria in San Luis Obispo County. The Discharger is alleged to have violated provisions of law for which the Central Coast Regional Water Quality Control Board (Central Coast Water Board) may impose civil liability pursuant to California Water Code (Water Code) section 13268. This Complaint proposes to assess **\$53,596** in administrative civil liability against the Discharger for the violations alleged herein.
2. This Complaint alleges that the Discharger submitted numerous late self-monitoring reports (SMRs) in violation of Waste Discharge Requirements Order No. R3-2014-0050, and proposes liability against the Discharger for the late monthly SMRs it submitted for EWS Project operating periods after October 7, 2015, the date on which revised Monitoring and Reporting Program No. R3-2014-0050 became effective.
3. Within 90 days of the date of issuance of this Complaint, the Central Coast Water Board will hold a public hearing on this matter on **July 14, 2017**, in San Luis Obispo, California, unless the Discharger agrees to waive the right to a public hearing by filling out, signing, and submitting the enclosed hearing "Waiver Form." At the hearing, the Discharger will have the opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of administrative civil liability by the Central Coast Water Board.
4. If the Discharger chooses not to waive the right to a public hearing, an agenda will be mailed to the Discharger, not less than ten days before the public hearing date. The Discharger and its authorized representative will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of administrative civil liability by the Central Coast Water Board.

5. At the public hearing, the Central Coast Water Board will receive evidence and hear arguments and consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

Factual Basis for the Allegations

6. The Discharger provides drinking water to residents in and around the unincorporated area of Cambria, San Luis Obispo County.
7. The Discharger owns and operates the EWS Project, located at the Discharger's existing San Simeon well field and effluent percolation ponds property. The EWS Project treats impaired groundwater to recharge the San Simeon well field aquifer with treated water.
8. On November 14, 2014, the Central Coast Water Board adopted Waste Discharge Requirements Order No. R3-2014-0050 (Order) and the accompanying Monitoring and Reporting Program No. R3-2014-0050 (MRP) to regulate the treatment of recycled water at the Discharger's effluent percolation pond site and injection of treated water into the San Simeon aquifer.
9. The Discharger's advanced water treatment plant (AWTP) is assumed to operate continuously for six months of the year when drought conditions are most severe. Since adoption of the Order, the Discharger operated the EWS Project during the following periods: January 20 to April 30, 2015; September 20 to December 31, 2015; and September 19 to December 23, 2016.
10. Order Provision V.3 requires the Discharger to "submit to the [Central Coast Water Board], under penalty of perjury, self-monitoring reports according to the specifications contained in the MRP, as directed by the Executive Officer and signed by a designated responsible party."
11. The Order requires technical and monitoring reports, including the MRP and any revisions thereto, pursuant to Water Code section 13267, subdivisions (b) and (d).
12. The Order's requirements "are subject to enforcement under Water Code sections 13261, 13263, 13264, 13265, 13268, 13350, 13300, 13301, 13304, 13350, and enforcement provisions in Water Code, Division 7, Chapter 7 (Water Reclamation)."
13. MRP section I, in part, requires the Discharger to submit reports to the State Water Resources Control Board's GeoTracker database in Electronic Data

Format and to the Division of Drinking Water, Drinking Water Field Operations, by the dates indicated below:

- a. Consistent with MRP section III. REPORTING REQUIREMENTS, Monthly Reports for monitoring and reporting requirements included in the Operations Maintenance and Monitoring Plan (OMMP) shall be received by the 15th day of each month following the first monitoring period.
 - b. Quarterly Monitoring Reports shall be received by the 15th day of the second month following the end of each quarterly monitoring period according to Table M-1.¹
 - c. Annual Summary Report shall be received by April 15 of each year.
 - d. The OMMP shall be submitted prior to startup of the AWTP and shall be updated as necessary. The OMMP and any updates are subject to Division of Drinkwater (DDW) and Central Coast Water Board approval. Additionally, significant changes in the approved OMMP must be approved by the DDW and Central Coast Water Board prior to instituting said changes. The Discharger is responsible for ensuring that the OMMP is, at all times, representative of the current operations, maintenance, and monitoring of the AWTP.
14. Under MRP section VI, the Central Coast Water Board's Executive Officer may adjust the list of parameters and monitoring frequencies if the Discharger makes a request and the Executive Officer determines that the modification is adequately supported by statistical trends of monitoring data.
15. During the first year of operation, the Discharger repeatedly failed to meet its reporting requirements. The violations continued, despite assistance from Central Coast Water Board staff, which included: (a) revising the MRP on October 7, 2015², to eliminate duplicative monitoring, (b) developing a spreadsheet monitoring tool for timely report submittals; and (c) sending reminder emails when report due dates were fast approaching or overdue.
16. On February 9, 2017, Central Coast Water Board staff sent the Discharger a Notice of Violation (NOV) for chronic violations of the Order and other waste discharge requirements, which summarized the Discharger's history of submitting late SMRs. The most troubling violations are related to the Discharger's failure to submit timely Monthly Reports during each EWS Project operational period. The Monthly Reports are needed to ensure that the treated water that is injected into

¹ See MRP, page 3, for Table M-1.

² The Executive Officer approved the revised MRP dated October 7, 2015, after the Discharger requested revisions. The revised MRP did not alter the reporting due dates set forth in MRP section I (cited above).

the San Simeon aquifer meets Order requirements and Division of Drinking Water drinking water regulations.

17. On April 13, 2017, Central Coast Water Board staff sent the Discharger another NOV for violations of the Discharger's February 9, 2017 NOV response and other waste discharge requirements. The April 13, 2017 NOV notifies the discharger of staff's intent to issue this Complaint.
18. Central Coast Water Board Prosecution Team reviewed the violations related to the Order and the revised MRP dated October 7, 2105 (revised MRP), and alleges that the Discharger committed six (6) violations as set forth below. The alleged violations occurred after the Executive Officer issued the revised MRP and during operation of the EWS Project.

Violations

19. Violation No. 1: The Discharger violated revised MRP section I.1.a because it submitted the November 2015 Monthly Report on December 21, 2015. The late submittal results in five (5) days of violation.
20. Violation No. 2: The Discharger violated revised MRP section I.1.a because it submitted the December 2015 Monthly Report on January 15, 2016. The late submittal results in twelve (12) days of violation.
21. Violation No. 3: The Discharger violated revised MRP section I.1.a because it submitted the September 2016 Monthly Report on October 21, 2016. The late submittal results in five (5) days of violation.
22. Violation No. 4: The Discharger violated revised MRP section I.1.a because it submitted the October 2016 Monthly Report on November 22, 2016. The late submittal results in six (6) days of violation.
23. Violation No. 5: The Discharger violated revised MRP section I.1.a because it submitted the November 2016 Monthly Report on January 17, 2017. The late submittal results in thirty-two (32) days of violation.
24. Violation No. 6: The Discharger violated revised MRP section I.1.a because it submitted the December 2016 Monthly Report on February 2, 2017. The late submittal results in seventeen (17) days of violation.

Legal Provisions

25. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports required under Water Code section 13267, or falsifying any information provided therein, is guilty of a misdemeanor and subject to an administrative civil liability of up to one thousand dollars (\$1,000) for each day in which the violation occurs.

Minimum and Maximum Administrative Civil Liability

26. Pursuant to Water Code section 13268, subdivision (b), the maximum administrative civil liability for Violation Nos. 1 to 6 is **seventy-seven thousand dollars (\$77,000)** based on a calculation of the total days of violation times the statutory maximum penalty (\$1,000 x 77 days of violation = \$77,000).
27. The State Water Board's Enforcement Policy (referenced below) states that the total liability amount 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 meaningful deterrent to future violations." As set forth in Attachment A, the requirement is met because the minimum liability associated with economic benefit is approximately \$30.80.

Liability Factors

28. On November 17, 2010, 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 May 20, 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, including those set forth in Water Code section 13327. This policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.
29. The administrative civil liability for this complaint was derived from the use of the penalty methodology in the Enforcement Policy based on a consideration of the Discharger's failure to submit technical and monitoring reports pursuant to Water Code section 13267. The proposed civil liability takes into account the factors set forth in Water Code section 13327, including the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require. The specific application of the Enforcement Policy methodology is provided in Attachment B, incorporated herein by reference.

Proposed Administrative Civil Liability

30. Based on consideration of the above facts and after applying the penalty methodology as shown in Attachment B, the Assistant Executive Officer of the Central Coast Water Board proposes that civil liability be imposed administratively on the Discharger pursuant to Water Code section 13268, subdivision (b), in the amount of **fifty-three thousand five hundred and ninety-six dollars (\$53,596)**.
31. Administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
32. Notwithstanding the issuance of this Complaint, the Central Coast Water Board retains the authority to assess additional penalties for violations of Order requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
33. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to California Code of Regulations, title 14, sections 15308 and 15321 subsection (a) (2).
34. Payment of the assessed liability amount does not absolve the Discharger from complying with the Order. Additional civil liability may be assessed in the future if the Discharger fails to comply with the Order or future orders issued by the Central Coast Water Board.

Waiver of Hearing

The Discharger may waive its right to a hearing. If the Discharger wishes to waive the right to a hearing, an appropriate representative must sign the attached waiver, select the waiver option provided, and return it **by May 17, 2017**, together with a check for **fifty-three thousand five hundred and ninety-six dollars (\$53,596)**. Indicate **“R3-2017-0015” on the check** and make it payable to the *State Water Board Cleanup and Abatement Account*. Send the check to the following address:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch
1001 I Street, 18th Floor
Sacramento, CA 95814

The waiver and a copy of the check shall also be mailed to the Regional Board at the following address:

Central Coast Water Board
Attention: Thea Tryon
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906



Digitally signed by Michael Thomas
Date: 2017.04.18 15:35:58 -07'00'

Michael Thomas
Assistant Executive Officer

Date: April 18, 2017

Economic Benefit Analysis

Cambria CSD

Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
November 2015 Monthly Report	\$ 6,000	ECI	7/14/2017	Y	12/15/2015	12/22/2015	7/14/2017	3.60%	\$ 4
December 2015 Monthly Report	\$ 6,000	ECI	7/14/2017	Y	1/15/2016	1/29/2016	7/14/2017	3.40%	\$ 8
September 2016 Monthly Report	\$ 6,000	ECI	7/14/2017	Y	10/15/2016	10/22/2016	7/14/2017	3.40%	\$ 4
October 2016 Monthly Report	\$ 6,000	ECI	7/14/2017	Y	11/15/2016	11/23/2016	7/14/2017	3.40%	\$ 4
November 2016 Monthly Report	\$ 6,000	ECI	7/14/2017	Y	12/15/2016	1/18/2017	7/14/2017	3.40%	\$ 8
December 2016 Monthly Report	\$ 6,000	ECI	7/14/2017	Y	1/15/2017	2/3/2017	7/14/2017	3.40%	\$ -

Income Tax Schedule: Municipality **Analyst:** Bryan Elder **Total Benefit: \$ 28**

USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 4/18/2017 9:01

Assumptions:

- 1 Monthly reporting costs estimated using 40 hours of labor based on at least 1 hour per day for data entry/organization and the remainder for violation and corrective action assessment, report preparation, certification and submittal. Labor rates assumed to be \$150 per hour.
- 2 Reporting costs are indexed using the Employment Cost Index (ECI).
- 3 Non-compliance dates are reporting deadlines specified in the MRP.
- 4 Compliance dates are the date the report was received by the CCRWQCB.
- 5 Penalty payment date is assumed to be July 14, 2017.
- 6 If benefit of non-compliance for a given compliance action is computed to be negative, benefit will be assumed to be zero for computational purposes.
- 7 CCSD is assumed to be a municipality for computational purposes. 10 / 16

ATTACHMENT B
**FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2017-0015
CAMBRIA COMMUNITY SERVICES DISTRICT
EMERGENCY WATER SUPPLY FACILITY**

This document provides details to support recommendations for enforcement in response to Cambria Community Services District's (Discharger) failure to submit timely monthly self-monitoring reports (Monthly Reports) as required by Waste Discharge Requirements Order No. R3-2014-0050 (Order) and Monitoring and Reporting Program No. R3-2014-0050 (MRP) and any revisions thereto. The proposed administrative civil liability was derived following the State Water Resources Control Board's Water Quality Enforcement Policy (the "Enforcement Policy")¹. The proposed civil liability takes into account such factors as the Discharger's culpability, cooperation in returning to compliance, ability to pay and continue in business, and other factors as justice may require.

Discharger and Project Information

The Discharger is the owner and operator of the Cambria Emergency Water Supply Project (EWS Project) located at the Discharger's existing San Simeon well field and effluent percolation ponds property in San Luis Obispo County. The purpose of the EWS Project is to provide the Discharger's customers with a supplemental source of drinking water in order to prevent depletion of the San Simeon aquifer during a prolonged drought. The EWS Project takes impaired groundwater underlying the property where the municipal wastewater treatment plant discharges effluent to percolation ponds and treats the water using membrane filtration, reverse osmosis, and an advanced oxidation process. The treated water is disinfected using ultraviolet and chlorine and then reinjected into the San Simeon aquifer.

Application of Water Board's Enforcement Policy

On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code section 13327, which requires the Central Coast Regional Water Quality Control Board (Central Coast Water Board) to consider several factors when determining the amount of civil liability to impose, including "...the nature, circumstance, 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 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.

The Central Coast Water Board Prosecution Team (Prosecution Team) developed the following recommendations based on the procedures included in the Enforcement Policy methodology. The attached spreadsheet shows the calculations associated with the procedural steps detailed herein.

¹ Water Board's Adopted Enforcement Policy available at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

Regulatory Basis of Alleged Violation(s) and Proposed Liability

The Prosecution Team alleges that the Discharger violated California Water Code section 13267 for failure to submit timely Monthly Reports as required by the Order. Pursuant to Water Code section 13268, subdivision (b), the Discharger is subject to a maximum penalty of \$1,000 per day of violation.

The Prosecution Team's proposed administrative civil liability amount is based on the Discharger's failure to submit timely Monthly Reports for EWS Project operating periods after October 7, 2015, the date on which the revised MRP became effective.² As detailed in the Complaint, the Discharger is alleged to have violated revised MRP section I during six separate monthly monitoring periods for a total of 77 days of violation as follows:

Violations	Monthly Reports	Days of Violation
1	November 2015	5
2	December 2015	12
3	September 2016	5
4	October 2016	6
5	November 2016	32
6	December 2016	17

Penalty Calculation Methodology Procedural Steps

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because the violation is a not a discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Factor Background: The evaluation of non-discharge violations considers the potential for harm to beneficial uses and the environment, and the extent of deviation from applicable requirements. In general, non-discharge violations include, but are not limited to, the failure to file an Application/Notice of Intent to Comply with waste discharge requirements, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program, economically benefit the discharger by avoiding the costs of compliance, and represent unfair business practices in relation to other dischargers that comply with requirements.

Applicable Factor: The evaluation of the **potential harm to beneficial uses** considers whether the characteristics of the violation present a minor, moderate, or major threat to beneficial uses and/or potential harm to the environment and regulatory program. Here, the potential for harm is **moderate** because 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 to the regulatory program (per the Enforcement Policy, most incidents would be considered to present a moderate potential for harm). The Discharger's required submittal of timely Monthly Reports is necessary to determine compliance with waste discharge requirements, evaluate EWS Project performance, identify and respond to equipment and treatment plant problems, protect water

² The EWS Project reinjected treated water into the San Simeon aquifer during the following periods: 1/20/2015 to 4/30/2015; 9/20/2015 to 12/31/2015; and 9/19/2016 to 12/23/2016.

quality and the beneficial uses of groundwater in the San Simeon aquifer, and protect public health. The aquifer has the beneficial uses of municipal and domestic water supply (MUN), and serves as the primary source of drinking water for the community. Failure to submit timely Monthly Reports also indicate delays in the Discharger's awareness of potential corrective actions relating to discharges that directly impact drinking water and public health. The Monthly Reports are essential in determining whether the treated water that is reinjected into the aquifer will meet the drinking water requirements at the location where the Discharger extracts the groundwater for direct potable use.

The evaluation of **the deviation from the requirement** considers whether the characteristics of the violation present a minor, moderate, or major impact to the effectiveness of the requirement. Here, the deviation from the requirement is **moderate** because the intended effectiveness of the reporting requirements were partially compromised/partially achieved. The repeated failure to submit Monthly Reports on their respective due dates partially compromised the abilities of the Discharger, Central Coast Water Board, and Division of Drinking Water to effectively monitor and respond to potential impacts to Cambria's drinking water and public health.

Based on the Prosecution Team's determination of a moderate potential for harm and a moderate deviation from the requirement, the initial liability per day factor is **0.4**.

Step 4. Adjustment Factors

Factor Background: The **culpability** factor addresses responsibility for the violation due to characteristics such as oversight, disregard, lack of attention or precaution, or omission (i.e., negligence) that may have contributed to the violations. For example, the omission of any reasonable precaution, care, or action related to the violation would influence this factor upwards, as would a failure to care for or give proper attention to anything materially or administratively related to the violation. These characteristics are not limited to the violation and immediate response, but can also include actions or inactions leading up to and potentially influencing the event such as maintenance practices, adherence to manufacturer recommendations, operational error, staffing, training, funding, planning, and design.

Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a similarly situated reasonable and prudent person would have done or not done under similar circumstances. Where culpability/responsibility for a violation belongs to a given party, a factor from 1.1 to 1.5 is used to influence the liability amount upward accordingly. Therefore, a high level of culpability is represented by the factor of 1.5. The culpability characteristics discussed above are examples of considerations useful in determining how much above 1 this factor should increase. Any diminishing factor from 0.5 to less than 1 would indicate that circumstances outside of a discharger's control had a substantial influence on the event, and act to reduce the liability. Therefore, adjustment should result in a multiplier from 0.5 to 1.5, with a lower multiplier for accidents, and a higher multiplier for intentional or negligent behavior.

Applicable Factor: The culpability factor is **1.3**. A higher multiplier is used because the Discharger continued to submit late Monthly Reports despite previous notifications of reporting requirements and extraordinary assistance from Central Coast Water Board staff to facilitate compliance. Beyond the Discharger being on notice of the monthly reporting requirements starting from the time the Central Coast Water Board issued the Order, the Discharger was explicitly re-notified of the requirements on multiple occasions and the Discharger failed to comply. On October 7, 2015, the Executive Officer issued the revised MRP to remove duplicative monitoring requirements. The November 2015 and December 2015 Monthly Reports were submitted 5 and 12 days late. In 2016, Central Coast Water Board staff sent a reminder email after the EWS Project started operating in September 2016. The September 2016 and October 2016 Monthly Reports were 5 and 6 days late. Last, on November 14, 2016, Central Coast Water Board staff developed and sent a spreadsheet reporting tool to assist the Discharger with successfully complying with reporting requirements, including Monthly Reports. Nonetheless, the November and December 2016 Monthly Reports were 32 and 17 days

late, respectively. For these reasons, the Prosecution Team selects a factor of 1.3 to reflect the Discharger's known responsibility to comply with the monthly reporting requirements, but failure to do so.

The cleanup and cooperation factor addresses the extent to which the discharger voluntarily **cleaned up and cooperated** in returning to compliance and correcting environmental damage. Adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent. Cleanup is not applicable to this violation. For the reasons stated below, Violation Nos. 1 to 4 are assessed a multiplier of **1.2**, and Violation Nos. 5 and 6 are assessed a multiplier of **1.3**.

The Discharger failed to timely submit Monthly Reports when the EWS Project was operational. The Discharger has been generally responsive to Central Coast Water Board staff's telephone calls, emails, and meetings. But, as stated above, Central Coast Water Board staff has expended significant time and resources in the attempt to obtain the Discharger's voluntary compliance. While the Discharger has acknowledged its responsibility for submitting Monthly Reports on the required dates, it failed to take appropriate action to do so. The Prosecution Team applied a higher multiplier for the violations where the Discharger's voluntary effort to submit an overdue Monthly Report was less cooperative and/or not urgent.

Where there is a **history of violations**, a minimum multiplier of 1.1 should be used to reflect this. Here, the Discharger was assessed a score of **1** because the Central Prosecution Team has no record of prosecuted violations previous to those addressed herein.

Step 5. Determination of Total Base Liability Amount

Accordingly, the Total Base Liability amount for the violations is calculated by multiplying the initial amount by the adjustment factors for each alleged violation (Initial Liability) x (Culpability) x (Cleanup/Cooperation) x (History of Violations). Where multiple violations or violation types are considered, the calculated amounts are added together. The applicable **Total Base Liability** amount Violation Nos. 1 to 6 is **\$ 50,596** as calculated below:

Violation No. 1 (Nov. 2015 Monthly Report):

\$3,120 $([\$1,000] \times (0.4) \times (5 \text{ days}) = (\$2,000]) \times (1.3) \times (1.2) \times (1))$.

Violation No. 2 (Dec. 2015 Monthly Report):

\$7,488 $([\$1,000] \times (0.4) \times (12 \text{ days}) = (\$4,800]) \times (1.3) \times (1.2) \times (1))$.

Violation No. 3 (Sept. 2016 Monthly Report):

\$3,120 $([\$1,000] \times (0.4) \times (5 \text{ days}) = (\$2,000]) \times (1.3) \times (1.2) \times (1))$.

Violation No. 4 (Oct. 2016 Monthly Report):

\$3,744 $([\$1,000] \times (0.4) \times (6 \text{ days}) = (\$2,400]) \times (1.3) \times (1.2) \times (1))$.

Violation No. 5 (Nov. 2016 Monthly Report):

\$21,632 $([\$1,000] \times (0.4) \times (32 \text{ days}) = (\$12,800]) \times (1.3) \times (1.3) \times (1))$.

Violation No. 6 (Dec. 2016 Monthly Report):

\$11,492 $([\$1,000] \times (0.4) \times (17 \text{ days}) = (\$6,800]) \times (1.3) \times (1.3) \times (1))$.

Step 6. Ability to Pay and Continue in Business

The Discharger's ability to pay an administrative civil liability is determined by its revenues and assets. The Total Base Liability amount may be adjusted to address ability to pay or to continue in business if the Central

Coast Water Board has sufficient financial information necessary to assess the Discharger's ability to pay the Total Base Liability amount or to assess the effect of the Total Base Liability Amount on the Discharger's ability to continue in business.

To assess the Discharger's ability to pay, the Prosecution Team reviewed publically available financial information obtained from the Discharger's website. Those documents included the 2015/2016 Fiscal Year Financial Statements and the 2016/2017 Fiscal Year Budget. The net position of the wastewater enterprise fund at the end of fiscal year 2015/2016 was approximately \$4 million; however, current assets (liquid assets) were negative. In addition, the fund operated at a deficit, although the current budget for fiscal year 2016/2017 indicates a balanced operation. For fiscal year 2015/2016, the General Fund had a net position of nearly \$38 million, with approximately \$1.9 million in unrestricted assets. Based on the unrestricted assets available in the General Fund, the Discharger has the ability to pay the civil liability as proposed.

Step 7. Other Factors as Justice May Require

In addition, the Prosecution Team conservatively incurred at least \$3,000 (20 hours x \$150/hours) to investigate this case and prepare this analysis and supporting information. The Prosecution Teams finds that it is appropriate to increase the Total Base Liability amount by **\$3,000** in consideration of these investigation and enforcement costs. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

Step 8. Economic Benefit

The total economic benefit of noncompliance was determined to be approximately **\$28**.

Pursuant to the Enforcement Policy, the economic benefit, or the savings/monetary gain derived from the acts that constitute a violation, must be determined for each violation. As documented in the Complaint, the Discharger has repeatedly failed to submit timely monthly monitoring reports to the Central Coast Water Board. Although the harm related to the late reporting of critical public health information has no readily measurable financial implications, the Discharger did realize a measurable financial benefit associated with delayed reporting expenses.

The Prosecution Team evaluated the monthly reporting requirements in the revised MRP and determined that at least 40 hours of staff time is associated with each report. The staff time estimate is based on a minimum of one hour per day of the month for data collection and organization, with the remaining hours dedicated to report preparation, certification, and submittal. Using a labor rate of \$150 per hour for a competent person, each report is estimated to cost a minimum of \$6,000. The Discharger submitted six monthly reports are past the required deadline specified in the revised MRP.

The BEN financial model provided by the United States Environmental Protection Agency was used to compute the total economic benefit of noncompliance. Cost estimate details and other assumptions are included in the attached table. For computational purposes, the penalty payment date was established as July 14, 2017. Changes to this date will affect the total economic benefit. The total economic benefit of delayed reporting was determined to be approximately \$28.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy states (p. 21) that the total 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 meaningful deterrent to future violations."

The minimum liability associated with economic benefit is approximately **\$30.80** $(\$28) \times (1.1)$). Because the Final Liability Amount exceeds 10% of the economic benefit, the Enforcement Policy requirement is satisfied.

The maximum administrative liability amount pursuant to Water Code section 13268 is one thousand dollars (\$1,000) for each day in which the violation occurs. Thus, the maximum liability amount is \$77,000 $(\$1,000 \text{ per day}) \times (77 \text{ days of violation})$.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the failure to timely submit Monthly Reports, including staff costs, is **\$53,596**.

- Attachments:**
1. Penalty Calculation Methodology Spreadsheet
 2. U.S. EPA BEN Economic Benefit Analysis Table