

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter of:

**CALIFORNIA DEPARTMENT OF
CORRECTIONS MULE CREEK STATE
PRISON**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

ORDER NO R5-2021-0001

Section I: Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order, Order, or ACLO) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the California Department of Corrections and Rehabilitation (CDCR) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: Background

2. Mule Creek State Prison (Prison) opened in June 1987, and since that time has been under the jurisdiction and control of the California Department of Corrections and Rehabilitation (referred to as "Department" or "Discharger"). Through 2015, the Prison consisted of Facilities A, B, C, and their accompanying yards. These facilities are identified hereafter as the "Old Prison Facility". The Old Prison Facility contains 15 celled housing units and two dormitory housing units for approximately 2,400 - 2,500 inmates. In 2016, the Prison expanded with the construction of the Mule Creek Infill Complex (MCIC) on site containing 6 dormitory housing units for approximately 1,584 inmates.
3. The Central Valley Water Board regulates the treatment and disposal of domestic and prison industry wastewater from Mule Creek State Prison under Waste Discharge Requirements (WDRs) Order R5-2015-0129 and requires the Department to monitor underlying groundwater for contamination related to these treatment and disposal activities.
4. The Central Valley Water Board also regulates storm water discharges associated with both industrial and construction activities through two general permits adopted by the State Water Resources Control Board (State Water Board).

5. On 28 December 2017, Central Valley Water Board staff received a complaint via a phone call regarding an alleged illegal discharge of water of unknown origin directly into the perimeter storm water conveyance system at the Old Prison Facility which discharges into Mule Creek. The complainant stated that the discharge flows varied greatly, but occurred during every one of their numerous observations between August 2017 and January 2018.
6. The complainant described the water being discharged as varying between clear and jet black, sometimes with solids, and sometimes steaming hot. The complaint alleged that these discharges occurred during observations both during the wet season and dry season, regardless of precipitation or irrigation. Therefore, Central Valley Water Board staff believes the source to be non-stormwater.
7. Central Valley Water Board Compliance and Enforcement staff from the WDRs and Storm Water Units inspected Mule Creek State Prison on 4 January 2018 in response to the complaint.

During the inspection, Central Valley Water Board staff determined that the likely source of the water described in the complaint as discharging into the perimeter storm water conveyance system was from stormwater laterals discharging from the collection and conveyance system within the Old Prison Facility into the perimeter conveyance system. Central Valley Water Board staff observed water discharging out of lateral drainpipes into the storm water collection and conveyance system that surrounds the Old Prison Facility during the inspection. This perimeter conveyance system discharges to Mule Creek, which is a water of the State and the United States.

8. To understand the threat of this discharge, Central Valley Water Board staff collected a sample of the water from a lateral drainpipe (Sample named "Tower 4") during the 4 January 2018 inspection. In addition, Water Board staff observed a small amount of water discharging from the common collection sump, through the culvert and unlined ditch, and into Mule Creek.
9. Central Valley Water Board staff also collected a sample from the common collection sump (Sample named "Junction") during the 4 January 2018 inspection. The laboratory results of these samples are summarized in Table 1 below. Water Board staff did not have the proper sampling equipment to sample for Volatile Organic Compounds (VOCs) or Semi Volatile Organic Compounds (SVOCs) at the time of the inspection, and therefore, there was no analysis for those compounds.

Table 1: Laboratory Results from 4 January 2018 Samples

Parameter	Tower 4 Sample	Junction Sample	Comparison Regulatory Values	Comparison Values and Sources
Oil and Grease (mg/L)	2.6	1.2	15	Annual Numerical Action Limit, Order 2014-0057-DWQ
MBAS (mg/L)	0.13	0.18	0.5	Drinking Water Standard: Secondary MCL
Aluminum (mg/L)	2.9	3.7	1	Drinking Water Standard: Primary MCL
Iron (mg/L)	1.9	3	0.3	Drinking Water Standard: Secondary MCL
Total Phosphorus as P (mg/L)	0.35	0.87	0.1	USEPA Health Advisory
Orthophosphate as PO4 (mg/L)	0.89	2.3	N/A	Common Constituent Found in Sewage and Other Biological Decomposition
Total Coliforms (MPN/100ml)	>1600	>1600	>2.2	Section 64426.1, Title 22, CCR
E. Coli (MPN/100ml)	>1600	>1600	>2.2	Section 64426.1, Title 22, CCR
Fecal Coliforms (MPN/100ml)	>1600	>1600	>2.2	Section 64426.1, Title 22, CCR

10. The water quality samples collected by Central Valley Water Board staff demonstrate that the water being discharged from the Old Prison Facility to the perimeter storm water collection system, and then into Mule Creek, was not solely storm water.
11. During 4 January 2018 inspection, the Discharger stated that it was covered under the General Permit for Storm Water Discharges Associated with Industrial Activities, Order 2014-0057-DWQ (Industrial General Permit). However, Central Valley Water Board staff found no evidence of this SWPPP in the Storm Water Multiple Application and Report Tracking System (SMARTS), nor any indication that the Discharger submitted a Notice of Intent (NOI) to comply with the Industrial General Permit. At the time of inspection, the Discharger did not have a permit to discharge to surface waters, including Mule Creek. CDCR filed for “No Exposure Certification” coverage under the Industrial General Permit on 22 May 2018.
12. Furthermore, with respect storm water discharges from construction activities, the Discharger stated on 4 January 2018 that it had not obtained coverage under the General Permit for Storm Water Dischargers Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ, as amended (Construction General Permit) for their Storm Drain System project, which is further discussed in the 14 February 2018 13267 Order. CDCR filed a Notice of Intent to be governed by the Construction General Permit on 10 April 2018.

13. On 14 February 2018, the Assistant Executive Officer issued a Water Code 13267 Order that required, in part, the Department to prepare an Interim Disposal Plan, a Storm Water Collection System Investigation Workplan, and a Storm Water Collection System Investigation Findings Report. The Order directed the Department to submit the Storm Water Collection System Investigation Findings Report by 15 April 2018.
14. The Interim Disposal Plan, submitted on 15 March 2018, stated that CDCR was containing all water within the stormwater system, and conveying the water to the on-site wastewater treatment plant. The Prison had ceased all discharges to the creek beginning on January 19, 2018. CDCR also utilized ten 21,000 gallon Baker tanks in order to divert water from the stormwater collection system. Diverting all stormwater during significant rain events that occurred in the following months caused flooding at the Prison. As such, CDCR submitted the Revised Interim Disposal Plan on 24 May 2018, which was never approved by the Central Valley Water Board. The revised plan indicated that during rain events of more than 0.1 inches in an hour or 0.3 inches in a 24 hour period, CDCR would discharge the stormwater and commingled alleged nonstormwater contents of the stormwater collection system to Mule Creek to avoid flooding at the Prison. The Discharger has installed flow meters to measure discharges during rain events. The Central Valley Water Board indicated that they could not approve any plan that included discharges in violation of the Clean Water Act, the Water Code, or waste discharge requirements on 6 April 2018.
15. On 15 March 2018, the Discharger submitted the required Storm Water Collection System Investigation Workplan. The submittal was conditionally approved by Water Board staff on 23 March 2018. On 16 April 2018, the Department submitted preliminary findings of the initial investigative efforts in a Preliminary Storm Water Investigation Report of Findings. On 17 August 2018, the Discharger submitted the Storm Water Collection System Investigation Findings Report. The report was submitted 124 days late, and the Central Valley Water Board determined it was materially deficient. The Discharger then conducted additional investigative actions to determine the source of the alleged non-storm water discharge. As part of these additional actions a Piezometer Installation Workplan was submitted by CDCR on 11 March 2019, and conditionally approved by Board staff on 25 March 2019. The approved workplan included the installation of four piezometers within the Old Prison Facility to investigate groundwater surface elevations and groundwater quality in proximity to the central corridor of the Old Prison Facility. The piezometers have not been installed as of the date of this Order.

16. The Revised Stormwater Collection System Investigation Report of Findings states:

“SHN’s site investigation efforts did not reveal any direct cross-connections between the stormwater and sanitary sewer collection systems. Additionally, the analytical results provided no evidence that stormwater is comingled with wastewater, sewage, and/or grey water... This investigation has identified the non-stormwater sources to be irrigation and groundwater within the stormwater collection system at MCSP.”

Although no direct cross connections were found, numerous potential sources of indirect cross connections were discovered. Over 500 defects were found in the stormwater and sewer systems. These defects range from minor corrosion to broken/collapsed pipes, fully separated joints, deformations, compromised seals, failed previous repairs, and large holes, cracks, or breaks where soil is visible. The investigation did not comprehensively include pipes less than six inches in diameter due to limitations of the equipment. Central Valley Water Board staff’s review of a portion of the CCTV footage shows areas where water is leaking into both systems from some defects and drain design flaws. Smoke testing of the sanitary sewer revealed eight locations where smoke escaped the system through concrete seams or grassy areas. Further, the stormwater and sewer systems were constructed in close physical proximity at some points, with the sanitary sewer system above the stormwater system in most areas, providing an opportunity for leaking sewer pipes to gravity flow through the soil and contact the stormwater system. The Central Valley Water Board believes this is a clear conduit for indirect cross connection anywhere that both systems have nearby defects. The Central Valley Water Board believes the high groundwater is likely exacerbating these cross connections. A number of repairs are necessary to both systems.

17. Monitoring data collected by CDCR since February 2018 shows numerous detections in a wide range of waste constituents including VOCs, SVOCs, surfactants, oil and grease, metals, inorganics, and nutrients at varying concentrations. Some of these results show concentrations of waste-type constituents at levels that would be expected in wastewater, sewage, and/or grey water. Constituent concentrations other than coliforms are shown to be highly variable. Coliforms, fecal coliforms, and E. Coli are consistently very high, and often not enumerated as the concentrations exceeded the upper quantification limit used by the lab. The summarized data shows thousands of instances in which the discharge from the stormwater system exceeded water quality objectives for a given constituent. Water Board staff does not believe that the identified non-stormwater sources of irrigation and groundwater are likely sources of waste constituents. To date, no repairs to the stormwater or sanitary sewer system have been made. The Discharger continues to sample on a significantly reduced basis, according to the direction of the Assistant Executive Officer in a letter dated 6 November 2018, and waste constituents continue to be detected in the stormwater system.

18. On January 11, 2019, The Water Board Assistant Executive Officer issued the Notice of Opportunity to Review and Comment and Notice of Public Hearing concerning consideration of a resolution designating MCSP as a Regulated Small Municipal Separate Storm Sewer System subject to State Water Board Order No. 2013-0001-DWQ (Small MS4 General Permit). On February 8, 2019, the Water Board adopted the resolution, and on April 24, 2019, the Executive Director of the State Water Resources Control Board adopted Water Quality Order 2013-0001-DWQ, which directed MCSP to submit a Notice of Intent to apply for coverage under the Small MS4 General Permit.
19. In April 2019, the Department filed a complete Notice of Intent to be permitted under the Small MS4 General Permit, which presently governs discharges from the storm water system at Mule Creek State Prison.
20. The MS4 permit requires the Discharger to identify and eliminate illicit discharges of waste constituents to the stormwater system. The Discharger has identified several likely sources of waste constituents in the Revised Stormwater Collection System Investigation Report of Findings.
21. The Discharger is currently in Year 2 of the MS4 permit, which requires among other things that all outfalls be identified and sampled if discharging to waters of the US more than 72 hours since the last rain event. If these samples yield results that exceed any action levels described in Table 2 of the permit, the Discharger has 72 hours to conduct an investigation. The report documenting this information is due no later than 15 October 2020.
22. The Parties have met extensively and performed several site walks and joint inspections to resolve the issue of unpermitted discharges to Mule Creek.
23. The Discharger's Wastewater Treatment Plant is located at 4001 Highway 104, in Lone (Section 13, T6N, R9E, MDB&M. The facility occupies Assessor's Parcel Numbers (APN) 004-290-004, 004-290-005, 004-290-006, 005-070-007, 005-070-008, and 005-070-011, with surface water drainage to Mule Creek, tributary to Dry Creek, tributary to the Mokelumne River.
24. The Central Valley Water Board's Water Quality Control Plan (Fourth Edition) for the Sacramento River and San Joaquin River Basins (Basin Plan) establishes the beneficial uses of the waters of the state and water quality objectives to protect those uses. The beneficial uses of the Mokelumne River are irrigation and stock watering; contact and noncontact recreation; warm and cold freshwater habitat; warm and cold water migration; warm and cold spawning; wildlife habitat.
25. The Parties did not address liability for the commingled discharges of storm water and non-stormwater discharges. The Central Valley Water Board asserts that the entire volume of the discharge (non-stormwater and stormwater) is potentially the basis for a penalty. CDCR asserts that only those non-stormwater volumes in Finding 26 below are the basis for liability. The volumes in Finding 26 below in the table below were agreed upon for the purpose of resolving the violations for an

appropriate administrative civil penalty. The Central Valley Water Board believes that the resolution for the volumes below meets the enforcement needs for the region, is protective of water quality, and is in the best interests of the Central Valley region.

26. The non-storm water discharge volume calculation was based on six intervals in which there was little to no rainfall. Because little to no rain fell during these periods, any water within the storm water system likely represents non-stormwater flows. The six periods used were: (1) December 7 – 15, 2018; (2) December 26, 2018 – January 5, 2019; (3) January 25 – 31, 2019; (4) March 11 – 18, 2019; (5) April 6 – 14, 2019; and (6) April 20 – 26, 2019. Next, the parties added together the highest daily average for each pump, resulting in a total of 14,174 gallons per day, which represents the volume of non-storm water within the storm water system as a daily average.
27. The number of days that discharges occurred is based on the time the gates were open as reported in the Office of Emergency Services reports, with any fraction of a day counted as one day. For example, if the gates were open for one hour, the Parties counted that as one day. For each of these periods, the Parties calculated the average daily flow for each of the six pumps used to redirect water to the wastewater treatment plant. Only discharges that occurred between the 18 January 2018 notification from Water Board staff regarding the discovery of waste constituents in the stormwater discharge and 10 April 2019 when the facility obtained coverage under the MS4 permit were considered. The total days of discharge was 79 days during this time period. These discharges are summarized in Table 2 below:

**Table 2: Days of Violation based on OES Reports between
 18 January 2018 and 10 April 2019**

Days of Violation	OES Control #	Date
N/A	18-0502	1/23/2018
1	18-1696	3/14/2018
1	18-1892	3/22/2018
1	18-2307	4/6/2018
1	18-3383	5/25/2018
2	18-7188	10/3-10/4/2018
1	18-8009	11/25/2018
7	18-8207	11/27-12/3/2018
2	18-8563	12/16-12/17/2018
4	19-0260	12/23-26/2018
7	19-0305	1/5/19-1/11/2019
4	19-0534	1/15/18-1/18/2018
4	19-0535	1/19/19-1/22/2019
6	19-0887	2/1/19-2/6/2019
4	19-0976	2/8/19-2/11/2019

Days of Violation	OES Control #	Date
7	19-1218	2/12/19-2/18/2019
12	19-1622	2/24/19-3/7/2019
10	19-2092	3/19/19-3/28/2019
5	19-2312	4/1/19- 4/05/2019

Total Days: 79

28. The 14,174-gallon daily average flow of non-storm water was multiplied by the 79 days of discharge as reported in the OES reports, resulting in a total of 1,119,746 gallons of non-stormwater discharge between 18 January 2018 and 10 April 2019.

Section III: Statutory and Regulatory Considerations

29. Water Code section 13385(a) provides, in relevant part, “A person who violates any of the following shall be liable civilly in accordance with this section: ... (5) A requirement of Section 301...of the federal Clean Water Act (33 USC Sec. 1311...), as amended...”
30. Water Code section 13385(c) states: “Civil liability may be imposed administratively by...the regional board pursuant Article 2.5 (Commencing with Section 13323) of Chapter 5...” The penalty shall not exceed the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and ten dollars (\$10) per gallon for each gallon in excess of the first one thousand (1,000) gallons discharged.
31. Pursuant to Water Code section 13327, in determining the amount of discretionary civil liability, the Central Valley Water Board is required to take into consideration 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 in 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 as justice may require.
32. The estimated economic benefit plus an additional 10% is the minimum amount for an ACLO under the 2017 Enforcement Policy. In this instance, the estimated economic benefit plus 10% is \$1,605,811, which amounts to the estimated cost of compliance plus 10% as determined in Attachment A.

Section IV: Settlement

33. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of **two million five hundred thousand dollars (\$2,500,000)** against the Discharger.

34. The Central Valley Water Board Prosecution Team has determined that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public

Section V: Stipulations

The Parties stipulate to the following:

35. Administrative Civil Liability: Without admitting the truth of any violations alleged in this Stipulated Order, the Discharger hereby agrees to the imposition of two million five hundred thousand dollars (\$2,500,000) in administrative civil liability to the Central Valley Water Board to resolve the violations alleged in this Stipulated Order. The Discharger agrees to pay the following amounts:
- a. **One million six hundred and five thousand eight hundred and eleven (\$1,605,811)** shall be paid to the State Water Pollution Cleanup and Abatement Account. Payment shall be made no later than thirty (30) days after adoption of an order approving this Stipulated Order by the Central Valley Water Board, or its delegee, by check payable to the State Water Pollution Cleanup and Abatement Account. The Discharger shall indicate on the check the number of this Stipulated Order (R5-2021-0001). The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Nickolaus Knight, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Kari Holmes, Enforcement Coordinator, Central Valley Water Board, 11020 Sun Center Drive Suite 200, Rancho Cordova, CA 95670.
 - b. **Eight hundred ninety-four thousand one hundred and eighty-nine dollars (\$894,189)** shall be permanently suspended on the condition that CDCR spends \$894,189 on completing the Enhanced Compliance Actions (ECA) described in Attachments B and C of this Order, hereby incorporated by reference. Failure to complete all aspects of the ECAs shall result in the Discharger's payment of the entire suspended penalty amount to the State Water Pollution Cleanup and Abatement Account.
36. **Enhanced Compliance Actions (ECAs):** The \$894,189 in suspended administrative civil liability shall be satisfied through the implementation of the ECAs described in Attachments B and C, incorporated herein by reference, and summarized below. The Discharger proposes to implement the following ECAs:
- a. **Irrigation Replacement ECA (Attachment B)**
 - b. **SCCWRP Study ECA (Attachment C)**
37. **ECA Completion Deadlines:** The Discharger shall comply with the deadlines in the ECA proposals. The deadlines shall begin with the effective date of this Order.

38. **Request for Extension of Final ECA Completion Deadlines:** If the Discharger cannot meet the ECA Completion Deadlines due to circumstances beyond the Discharger's control, the Discharger shall notify the Executive Officer in writing at least thirty (30) days prior to the ECA Completion Deadline. The notice shall describe the reason for the delay and specifically refer to this paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the Discharger to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. The Discharger shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the Discharger and its agents will be made by the Executive Officer. Where the Executive Officer concurs, that compliance was or is impossible, despite the timely good faith efforts of the Discharger, due to circumstances beyond the control of the Discharger that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Discharger, a new compliance deadline shall be established and provided to the Discharger in writing with the effect of revising this Stipulated Order. The Executive Officer will not unreasonably deny a time extension request.

39. **Final Report and Quarterly Monitoring Reports:** The Discharger shall provide quarterly monitoring reports on the progress of the ECA thirty (30) days following the end of each calendar quarter beginning on the effective date of this Stipulated Order. The Final Report shall be submitted with the certification, within 90 days of the completion of the ECA.

40. **Audits and Certification of Enhanced Compliance Action:**

- a. **Certification of Completion:** Within 90 days of completion of the ECA, the Discharger shall submit a certified statement of completion of the ECA ("Certification of Completion"). The Certification of Completion may be submitted with the Discharger's final Quarterly Report for the project. The Discharger's authorized representative shall submit the Certification of Completion under penalty of perjury to the Designated Central Valley Water Board contact. (The Central Valley Water Board Executive Officer will identify the designated Central Valley Water Board contact in the transmittal letter for the signed Order, and subsequently notify the Discharger if any changes to that contact are needed.) The Certification of Completion shall include the following:

- i. **Certification of Expenditures**

Certification documenting all expenditures by the Discharger. The expenditures may include external payments to outside vendors or contractors implementing the ECA. If applicable, the expenditures may include the costs of internal Environmental Management resources and internal Business Unit resources, provided that such expenditures are directly related to development and implementation

of the ECA. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Discharger shall provide any additional information requested by the Central Valley Water Board staff that is reasonably necessary to verify ECA expenditures. The certification need not address any costs incurred by the Central Valley Water Board for oversight.

ii. Certification of Performance of Work

Certification that the ECA has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Central Valley Water Board to evaluate the completion of the ECA and the costs incurred by the Discharger.

iii. Certification that Work Performed on ECA Met or Exceeded Requirements of California Environmental Quality Act (CEQA) and other Environmental Laws [where applicable]

Certification that the ECA meets or exceeds the requirements of CEQA and/or other environmental laws. Unless the Discharger is exempted from compliance with CEQA, the Discharger shall, before the ECA implementation date, consult with other interested State Agencies regarding potential impacts of the ECA. To ensure compliance with CEQA where necessary, the Discharger shall provide the Central Valley Water Board with the following documents:

- A. Categorical or statutory exemptions;
- B. Negative Declaration if there are no “significant” impacts;
- C. Mitigated Negative Declaration if there are potential “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or
- D. Environmental Impact Report if there are “significant” impacts.

iv. Third Party Audit

If the designated Central Valley Water Board contact obtains information that causes the representative to reasonably believe that the Discharger has not expended money in the amounts claimed, or has not adequately completed any of the work in the ECA, the designated Central Valley Water Board contact may require, and the Discharger shall submit, at its sole cost, a report prepared by an

independent third party(ies), stating that in its professional opinion, the Discharger has or has not expended money in the amounts claimed. The Discharger, with the Central Valley Water Board's approval, shall choose the independent third-party auditor. In the event of such an audit, the Discharger agrees that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall also be provided to the designated Central Valley Water Board contact. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

- b. **Central Valley Water Board Acceptance of Completed ECA:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, the completion of the ECA and any audits, the designated Central Valley Water Board contact, with notice to the regional Enforcement Coordinator, shall request that the Central Valley Water Board, or the Central Valley Water Board's delegee, issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligation of the Discharger under this Stipulated Order and permanently suspend the administrative civil liability associated with the ECA.
- c. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved ECA:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the designated Central Valley Water Board contact that the entire ECA Amount pursuant to Paragraph 35 has been spent for the completed ECA, the Discharger shall pay the difference between the ECA amount and the amount the Discharger can demonstrate was actually spent on the ECA, as an administrative civil liability to the State Water Pollution Cleanup and Abatement Account.
- d. **Failure to Complete the ECA:** If the ECA is not fully implemented by the ECA Completion Deadlines required by this Stipulated Order and an extension has not been granted by the Central Valley Water Board's Executive Officer pursuant to Paragraph 38 above, the designated Central Valley Water Board contact shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability to the State Water Pollution Cleanup and Abatement Account.
- e. **Central Valley Water Board Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the Discharger (or the Implementing Party where applicable), its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

The Discharger and its contractor(s) covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the ECA. This provision does not preclude the Discharger and/or the Implementing Party from opposing a Notice of Violation or Motion brought under Paragraph 40.d.

41. Compliance with Applicable Laws and Regulatory Changes: The Central Valley Water Board understands that payment of an ACL in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

42. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

Kari Holmes
Enforcement Coordinator Central Valley Water Board
11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670
Kari.Holmes@waterboards.ca.gov
(916) 464-4848

Nickolaus Knight
Office of Enforcement, State Water Board
P.O. Box 100
Sacramento, California 95812
nickolaus.knight@waterboards.ca.gov
(916) 327-0169

For the Discharger:

Dean L. Borg, Director
Facility Planning, Construction and Management Division
California Department of Corrections and Rehabilitation
9838 Old Placerville Road, Suite B
Sacramento, CA 95827

Eric Papathakis
Office of Legal Affairs
1515 S Street, Sacramento, CA 95811
eric.papathakis@cdcr.ca.gov
(916) 324-7111

43. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
44. **Matters Addressed by this Stipulated Order:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Stipulated Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the Discharger's full payment of the ACL by the deadline specified in Paragraph 35.a and completion of the ECA referenced in Paragraph 36 or full payment of the associated suspended liability.
45. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
46. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Valley Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Valley Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
47. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Stipulated Order.

48. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
49. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
50. **Publicity:** Whenever the Discharger or its agents or subcontractors publicize one or more elements of the ECA, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the Discharger.
51. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Stipulated Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
52. **If Stipulated Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; provided however, that objections intended to preserve Central Valley Water Board's due process rights are not waived by this section; or
 - b. Laches or delay or other equitable defenses based on the time period that the Stipulated Order or decision by settlement may be subject to administrative or judicial review.

53. **No Admission of Liability:** In settling this matter, the Department does not admit any of the allegations, or that it has been or is in violation of the Water Code, or any federal, state, or local law, regulation, or ordinance.
54. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
55. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
56. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
57. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by CDCR, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to the Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by CDCR, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to the Stipulated Order.
58. **CDCR is Not Liable:** Neither CDCR, its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Central Valley Water Board members, or the Central Valley Water Board staff, attorneys, or representatives in carrying out activities pursuant to the Stipulated Order, nor shall CDCR, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Central Valley Water Board, its members or staff, in carrying out activities pursuant to the Stipulated Order.
59. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
60. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.

61. **Site Inspections:** The Discharger shall permit Central Valley Water Board's staff to inspect during normal business hours any location where ECAs are being implemented as well as review any documents associated with implementation of ECA(s) at any time without notice.
62. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
63. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
64. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Stipulated Order.
65. **Counterpart Signatures; Facsimile, and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

IT IS SO STIPULATED.

California Regional Water Quality Control Board
Central Valley Region Prosecution Team

By: Original Signed By
John J Baum
Assistant Executive Officer

Date: 01/28/2021

IT IS SO STIPULATED.

California Department of Corrections and Rehabilitation

By: Original Signed By
Dean Borg
Director, Division of Facility Planning,
Construction and Management

Date: 01/27/2021

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. This Order incorporates the foregoing Sections I through V by this reference as if set forth fully herein.
2. In adopting this Stipulated Order, the Central Valley Water Board, or its delegee, has considered, where applicable, each of the factors prescribed in Water Code sections 13327, 13351, and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations concerning the Central Valley Water Board discussed herein or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
3. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for ACL and successful completion of the ECA. As such, the Central Valley Water Board finds that issuance of this Stipulated Order is not considered subject to the provisions of CEQA as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 150378(a), Title 14, of the California Code of Regulations). In addition, issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
4. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

I, Patrick Pulupa, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of the Order issued by the California Regional Water Quality Control Board, Central Valley Region, on 18 February 2021.

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality
Control Board

Settlement & ACL Order R5-2021-0001
California Department of Corrections and Rehabilitation

Attachment A: Factor Consideration and Penalty Calculation Methodology for
Administrative Civil Liability

Attachment B: Irrigation Repair ECA

Attachment C: SCCWRP Study ECA

Attachment D: Economic Benefit Estimate

Attachment A – ACL Complaint No. R5-2021-0001
Specific Factors Considered for Administrative Civil Liability

California Department of Corrections and Rehabilitation,
Mule Creek State Prison

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 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The [Enforcement Policy](#) can be found at:

(http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf).

The application of the Enforcement Policy is an application of the statutory factors by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) in order to develop an appropriate penalty for the alleged conduct. The California Department of Corrections and Rehabilitation (Discharger) does not admit any of the allegations discussed below, and does not admit to the violation of any local, state or federal laws or regulations. The information contained below represents the position of the Central Valley Water regarding their understanding of the facts and circumstances surrounding the Stipulated Administrative Civil Liability Order. The Discharger did not participate in the application of the Enforcement Policy below.

Background

The stormwater collection system collects and conveys stormwater from the approximately 65-acre area inside the perimeter fence of the Old Prison Facility. Approximately 20-25 lateral drain pipes travel under the perimeter fence and discharge into unlined basins. These basins are connected by unlined ditches and buried culverts. This conveyance system loop completely encircles the Old Prison Facility just outside the lethal electric fence. Stormwater that enters the perimeter drainage system loop is conveyed to one of two common collection basins, located near guard towers 3 and 9. The basins discharge through culverts that run under the perimeter access road and discharge into wide, heavily vegetated conveyance ditches. These ditches convey water directly into Mule Creek. The outfalls of these ditches are approximately 50 and 1,300 feet upstream of the location where Highway 104 crosses over Mule Creek.

On 28 December 2017, Board staff received a complaint regarding the apparent illegal discharge of water of unknown origin directly into Mule Creek. The complainant stated that the discharge flows varied greatly, but had been occurring during every one of their numerous observations between August 2017 and January 2018. The complainant described the water being discharged as varying between clear and jet black, sometimes with solids, and sometimes steaming hot. The complaint alleged that these discharges occurred during observations both during the wet season and dry season, regardless of precipitation or irrigation. Therefore, the source is presumed to be something other than stormwater or irrigation runoff. These statements were supported

by video evidence of the described discharge that were later provided by the complainant.

On 4 January 2018, Compliance and Enforcement (CE) staff from the Central Valley Water Board inspected Mule Creek State Prison in response to the complaint. It was determined that the likely source of the discharge described in the complaint was originating from a stormwater collection system that originated from within the Old Prison Facility. At the time of the inspection, water was observed discharging out of the left drain pipe within the vault immediately south of guard tower 4 into the perimeter collection system. Board staff collected a sample from these discharges. Results from the sampling demonstrate that the water being discharged from the Old Prison Facility to the perimeter stormwater collection system, and then into Mule Creek, contained waste constituents including surfactants, oil and grease, metals, nutrients, and coliforms. Therefore, the Central Valley Water Board considered this an unpermitted illegal discharge.

On 14 February 2018, the Assistant Executive Officer issued a Water Code 13267 Order which required the Discharger, in part, to cease all discharges of waste to Mule Creek and to submit an *Interim Disposal Plan* to ensure the contaminated water in the stormwater system were captured, treated, and disposed of appropriately.

On 16 February 2018, Central Valley Water Board staff met with the Discharger. The Discharger agreed to meet the requirements in the 13267 Order, but requested an extension on the deadlines. However, due to the unknown source(s) of the wastewater, and the threat to humans as well as Mule Creek, Central Valley Water Board staff informed MCSP that the deadlines in the 13267 Order would not be changed. No extensions were granted.

On 13 March 2018, Central Valley Water Board staff performed an inspection of the stormwater system and the Discharger's actions performed to comply with the 13267 Order. During the inspection, the site was receiving heavy rain. The temporary system was in the process of being overrun. Temporary containment systems were nearly at capacity and the pumps were having difficulty keeping up. The wastewater treatment plant (WWTP) reported no problems with treatment or hydraulic capacity. Central Valley Water Board staff recommended that they increase the hydraulic capacity of their system, including larger pipelines, connecting to manholes, and additional pumps. Central Valley Water Board staff also suggested temporary holding tanks be installed to allow equalization of flow into the WWTP to prevent impacts on the plant, because more significant rain events had been forecasted. In response the Discharger had ten 21,000-gallon temporary holding tanks delivered to the site over the following week. On 15 March 2018, the Discharger submitted the required *Interim Disposal Plan*.

On 22 March 2018, the Discharger reported that heavy rainfall had fallen on the site, resulting in a complete inundation of the measures in place to divert stormwater from

discharging to Mule Creek. This resulted in a threat of flooding to buildings on the institution grounds, and caused the WWTP to operate at flood stage. Additionally, contained water had overtopped the perimeter road and surface flooding of the neighboring property owner's fields west of Collins Road and north of Highway 104. In response the Discharger pulled the slide gates in the collection sumps, which released an estimated 1,600,000 gallons of comingled turbid wastewater which was illegally discharged directly to Mule Creek. The Office of Emergency Services (OES) report was filed (ref # 18-1892), but inaccurately referred to the discharge as "stormwater." The WWTP was reported to be effectively treating the flows. Board staff advised the Discharger to improve the temporary system to ensure they would be able to contain all water during a similar storm event. In response an additional 4 temporary holding tanks were brought on site. The Discharger collected samples of the discharge, and reported the results on 1 May 2018. Results showed oil and grease, diesel range organics, fecal coliforms, E. coli, as well as elevated chemical oxygen demand, suspended solids, turbidity, aluminum, iron, manganese, and nickel. Upstream and downstream samples were collected, and confirm that Mule Creek had been impacted.

On 4 April 2018 Central Valley Water Board staff issued a formal review of the *Interim Disposal Plan* that found the submittal to be materially deficient, as it would cause a violation of the WDRs by exceeding the capacity of the WWTP and could potentially cause a plant upset. On 24 May 2018, CDCR submitted a *Revised Interim Disposal Plan*, which stated in part that the WWTP did not have the capacity to handle the increased flows during rain events over 0.1 inches per hour or 0.3 inches in any given 24-hour period in which case all comingled stormwater flows would be discharged to Mule Creek. Previously, on 6 April 2018, Central Valley Water Board staff informed CDCR via email that the *Heavy Rainfall Response Plan* described practices that would cause illegal discharges and violations of the Clean Water Act, and therefore would not be approved. CDCR did not revise their 24 May 2018 submittal.

On 6 April 2018, the temporary storage system was again completely overrun by a storm event. The heavy rains flooded the collection system, backing up into the WWTP. At this point the Discharger again pulled the slide gates on the collection system and knowingly released an estimated 1,600,000 gallons of comingled turbid wastewater directly to Mule Creek. CDCR reported the illegal discharge to OES (ref # 18-2255), but again inaccurately referred to the discharge as "stormwater." The WWTP operator communicated via email to Central Valley Water Board staff that the WWTP was "no longer effectively processing." The Discharger collected samples of the discharge during the event, and reported the results on 1 May 2018. Results showed oil and grease, diesel range organics, fecal coliforms, E. coli, as well as elevated chemical oxygen demand, suspended solids, turbidity, aluminum, chromium, lead, manganese, nickel, zinc, and iron. It does not appear that any effluent samples were collected from the WWTP to assess effectiveness of the treatment during the high flows or days following. Upstream and downstream samples were collected, and confirm that Mule Creek had been impacted.

Following the failure to contain and treat the comingled flows during the 6 April 2018 storm event, CDCR began using the practices described in the *Revised Interim Disposal Plan* despite Board staff repeatedly communicating that it would be a violation of the Clean Water Act. This practice led to additional unpermitted discharges of comingled flows directly to Mule Creek. This continued until 10 April 2019 when the facility was permitted under the Small MS4 permit. CDCR continues to discharge comingled flows during both dry and wet weather under the MS4 permit. Table 1 below lists the known days of unpermitted discharge to Mule Creek between Central Valley Water Board staff's discovery of the issue on 23 January 2018 and 19 April 2019. CDCR collected numerous samples from the stormwater collection system during this period as required by the 13267 Order to characterize the waste. That data was used to determine factors below. The Central Valley Water Board and the Discharger stipulated to the days and volumes of discharge for the purpose of resolving the administrative civil liability action. The Central Valley Water Board continues to assert that the entire volume of the discharge could be a basis for an administrative liability, while the Discharger asserts the alleged non-stormwater discharges are the only basis for liability. The legal and factual dispute was not resolved, and the stipulated volumes and days of discharge were used to estimate an appropriate administrative civil liability.

Table 1: Days of Violation based on OES Reports between 18 January 2018 and 10 April 2019

<u>Days of Violation</u>	<u>OES Control #</u>	<u>Date</u>
<u>N/A</u>	<u>18-0502</u>	<u>1/23/2018</u>
<u>1</u>	<u>18-1696</u>	<u>3/14/2018</u>
<u>1</u>	<u>18-1892</u>	<u>3/22/2018</u>
<u>1</u>	<u>18-2307</u>	<u>4/6/2018</u>
<u>1</u>	<u>18-3383</u>	<u>5/25/2018</u>
<u>2</u>	<u>18-7188</u>	<u>10/3-10/4/2018</u>
<u>1</u>	<u>18-8009</u>	<u>11/25/2018</u>
<u>7</u>	<u>18-8207</u>	<u>11/27-12/3/2018</u>
<u>2</u>	<u>18-8563</u>	<u>12/16-12/17/2018</u>
<u>4</u>	<u>19-0260</u>	<u>12/23-26/18</u>
<u>7</u>	<u>19-0305</u>	<u>1/5/19-1/11/19</u>
<u>4</u>	<u>19-0534</u>	<u>1/15/18-1/18/18</u>
<u>4</u>	<u>19-0535</u>	<u>1/19/19-1/22/19</u>
<u>6</u>	<u>19-0887</u>	<u>2/1/19-2/6/19</u>
<u>4</u>	<u>19-0976</u>	<u>2/8/19-2/11/19</u>
<u>7</u>	<u>19-1218</u>	<u>2/12/19-2/18/19</u>

<u>Days of Violation</u>	<u>OES Control #</u>	<u>Date</u>
<u>12</u>	<u>19-1622</u>	<u>2/24/19-3/7/19</u>
<u>10</u>	<u>19-2092</u>	<u>3/19/19-3/28/19</u>
<u>5</u>	<u>19-2312</u>	<u>4/1/19- 4/05/19</u>
<u>total days: 79</u>		

Step 1 – Actual or Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the degree of toxicity of the discharge; (2) the actual or potential for harm to beneficial uses; and (3) the discharge’s susceptibility to cleanup or abatement

Factor 1: The Degree of Toxicity of the Discharge

This factor evaluates the degree of toxicity by considering the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill or material involved in the violation or violations and the risk of damage the discharge could cause the receptors or beneficial uses. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. “Potential receptors” are those identified considering human, environmental, and ecosystem exposure pathways.

Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. In this case, the comingled discharges during rain events contained unknown but relatively small amounts of waste from unknown sources diluted by large volumes of stormwater. Based on data collected during both wet and dry weather, the discharge contained varying concentrations of numerous waste constituents normally found in domestic and industrial wastewater including coliform organisms, total suspended solids, biochemical oxygen demand, chemical oxygen demand, nutrients, surfactants, metals, volatile organic compounds (VOCs), and semi-volatile organic compounds (SVOCs). These constituents can impact aquatic life and human health. Because the discharged material possesses “less than moderate threat to beneficial uses,” **a score of 2** was assigned for this factor.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses

The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with

the statutory factors of the nature, circumstances, extent, and gravity of the violation(s). A score between 0 and 5 is assigned based on a determination of the extent of the actual harm or potential for harm. Actual harm as used in this section means harm that is documented and/or observed. Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters.

The discharge entered Mule Creek, tributary to Dry Creek and the Sacramento-San Joaquin Delta. The beneficial uses of the Sacramento-San Joaquin Delta and its tributaries that could be impacted by the untreated sewage include municipal and domestic water supply, agricultural irrigation and stock watering, contact and non-contact water recreation, warm freshwater habitat, cold freshwater habitat, migration of aquatic organisms, warm spawning, wildlife habitat, navigation, and commercial sport fishing.

The Discharger collected paired samples from Mule Creek at upstream and downstream locations relative to the discharge point during almost all discharge events. Tables 2, 3, and 4 below summarize a subset of that data and demonstrate those impacts by comparing upstream and downstream paired data set. Values in bold highlight downstream concentrations that are higher than the upstream counterparts in the same paired data set.

Attachment A – ACL Complaint No. R5-2021-0001
 Specific Factors Considered for Administrative Civil Liability

California Department of Corrections and Rehabilitation,
 Mule Creek State Prison

Table 2: Organic and Microbial Constituents Comparison in Discharge to Mule Creek

Date	Sample Location in Mule Creek	Oil and Grease (mg/l)	Volatile Organic Compounds (ug/L)	Fecal Coliforms (MPN/100mls)	Total Coliforms (MPN/100mls)	E. coli (MPN/100mls)
3/23/18	upstream	1.3	--	>1,600	>1,600	>1,600
	downstream	1.3	--	>1,600	>1,600	>1,600
4/6/18	upstream	<5.0	ND	240	> 1,600	151.5
	downstream	1.4 J	ND	> 1,600	> 1,600	>2419.6
4/7/18	upstream	2.3 J	ND	> 1,600	> 1,600	>2,419.6
	downstream	1.7 J	ND	> 1,600	> 1,600	1,732.90
4/11/18	upstream	<5.0	ND	49	> 1,600	118.7
	downstream	<5.0	ND	130	350	172.2
4/27/18	upstream	<5.0	ND	170	1,600	113.7
	downstream	2.9J	ND	540	> 1,600	178.9
5/25/18	upstream	<5.0	ND	1,600	>1,600	1,986.30
	downstream	<5.0	acetone = 5.5	>1,600	>1,600	>2,419.6
5/26/18	upstream	1.5 J	ND	>1,600	>1,600	1,986.30
	downstream	2.8 J	acetone = 2.7 J; chloroform = 1.1	>1,600	>1,600	>2,419.6
12/17/18	upstream	<5.0	ND	3500	24000	1553
	downstream	1.7 J	ND	11,000	>160,000	1,986.30
12/26/18	upstream	<5.0	ND	540	9200	387
	downstream	<5.0	ND	2200	24000	1046
1/5/19	upstream	2.1 J	ND	79	2600	50
	downstream	Not sampled	Not sampled	Not sampled	Not sampled	Not sampled
1/15/19	upstream	<5.0	ND	240	16000	86

ATTACHMENT A TO ACL COMPLAINT R5-2021-0001
 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
 MULE CREEK STATE PRISON
 AMADOR COUNTY

Date	Sample Location in Mule Creek	Oil and Grease (mg/l)	Volatile Organic Compounds (ug/L)	Fecal Coliforms (MPN/100mls)	Total Coliforms (MPN/100mls)	E. coli (MPN/100mls)
	downstream	1.4 J	ND	4600	16000	1986
1/20/19	upstream	<1.4	ND	2200	11000	1203
	downstream	<1.4	ND	>1,600	160000	2790
2/2/19	upstream	1.4 J	ND	1700	16000	1203
	downstream	<1.4	ND	3500	28000	2320
2/10/19	upstream	1.7 J	ND	1700	16000	1203
	downstream	<1.4	ND	920	35000	3550
2/13/19	upstream	<1.4	ND	3500	35000	3130
	downstream	<1.4	ND	2300	13000	770
2/26/19	upstream	<1.4	ND	1100	2200	1300
	downstream	<1.4	ND	540	17000	365
3/20/19	upstream	1.6 J	ND	33	920	98.5
	downstream	<1.4	ND	220	1400	101
3/27/19	upstream	1.5 J	ND	310	5400	193
	downstream	<1.4	ND	130	2400	57.6
4/5/19	upstream	2.8 J	ND	140	9200	114
	downstream	3.2 J	ND	220	2600	96

ATTACHMENT A TO ACL COMPLAINT R5-2021-0001
 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
 MULE CREEK STATE PRISON
 AMADOR COUNTY

Table 3: Inorganic Constituents Comparison in Discharge to Mule Creek

Date	Sample Location in Mule Creek	Total Dissolved Solids (mg/L)	Turbidity (NTUs)	Sulfate as SO4 (mg/L)	Total Nitrogen (mg/L)	Biological Oxygen Demand (mg/L)
	Regulatory Limit	5003	11	2503	--	--
3/23/18	upstream	130	24	7.7	0.63	<10
	downstream	150	26	8.2	0.69	<10
4/6/18	upstream	190	3.9	17	1.1	2.0J
	downstream	220	23	26	1	2.8J
4/7/18	upstream	120	30	7.2	1.1	3.4J
	downstream	140	40	9.3	1.2	3.4J
4/11/18	upstream	210	1.9	13	<1.0	<5.0
	downstream	220	5.6	15	<1.0	<5.0
4/27/18	upstream	250	1.1	16	<1.0	<5.0
	downstream	260	1.8	18	<1.0	<5.0
5/25/18	upstream	260	0.79	12	<1.0	<5.0
	downstream	120	68	39	3.4	7.1
5/26/18	upstream	250	0.54	11	<1.0	<5.0
	downstream	120	56	26	1.8	2.9J
12/17/18	upstream	470	Not Analyzed	100	<1.0	<5.0
	downstream	170	Not Analyzed	36	3	3.7 J
12/26/18	upstream	220	Not Analyzed	75	1	<5.0
	downstream	380	Not Analyzed	18	1.3	2.0 J
1/5/19	upstream	340	Not Analyzed	50	<1.0	<5.0
	downstream	Not Sampled	Not sampled	Not sampled	Not sampled	Not sampled
1/15/19	upstream	270	Not Analyzed	39	<1.0	<5.0
	downstream	130	Not Analyzed	30	1.8	3.7 J

ATTACHMENT A TO ACL COMPLAINT R5-2021-0001
 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
 MULE CREEK STATE PRISON
 AMADOR COUNTY

Date	Sample Location in Mule Creek	Total Dissolved Solids (mg/L)	Turbidity (NTUs)	Sulfate as SO4 (mg/L)	Total Nitrogen (mg/L)	Biological Oxygen Demand (mg/L)
1/20/19	upstream	170	Not Analyzed	16	3	<2.0
	downstream	180	Not Analyzed	21	2.2	2.1 J
2/2/19	upstream	220	Not Analyzed	23	1.9	3.6 J
	downstream	160	Not Analyzed	26	1.4	2.8 J
2/10/19	upstream	120	Not Analyzed	10	1.8	2.5 J
	downstream	130	Not Analyzed	12	1.8	2.2 J
2/13/19	upstream	150	Not Analyzed	13	1.8	<2.0
	downstream	130	Not Analyzed	12	1.2	<2.0
2/26/19	upstream	160	Not Analyzed	16	1.4	<2.0
	downstream	170	Not Analyzed	22	1.2	<2.0
3/20/19	upstream	190	Not Analyzed	16	<0.20	<2.0
	downstream	200	Not Analyzed	21	<0.20	<2.0
3/27/19	upstream	160	Not Analyzed	15	<0.20	<2.0
	downstream	190	Not Analyzed	17	<0.20	<2.0
4/5/19	upstream	180	Not Analyzed	14	3.7	<2.0
	downstream	200	Not Analyzed	17	1.3	<2.0

Table 4: Metal Constituents Comparison in Discharge to Mule Creek

Date	Sample Location in Mule Creek	Aluminum (ug/L)	Chromium (ug/L)	Copper (ug/L)	Iron (ug/L)	Lead (ug/L)	Manganese (ug/L)	Zinc (ug/L)
3/23/18	upstream	940	3.7	--	1200	<1.0	36	6.3
	downstream	1200	3.5	--	1300	1.4	28	5.7
4/6/18	upstream	110	<2.0	2.4	320	<1.0	31	<20
	downstream	620	<2.0	3.5	700	0.81J	36	9.2J
4/7/18	upstream	1000	5.3	6.4	2300	0.66J	83	<20
	downstream	1800	6	8	3200	4	87	9.0J
4/11/18	upstream	45	<2.0	2.2	190	<1.0	<20	<20
	downstream	140	<2.0	2.5	410	<1.0	27	<20
4/27/18	upstream	<40	<2.0	<2.0	<100	<1.0	30	<20
	downstream	29J	<2.0	--	180	0.24J	<20	<20
5/25/18	upstream	<40	<2.0	<2.0	<100	<1.0	43	<20
	downstream	1600	4.1	15	2100	<1.0	76	180
5/26/18	upstream	<40	<2.0	<2.0	<100	<1.0	13J	<20
	downstream	1200	3.8	14	1800	0.67J	34	70
12/17/18	upstream	<40	<2.0	Not Analyzed	<100	<1.0	Not Analyzed	<20
	downstream	380	<2.0	Not Analyzed	4800	1.6	Not Analyzed	49
12/26/18	upstream	39J	<2.0	Not Analyzed	70 J	2.2	Not Analyzed	<20
	downstream	740	<2.0	Not Analyzed	2100	24	Not Analyzed	11 J
1/5/19	upstream	100	<2.0	Not Analyzed	180	<1.0	Not Analyzed	<20
	downstream	Not Sampled	Not sampled	Not sampled	Not sampled	Not sampled	Not sampled	Not sampled
1/15/19	upstream	20	<2.0	Not Analyzed	<100	<1.0	Not Analyzed	<20
	downstream	2100	5.3	Not Analyzed	4300	2.1	Not Analyzed	130
1/20/19	upstream	390	<2.0	Not Analyzed	650	0.47 J	Not Analyzed	<8.0
	downstream	3000	4.7	Not Analyzed	1900	1.1	Not Analyzed	37

ATTACHMENT A TO ACL COMPLAINT R5-2021-0001
 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
 MULE CREEK STATE PRISON
 AMADOR COUNTY

Date	Sample Location in Mule Creek	Aluminum (ug/L)	Chromium (ug/L)	Copper (ug/L)	Iron (ug/L)	Lead (ug/L)	Manganese (ug/L)	Zinc (ug/L)
2/2/19	upstream	140	<2.0	Not Analyzed	320	<0.24	Not Analyzed	<8.0
	downstream	2200	4.1	Not Analyzed	4300	65	Not Analyzed	17 J
2/10/19	upstream	580	2.3	Not Analyzed	950	.43 J	Not Analyzed	<8.0
	downstream	670	2	Not Analyzed	1500	2.3	Not Analyzed	<8.0
2/13/19	upstream	440	<5.0	Not Analyzed	830	<0.6	Not Analyzed	<20
	downstream	2600	7.5	Not Analyzed	5000	30	Not Analyzed	<20
2/26/19	upstream	61	<2.0	Not Analyzed	150	<0.24	Not Analyzed	<8.0
	downstream	120	<2.0	Not Analyzed	250	0.91 J	Not Analyzed	<8.0
3/20/19	upstream	24 J	<2.0	Not Analyzed	150	<0.24	Not Analyzed	<8.0
	downstream	49	<2.0	Not Analyzed	170	0.31 J	Not Analyzed	<8.0
3/27/19	upstream	28 J	<2.0	Not Analyzed	170	<0.24	Not Analyzed	<8.0
	downstream	350	<2.0	Not Analyzed	840	1	Not Analyzed	<8.0
4/5/19	upstream	160	<2.0	Not Analyzed	430	<0.24	Not Analyzed	<16
	downstream	86	<2.0	Not Analyzed	340	0.54 J	Not Analyzed	<16

Attachment A – ACL Complaint No. R5-2021-0001
Specific Factors Considered for Administrative Civil Liability

California Department of Corrections and Rehabilitation,
Mule Creek State Prison

Discharges of any domestic or industrial wastewater to surface water must typically be treated to a high standard to prevent adverse impacts to human and aquatic life. In this case, the discharge contained constituents typically found in domestic and industrial wastewater, including pathogens, nitrogen, salts, metals, VOCs, oil and grease, suspended solids, sulfate, and biological oxygen demand. It should be noted that the data presented in Tables 2, 3, and 4 above is from samples collected from Mule Creek itself, and downstream data represents the conditions in the creek after the diluted comingled flows mixed with stormwater runoff that was naturally draining into the creek bed. This data demonstrates an impact to the creek and water quality objectives protective of beneficial uses.

The spill resulted in a below moderate potential harm to beneficial uses. “Moderate” is defined as “observed or reasonably expected potential impacts, but harm or potential harm to beneficial uses are moderate and likely to attenuate without appreciable medium or long term acute or chronic effects.” Therefore, a **score of 2**, below moderate, is assigned for this factor.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if the discharger cleans up 50% or more of the discharge within a reasonable amount of time. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement, or if 50% or more of the discharge is susceptible to cleanup and abatement but the discharger failed to clean up 50% or more of the discharge within a reasonable amount of time. In this case, less than 50% of the discharge was susceptible to cleanup or abatement as the wastewater entered Mule Creek and was not recoverable. Therefore, a factor of 1 is assigned.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for the effluent limit violations. In this case, a final score of 5 was calculated. The total score is then used in Step 2, below.

Step 2– Assessment for Discharge Violations

This step addresses administrative civil liabilities for the unauthorized discharge based on both a per-gallon and a per-day basis.

1. Per Gallon Assessments for Discharge Violations

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Extent of Deviation from Requirement of the violation. The Potential for Harm Score was determined in Step 1 and is 5. The California Clean Water Act and Federal Clean Water Act prohibit the discharge of untreated wastewater to waters of the United States. In this case, the discharge of comingled wastewater and stormwater to Mule Creek is a major deviation from the required standards.

Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is 0.15. This value of 0.15 is multiplied by the volume of discharge and the days of discharge, as described below.

The statutory maximum penalty amount of \$10 per gallon was used for this calculation. CWC section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged but not cleaned up, over 1,000 gallons for each spill event. Of the 1,119,746 gallons spilled that reached surface water, a total of 1,118,746 gallons were discharged in excess of 1,000 gallons into waters of the United States.

Therefore, the per gallon assessment is calculated as:

Discharge Liability $0.15 \times 1,118,746 \text{ gallons} \times \\$10 \text{ per gallon} = \\$1,678,119$
--

2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per-gallon analysis. The “per day” factor (determined from Table 2 of the Enforcement Policy) is 0.1. The spill event took place over 79 days (see Table 1).

Water Code section 13385(c)(1) states that the maximum civil liability is \$10,000 per day of violation.

Per Day Liability $0.15 \times 79 \text{ days} \times \\$10,000 \text{ per day} = \\$118,500$

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment.

Initial Liability

\$1,678,119 per gallon assessment + \$118,500 per day assessment = \$1,796,619

Step 3 – Per Day Assessment for Non-Discharge Violation

This step is not applicable.

Step 4 – Adjustment Factors

There are three additional factors to be considered for potential modification of the amount of initial liability: the violator's culpability, the violator's prior history of violations, and efforts to clean-up or cooperate with regulatory authorities after the violation. 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.

Degree of Culpability

This factor considers a discharger's degree of culpability. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for negligent behavior. In this case there was only one party involved, and Central Valley Water Board staff evaluated the party's degree of culpability individually and assigned an overall multiplier to this incident.

The source of the waste constituents appears to be entirely within CDCR's facility. Although CDCR made some efforts to contain and treat the comingled flows as required by the 14 February 2018 13267 Order, they did not adequately prepare themselves for rain events which led to failures of the temporary containment system. On several occasions Central Valley Water Board staff conveyed to CDCR staff that the system was severely undersized, but CDCR did not take further steps to increase capacity. Additionally, they later changed their policy to allow discharge of comingled wastewater and stormwater to Mule Creek during all significant rain events in a clear contradiction with Central Valley Water Board staff's instruction.

If CDCR had adequately sized their temporary storage and treatment system these spills could have been avoided or mitigated; however, they failed to respond to Central Valley Water Board staff's directives and the 13267 Order appropriately. Therefore, Board staff assigns a **multiplier of 1.2** for culpability.

History of Violations

The Enforcement Policy states that if the discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1.

The Central Valley Water Board issued Administrative Civil Liability Order (ACLO) R5-2007-0518 against the California Department of Corrections and Rehabilitation for the Mule Creek State Prison Facility. The ACLO was issued because of several releases of raw sewage to Mule Creek from the collection system to Mule Creek. Since the issuance of the ACLO, CDCR took several actions to address the issues causing the repeated releases including the construction of a new treatment plant.

Because CDCR does not have a recent history of violations and the violations cited in this Order are not caused by the same issues as the historical violations, Central Valley Water Board staff has taken a conservative approach and assessed a **multiplier of 1.0** for history of violations.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Since this case involves multiple parties, Board staff evaluated each party's cleanup and cooperation and then assigned an overall multiplier.

After CDCR received notification that waste constituents had been detected in the stormwater discharging to Mule Creek, it took reasonable and prudent steps to respond to the discharge. CDCR immediately began a preliminary investigation and sampling program, and implemented a temporary storage and disposal system to contain and treat the comingled flows. However, when it became evident that the flows during certain rain events were much greater than CDCR originally had estimated they proposed direct discharge to Mule Creek during rain events that met a specific threshold with no treatment. Despite Central Valley Water Board staff informing them that it would be an illegal discharge, they implemented this practice anyway. CDCR eventually completed their investigation and produced a final report. However, the report was 124 days late.

Overall, all parties involved in this incident cooperated with Central Valley Water Board staff by providing appropriate information when requested, but also ignored directives related to discharges to surface water. The parties did not act as would be expected of a reasonable and prudent person during some parts of the process. Therefore, Board staff assigns the parties a **multiplier of 1.1** for cleanup and cooperation.

$$\begin{aligned} & \text{Total Base Liability} \\ & \text{Initial Liability} \times \text{Culpability Multiplier} \times \text{History of Violations Multiplier} \times \text{Cleanup and} \\ & \text{Cooperation Multiplier} = \text{Total Base Liability} \\ & \$1,796,619 \times 1.2 \times 1.0 \times 1.1 = \$2,371,537 \end{aligned}$$

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

CDCR has stipulated to the ability to pay the administrative penalty. CDCR is a state agency with a budget of \$13.4 billion for the 2020-2021 fiscal year.

Step 7 – Other Factors as Justice May Require

The Central Valley Water Board and the Discharger have agreed to settle this action in an administrative setting, in lieu of engaging in a civil action, where the maximum penalty amounts are significantly larger, and the penalty may amount to a much larger penalty. Thus, the estimated amount generated by the Enforcement Policy in this matter does adequately address the penalty exposure for the Discharger. Thus, the stipulated administrative civil liability in this case is \$2,500,000 to more reasonably address the alleged violations, and threats to water quality and public health from the alleged violations. In addition, the stipulated penalty in this action addresses the estimated economic benefit below.

Step 8 – Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) [Economic Benefit Model \(BEN\)](https://www.epa.gov/enforcement/penalty-and-financial-models) (https://www.epa.gov/enforcement/penalty-and-financial-models) penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 2019.0.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The estimated economic benefit for the violations alleged above is \$1,459,828. Therefore, the Enforcement Policy requires a minimum administrative civil liability of \$1,605,811.

A copy of the BEN output is included as an Attachment D.

Final Adjusted Liability

The stipulated administrative civil liability in this matter is \$2,500,000.00.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts must be determined for comparison to the proposed liability.

Maximum Liability Amount:

The maximum penalty is the sum of the statutory per day and per gallon penalties. Pursuant to Water Code section 13385(c)(1), the per day maximum penalty for 79 days of violation is \$790,000. Pursuant to Water Code section 13385(c)(2), the per gallon maximum penalty is \$11,977,460. Therefore, the maximum penalty when combining the per day and per gallon statutory penalties is \$12,767,460.

Minimum Liability Amount: The minimum liability for a discretionary penalty is equal to the economic benefit of noncompliance plus 10%. The minimum liability in this case is \$1,605,811.

Step 10 – Final liability Amount

The final liability amount consists of the added amounts for the violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. The proposed administrative civil liability is \$2,500,000.

Attachment B

California Department of Corrections and Rehabilitation Mule Creek State Prison Enhanced Compliance Action (ECA) Scope of Work

Project Name:

Mule Creek State Prison, Landscape Irrigation System Replacement

Project Developed by:

California Department of Corrections and Rehabilitation (CDCR)

Project to be Performed by:

California Department of Corrections and Rehabilitation (consultant designed, constructed via a public works contract or via CDCR's day labor program)

Contact:

Miles Bettencourt, Regional Manager
9838 Old Placerville Road, Suite B
Sacramento, CA 95827
Phone: 916-255-3381
Email: Miles.Bettencourt@cdcr.ca.gov

Description of Project:

This project will replace the landscape irrigation system at Mule Creek State Prison (MCSP), which has exceeded its useful life. The existing system has breaches in several mainlines, resulting in non-storm water flow entering the MCSP storm water collection system, which eventually discharges into Mule Creek. Installing new piping for the landscape irrigation system will have the effect of eliminating non-storm water flows, resulting from irrigation, into Mule Creek.

Project Goals

The CDCR's ECA project has the follow goals:

- 1) The project is expected to eliminate non-storm water flow, resulting from landscape irrigation, from entering the storm water collection system at MCSP.
- 2) Reduction of the amount of potable water utilized in landscape irrigation

Compliance with ECA Criteria

1. Benefit to Water Quality and Beneficial Uses

The Landscape Irrigation System replacement project will eliminate non-storm water flow from entering the MCSP storm water collection system, which ultimately discharges to Mule Creek.

2. ECA is not an Obligation of Discharger

The CDCR is not required to develop, implement, or fund the proposed ECA project by any permit, order, or local, state, or federal law.

3. No Fiscal Benefit to Regional Water Quality Control Board.

This ECA project does not provide any fiscal benefit to the RWQCB, or fund any functions, members, or staff of the RWQCB.

4. Nexus between Violation and ECA

A nexus exists between the MCSP non-storm water flows and the proposed ECA project. The landscape irrigation systems replacement project will eliminate non-storm water flow resulting from irrigation from entering Mule Creek.

5. Key Personnel Involved in ECA

The CDCR's Facility Planning, Construction and Management Division will oversee completion of the ECA.

6. Project Milestones and Budget

The overall project cost is at least a minimum of \$850,000. This project will be funded utilizing the Department's Special Repair budget allocation. The ECA project will include the following Task milestones, measured from the effective date of the Stipulated Order authorizing the ECA (ECA Effective Date).

Task 1: Retain Landscape Architect or Engineering Consultant

This Task allows for the retention of a qualified consultant to support the CDCR through design and construction of the landscape irrigation system, which will eliminate non-storm water flows from irrigation from entering Mule Creek. This task is estimated to be completed within **90 days** from the ECA Effective Date.

Task 2: Completion of Study, Survey, and Concept Plans

This Task provides for the completion of a study (Preliminary Design Report), survey and (50% design) concept plans. This Task is estimated to be completed within **270 days** from completion of Task 1.

Task 3: Plans Specifications & Cost Estimate Package

This task will complete the design of landscape irrigation system, in accordance with the study (Task 2) and develop Plans, Specifications, and a Cost Estimate package ready for bidding. This task is estimated to be completed within **270 days** from completion of Task 2.

Task 4: Environmental Review

This task will be completed concurrently with Task 3 and will include an environmental review of the proposed improvements. This Task is estimated to be completed within **120 days** from completion of Task 2.

Task 5: Bidding and Contract Development

This Task will include bidding and development of a public works contract for the proposed ECA, and is estimated to be completed within **270 days** from completion of Task 3. (Alternatively, the project may also be constructed via day labor.)

Task 6: Construction Phase

This Task will include the installation of the new landscape irrigation system, which is estimated to be completed within **545 days** following the completion of Task 5.

The overall project is anticipated to take **1445 days**, or approximately **48 months**, from the date the Stipulated Order is adopted.

7. Reports to the Regional Water Quality Control Board

The CDCR intends to comply with quarterly reporting requirements for an ECA with a duration of greater than one year. The CDCR will also submit a final quarterly report with close-out information as required upon completion of the ECA.

8. Project Compliance with CEQA

The project will include environmental review in compliance with CEQA requirements. The environmental review requirements will be determined during the engineering study phase.

Attachment C

California Department of Corrections and Rehabilitation Mule Creek State Prison Enhanced Compliance Action (ECA) Scope of Work

Project Name:

Mule Creek State Prison, Storm Water Microbiological Study

Project Developed by:

California Department of Corrections and Rehabilitation (CDCR)

Project to be Performed by:

California Department of Corrections and Rehabilitation

Contact:

Gregor Larabee, Chief of Environmental and Regulatory Compliance

9838 Old Placerville Road, Suite B

Sacramento, CA 95827

Phone: 916-255-2162

Email: Gregor.Larabee@cdcr.ca.gov

Description of Project:

The purpose of this ECA is to characterize the microbiological quality of the Mule Creek State Prison (MCSP) storm water collection system discharges and any effects these discharges have on Mule Creek water quality.

ECA Goals:

1. Characterize the microbiological quality of storm water discharges from the Mule Creek State Prison storm water system.
2. Determine the effects to Mule Creek of MCSP storm water system discharges

Compliance with ECA Criteria

1. **Benefit to Water Quality and Beneficial Uses**

This ECA is an environmental quality assessment of the impact of MCSP storm water discharges to Mule Creek, and will allow for the appropriate address of issues identified.

2. **ECA is not an Obligation of Discharger**

The CDCR is not required to develop, implement, or fund the proposed ECA by any permit, order, or local, state, or federal law.

3. **No Fiscal Benefit to Regional Water Quality Control Board**

This ECA does not provide any fiscal benefit to the RWQCB, or fund any functions, members, or staff of the RWQCB.

4. **Nexus between Violation and ECA**

A nexus exists between the MCSP non-storm water flows and the proposed ECA. The Storm Water Microbiological Study will aid in defining the impact of MCSP storm water system discharge to Mule Creek.

5. **Key Personnel Involved in ECA**

The CDCR's Facility Planning, Construction and Management Division will oversee completion of the ECA.

6. **Project Milestones and Budget**

The overall project cost is at least a minimum of \$400,000. This project is planned to be funded utilizing the Department's Special Repair budget allocation. The ECA will address the following three questions through the completion of tasks addressing each. The nature of the study necessitates concurrent performance of tasks.

Question 1: What is the microbial water quality of storm water effluent from Mule Creek prison and to what extent do they influence water quality in the creek?

Task 1: Compare E. coli concentrations upstream and downstream of Mule Creek State Prison.

Task 2: Compare mass loadings at four locations.

Question 2: What fecal sources are part of any prison contribution?

Task 1: Investigate human sources within prison grounds

Task 2: Investigate avian sources within prison grounds

Task 3: Closed circuit television investigation

Question 3: What other fecal sources are contributing to creek exceedances of microbial water quality criteria?

Task 1: Investigate cattle sources to Mule Creek, upstream of prison grounds

Attachment C

Task 2: Investigate human sources to Mule Creek, upstream of prison grounds

Task 3: Investigate avian sources to Mule Creek, upstream of prison grounds

Task 4: Investigate contributions from treated effluent spray fields to Mule Creek

Schedule for Completing ECA

Tasks will be performed concurrently and rely on analytical data that will come from sampling at multiple locations to represent conditions during wet and dry seasons. The study is estimated to require 30 months for completion.

Reports to the Regional Water Quality Control Board

The CDCR intends to comply with quarterly reporting requirements associated with an ECA with a duration of greater than one year. The CDCR will also submit a final quarterly report as required upon completion of the ECA.

Project Compliance with CEQA

The ECA does not require CEQA requirements.

**Economic Benefit Analysis
CDCR - Mule Creek**

Compliance Action	One-Time Non-Depreciable Expenditure				Annual Costs			Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Data	Delayed	Amount	Basis	Data					
Interim Containment 17/18	\$141,750	GDP	9/15/2020	No	Blank Cell	Blank Cell	Blank Cell	11/1/2017	Blank Cell	9/15/2020	3.90%	149,771
Interim Containment 18/19	\$570,150	GDP	9/15/2020	No	Blank Cell	Blank Cell	Blank Cell	11/1/2018	Blank Cell	9/15/2020	4.00%	593,605
Interim Pumping 17/18	\$21,572	GDP	1/1/2015	No	Blank Cell	Blank Cell	Blank Cell	11/1/2017	Blank Cell	9/15/2020	3.90%	25,160
Interim Pumping 18/19	\$86,765	GDP	1/1/2015	No	Blank Cell	Blank Cell	Blank Cell	11/1/2018	Blank Cell	9/15/2020	4.00%	99,719
Routine Sewer Cleaning	\$0.00	NONE	No Date	Blank	\$201,452	ECI	1/1/2015	11/1/2017	3/14/2020	9/15/2020	3.90%	558,176
Sewer Slip-lining	\$661,174	ECI	1/1/2015	Yes	Blank Cell	Blank Cell	Blank Cell	11/1/2017	9/15/2020	9/15/2020	3.90%	33,397

Income Tax Schedule: Municipality

Total Benefit: \$1,459,828

USEPA BEN Model Version: Version 2019.0.0 (March 2019)
Analyst: Bryan Elder
Date/Time of Analysis: 12/31/20 10:21

Assumptions:

- Interim containment costs based on 90 rental tanks at \$35 per tank per day. Tank needs and cost were determined by Regional Board staff: 2017/18 - 45 days; 2018/19 - 181 days.
- Non-compliance date for containment costs assumed to be November 1st for the onset of wet season.
- Containment costs for 2017/18 and 2018/19 are assumed to be avoided.
- Interim pumping costs based on 3, 6" diesel pumps for duration of tank rentals specified above. Cost assumption: RSMMeans, 2015, Heavy Construction Cost Data, 01 54 33 40 5500, pg. 522.
- Interim pumping costs indexed using Gross Domestic Product (GDP) index.
- Routine Sewer Cleaning assumed to be on 3 year cycle (American Society of Civil Engineers, Optimization of Collection System Maintenance Frequencies and System Performance, February 1999). 3 miles per year based on CIWQS questionnaire entry for 9 miles of gravity, force main, and owned-lateral pipe). Cost assumption: RSMMeans, 2015, Heavy Construction Cost Data, 33 01 30.16 6140 - Cleaning 4"-12" diameter - pg. 337.
- Routine Sewer Cleaning assumed to be annual starting at the onset of wet weather, November 1st, for each calendar year. First year of noncompliance assumed to be 11/1/2017.
- Routine Sewer Cleaning costs indexed using Employment Cost Index (ECI).
- Compliance date for routine sewer cleaning assumed to be 3/14/2020 based on CCTV/jetting work completed by CDCR and documented in the Storm Water Collection System Investigation Findings Report.
- Slip-lining assumed to apply to system in entirety based on review of CCTV findings. Costs are assumed to be delayed. Cost assumption: RSMMeans, 2015, Heavy Construction Cost Data, 33 01 30.74 0150 - 8" diameter, HDPE lining, pg. 338.
- Slip-lining compliance date assumed to be 9/15/2020.
- Slip-lining costs indexed using ECI.
- All RSMMeans costs are adjusted for location based on Sacramento, CA - 108.7 factor, pg. 607.
- CDCR is assumed to operate the facility as a municipality.