

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

In the matter of:

**MONTEREY MUSHROOMS,  
INC., AND SPAWN MATE, INC.;  
UNAUTHORIZED  
DISCHARGES OF PROCESS  
WASTEWATER AND  
POLLUTED STORMWATER IN  
2017**

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

**ORDER NO. R3-2020-0048**

**SECTION I: INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), Prosecution Team (Prosecution Team), and Monterey Mushrooms, Inc. (Settling Respondent), acting on its own behalf and on behalf of its wholly owned subsidiary, Spawn Mate, Inc., (collectively, Parties) and is presented to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the Settling Respondent in the amount of **\$1,169,425**.

**SECTION II: RECITALS**

1. The Settling Respondent owns and operates, either directly or through its wholly owned subsidiaries, four mushroom growing facilities in California. This Stipulated Order resolves the violations associated with two of the four California facilities, which are located in Monterey County and regulated under Waste Discharge Requirements (WDRs) issued by the Central Coast Water Board.

2. WDR Order No. R3-2000-0037 (Maher Court Permit) regulates the Settling Respondent's discharge of wastewater at its 279-acre facility located at 777 Maher Court in Royal Oaks (Maher Court Facility), where mushrooms are spawned, grown, harvested, and packaged. Compost—typically containing horse and/or poultry manure, urea, and gypsum—used in the mushroom growing process is manufactured onsite. Compost leachate, a process wastewater, is recycled and stored at the Maher Court Facility and reused to add nutrients to compost.

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3. WDR Order No. R3-2000-0038 (Hall Road Permit) regulates the discharge of wastewater at a 14.3-acre facility located at 415 Hall Road in Royal Oaks (Hall Road Facility), owned and operated by the Settling Respondent's subsidiary, Spawn Mate, Inc., where mushrooms were spawned, grown, harvested, and packaged. Compost was also used to grow mushrooms at the Hall Road Facility, which required the onsite use and storage of compost leachate.<sup>1</sup>

4. All process wastewater, including stormwater commingled with process wastewater and/or other wastes, generated at the Maher Court and Hall Road Facilities is required by the respective permits to be placed and contained in the facilities' wastewater ponds. Both the Maher Court Permit and Hall Road Permit prohibit the discharge of any wastes to waters of the United States (U.S.), adjacent drainage ways, or adjacent properties.

5. Federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. § 1311) prohibits any person to discharge any pollutant into waters of the U.S. without authorization under specific Clean Water Act provisions, including section 402 (33 U.S.C. § 1342) for point source discharges. Point source discharges of pollutants to waters of the U.S. are to be authorized under a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued in accordance with Water Code section 13376. The Settling Respondent has never filed for a Report of Waste Discharge pursuant to California Water Code section 13376 to obtain an NPDES permit that authorizes the discharge of pollutants from point sources (i.e., ditches and pipes) at the Maher Court and Hall Road Facilities to waters of the U.S.

6. Pursuant to Water Code section 13385, subdivision (a), a person that violates Water Code section 13376 and/or Clean Water Act section 301 is subject to administrative civil liability under Water Code section 13385, subdivision (c):

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

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<sup>1</sup> During a call with Central Coast Water Board staff on April 30, 2020, the Settling Respondent reported that Spawn Mate, Inc. ceased all mushroom growing operations at the Hall Road Facility, but still conducts a mushroom dehydration process that generates about 1,000 gallons of wastewater per week.

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7. The Prosecution Team alleges that the Settling Respondent committed eight violations of Water Code section 13376 and Clean Water Act section 301 at the Maher Court Facility. Between January 8, 2017 and April 19, 2017, the Settling Respondent is alleged to have discharged approximately 4,014,245 gallons of process wastewater and/or polluted stormwater from the Maher Court Facility to an unnamed tributary of Elkhorn Slough, a water of the U.S., as shown in Table 1 of Attachment A, which is incorporated herein by reference.

8. The Prosecution Team alleges that the Settling Respondent, through its subsidiary, Spawn Mate, Inc., committed six violations of Water Code section 13376 and Clean Water Act section 301 at the Hall Road Facility. From January 8, 2017 to on or about February 20, 2017, the Settling Respondent is alleged to have discharged approximately 620,000 gallons of process wastewater from the Hall Road Facility into an unnamed tributary of Elkhorn Slough, a water of the U.S., as shown in Table 2 of Attachment A, which is incorporated herein by reference.

9. To resolve the alleged violations listed in Section II, paragraphs 7 and 8, by consent, the Parties have agreed to the imposition of an administrative civil liability of **\$1,169,425** against the Settling Respondent. The Prosecution Team calculated the proposed liability using the Penalty Calculation Methodology in the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A, which is incorporated herein by reference.

10. The Parties have agreed to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

11. The Prosecution Team has determined that the resolution of the violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violations except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

**SECTION III: STIPULATIONS**

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of **\$1,169,425** in administrative civil liability, to resolve the violations set forth in Section II, paragraphs 7 and 8, as follows:

- a. **Payment:** The Settling Respondent must submit a check for **\$569,650** in administrative civil liability no later than 30 days following the date the Central Coast Water Board or its delegate signs this Stipulated

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Order. The check must be made payable to the “State Water Pollution Cleanup and Abatement Account,” reference Stipulated Order No. R3-2020-0048, and be submitted to:

State Water Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Settling Respondent must provide a copy of the check via e-mail to the State Water Board, Office of Enforcement ([Paul.Ciccarelli@waterboards.ca.gov](mailto:Paul.Ciccarelli@waterboards.ca.gov)) and the Central Coast Water Board ([Thea.Tryon@waterboards.ca.gov](mailto:Thea.Tryon@waterboards.ca.gov)).

- b. **Supplemental Environmental Project and Suspended Liability:** In accordance with the State Water Resources Control Board’s Policy on Supplemental Environmental Projects (SEP Policy) (May 2018), the Parties agree that **\$599,775** (SEP Amount) of the administrative civil liability will be suspended pending completion of the Supplemental Environmental Project (SEP) as set forth in the attached SEP Proposal Form (Attachment B), which is incorporated herein by reference. The suspended liability will become due and payable if the initial monetary assessment described in Section III, paragraph 1.a. is not paid as required.

2. **SEP Description:** The Settling Respondent proposes to implement a third party-performed SEP proposed by the Community Water Center, the *1,2,3-Trichloropropane (1,2,3-TCP) Treatment Pilot Project for DAC Households in Northern Monterey County* (the SEP), as set forth in Attachment B. The SEP consists of a pilot project for 1,2,3-TCP Point Of Entry (POE) household-level water treatment for up to 20 Disadvantaged Community (DAC) households in unincorporated areas of northern Monterey County, where residents rely on groundwater wells with high levels of 1,2,3-TCP, a regulated contaminant, for drinking water. The goal of the POE household-level water treatment is to effectively treat 1,2,3-TCP to levels below the Maximum Contaminant Level (MCL) for drinking water consistent with the Human Right to Water pursuant to Water Code section 106.3.

3. **Compliance with SEP Policy:** The SEP Policy (May 2018) section VIII provides:

Unless otherwise permitted by statute or approved by the Director of [the Office of Enforcement (OE)] based on a finding of compelling justification due to exceptional circumstances . . . no settlement shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the settling party. The total adjusted monetary

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assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs.

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment . . . in cases where the SEP is located in or benefits a DAC, an [Environmental Justice (EJ)] Community or a community that has a financial hardship, or where the SEP substantially furthers the human right to water.

Here, 50 percent of the total adjusted monetary assessment is \$566,161. The SEP Amount slightly exceeds \$566,161 by \$33,614. Pursuant to the OE Director's November 8, 2018 memorandum on approving DAC and EJ SEPs greater than 50 percent of the total adjusted monetary assessment (SEP Memo), the SEP Amount may exceed \$566,161 because the SEP is located in or benefits a DAC and substantially furthers the Human Right to Water as shown in Attachment B. The Prosecution Team has provided written notification of the proposed SEP to the OE Director as required in the SEP Memo. For these reasons, the Prosecution Team has determined that the Settling Respondent's proposed SEP complies with the SEP Policy.<sup>2</sup>

4. **SEP Completion Deadline:** The Settling Respondent agrees that it bears ultimate responsibility for completing the SEP in accordance with the *SEP Project Schedule* as set forth in Table 1 of Attachment B, including expenditure of the full SEP Amount no later than July 17, 2023 (SEP Completion Deadline) as funded pursuant to the *SEP Amount Payment Schedule* included in Table 2 of Attachment B.

5. **Time Extension for SEP:** The Central Coast Water Board's Executive Officer may extend the deadlines set forth in the *SEP Project Schedule* in Table 1 of Attachment B if the Community Water Center demonstrates delays from unforeseeable circumstances, provided that the Settling Respondent and Community Water Center continue to undertake all appropriate measures to meet their deadlines. Should an extension be needed, the Settling Respondent must notify the Executive Officer in writing at least 30 days prior to the deadline. The written notice must specifically refer to this Paragraph and 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 Settling Respondent and/or Community Water Center 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. Any approval of an extension request by the Executive

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<sup>2</sup> The Prosecution Team's written notification of the proposed SEP to the OE Director and the Compliance Determination Form documenting the Prosecution Team's review of the SEP for compliance with the SEP Policy are available upon request.

Officer will be sent to the Settling Respondent and Community Water Center in writing with the effect of revising this Stipulated Order.

6. **SEP Oversight Costs:** Central Coast Water Board staff will review the Quarterly Reports and Certification of Completion completed by Community Water Center to ensure that SEP implementation is in compliance with this Stipulated Order. The Settling Respondent is responsible for any charged costs for any necessary Central Coast Water Board staff oversight, which are not included in the SEP Amount.

7. **Reporting Requirements for the SEP:** The Community Water Center has agreed, on the Settling Respondent's behalf, to submit the following reports on SEP implementation to the designated Central Coast Water Board contact identified in Section III, paragraph 17 below:

- a. **Quarterly Reports:** Quarterly Reports must be submitted in accordance with the *SEP Reporting Schedule* in Table 3 of Attachment B. The Quarterly Reports must describe the tasks completed during the previous quarter, whether the Community Water Center and Settling Respondent are in compliance with the *SEP Project Schedule* in Table 1 of Attachment B, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order, and whether the Settling Respondent is in compliance with the *SEP Amount Payment Schedule* in Table 2 of Attachment B. The Quarterly Reports shall also include descriptions and photos of activities completed during the previous quarter, results of any monitoring completed during the previous quarter, and an analysis of the SEP's progress.
- b. **Certification of SEP Completion:** No later than August 17, 2023, Community Water Center, on the Settling Respondent's behalf, must submit a final report that documents SEP completion and provides a certified statement of SEP completion (Certification of SEP Completion), signed under penalty of perjury, that documents the following: (a) Community Water Center's receipt of the Settling Respondent's payments for the SEP Amount as described in Attachment B, (b) Community Water Center's expenditures made during the SEP completion period (which may exceed the amount funded by this Stipulated Order), (c) that Community Water Center followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act, and (d) Community Water Center's completion of the SEP in accordance with the terms of this Stipulated Order.

The expenditures may include external payments to outside vendors, but may not include the normal, routine work undertaken by the

Community Water Center's staff. Routine work does not include work undertaken to complete the SEP, including the work and associated costs to complete and submit the Quarterly Reports and Certification of Completion. In making such certification, the signatories may rely on normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Coast Water Board to evaluate SEP completion and the costs incurred. The Community Water Center has agreed to provide the designated Central Coast Water Board contact with any additional information reasonably necessary to verify the Community Water Center's SEP expenditures and SEP completion on behalf of the Settling Respondent. The Settling Respondent must provide the designated Central Coast Water Board contact with any additional information reasonably necessary to verify the Settling Respondent's payments for the SEP Amount.

8. **Third Party Audit:** If the designated Central Coast Water Board contact obtains information reasonably indicating that the Settling Respondent and/or Community Water Center has not expended money in the amounts claimed, or the Community Water Center has not adequately completed any of the work in the SEP, the designated Central Coast Water Board contact may require, and the Settling Respondent must submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the designated Central Coast Water Board contact, stating that in its professional opinion, the Settling Respondent and/or Community Water Center has or has not expended money in the amounts claimed. In the event of such an audit, the Settling Respondent and the Community Water Center agree that the third-party auditor will be provided with access to all documents that the auditor requests. Such information must be provided to the designated Central Coast Water Board contact within three months of the date on which the designated Central Coast Water Board contact requires the audit. The audit need not address any costs incurred by the Central Coast Water Board for oversight.

9. **Central Coast Water Board Acceptance of Completed SEP:** Upon the Settling Respondent's satisfaction of its obligations under this Stipulated Order, the completion of the SEP and any audits, the designated Central Coast Water Board contact will request the Central Coast Water Board, or its delegate, to issue a "Satisfaction of Order." The issuance of the Satisfaction of Order will terminate any further obligation of the Settling Respondent under this Stipulated Order and permanently suspends and dismisses the SEP Amount.

10. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP:** If the Settling Respondent is unable to demonstrate to

the reasonable satisfaction of the designated Central Coast Water Board contact that the Settling Respondent has spent the entire SEP Amount on the completed SEP, the Settling Respondent must pay the difference between the SEP Amount and the amount the Settling Respondent can demonstrate was actually spent on the SEP (the Difference) as an administrative civil liability. The designated Central Coast Water Board contact will issue a Notice of Violation (NOV) that will require the Settling Respondent to pay the Difference to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the NOV's issuance date. The Settling Respondent must submit payment consistent with the payment method described in Section III, paragraph 1.a. Payment of the Difference will satisfy the Settling Respondent's remaining obligations to implement the SEP.

11. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Deadline and the Executive Officer has not granted an extension pursuant to Section III, paragraph 5, the designated Central Coast Water Board contact will issue an NOV. As a consequence, the Settling Respondent will be liable to pay the entire SEP Amount, less any amount permanently suspended or excused based on the timely and successful completion of any interim project milestone with an identifiable and stand-alone environmental benefit. Unless the Central Coast Water Board or its delegate determines otherwise, the Settling Respondent will not be entitled to any credit, offset, or reimbursement from the Central Coast Water Board for expenditures made on the SEP prior to the NOV's issuance date. The amount of the suspended liability owed must be determined via a written, stipulated agreement between the Parties or, if the Parties cannot reach an agreement on the amount owed, via a "Motion for Payment of Suspended Liability" before the Central Coast Water Board or its delegate. Within 30 days of the Central Coast Water Board's or its delegate's determination of the suspended liability assessed, the Settling Respondent must pay the amount owed to the "State Water Pollution Cleanup and Abatement Account." The Settling Respondent must submit payment consistent with the payment method described in Section III, paragraph 1.a. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEP. This Stipulated Order does not restrict the Settling Respondent from seeking reimbursement from the Community Water Center if payment of the suspended liability becomes due and payable under this Paragraph.

12. **Central Coast Water Board Not Liable:** Neither the Central Coast Water Board members nor the Central Coast 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 Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Coast Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Settling Respondent, its directors, officers, employees,

agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

13. **Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP, except that this covenant is not intended to, and does not, limit the Settling Respondent's rights to sue over other Central Coast Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the Settling Respondent's rights to defend against any additional enforcement or other actions taken by the Central Coast Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any State agency, or the State of California or its officers, Central Coast Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.

14. **Publicity:** Whenever the Settling Respondent, or its agents or subcontractors (i.e., Community Water Center), publicize one or more elements of the SEP, they must state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Central Coast Water Board against the Settling Respondent.

15. **SEP Inspections:** The Settling Respondent and Community Water Center agree that Central Coast Water Board staff has permission to inspect the SEP, including the location where the SEP is being implemented and any documents associated with SEP implementation, at any time without notice.

16. **Compliance with Applicable Laws:** Settling Respondent understands that payment of administrative civil liability 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 continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

17. **Party Contacts for Communications related to this Stipulated Order:**

**For the Central Coast Water Board:**

Thea Tryon  
Assistant Executive Officer  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
[Thea.Tryon@waterboards.ca.gov](mailto:Thea.Tryon@waterboards.ca.gov)

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(805) 542-4776

**For Settling Respondent:**

Mr. Shah Kazemi  
Monterey Mushrooms, Inc.  
642 Hale Ave.  
Morgan Hill, CA 95038  
[SKazemi@montmush.com](mailto:SKazemi@montmush.com)

**Counsel for Monterey Mushrooms, Inc.:**

Melissa Thorme  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
[mthorme@downeybrand.com](mailto:mthorme@downeybrand.com)  
(916) 520-5376

18. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party agrees to bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

19. **Matters Addressed by this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 1.a. and the Settling Respondents full satisfaction of the obligations to implement the SEP in accordance with the terms of this Stipulated Order.

20. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Coast Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Coast Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

21. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Coast Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast 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

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the Central Coast Water Board requires a public hearing prior to the Stipulated 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.

22. **No Waiver of Right to Enforce:** The failure of the Central Coast 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 Central Coast Water Board to enforce any such provision shall not preclude later enforcement of the same or any other provision of this Stipulated Order. If the Settling Respondent fails to comply with this Stipulated Order, the Central Coast Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.

23. **Effect of this Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Central Coast Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.

24. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

25. **Modification:** The Parties must not modify this Stipulated Order by oral representation made before or after its execution. Except as otherwise provided in Section III, paragraph 5, all modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.

26. **Necessity for Written Approvals:** All approvals and decisions of the Central Coast Water Board, or its delegate, under the terms of this Stipulated Order must be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Central Coast Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

27. **If the Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying violation(s), unless the Parties agree otherwise. 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 the hearing. The Parties agree to waive any and all

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objections based on settlement communications in this matter, including, but not limited to the following:

- a. Objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

28. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Settling Respondent does not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulated Order or Attachment A, or admit to any violations of the Water Code, the Clean Water Act, any Central Coast Water Board order, or any other federal, State, or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e), and the Enforcement Policy. By entering into this agreement, the Settling Respondent does not waive any defenses or arguments related to any new enforcement action that may be brought by the Central Coast Water Board, including any brought under its discretionary enforcement authority reserved herein.

29. **Waiver of Hearing:** Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption. However, the Settling Respondent may appear at any Central Coast Water Board hearing where approval of this settlement is discussed, and if the settlement is not adopted and the matter proceeds to the Central Coast Water Board or State Water Resources Control Board for a hearing, the Settling Respondent does not waive its right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.

30. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Central Coast Water Board or its delegate, the Settling Respondent hereby waives its right to petition the Central Coast Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate-level court.

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31. **Authority to Bind:** 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.

32. **No Third-Party Beneficiaries:** Except in relation to the SEP, this Stipulated Order is not intended to confer any rights or obligations on any third party or parties. No third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

33. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

34. **Counterpart Signatures; 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 electronic signature, and any such 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 electronic signature were an original signature.

35. **Effective Date:** This Stipulated Order becomes effective and binding on the Parties upon the date the Central Coast Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION, PROSECUTION TEAM**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Thea S. Tryon  
Assistant Executive Officer  
Central Coast Water Board

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**IT IS SO STIPULATED.**

**MONTEREY MUSHROOMS, INC. AND SPAWN MATE, INC.**

Date: May 15, 2020

By: *Original Signed by*  
Shah Kazemi, on behalf of  
Monterey Mushrooms, Inc. and Spawn  
Mate, Inc.

## ORDER OF THE CENTRAL COAST WATER BOARD

1. This Order is issued pursuant to Water Code section 13323 and Government Code section 11415.60 and incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. The timeline for completion of the terms of this Stipulated Order:

| Task I.D. | Task Description  | Deadline(s)  |
|-----------|---|--|
| a.        | Pay <b>\$569,850</b> to the State Water Pollution Cleanup and Abatement Account | No later than 30 days after this Stipulated Order is adopted.  |
| b.        | Submit Quarterly Reports on SEP implementation                                  | No later than the deadlines identified in the <i>SEP Reporting Schedule</i> provided in Table 3 of Attachment B. |
| d.        | SEP Completion Deadline   | No later than July 17, 2023.   |
| e.        | Submit Certification of Completion  | No later August 17, 2023.  |

3. In accepting this Stipulated Order, the Central Coast Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, and has applied the Penalty Calculation Methodology set forth in the State Water Board's Enforcement Policy, which is incorporated herein by this reference. The Central Coast Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Coast Water Board.

4. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that 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 section 15321, subdivision (a)(2), title 14, of the California Code of Regulations. Additionally, this Stipulated Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.

5. The Executive Officer of the Central Coast Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under this Stipulated Order.

Settlement Agreement and Stipulated Administrative Civil Liability  
Stipulated Order No. R3-2020-0048  
Monterey Mushrooms, Inc. and Spawn Mate, Inc.

I, Matthew T. Keeling, Executive Officer of the California Regional Water Quality Control Board, Central Coast Region, do hereby certify the foregoing is a full, true, and correct copy of an order adopted by the Central Coast Water Board on July 17, 2020.

\_\_\_\_\_  
Matthew T. Keeling  
Executive Officer  
California Regional Water Quality Control Board  
Central Coast Region

\_\_\_\_\_  
Date

**Attachment A:** Administrative Civil Liability Factors and Penalty Calculation Methodology

**Attachment B:** SEP Proposal

## **ATTACHMENT A**

### **ALLEGED VIOLATIONS AND FACTORS IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY**

#### **MONTEREY MUSHROOMS, INC. AND SPAWN MATE, INC., 777 MAHER COURT AND 415 HALL ROAD, ROYAL OAKS, MONTEREY COUNTY**

The State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (Enforcement Policy)<sup>1</sup> establishes a methodology for assessing administrative civil liability to address the factors required by Water Code section 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violations is presented below.

#### **DISCHARGER INFORMATION**

Monterey Mushrooms, Inc. and its subsidiaries (MMI) own ten mushroom growing facilities throughout the United States (U.S.) and Mexico where MMI grows and ships different mushroom varieties across the U.S. MMI owns and operates, either directly or through its wholly owned subsidiaries, four mushroom growing facilities in California. Two of the four California facilities are in Monterey County and regulated under Waste Discharge Requirements (WDRs) issued by the Central Coast Regional Water Quality Control Board (Central Coast Water Board).<sup>2</sup>

WDR Order R3-2000-0037 (Maher Court Permit) regulates the MMI's discharge of wastewater at its 279-acre facility located at 777 Maher Court in Royal Oaks (Maher Court Facility), where mushrooms are spawned, grown, harvested, and packaged. MMI utilizes compost that typically contains horse and/or poultry manure, urea, and gypsum to grow mushrooms. Compost used in the mushroom growing process is manufactured on site. Compost leachate, a process wastewater, is recycled and stored at the Maher Court Facility and reused to add nutrients to compost. MMI also generates process wastewater from sanitizing their mushroom growing trays after the mushrooms are

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<sup>1</sup> The State Water Board's amendments to the 2010 Enforcement Policy became effective on October 5, 2017. Except for the use of 2017 Enforcement Policy clarifications of elements common to both versions of the policy, this document applies the 2010 Enforcement Policy because this version was in effect at the time the alleged violations occurred.

<sup>2</sup> The Central Coast Water Board also regulates MMI's Arroyo Grande facility, owned and operated through its subsidiary, Spawn Mate, Inc., under WDR Order R3-1992-0069. In response to a December 2, 2016 notice of violation for the unauthorized use of an unlined wastewater pond, MMI began using storage tanks to manage its process wastewater. In November 2017, MMI reported that the unlined wastewater pond was removed and compost production and storage at the facility ceased. The Prosecution Team is exercising its prosecutorial discretion and is currently not alleging violations that may have occurred at the Arroyo Grande facility.

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harvested and generates saline wastes, including boiler blowdown and water softener brine.

WDR Order R3-2000-0038 (Hall Road Permit) regulates MMI's discharge of wastewater at a 14.3-acre facility, owned and operated through its wholly owned subsidiary, Spawn Mate, Inc., located at 415 Hall Road in Royal Oaks (Hall Road Facility), where mushrooms were spawned, grown, harvested, and packaged. MMI also used compost to grow mushrooms and produces process wastewater and saline wastes from boiler blowdown at the Hall Road Facility.<sup>3</sup>

All process wastewater, including stormwater commingled with process wastewater and/or other wastes, generated at the Maher Court and Hall Road Facilities must be placed and contained in the facilities' wastewater ponds as permitted. Both the Maher Court Permit and Hall Road Permit prohibit the discharge of any wastes to waters of the United States (U.S.), adjacent drainage ways, or adjacent properties. MMI has never filed for a Report of Waste Discharge pursuant to California Water Code (Water Code) section 13376 to obtain a National Pollutant Discharge Elimination System (NPDES) permit. Any point source discharge of pollutants to waters of the U.S. at the Maher Court and Hall Road Facilities is unauthorized.

### **ALLEGED VIOLATIONS AND PROPOSED LIABILITY**

The Central Coast Water Board Prosecution Team (Prosecution Team) applied the Enforcement Policy's administrative civil liability methodology to the eight alleged discharge violations at the Maher Court Facility and six alleged discharge violations at the Hall Road Facility to develop a proposed final liability amount of **\$1,169,425**.

#### **Violations 1 – 8: Unauthorized Discharges of Pollutants from the Maher Court Facility in Violation of Water Code section 13376 and Clean Water Act section 301**

The Prosecution Team alleges that MMI committed eight violations of Water Code section 13376 and federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. § 1311) at the Maher Court Facility. Between January 8, 2017, and April 19, 2017, MMI is alleged to have discharged approximately 4,014,245 gallons of process wastewater and/or polluted stormwater from the Maher Court Facility to an unnamed tributary of Elkhorn Slough<sup>4</sup> (Tributary 1), a water of the U.S. MMI neither filed a Report of Waste Discharge under Water Code section 13376 prior to the discharges nor

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<sup>3</sup> In a January 28, 2020 email, MMI reported ceasing all mushroom growing operations at the Hall Road Facility, but still conducts a mushroom dehydration process that generates wastewater. As of April 30, 2020, MMI reported pumping approximately 1,000 gallons of wastewater per week to the facility's aerated pond, where the wastewater evaporates.

<sup>4</sup> The tributary that flows through the southern portion of the Maher Court Facility is sometimes referred to as Bolsa Nueva Creek in monitoring reports, the investigative order, and California Department of Fish and Wildlife documents. The tributary is referenced as the unnamed tributary of Elkhorn Slough in the Maher Court Permit. For convenience, the tributary is referred to as "Tributary 1" in this document.

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obtained an NPDES permit authorizing the discharges. The unauthorized discharges subject MMI to administrative civil liability pursuant to Water Code section 13385, subdivision (c). The proposed administrative civil liability for Violations 1 – 8 is **\$1,009,383**.

In response to an investigative order issued by the Central Coast Water Board on September 15, 2017, MMI reported that the Maher Court Facility discharges occurred as follows:

- **Violations 1 – 7:** During rain events from January 8, 2017 to April 19, 2017, high volumes of stormwater and process wastewater entered one of the Maher Court Facility’s wastewater ponds (Maher Court Pond 2<sup>5</sup>), causing the elevation of Maher Court Pond 2 to rise above its liner and overflow into its concrete spillway and discharge directly into Tributary 1; and
- **Violation 8:** On April 7, 2017, MMI turned off a pump at one of the Maher Court Facility’s sumps (Maher Court Sump 1), also known as the Level 400 catch basin, to repair a broken main line, causing process wastewater and polluted stormwater in Maher Court Sump 1 to overflow into drainage ditches and discharge into Tributary 1.

**Table 1. Summary of Maher Court Facility Violations**

| <b>Violation Number</b> | <b>Violation Description</b>   | <b>Violation Dates in 2017</b> | <b>Days of Violation</b> | <b>Estimated Discharge Volume</b> |
|-------------------------|--|--------------------------------|--------------------------|-----------------------------------|
| 1                       | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Pond 2 | January 8 – 11                 | 4 days                   | 515,631 gallons                   |
| 2                       | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Pond 2 | January 20 – 23                | 4 days                   | 1,017,933 gallons                 |
| 3                       | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Pond 2 | February 2 – 15                | 14 days                  | 848,651 gallons                   |
| 4                       | Unauthorized discharge of process wastewater   | February 16 – 24               | 9 days                   | 1,053,241 gallons                 |

<sup>5</sup>“Pond 2,” as identified in the Maher Court Permit, is referenced as “Pond 3” in California Department of Fish and Wildlife and/or Santa Clara County District Attorney’s Office inspection reports referenced in this document.

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| Violation Number | Violation Description  | Violation Dates in 2017 | Days of Violation | Estimated Discharge Volume |
|------------------|--|-------------------------|-------------------|----------------------------|
|                  | and polluted stormwater to waters of the U.S. from Maher Court Pond 2  |                         |                   |                            |
| 5                | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Pond 2 | March 21 – 31           | 11 days           | 370,657 gallons            |
| 6                | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Pond 2 | April 8 – 10            | 3 days            | 6,948 gallons              |
| 7                | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Pond 2 | April 14 – 19           | 6 days            | 146,812 gallons            |
| 8                | Unauthorized discharge of process wastewater and polluted stormwater to waters of the U.S. from Maher Court Sump 1 | April 7                 | 1 day             | 54,372 gallons             |

**Violations 9 – 14: Unauthorized Discharges of Pollutants from the Hall Road Facility in Violation of Water Code section 13376 and Clean Water Act section 301**

The Prosecution Team alleges that MMI committed six violations of Water Code section 13376 and Clean Water Act section 301 at the Hall Road Facility. From January 8, 2017 until on or about February 20, 2017, MMI discharged approximately 620,000 gallons of process wastewater from the Hall Road Facility into an unnamed tributary of Elkhorn Slough (Tributary 2), a water of the U.S. MMI neither filed a Report of Waste Discharge under Water Code section 13376 prior to the discharges nor obtained an NPDES permit authorizing the discharges. The unauthorized discharges subject MMI to administrative civil liability pursuant to Water Code section 13385, subdivision (c). The proposed administrative civil liability for Violations 9 – 14 is **\$160,042**.

In response to an investigative order issued by the Central Coast Water Board on October 2, 2017, MMI reported that the Hall Road Facility discharges occurred as follows:

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- **Violation 9:** After rain events on January 3, 7, and 8, 2017, MMI excavated a large, 4-feet-wide by 4-feet-deep by approximately 550-feet-long, diversion ditch across the northern portion of the Hall Road Facility from the east to west boundary. MMI used the diversion ditch to divert stormwater run-on from the neighboring property east of the facility to Tributary 2, which flows along the Hall Road Facility’s west boundary. On January 8, 2017, MMI pumped approximately 24,000 gallons of process wastewater from the Hall Road Facility’s lift station (Lift Station) to the diversion ditch that discharged into Tributary 2 to maintain capacity in one of the facility’s wastewater storage ponds (Hall Road Pond 2); and
- **Violations 10 – 14:** From January 9 until on or about February 20, 2017, MMI released approximately 596,000 gallons of process wastewater from various storage tanks to the diversion ditch that discharged into Tributary 2 to preserve the integrity and storage capacity of Hall Road Pond 2 (270,000 gallon capacity).

**Table 2. Summary of Hall Road Facility Violations**

| <b>Violation Number</b> | <b>Violation Description</b>   | <b>Violation Dates in 2017</b> | <b>Days of Violation</b> | <b>Estimated Volume Discharged</b> |
|-------------------------|--|--------------------------------|--------------------------|------------------------------------|
| 9                       | Unauthorized discharge of process wastewater to waters of the U.S. from the Lift Station | January 8                      | 1 day                    | 24,000 gallons                     |
| 10                      | Unauthorized discharge of process wastewater to waters of the U.S from 2 storage tanks   | January 9                      | 1 day                    | 40,000 gallons                     |
| 11                      | Unauthorized discharge of process wastewater to waters of the U.S from 11 storage tanks  | January 22                     | 1 day                    | 220,000 gallons                    |
| 12                      | Unauthorized discharge of process wastewater to waters of the U.S from 5 storage tanks   | January 23                     | 1 day                    | 100,000 gallons                    |
| 13                      | Unauthorized discharge of process wastewater to waters of the U.S from 9 storage tanks   | February 9 <sup>6</sup>        | 1 day                    | 180,000 gallons                    |

<sup>6</sup> MMI’s technical report states that the unauthorized discharge occurred on February 10, 2017. On February 10, 2017, however, MMI reported to Central Coast Water Board permitting staff that there was a “12-hour release from the farm yesterday. Samples were taken before the release ... that ended this morning.” For this violation, the Prosecution Team is exercising prosecutorial discretion and only alleging one day of violation, February 9, 2017; the day on which a sample was taken.

| Violation Number | Violation Description   | Violation Dates in 2017 | Days of Violation | Estimated Volume Discharged |
|------------------|---|-------------------------|-------------------|-----------------------------|
| 14               | Unauthorized discharge of process wastewater to waters of the U.S from an unknown number of storage tanks | February 20             | 1 day             | 56,000 gallons              |

### ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY STEPS

#### **Step 1. Harm or Potential for Harm for Discharge Violations**

A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

#### ***Factor 1: Harm or Potential Harm to Beneficial Uses***

The evaluation of the 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 pollutants in the discharge, consistent with the statutory factors for the nature, circumstances, extent, and gravity of the violation(s). The Central Coast Water Board may consider actual harm or potential harm to beneficial uses or human health. Actual harm is harm that is documented and/or observed. Potential harm is evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters. The Enforcement Policy specifies a score ranging from 0 to 5 based on a determination of whether the harm or potential for harm from a violation is negligible (0) to major (5).

The harm or potential harm to beneficial uses from the discharges associated with Violations 1 – 14 is **above moderate (4)**. “Above moderate” is assigned when impacts are observed or likely substantial, there are temporary restrictions on beneficial uses (i.e., less than 5 days), or human or ecological health concerns exist.

Tributary 1, Tributary 2, and the Elkhorn Slough are waters of the U.S. The Maher Court Facility is located on steep topography (up to 35% slopes) adjacent to Tributary 1.<sup>7</sup> The Hall Road Facility is located on sloping topography (approximately 29% slope) and the site drains directly into Tributary 2 by means of drainage channels and swales.<sup>8</sup> Tributary 1 and Tributary 2 are both tributaries to Elkhorn Slough, which is located approximately six miles downstream of the Maher Court Facility along Tributary 1 and two miles downstream of the Hall Road Facility along Tributary 2. Elkhorn Slough is

<sup>7</sup> Maher Court Permit, Finding No. 11.

<sup>8</sup> Hall Road Permit, Finding No. 11.

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designated as an ecological reserve by the California Department of Fish and Wildlife (CDFW) and is recognized as a National Estuary Sanctuary by the federal government.<sup>9</sup>

The Water Quality Control Plan for the Central Coast Basin, March 2016 Edition (Basin Plan<sup>10</sup>), Chapter 2, *Present and Potential Beneficial Uses*, Section I lists the following beneficial uses for Tributary 1 and Tributary 2: municipal and domestic water supply (MUN), water contact recreation (REC-1), non-contact water recreation (REC-2), cold fresh water habitat (COLD), and warm fresh water habitat (WARM). Basin Plan Chapter 2, Table 2-1 lists the following beneficial uses for Elkhorn Slough: REC-1, REC-2, COLD, WARM, wildlife habitat (WILD), migration of aquatic organisms (MIGR), spawning, reproduction, and/or early development (SPWN), preservation of biological habitats of special significance (BIOL), rare, threatened, or endangered species (RARE), estuarine habitat (EST), aquaculture (AQUA), shellfish harvesting (SHELL), commercial and sport fishing (COMM), and navigation (NAV).

During MMI's composting operations, organic material breaks down into a useable protein source for mushrooms.<sup>11</sup> Organic wastes can cause intolerably high concentrations of ammonia, intolerably low dissolved oxygen, and intolerably high sediment for aquatic life if allowed to enter waters of the State or U.S.<sup>12</sup> Water samples collected during inspections of the Maher Court and Hall Road Facilities were "indicative of natural waters stressed by the presence of organic wastes."<sup>13</sup>

Composting operations, in general, have the potential to degrade water quality with nutrients (e.g., nitrate), salinity (e.g., sodium chloride), pathogens, oxygen-reducing materials, sediment, and other waste constituents.<sup>14</sup> The Central Coast Water Board has also identified possible water quality problems associated with mushroom farm operations, including the threatened discharge of compost leachate, which is high in biochemical oxygen demand (BOD), and nutrients, which may depress dissolved oxygen to a critical level and provide a nutrient source for undesirable aquatic growth.<sup>15</sup>

In sum, ammonia, excessive nutrients, and suspended and floating material observed in the unauthorized discharges, caused or had the potential to cause above moderate

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<sup>9</sup> Central Coast Regional Water Quality Control Board. 2016. *Water Quality Control Plan for the Central Coast Basin, March 2016 Edition*, p. 2-16.

<sup>10</sup> The March 2016 Edition of the Basin Plan (Basin Plan) was in effect at the time the alleged violations occurred and is available at:

[https://www.waterboards.ca.gov/centralcoast/publications\\_forms/publications/basin\\_plan/](https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/)

<sup>11</sup> Basin Plan, p. 4-44.

<sup>12</sup> Orr, Daniel, Senior Environmental Scientist (Specialist), California Department of Fish and Wildlife. Amendment to Biological Effects of Organic Waste to Fish and Aquatic Life dated April 20, 2016, August 12, 2016, p. 5.

<sup>13</sup> *Ibid.*

<sup>14</sup> State Water Resources Control Board Order 2015-0121-DWQ, General Waste Discharge Requirements for Composting Operations, Finding 20.

<sup>15</sup> Basin Plan, p. 4-45.

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harm to habitat-related beneficial uses including COLD, WARM, RARE, BIOL, EST, SPWN, MIGR, AQUA, and WILD for the following reasons:

- Ammonia (explained in detail below) can cause toxicity in fresh and estuarine waters and inhibit growth of, or kill, various aquatic species including fish. Ammonia is a common cause of fish kills and can harm people's health after it is converted to nitrate by bacteria in water.<sup>16</sup>
- Excessive nutrients (i.e., nitrogen and phosphorous) known to be in the unauthorized discharges can cause accelerated aquatic plant growth that depletes oxygen in waterways and harms fish and other aquatic life.<sup>17</sup>
- Suspended material (i.e., suspended solids) in concentrations found in process wastewater and receiving water samples can act directly on fish and cause lethal and sublethal effects.<sup>18</sup>
- Foam, a floating material observed in Tributary 1 and 2 during the unauthorized discharges, can be indicative of elevated levels of surfactants in the form of dissolved organic carbon.<sup>19</sup> Excessive dissolved organic carbon and nutrients in the waterways can reduce dissolved oxygen and harm aquatic habitat, including fish.<sup>20</sup>

The remainder of this factor analysis focuses on ammonia levels, measured as total ammonia nitrogen (TAN), found in samples of the unauthorized process wastewater discharges and the associated receiving waters for each facility.

The U.S. EPA established acute and chronic toxicity of TAN criteria for freshwater aquatic life to be 17 milligrams per liter (mg/L) (one-hour average) and 1.9 mg/L (four-day average) respectively.<sup>21</sup> Acute criteria are intended to protect aquatic species from adverse effects that result from a single exposure or from multiple exposures in a short period of time. Chronic criteria are intended to protect aquatic species from adverse effects that build up over long-term exposure.

The Basin Plan designates water quality objectives for all surface and groundwaters in the Central Coast Region to protect beneficial uses.<sup>22</sup> Exceeding or potentially exceeding water quality objectives is an indicator of harm or potential harm to those

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<sup>16</sup> United States Environmental Protection Agency, Summaries of Water Pollution Reporting Categories, adapted from doc. no. EPA841-R-12-104, October 2012, pp. 2-3. Available online at <https://www.epa.gov/sites/production/files/2015-08/documents/34parentattainsdescriptions.pdf>. Accessed October 18, 2019.

<sup>17</sup> *Id.* at p. 11.

<sup>18</sup> Orr, *supra*, p. 5.

<sup>19</sup> Davis, Jeffrey C. *What causes foam in streams and lakes?* The Aquatic Restoration and Research Institute. Available online at [www.arriialaska.org/foam-in-streams.html](http://www.arriialaska.org/foam-in-streams.html). Accessed October 18, 2019.

<sup>20</sup> Mount, Jeffrey F. 1995. *California Rivers and Streams*. University of California Press. pp. 259-260.

<sup>21</sup> United States Environmental Protection Agency. (2013) *Aquatic Life Ambient Water Criteria of Ammonia-Freshwater 2013*. EPA 822-R-13-001.

<sup>22</sup> Water Code section 13050, subdivision (h) defines "water quality objectives" as "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

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beneficial uses. Among the water quality objectives that apply to all inland surface waters in the Central Coast Region, the Basin Plan establishes that all waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life. Because the above U.S. EPA criteria establish thresholds above which toxicity occurs, exceeding the TAN criteria indicates exceedance of the Basin Plan toxicity objective.

On January 20, 2017, and during the Violation 2 discharge from Maher Court Pond 2, CDFW staff collected receiving water samples in the following Tributary 1 locations: immediately downstream of the Maher Court Facility (near the corner of Maher Road and Maher Court), approximately 800 feet downstream of the Maher Court Facility, and approximately 0.5 mile downstream of the Maher Court Facility (at the entrance to Royal Oaks County Park). TAN concentrations were 9.2 mg/L, 7.3 mg/L, and 8.6 mg/L, respectively, ranging from 3.8 to 4.8 times greater than the U.S. EPA chronic toxicity criteria of 1.9 mg/L. Each of the January 20, 2017 receiving water samples exceeded the Basin Plan water quality objective for toxicity. The potential for harm to Tributary 1 and Elkhorn Slough aquatic life beneficial uses were documented and/or observed and the discharge's toxicity characteristics warrant concern for the ecological health of both surface waters.

On April 14, 2017, and during the Violation 7 discharge from Maher Court Pond 2, CDFW staff and an investigator from the Santa Clara County District Attorney's Office (DA Investigator) collected receiving water samples in the following Tributary 1 locations: immediately downstream of the Maher Court Facility (near the corner of Maher Road and Maher Court), approximately 0.5 mile downstream of the Maher Court Facility (at the entrance to Royal Oaks County Park), and approximately 0.75 mile downstream of the Maher Court Facility (where Tributary 1 passes under Chianti Lane). TAN concentrations were 20 mg/L, 10 mg/L, and 2.3 mg/L, respectively, ranging from 10.5, 5.3, and 1.2 times greater than the U.S. EPA chronic criteria of 1.9 mg/L. The TAN sample with a concentration of 20 mg/L was 1.2 times greater than the acute criteria of 17 mg/L. The exceedance of the acute toxicity criteria indicates that the discharges from Maher Court Pond 2 were capable of substantial impacts to the aquatic life beneficial uses due to toxicity from just a brief exposure to the discharged material. The April 14, 2017 results also indicate that the discharge exceeded the Basin Plan water quality objective for toxicity. The potential for harm to Tributary 1 and Elkhorn Slough aquatic life beneficial uses was likely substantial, and the discharge's toxicity characteristics warrant concern for the ecological health of both surface waters.

The receiving water (Tributary 1) sampling results for TAN on January 20, 2017, and April 14, 2017, correspond with Maher Court Pond 2 process wastewater overflow TAN concentrations of 29 mg/L and 31 mg/L. As shown in Table 3 below, all the process wastewater overflows sampled at both facilities showed similar TAN concentrations (ranging from 23 mg/L to 44 mg/L) that resulted from the same mushroom growing processes. All process wastewater overflow samples were above the U.S. EPA acute

and chronic toxicity criteria for protection of freshwater aquatic species and in violation of the Basin Plan water quality objective for toxicity. Because none of the data indicate fluctuations in TAN concentrations below toxic levels, it is reasonable to conclude that all unauthorized discharges of polluted stormwater and/or process wastewater from both facilities, including violations with no corresponding sample (Violations 1, 8, and 10), caused above moderate harm or potential harm to the aquatic life beneficial uses of Tributary 1, Tributary 2, and Elkhorn Slough, including WARM, COLD, WILD, SPWN, BIOL, RARE, EST, AQUA, and SHELL. The unauthorized discharges' toxicity characteristics impacted the ecological health of the surface waters.

**Table 3. Process Wastewater Overflow Sampling**

| Corresponding Violation Number | Sampling Date in 2017     | Facility    | TAN (mg/L)    |
|--------------------------------|---------------------------|-------------|---------------|
| 1                              | No Sample                 | Maher Court | Not Available |
| 2                              | January 20                | Maher Court | 29            |
| 3                              | February 2                | Maher Court | 28            |
| 4                              | February 17               | Maher Court | 25            |
| 5                              | March 21                  | Maher Court | 23            |
| 6                              | April 8                   | Maher Court | 30            |
| 7                              | April 14                  | Maher Court | 31            |
| 8                              | No Sample                 | Maher Court | Not Available |
| 9                              | January 8                 | Hall Road   | 25            |
| 10                             | No Sample                 | Hall Road   | Not Available |
| 11                             | January 20 <sup>23</sup>  | Hall Road   | 30            |
| 12                             | January 20                | Hall Road   | 30            |
| 13                             | February 9                | Hall Road   | 44            |
| 14                             | February 21 <sup>24</sup> | Hall Road   | 37            |

The TAN concentrations in process wastewater at the Hall Road Facility consistently measured between 25 mg/L and 44 mg/L (see Table 3 above). On January 20, 2017, CDFW staff inspected the Hall Road Facility and sampled an active discharge of process wastewater from the western facility boundary to Tributary 2. The TAN concentration at the Hall Road Facility was 30 mg/L, comparable to the Maher Court Facility concentrations (29 mg/L) sampled the same day during Violation 2. The January

<sup>23</sup> CDFW staff took samples of an active process wastewater discharge to Tributary 2 on January 20, 2017. The Prosecution Team is exercising its prosecutorial discretion and is not alleging a violation on January 20, 2017, but the sample result is reflective of the discharges that occurred during Violations 11 and 12 as explained in the factor analysis. This enforcement action assesses liability only for the large volume unauthorized discharges reported by MMI in its response to Water Code section 13267 Orders.

<sup>24</sup> The analytical results submitted by MMI for Violation 14 (February 20, 2017) correspond to a sample taken on February 21, 2017, at 7:00 a.m. It is assumed that the unauthorized discharge to Tributary 2 ended the night of February 20, 2017, and that the February 21, 2017 sample is an adequate representation of the February 20, 2017 process wastewater that was discharged from the storage tanks, as reported in MMI's technical report.

20, 2017 samples from both facilities were collected two and three days before Violations 11 and 12. Given the consistent range of TAN concentrations found in the process wastewater over a similar time period, the sample taken at the Hall Road Facility on January 20, 2017, is reasonably representative of the process wastewater discharged during Violations 11 and 12. The potential harm to beneficial uses and ecological health concerns for the process wastewater discharges at both facilities during the same time period were similar.

***Factor 2: The Physical, Biological or Thermal Characteristics of the Discharge (Degree of Toxicity)***

Based on the physical, chemical, biological or thermal characteristics of the discharges associated with Violations 1 – 14, the risk or threat of the discharged material is **above moderate (3)**. “Above moderate” is assigned when the chemical and/or physical characteristics of the discharged material far exceed known risk factors and/or there is substantial concern regarding receptor protection.

High levels of ammonia present in the discharged process wastewater can lead to lethal toxic buildup in the tissues and blood of aquatic organisms. Samples taken during the violations shown in Table 3 above indicate the significant threat of the process wastewater and/or polluted stormwater before discharge. All analytical results for process wastewater samples were significantly above the U.S. EPA chronic toxicity criteria of 1.9 mg/L and the acute toxicity criteria of 17 mg/L for TAN for the protection of freshwater aquatic species.

- **Violations 1 – 8 (Maher Court Facility):** As identified in Table 3 above, the analytical results for corresponding TAN samples taken at the Maher Court Pond 2 spillway during Violations 2 – 7 are as follows: 29 mg/L, 28 mg/L, 25 mg/L, 23 mg/L, 30 mg/L, and 31 mg/L. These results show that the sampled discharges were highly and significantly toxic to aquatic life and far exceed known risk factors. The same conclusion is reached for the discharges without corresponding samples at the Maher Court Facility (Violations 1 and 8) because Maher Court Pond 2 and Maher Court Sump 1 contained compost-laden stormwater and process wastewater, the same elements in the discharges associated with Violations 2 – 7.
- **Violations 9 – 14 (Hall Road Facility):** As identified in Table 3 above, the analytical results for corresponding TAN samples during Violations 9, and 11 – 14 are as follows: 25 mg/L, 30 mg/L, 30 mg/L, 44 mg/L, and 37 mg/L. These results show that the sampled discharges were highly and significantly toxic to aquatic life and far exceed known risk factors. The same conclusion is reached for the discharge without a corresponding sample at the Hall Road Facility (Violation 10) because the storage tanks contained only process wastewater produced by the Hall Road Facility, the same elements in the discharges associated with Violations 9, and 11 – 14.

**Factor 3: Susceptibility to Cleanup or Abatement**

For each violation, the Prosecution Team determined that less than 50 percent of the discharge was susceptible to cleanup or abatement. The applicable factor is **1**.

**Step 1 Final Score – Harm or Potential Harm to Beneficial Uses**

The sum of the above scores is **8**. This value is used in Step 2 as the “Potential for Harm” score.

**Step 2. Per Gallon and Per Day Assessments for Discharge Violations**

The Enforcement Policy specifies that when there is a discharge, an initial liability based on a per gallon and per day basis shall be determined using the Potential for Harm scores from Step 1 and a determination of the Deviation from Requirement. The Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement violated.

The Deviation from Requirement for all violations is **major**. “Major” is assigned when the requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Clean Water Act section 301 prohibits any person to discharge any pollutant into waters of the U.S. without authorization under specific Clean Water Act provisions, including section 402 for point source discharges. Point source discharges of pollutants to waters of the U.S. are to be authorized under an NPDES permit issued in accordance with Water Code section 13376. MMI discharged pollutants (polluted stormwater, process wastewater, or both) into waters of the U.S. (Tributary 1 and Tributary 2) from point sources (diversion ditch, Maher Court Pond 2, and Maher Court Sump 1) without an NPDES permit in violation of Clean Water Act section 301 and Water Code section 13376. The requirement to obtain authorization for the discharges was disregarded and rendered ineffective in its essential functions.

***Per Gallon and Per Day Factors***

The Prosecution Team determined the Per Gallon Factor from Table 1 and the Per Day Factor from Table 2 of the Enforcement Policy as follows:

Based on a Potential for Harm score of 8 and a Deviation from Requirement score of major, the Per Gallon Factor and Per Day Factor are both **0.6**.

***Volume Assessment***

Pursuant to Water Code section 13385, subdivision (a)(5), MMI is subject to administrative civil liability for the alleged violations. The Central Coast Water Board may impose administrative civil liability for each violation in an amount not to exceed the sum of both the following per Water Code section 13385, subdivision (c): \$10,000 for

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each day in which the violation occurs; and \$10 for each gallon of discharge not cleaned up in excess of 1,000 gallons.

The Enforcement Policy requires application of the above Per Gallon Factor (0.6) to the maximum per gallon amounts allowed under statute for the violations, but allows for an adjustment down to \$2.00 per gallon for high volume sewage spills and stormwater discharges. Where reducing the maximum amount results in an inappropriately small penalty given the impact to beneficial uses, a higher amount, up to the maximum amount, may be used.

For these unauthorized discharges, \$10 per gallon was applied for any discharge less than 100,000 gallons. For discharges greater than or equal to 100,000 gallons and less than 400,000 gallons, \$5 per gallon was applied. For any discharge greater than 400,000 gallons, \$2 per gallon was applied.

***Initial Liability Amount***

The initial liability amount (Per Gallon Liability + Per Day Liability) for Violations 1 – 14 were calculated as follows:

Per Gallon Liability

Violation 1:  $(514,631 \text{ gallons } [515,631 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$2/\text{gallon}) = \$617,557$

Violation 2:  $(1,016,933 \text{ gallons } [1,017,933 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$2/\text{gallon}) = \$1,220,320$

Violation 3:  $(847,651 \text{ gallons } [848,651 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$2/\text{gallon}) = \$1,017,181$

Violation 4:  $(1,052,241 \text{ gallons } [1,053,241 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$2/\text{gallon}) = \$1,262,689$

Violation 5:  $(369,657 \text{ gallons } [370,657 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$5/\text{gallon}) = \$1,108,971$

Violation 6:  $(5,948 \text{ gallons } [6,948 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$10/\text{gallon}) = \$35,688$

Violation 7:  $(145,812 \text{ gallons } [146,812 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$5/\text{gallon}) = \$437,436$

Violation 8:  $(53,372 \text{ gallons } [54,372 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$10/\text{gallon}) = \$320,232$

Violation 9:  $(23,000 \text{ gallons } [24,000 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$10/\text{gallon}) = \$138,000$

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Violation 10:  $(39,000 \text{ gallons } [40,000 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$10/\text{gallon}) =$   
 $\$234,000$

Violation 11:  $(219,000 \text{ gallons } [220,000 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$5/\text{gallon}) =$   
 $\$657,000$

Violation 12:  $(99,000 \text{ gallons } [100,000 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$5/\text{gallon}) =$   
 $\$297,000$

Violation 13:  $(179,000 \text{ gallons } [180,000 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$5/\text{gallon}) =$   
 $\$537,000$

Violation 14:  $(55,000 \text{ gallons } [56,000 \text{ gallons} - 1,000 \text{ gallons}] \times (0.6) \times (\$10/\text{gallon}) =$   
 $\$330,000$

Per Day Liability

Violation 1:  $\$10,000/\text{day} \times (0.6) \times (4 \text{ days}) = \$24,000$

Violation 2:  $\$10,000/\text{day} \times (0.6) \times (4 \text{ days}) = \$24,000$

Violation 3:  $\$10,000/\text{day} \times (0.6) \times (14 \text{ days}) = \$84,000$

Violation 4:  $\$10,000/\text{day} \times (0.6) \times (9 \text{ days}) = \$54,000$

Violation 5:  $\$10,000/\text{day} \times (0.6) \times (11 \text{ days}) = \$66,000$

Violation 6:  $\$10,000/\text{day} \times (0.6) \times (3 \text{ days}) = \$18,000$

Violation 7:  $\$10,000/\text{day} \times (0.6) \times (6 \text{ days}) = \$36,000$

Violation 8:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Violation 9:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Violation 10:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Violation 11:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Violation 12:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Violation 13:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Violation 14:  $\$10,000/\text{day} \times (0.6) \times (1 \text{ day}) = \$6,000$

Initial Liability Amount

Violation 1:  $\$617,557 + \$24,000 = \$641,557$

Violation 2:  $\$1,220,320 + \$24,000 = \$1,244,320$

Violation 3:  $\$1,017,181 + \$84,000 = \$1,101,181$

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Violation 4:  $\$1,262,689 + \$54,000 = \$1,316,689$

Violation 5:  $\$1,108,971 + \$66,000 = \$1,174,971$

Violation 6:  $\$35,688 + \$18,000 = \$53,688$

Violation 7:  $\$437,436 + \$36,000 = \$473,436$

Violation 8:  $\$320,232 + \$6,000 = \$326,232$

Violation 9:  $\$138,000 + \$6,000 = \$144,000$

Violation 10:  $\$234,000 + \$6,000 = \$240,000$

Violation 11:  $\$657,000 + \$6,000 = \$663,000$

Violation 12:  $\$297,000 + \$6,000 = \$303,000$

Violation 13:  $\$537,000 + \$6,000 = \$543,000$

Violation 14:  $\$330,000 + \$6,000 = \$336,000$

**Step 3. Per Day Assessments for Non-Discharge Violations**

This step is not applicable because the violations are discharge violations.

**Step 4. Adjustment Factors**

The Enforcement Policy requires consideration of three additional factors for potential modification of the initial liability determined from Steps 1 through 3: the violator's culpability, the violator's efforts to clean up or cooperate with regulatory authorities after the violation, and the violator's history of violations.

***Culpability***

The culpability factor addresses responsibility for the violation due to characteristics such as lack of oversight, disregard, lack of attention or precaution, or omission (i.e., negligence) that may have contributed to the violation. It measures a discharger's degree of culpability before a violation occurs. For example, the omission of any reasonable precaution, care, or preventive action related to a violation would influence this factor upwards. These characteristics are not limited to the violation but can also include actions or inactions leading up to and potentially influencing the event such as maintenance practices, operational error, staffing, training, funding, planning, and design.

Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. The first step is to identify any performance standards or prevailing industry practices in the context of the violations. The test is what a similarly situated reasonable and prudent person would have done or not done under similar circumstances. A factor from 1.1 to 1.5 is used to influence the liability amount upward when the violations result from negligent or intentional action or inaction. The highest

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level of culpability is represented by a factor of 1.5. A neutral assessment of 1.0 is used when a violator acted as a reasonable and prudent person would have. Any diminishing factor from 0.5 to less than 1 would indicate that the violator exceeded the standard of care or circumstances outside of its control had a substantial influence on the event.

**Violations 1 – 8 (Maher Court Facility):** The culpability factor is **1.3**.

MMI has been operating under the Maher Court Permit since May 19, 2000, and prior to that was regulated by WDR Order 82-51 from November 5, 1982. Both permits prohibit the discharge of waste to areas other than the wastewater system and spray-irrigation areas. The Maher Court Permit specifically prohibits the discharge of any wastes to Tributary 1.

Central Coast Water Board staff further notified MMI of Maher Court Permit discharge prohibitions after a June 10, 2002 inspection and through a notice of violation (NOV) dated March 4, 2005. In a letter dated June 28, 2002, Central Coast Water Board staff identified potential Maher Court Permit compliance issues observed during the inspection, including unauthorized discharges of waste from Maher Court Sump 1 and the spent compost area. Central Coast Water Board staff requested corrective actions before the 2002/2003 rainy season. In response, MMI installed a gate-valve on Maher Court Sump 1's overflow pipe and a collection basin to collect runoff from the facility's spent compost area. The corrective actions, however, did not effectively resolve the overall pond capacity issues.

As documented in an NOV dated March 4, 2005, MMI notified Central Coast Water Board staff of a February 2005 unauthorized discharge of process wastewater (estimated 100,000 to 120,000 gallons) from Maher Court Pond 2 and into Tributary 1. The NOV cited violations of the Maher Court Permit and Clean Water Act section 301. MMI responded to the NOV on March 17, 2005, stating that the Maher Court Pond 2 drain line rose as a result of a higher pond level, allowing water behind the pond liner, which seeped through a dam. Moreover, MMI reported that the main contributor to the overflow was the 4.25 inches of rain that occurred seven days prior to the unauthorized discharge. MMI stated the drain line would be removed to eliminate future occurrences and would consider adding another retention pond and/or increase the size of Maher Court Pond 2 to eliminate future unauthorized discharges. The Prosecution Team is not aware whether MMI added additional wastewater storage in response to the March 4, 2005 NOV. Regardless, any further actions taken by MMI did not eliminate future unauthorized discharges.

MMI has been permitted and has known about permit prohibitions for over 38 years. Since at least 2005, MMI has also been aware of Maher Court Pond 2 capacity issues that could lead to unauthorized discharges of waste during a rainy season. As explained above, MMI took some corrective actions to divert process wastewater and polluted stormwater to its wastewater ponds, but the infrastructure improvements proved to be insufficient as wastewater could not be retained onsite during a heavier rainy season.

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The violations occurred between January 8 and April 19, 2017. During this time, MMI continued production of process wastewater despite not having adequate capacity to discharge the wastewater in compliance with the Maher Court Permit. A reasonable and prudent person under similar circumstances would have taken appropriate measures well before 2017 to stop potential discharges from occurring. Therefore, a score of **1.3** is assigned.

**Violations 9 – 14 (Hall Road Facility):** The culpability factor is **1.2**.

MMI has been operating under the Hall Road Permit since May 19, 2000, and prior to that was regulated by WDR Order 84-079 from September 21, 1984. Both permits prohibit the discharge of waste to areas other than the holding pond and spray-irrigation areas. The Hall Road Permit specifically prohibits the discharge of any wastes to Tributary 2 located at the facility's western edge.

In an NOV dated October 27, 2008, Central Coast Water Board staff notified MMI of groundwater discharge violations (elevated groundwater concentrations of TDS, sodium, and chloride) and requested a Corrective Action Plan (CAP) detailing the cause of the violations and proposing compliance due dates. MMI's December 10, 2008 NOV response states that the Hall Road Facility's "operations from time-to-time generate an excess of water (process water) from onsite compost operations, mushroom watering operations and general site cleaning operations" and spray irrigation is used to "to prevent each of the subject lined ponds from overflowing." MMI also explained that the Lift Station overflows periodically because its capacity cannot keep up with the process wastewater flow during extended peak flow periods.

MMI has been permitted and known about the permit prohibitions for almost 36 years. Since at least 2008, MMI has been aware of pond capacity issues at the Hall Road Facility and that it could not, from time-to-time, manage all the process wastewater produced onsite without additional storage or disposal methods. MMI submitted a CAP to correct the issues identified in the 2008 NOV, which included a commitment to conduct a geotechnical investigation for a new process wastewater pond. (See CAP Extension Request Letter dated June 22, 2010.) While MMI installed new pumps and pipes at the Lift Station, ceased spray irrigation, and installed process water evaporators, MMI did not construct an additional wastewater pond to increase wastewater storage capacity. The violations occurred from January 8 to on or about February 20, 2017. During this time, MMI continued its production of process wastewater despite not having adequate capacity to discharge wastewater in compliance with the Hall Road Permit. A reasonable and prudent person under similar circumstances would have taken measures well before 2017 to stop potential discharges from occurring. Therefore, a score of **1.2** is assigned.

***Cleanup and Cooperation***

The cleanup and cooperation factor addresses a violator's voluntary efforts to cleanup and/or to cooperate with regulatory authorities after the violation. Adjustment should

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result in a multiplier between 0.75 to 1.5, using the lower multiplier for exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation should receive a neutral adjustment. Adjustments below or above 1.0 should be applied where the violator's response to a violation is above and beyond, or falls below, the normally expected response, respectively.

**Violations 1 – 8 (Maher Court Facility):** The cleanup and cooperation factor is **1.2**.

MMI cooperated with Central Coast Water Board staff to begin implementation of corrective actions associated with the discharge violations, but the initial corrective actions proved insufficient during the 2016/2017 rainy season. MMI also failed to timely provide adequate technical information to evaluate whether MMI has returned to compliance with the Maher Court Permit.

MMI did not return to compliance in a timely manner after the first unauthorized discharge in January 2017. During the 2016/2017 rainy season, MMI installed up to twenty-five 21,000-gallon rental storage tanks, increasing the Maher Court Facility's wastewater storage capacity by 525,000 gallons. These corrective actions fell short of providing adequate storage and unauthorized discharges from Maher Court Pond 2 continued to occur through the rainy season. After the 2016/2017 rainy season, MMI added two large storage tanks (approximately 1.8 million gallons and 1.0 million gallons) at the Maher Court Facility's former soccer field and implemented additional corrective actions.

MMI is relying on increased storage capacity, increased offsite wastewater hauling, increased separation of stormwater and process wastewater, and spray irrigation to avoid future violations. For the 2017/2018 rainy season, MMI reported having approximately 3.1 million gallons of extra storage capacity onsite and at least one dedicated tractor and trailer for hauling excess process wastewater to the Watsonville Wastewater Treatment Plant. Before the 2018/2019 rainy season, MMI constructed a stormwater concrete drainage swale to direct stormwater from the hillside north of Maher Court Pond 2 to Tributary 1 to reduce stormwater runoff from entering the pond. However, MMI has not provided a stormwater plan that depicts the specific areas on the hillside north of Maher Court Pond 2 from which the runoff is sourced. Without an updated stormwater flow diagram and runoff estimate, it is unclear how much the concrete drainage swale will prevent clean stormwater from mixing with process wastewater.

In response to a request from Central Coast Water Board staff, MMI voluntarily reported Maher Court Pond 2 measurements before and after rain events in February 2019. From February 9 to 16, 2019, MMI reported that the Maher Court Facility received approximately 2.95 inches of rain. On February 15, 2019 (during the rain events), the Maher Court Facility had a storage capacity of 1,354,000 gallons. On February 19, 2019 (after the rain events), the Maher Court Facility had 1,200,000 gallons of storage

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capacity. From February 9 to 16, 2019, MMI also hauled approximately 72,000 gallons of process wastewater per day, or 504,000 gallons for the week. Central Coast Water Board staff are unaware if additional process wastewater was hauled from the Maher Court Facility after the February 2019 rain events.

According to MMI, almost 4 million gallons (3,959,872 gallons) of stormwater runoff entered Maher Court Pond 2 during the 2016/2017 rainy season. MMI has not provided sufficient data to estimate if enough process wastewater storage exists to handle a rainy season like 2016/2017. It is unclear if wastewater hauling and spray irrigation can cover the difference.

Despite Central Coast Water Board staff requests since September 2016, MMI has failed to produce a technically adequate water balance (evaluation of stormwater runoff commingled with process wastewater compared to the treatment system capacity and the disposal area capacity) for the Maher Court Facility. Central Coast Water Board staff is unable to definitively assess whether enough storage capacity exists onsite to capture the total volume of water generated at the Maher Court Facility (including stormwater run-on) until MMI provides a competent water balance. Therefore, a score of **1.2** is assigned.

**Violations 9 – 14 (Hall Road Facility):** The cleanup and cooperation factor is **1.2**.

MMI cooperated with Central Coast Water Board staff to begin implementation of corrective actions associated with the discharge violations, but failed to timely provide adequate technical information (i.e., a water balance) to evaluate whether MMI has returned to compliance with the Hall Road Permit and can retain all process wastewater in its wastewater system as permitted.

MMI did not return to compliance in a timely manner after the first unauthorized discharge in January 2017. During the 2016/2017 rainy season, MMI continued hauling wastewater away from the Hall Road Facility and staged up to twenty-six 21,000-gallon rental storage tanks to decrease the likelihood of spills. In response to the 2017 discharge events, MMI timely implemented some of Central Coast Water Board staff suggestions made after inspections and constructed an earthen berm between the wharf area and Tributary 2 to help prevent offsite discharges.<sup>25</sup> MMI also relocated an overflow pipe that discharged to land adjacent to its large holding pond and moved the pipe to the wharf where the overflow was less likely to contribute to a discharge to Tributary 2. Filtration screens (at the Hall Road Facility's southwest portion) that historically overflowed to Tributary 2 were replaced with increased capacity vibratory screens to handle the flow of process wastewater directed in that area of the Facility.

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<sup>25</sup> It is unclear, however, if the earthen berm will provide sufficient and lasting redirection of stormwater away from process wastewater. During an inspection on January 25, 2019, Central Coast Water Board staff questioned the integrity of the earthen berm as trucks drive over it daily. A more permanent structure may be needed.

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After the 2016/2017 rainy season, MMI purchased a larger water truck (approximately 5,800 gallons) and on September 12, 2017, started hauling wastewater to the Watsonville Wastewater Treatment Plant, which was closer and could accept more wastewater. MMI reported recycling some wastewater by spraying it onto the dry hay to make compost (volume unknown) and could haul some (volume unknown) of the Hall Road Facility wastewater to the Maher Court Facility if the Maher Court Facility needed additional process wastewater for its composting operations.

On May 10, 2018, MMI requested to restore onsite disposal of process wastewater (sprayfield irrigation) instead of hauling the wastewater offsite for treatment. In response, Central Coast Water Board staff sent a letter dated August 8, 2018, directing MMI to submit a Stormwater Management Plan, which required the submittal of a water balance, a Monitoring Well Installation Workplan, and a Sprayfield Irrigation Compliance Workplan. MMI submitted a Monitoring Well Installation Workplan and Stormwater Management Plan on October 1, 2018. Central Coast Water Board staff generally concurred with the Monitoring Well Installation Workplan, but did not provide comments or concurrence on the Stormwater Management Plan because MMI did not submit the Sprayfield Irrigation Compliance Workplan.

In response to the August 8, 2018 request for a Sprayfield Irrigation Compliance Workplan, MMI submitted a draft Process Water Utilization Plan and a final Process Water Utilization Report in February 2019. Central Coast Water Board staff determined that the Process Water Utilization Workplan was substantively deficient and sent an email to MMI on March 8, 2019, which included a request for a conference call and a request for the missing information required pursuant to the August 8, 2018 letter. When Central Coast Water Board staff followed up on its March 8, 2019 requests, MMI responded on April 24, 2019, and reported that MMI “is no longer pursuing restoration of spray irrigation because [the Hall Road Facility] will cease operation no later than October 2019.”

In a January 28, 2020 email, MMI reported that all mushroom growing operations ceased at the Hall Road Facility, but MMI still conducts a mushroom dehydration process that generates about 1,000 gallons of wastewater per day. MMI stated that process wastewater was being hauled offsite to the local wastewater treatment plant, but MMI plans to manage the wastewater onsite in the future.

In response to MMI’s January 28, 2020 email, Central Coast Water Board staff informed MMI that any industrial wastewater produced at the Hall Road Facility must be treated and disposed of in compliance with a wastewater permit. On January 29, 2020, and again on April 23, 2020, Central Coast Water Board staff requested additional information (including a complete description of current onsite processes and water quality and quantity data) from MMI to determine the next permitting steps. During a call with Central Coast Water Board staff on April 30, 2020, MMI stated that only cleaning

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and dehydrating of mushrooms was occurring at the Hall Road Facility and approximately 1,000 gallons of wastewater per week is pumped to the facility's aerated pond, where the wastewater evaporates. MMI is apparently no longer hauling wastewater offsite for disposal. MMI also stated its intent to sell or rent the Hall Road Facility, but that decision is temporarily on hold due to the COVID-19 pandemic. In an email dated April 30, 2020, Central Coast Water Board staff sent another request for the additional information originally requested on January 29, 2020. MMI has until June 1, 2020, to respond and submit the additional information required for the Hall Road Facility.

Since 2016, MMI has failed to timely and adequately respond to Central Coast Water Board staff requests for technical information to evaluate compliance with the Hall Road Permit. Because MMI materially changed the character, location, or volume of the discharge authorized in the Hall Road Permit, MMI is required to submit a new Report of Waste Discharge. (Wat. Code, § 13260, subd. (c).) MMI remains out of compliance until it provides the additional information requested by Central Coast Water Board staff on January 29, 2020. Therefore, a score of **1.2** is assigned.

***History of Violations***

Where there is a history of violations, a minimum multiplier of 1.1 should be used. Where a discharger has no prior history of violations, this factor should be neutral, or 1.0.

The history of violations factor is **1.1** for all violations. Although MMI has no previous formal enforcement actions in the Central Coast Region, the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) has taken formal enforcement against MMI. In addition to the recent formal enforcement action discussed in Step 7 below, the San Francisco Bay Water Board issued a June 26, 2001 Cleanup and Abatement Order (2001 CAO) for, among other things, unauthorized discharges of process wastewater to drainage channels and to an unlined percolation pond at MMI's facility in Morgan Hill. The WDR violations cited in the 2001 CAO are substantially similar to Violations 1 – 14.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability Amount for the violations is calculated by multiplying the initial liability amount by the adjustment factors for each alleged violation. Where multiple violations or violation types are considered, the individually calculated base liability amounts are added together to determine the Total Base Liability Amount. The applicable Total Base Liability Amount for Violations 1 – 14 is \$14,396,575 as calculated below.

Violation 1:  $\$641,557 \times 1.3 \times 1.2 \times 1.1 = \$1,100,912$

Violation 2:  $\$1,244,320 \times 1.3 \times 1.2 \times 1.1 = \$2,135,253$

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Violation 3:  $\$1,101,181 \times 1.3 \times 1.2 \times 1.1 = \$1,889,627$

Violation 4:  $\$1,316,689 \times 1.3 \times 1.2 \times 1.1 = \$2,259,438$

Violation 5:  $\$1,174,971 \times 1.3 \times 1.2 \times 1.1 = \$2,016,250$

Violation 6:  $\$53,688 \times 1.3 \times 1.2 \times 1.1 = \$92,129$

Violation 7:  $\$473,436 \times 1.3 \times 1.2 \times 1.1 = \$812,416$

Violation 8:  $\$326,232 \times 1.3 \times 1.2 \times 1.1 = \$559,814$

Violation 9:  $\$144,000 \times 1.2 \times 1.2 \times 1.1 = \$228,096$

Violation 10:  $\$240,000 \times 1.2 \times 1.2 \times 1.1 = \$380,160$

Violation 11:  $\$663,000 \times 1.2 \times 1.2 \times 1.1 = \$1,050,192$

Violation 12:  $\$303,000 \times 1.2 \times 1.2 \times 1.1 = \$479,952$

Violation 13:  $\$543,000 \times 1.2 \times 1.2 \times 1.1 = \$860,112$

Violation 14:  $\$336,000 \times 1.2 \times 1.2 \times 1.1 = \$532,224$

Total Base Liability Amount = \$14,396,575

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

The violator's ability to pay an administrative civil liability is determined by its revenues and assets. The Total Base Liability Amount may be adjusted to address ability to pay or to continue in business if the Central Coast Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business.

In most cases, it is in the public interest for a violator to continue in business and bring its operations into compliance. The Water Code requires the Central Coast Water Board to consider this issue when imposing civil liability, but does not require the Board to set civil liabilities at levels that allow violators to continue in business. Civil liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance, whether or not the violator is able to continue in business after incurring the liability.

Sufficient publicly available information exists to show that MMI has the ability to pay the proposed final liability amount. D&B WorldBase estimates that MMI's annual sales are over \$531,000,000.<sup>26</sup> According to county assessor records, MMI, either directly or through its wholly owned subsidiaries, also owns significant assets in California,

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<sup>26</sup> A D&B Worldbase Summary was accessed on June 5, 2019, through a Westlaw Company Investigator Report.

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Pennsylvania, and Florida. In California alone, MMI and its wholly owned subsidiaries (Spawn Mate, Inc. and Amycel, Inc.) own at least sixteen parcels with assessed total values of \$50,805,564 combined.<sup>27</sup> MMI directly owns at least ten parcels in Santa Clara County and two parcels in Monterey County with assessed total values of \$3,744,868 and \$31,259,118. Spawn Mate, Inc. owns at least two parcels in Monterey County and one parcel in San Luis Obispo County with assessed total values of \$5,786,101 and \$3,169,969. Amycel, Inc. owns one parcel in San Benito County with an assessed total value of \$6,845,508.

The proposed final liability amount is below MMI's estimated revenue and assets and should not affect MMI's ability to pay and continue in business. No adjustment is proposed.

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

***Costs of Investigation and Enforcement Adjustment***

The costs of investigation and enforcement are "other factors as justice may require" that can be considered to increase the liability amount.

The Prosecution Team incurred at least **\$37,103** in staff costs to investigate this case and prepare this analysis and supporting information. The staff costs include time spent by all team members, excluding legal counsel, based on the middle salary range (hourly burdened rate) for each classification. The adjusted Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations. Staff costs based on the hourly burdened rate were calculated as follows:

**Violations 1-8 (Maher Court Facility):**

\$4,530.60 = 60 hours x \$75.51/hour (Environmental Scientist)

\$2,722.50 = 16.5 hours x \$165/hour (Supervising Engineering Geologist)

\$869.84 = 8 hours x \$108.73/hour (Water Resource Control Engineer)

\$5,707.60 = 38 hours x \$150.20/hour (Senior Water Resource Control Engineer)

\$6,415.07 = 59 hours x 108.73/hour (Water Resource Control Engineer)

\$326.19 = 3 hours x 108.73/hour (Water Resource Control Engineer)

Staff Costs = \$20,572 (rounded)

**Violations 9-14 (Hall Road Facility):**

\$4,908.15 = 65 hours x \$75.51/hour (Environmental Scientist)

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<sup>27</sup> Assessed total values are based on the 2018 tax year, as reflected in ParcelQuest reports accessed on February 5, 2019, and June 5, 2019.

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\$1,897.50 = 11.5 hours x \$165/hour (Supervising Engineering Geologist)

\$869.84 = 8 hours x \$108.73/hour (Water Resource Control Engineer)

\$4,506.00 = 30 hours x \$150.20/hour (Sr. Water Resource Control Engineer)

\$4,131.74 = 38 hours x \$108.73/hour (Water Resource Control Engineer)

\$217.46 = 2 hours x \$108.73/hour (Water Resource Control Engineer)

Staff Costs = \$16,531 (rounded)

Total Staff Costs = \$37,103

***Additional Factors Considered to Reduce the Total Base Liability Amount***

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

For purposes of settlement, it is appropriate to adjust the Total Base Liability Amount to \$1,169,425—the minimum liability associated with economic benefit (see below) plus staff costs—in consideration of hearing and/or litigation risks, including the equitable factors and mitigating circumstances explained below.

In addition to this enforcement action, MMI has agreed to pay substantial administrative civil liability and civil penalties for same or similar discharge violations at its California facilities, including the Maher Court and Hall Road Facilities. A joint investigation between the Central Coast Water Board, the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board), CDFW, Santa Clara County District Attorney’s Office, Monterey County District Attorney’s Office, San Luis Obispo County District Attorney’s Office<sup>28</sup>, and Santa Cruz County District Attorney’s Office<sup>29</sup> has resulted in multiple injunctions against MMI and the imposition of an additional \$911,800 in administrative civil liability and over \$2,545,000 in civil penalties and other costs and damages. The adopted settlements related to the additional enforcement actions against MMI are summarized below.

- **Stipulated Administrative Civil Liability Order (ACLO) R2-2020-1023.** On April 2, 2020, the San Francisco Bay Water Board’s Executive Officer adopted Stipulated ACLO R2-2020-1023, requiring MMI to pay \$911,800 in administrative civil liability to resolve alleged Water Code section 13376 and Clean Water Act

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<sup>28</sup> As explained in the “Discharger Information” section, this enforcement action neither alleges nor resolves any violations that may have occurred at MMI’s Arroyo Grande facility, in San Luis Obispo County.

<sup>29</sup> MMI’s corporate headquarters (office) is in Santa Cruz County.

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section 301 violations. During the 2016/2017 and 2017/2018 rainy seasons, the mismanagement of spent compost, process wastewater, and/or polluted stormwater at MMI's facility in Morgan Hill, Santa Clara County, allegedly caused polluted stormwater from the facility to discharge into Fisher Creek, a water of the U.S. A portion of this amount, \$440,364, will be treated as a suspended liability pending completion of a third-party performed supplemental environmental project (SEP), the Fisher Creek Riparian Habitat Restoration Project.

- **Santa Clara County Superior Court Case No. 18CV339948.** Pursuant to a stipulated Final Judgement and Injunction, MMI agreed to the following to resolve, among other things, alleged unauthorized discharges to Fisher Creek that occurred at the Morgan Hill Facility:
  - Payment of \$1,000,000 in civil penalties for violations of Fish and Game Code section 5650.1 (\$750,000) and Business and Professions Code section 17206 (\$250,000);
  - Expenditures of at least \$735,000 on water pollution prevention projects at the Morgan Hill Facility;
  - Reimbursement of CDFW's investigation and enforcement costs (\$95,040) and Santa Clara County's attorney fees (\$79,960);
  - Payment of \$335,000 to the National Fish and Wildlife Foundation for habitat restoration of Coyote Creek and Fisher Creek;
  - Injunctive provisions that, among other things, prohibit the discharge of process wastewater and polluted stormwater and require water quality sampling of any such discharge; and
  - Injunctive provisions requiring MMI's employees to be trained in proper wastewater management practices.
  
- **Monterey County Superior Court Case No. 18CV002617.** Pursuant to a stipulated Final Judgement and Injunction, MMI agreed to the following to resolve, among other things, alleged unauthorized discharges to Tributary 1 and Tributary 2 that occurred at the Maher Court and Hall Road Facilities:
  - Payment of \$213,442.87 in civil penalties for violations of Fish and Game code sections 1615 and 5650.1 (\$30,000) and violations of Business and Professions Code section 17206 (\$183,442.87);
  - Reimbursement of CDFW's investigation and enforcement costs (\$61,557.13);
  - Payment of \$25,000 to the Elkhorn Slough Foundation as a SEP;
  - Injunctive provisions that, among other things, prohibit the discharge of process wastewater and polluted stormwater and require water quality sampling of any such discharge; and

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- Injunctive provisions requiring MMI's employees to be trained in proper wastewater management practices.

In addition to the substantial penalties paid as described above, MMI has spent \$11,167,857 on various compliance, containment, and remediation projects to comply with its WDRs' requirements. Listed below are examples of some of these expenditures:

- Increased additional process wastewater storage capacity by 4,500,000 gallons as a result of the expansion of some of the existing process wastewater ponds and addition of rental tanks.
- Grading and preparation of areas required to receive rental and procured steel baker tanks as well as to separate stormwater and process wastewater.
- Purchase and installation of evaporators for the process wastewater ponds to maintain storage capacity.
- Purchased two water vacuum trailers to haul process wastewater to the Pajaro disposal site, and costs associated with the hauled disposal of process wastewater.
- Various projects to build additional piping and concrete areas for spent compost storage and associated runoff collection during the wet season.

MMI claims to be a typical farming operation with thin margins and as a result of these expenditures has significantly reduced operations at the Hall Road Facility and its facility in Arroyo Grande (Arroyo Grande Facility). In November 2017, MMI reported that compost and white mushroom production has ceased at the Arroyo Grande Facility and converted to production of Shiitake mushrooms without compost. The change in operations at the Arroyo Grande Facility caused MMI to lay off 31 employees. MMI also reported that compost and white mushroom production has ceased at the Hall Road Facility in October 2019. MMI is currently dehydrating mushrooms at the Hall Road Facility, a process that only requires 4 to 6 employees depending on sales demand. The change in operations at the Hall Road Facility caused MMI to lay off up to 91 employees. MMI's loss of 122 employees was before the COVID-19 pandemic, which MMI claims has adversely affected its margins even more. Going forward, MMI is committed and required to spend hundreds of thousands of dollars annually to haul commingled stormwater and process wastewater to the disposal site, rent temporary tanks as required, continue to train its employees, and stay in compliance with various established stipulations, permits, laws, and regulations.

Based on the above equitable factors and mitigating circumstances, the Prosecution Team proposes an **adjusted Total Base Liability Amount of \$1,169,425** (\$1,132,322 [Economic Benefit + 10%] + \$37,103 [Staff Costs]). In accordance with Enforcement Policy guidelines, the proposed liability fully eliminates any economic or unfair competitive advantage MMI may have obtained through its noncompliance and creates

a meaningful specific and general deterrent to MMI and similarly situated person(s) in the regulated community from committing same or similar violations.

### **Step 8. Economic Benefit**

Water Code section 13385 requires recovery of economic benefit. The Enforcement Policy requires recovery of the economic benefit plus 10 percent. Economic benefit is any savings or monetary gains derived from the act or omission that constitutes the violations.

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the U.S. EPA's Economic Benefit Model (BEN)<sup>30</sup> 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 (March 2019). 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. As calculated below, the Economic Benefit Amount for Violations 1 – 14 is \$1,043,504.

**Violations 1-8 (Maher Court Facility):** The economic benefit of the avoided and delayed expenditures is approximately \$898,919.

MMI failed to immediately contain impacted stormwater and process wastewater due to inadequate storage capacity, resulting in significant discharges of wastewater. For the 2016/2017 rainy season, MMI used up to 25 rental storage tanks, but nearly four million gallons were discharged due to deficient capacity. Using industry standard rental rates for bulk wastewater storage tanks, MMI avoided rental expenses of approximately \$1.1 million that would have prevented the discharges associated with Violations 1 – 8. In addition, the estimated transportation and disposal of wastewater for the 2016/2017 rainy season is approximately \$208,850 based on transportation costs provided by MMI and disposal costs associated with the Watsonville Wastewater Treatment Plant. These cost estimates exclude additional expenses associated with design, engineering, piping, and pumping the wastewater.

For all compliance actions described above, the noncompliance date is assumed to be January 8, 2017 – the first day of discharge for Violation 1. Realistically, immediate temporary storage and engineering/design work should have been initiated prior to this event.

Based on information provided by MMI, in addition to standard accounting assumptions, the BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above to be approximately \$898,919. The output from BEN

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<sup>30</sup> U.S. EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

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detailing the compliance actions, assumptions, and benefit of non-compliance is available upon request.

**Violations 9-14 (Hall Road Facility):** The economic benefit of the avoided and delayed expenditures is approximately \$130,464.

MMI failed to immediately contain impacted stormwater and process wastewater due to inadequate storage capacity, resulting in significant discharges of wastewater. For the 2016/2017 rainy season, MMI used 26 rental storage tanks, but over 600,000 gallons were discharged due to deficient capacity. Using industry standard rental rates for bulk wastewater storage tanks, MMI avoided rental expenses of approximately \$156,000 that would have prevented the discharges associated with Violations 9 – 14. In addition, the estimated transportation and disposal of wastewater for the 2016/2017 rainy season was approximately \$34,100 based on transportation costs provided by MMI and disposal costs associated with the Watsonville Wastewater Treatment Plant. These cost estimates exclude additional expenses associated with design, engineering, piping, and pumping the wastewater.

For all compliance actions described above, the noncompliance date is assumed to be January 8, 2017 – the first day of discharge for Violation 9. Realistically, immediate temporary storage and engineering/design work should have been initiated prior to this event.

Based on information provided by MMI, in addition to standard accounting assumptions, the BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above to be approximately \$130,464. The output from BEN detailing the compliance actions, assumptions, and benefit of non-compliance is available upon request.

**Step 9. Maximum and Minimum Liability Amounts**

The adjusted Total Base Liability Amount is unchanged because it is within the minimum and maximum liabilities.

**Minimum Liability:**

The minimum liability associated with economic benefit for Violations 1 – 8 is approximately \$988,811 (rounded) (\$898,919 [Economic Benefit] + 10%).

The minimum liability associated with economic benefit for Violations 9 – 14 is approximately \$143,511 (rounded) (\$130,464 [Economic Benefit] + 10%).

The minimum liability associated with economic benefit for Violations 1 – 14 is \$1,132,322 (\$988,811 + \$143,511).

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Maximum Liability:

The maximum administrative liability is based on Water Code section 13385, subdivision (c), which allows up to \$10,000 per day of violation, plus \$10 for each gallon exceeding 1,000 gallons discharged but not cleaned up.

The maximum administrative civil liability for Violations 1 – 8 is \$40,652,450 (4,013,245 gallons [4,014,245 gallons – 1,000 gallons] x \$10/gallon) + (52 days of violation x \$10,000/day).

The maximum administrative civil liability for Violations 9 – 14 is \$6,250,000 (619,000 gallons [620,000 gallons – 1,000 gallons] x \$10/gallon) + (6 days of violation x \$10,000/day).

The maximum administrative civil liability for Violations 1- 14 is \$46,902,450 (\$40,652,450 + \$6,250,000).

**Step 10. Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed is **\$1,169,425** (\$1,132,322 [Economic Benefit + 10%] + \$37,103 Staff Costs).

## ATTACHMENT B

### **Proposal for Supplemental Environmental Project (SEP): Community Water Center 1,2,3-Trichloropropane (1,2,3-TCP) Treatment Pilot Project for DAC Households in Northern Monterey County**

- 1) Project Name: 1,2,3-TCP Treatment Pilot Project for Disadvantaged Community (DAC) Households in Northern Monterey County<sup>1</sup>
- 2) Project Applicant: Community Water Center (CWC), on behalf of Monterey Mushroom, Inc. and its subsidiaries (MMI)
- 3) Address: 406 Main Street, Suite 421 Watsonville, CA 95076 (local office) and 900 W. Oak Avenue Visalia, CA 93291 (headquarters)
- 4) Contact Person and Title: Natalie Garcia-Grazier, Director of Strategic Partnerships
- 5) Contact Phone Number and Email: (559) 301-8224 and [natalie.garcia@communitywatercenter.org](mailto:natalie.garcia@communitywatercenter.org)
- 6) Project Category: Public Health
- 7) Project Location:

The 1,2,3-TCP Treatment Pilot Project for Disadvantaged Community (DAC) Households in Northern Monterey County (Project) will take place in unincorporated areas located within a 50-mile radius of Las Lomas in Monterey County where residents rely on wells that supply drinking water with pollutant concentrations of 1,2,3-TCP that exceed drinking water Maximum Contaminant Levels (MCLs). A vast majority of program beneficiaries are located in a DAC with low-income in the area north of Moss Landing. See a map in Appendix A of specific private domestic wells with high 1,2,3-TCP concentrations on the State Water Board's Groundwater Ambient Monitoring and Assessment (GAMA) Groundwater Information System.

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<sup>1</sup> The Project area incorporates Tract and Block DACs according to the Department of Water Resources DAC Mapping Tool, available at <https://gis.water.ca.gov/app/dacs/>,

8) Project Description:

The Project objectives include: to conduct a pilot project for 1,2,3-TCP Point Of Entry (POE) household-level water treatment of up to 20 households with domestic wells or local small water systems that results in effectively treating 1,2,3-TCP, a regulated contaminant, to levels below the MCL. Thorough documentation and monitoring will also be a part of the Project, to help inform statewide efforts to effectively implement 1,2,3-TCP treatment at the domestic well and state small and local water system levels comprehensively and economically for other areas of the state.

9) Brief work plan, including tasks, deliverables, milestones, and schedule:

The deliverables must include quarterly progress reports (Quarterly Reports) and a final report with a certified statement of SEP completion (Certification of Project Completion), which will be prepared and submitted by CWC on behalf of MMI. All reports must be submitted to the Central Coast Regional Water Quality Control Board's (Central Coast Water Board's) contact, Thea Tryon, via email at [Thea.Tryon@waterboards.ca.gov](mailto:Thea.Tryon@waterboards.ca.gov).

**Table 1: Project Tasks, Budget, and Projected Completion Dates**  
**Total Project Timeline: July 17, 2020 - July 17, 2023**

| Task (Scope of work)   | Total Project Budget Amount   | Partner Completing Task | Projected Completion Date |
|--|---|-------------------------|---------------------------|
| <p><b>1. Project Outreach, Education and Enrollment (July-December 2020)</b><br/>                     During the first six months of the Project, CWC's bilingual, culturally competent Central Coast community outreach, education and organizing staff will create language (Spanish and English) and culturally appropriate outreach materials explaining the Project, as well as sharing information about the health impacts of 1,2,3-TCP and explain</p> | <p><b>\$34,250</b><br/><br/>                     - Staff time for creation of outreach materials and translation into Spanish:<br/>                     Community Organizer #1 (0.03 Full-time equivalent (FTE));<br/>                     Organizing</p> | <p>CWC</p>              | <p>12/31/20</p>           |

|  |  |                   |  |
|--|--|-------------------|--|
| <p>the potential participant's water quality results in order to encourage participation in the Project. CWC staff will deliver this information through the most effective means to communicate and connect with potential participants, which includes, but is not limited to: door-to-door outreach, phone calls, text messages, community meetings and social media.</p>   | <p>Manager (0.02 FTE)<br/>         -Staff time for outreach to enroll participants, gather necessary permissions (Community Organizer #1 (0.17 FTE); Community Organizer #2 (0.10 FTE); Organizing Manager (0.08 FTE)<br/>         - Travel expenses (\$500)</p> |                   |  |
| <p><b>2. POE Treatment Project Implementation: Design, Installation, Maintenance, Monitoring, Data Collection of Treatment Systems</b><br/>         CWC will publish a Request for Qualifications (RFQ) to identify engineering firms with experience with 1,2,3-TCP treatment and to solicit proposals for a master contract to implement POE treatment systems for 1,2,3-TCP. Phase 1 will require the engineering firm to conduct a site assessment of wells that require treatment systems in the study area as well as implementation of 1 to 3 pilot treatment systems. The scope of Phase 2 will be determined by Phase 1 and proposals received based on full site assessment data</p> | <p><b>\$427,000</b></p>  | <p>Contractor</p> | <p>September 30, 2020 - Phase 1 contract executed<br/><br/>         December 31, 2020 - Phase 1 complete, Phase 2 contract executed<br/><br/>         March 31, 2021 - Phase 2 installation complete</p> |

|   |   |   |   |
|---|---|---|---|
| <p>and cost to operate pilot treatment systems. POE treatment systems will be designed to reduce 1,2,3-TCP below the MCL. Treated water systems will be monitored monthly for 1,2,3-TCP and also total gallons of water treated. Source water quality will be monitored quarterly. All monitoring data will be summarized and reported monthly and shared directly with Project participants.</p>   |   |   | <p>April 1, 2021 -June 30, 2023 - maintenance , monitoring, data collection of treatment systems</p>  |
| <p><b>3. Study Design; Contract Oversight; Documentation of Project Outcomes, Lessons Learned, and Recommendations</b><br/> Because there is limited available information on the success of different approaches to treating 1,2,3-TCP from private drinking water wells, CWC will engage already identified technical and regulatory experts in the design and implementation of both Phase 1 and Phase 2 of this study. One goal of the Project is to provide transparent documentation of costs, outcomes and lessons learned to inform state-wide efforts to provide safe drinking water for all Californians specific to 1,2,3-TCP.</p> | <p><b>\$52,000</b></p> <ul style="list-style-type: none"> <li>- Staff time for direct project management, convening the TAC, managing consultant: Director of Community Solutions (0.4 FTE); Senior Fellow (volunteer) (0.01 FTE in kind)</li> <li>- Design and printing of key findings (\$2,500)</li> </ul> | <p>CWC Staff &amp; Technical Advisory Committee (TAC)</p> | <p>September 30, 2020 - Select TAC members, develop meeting schedule for TAC engagement</p> <p>Engage TAC as needed during key phases of project development</p> <p>July 17, 2023 - Report on findings released</p> |
| <p><b>4. Sharing results with project participants, key stakeholders (including other households</b></p>  | <p><b>\$32,000</b></p>  | <p>CWC Staff</p>  | <p>July 17, 2023</p>  |

|  |   |  |  |
|--|---|--|--|
| <p><b>impacted by 1,2,3-TCP), local and state decision-makers, and other organizations considering 1,2,3-TCP treatment projects, and the public</b></p> <p>After the Project has been completed and results have been drafted, CWC staff will share the results of the Project with Project participants, other households impacted by 1,2,3-TCP, and other key stakeholders including but not limited to: technical and regulatory experts (engaged in task 3), other technical assistance providers, local, regional and state governments, and research institutions. CWC will make the reports available online.</p> | <ul style="list-style-type: none"> <li>- Creation of materials and translation of materials in English and Spanish:<br/>Community Organizer #1 (0.03 FTE);<br/>Organizing Manager (0.02 FTE)</li> <br/> <li>- Staff time to share results with Project participants and key stakeholders via in-person meetings, online, email, calls and other forums.<br/>(Community Organizer #1 (0.12 FTE);<br/>Community Organizer #2 (0.10 FTE);<br/>Organizing Manager (0.10 FTE)</li> <br/> <li>Design and layout of bilingual educational materials on study (such as exec summary of key findings, one-pager, and/or</li> </ul> |  |  |
|--|---|--|--|

|  |  |  |  |
|--|--|--|--|
|  | infographic<br>(\$1,500)<br><br>Travel expenses<br>(\$500) |  |  |
| <b>Report writing, including Quarterly Reports and Certification of Project Completion, and submission</b> | <b>\$54,525</b> (10 percent indirect for Tasks 1-4)        |  |  |
| <b>Total Project Cost</b>  | <b>\$599,775</b>   |  |  |

**Table 2: MMI's Payment Schedule for Total Project Cost**

| <b>Amount</b> | <b>Due Date</b>    |
|---------------|--------------------|
| \$50,000      | September 30, 2020 |
| \$100,000     | April 30, 2021     |
| \$150,000     | September 30, 2021 |
| \$150,000     | April 30, 2022     |
| \$149,775     | September 30, 2022 |

Table 2 represents an agreement between CWC and MMI. CWC has agreed to allow MMI to fund the Total Project Cost of \$599,775 (or SEP Amount), per the payment schedule provided in Table 2. MMI's timely payment of the SEP Amount does not relieve MMI of its responsibility to fully implement and complete the Project as required by Stipulated Order No. R3-2020-0048, which approves this Project as a SEP, and the State Water Resources Control Board's Policy on Supplemental Environmental Projects (May 2018) (SEP Policy).

**Table 3: CWC Reporting and Milestones**

| <b>#</b> | <b>Type of Report</b>   | <b>Timeframe and Milestones Covered</b> | <b>Due Date</b>    |
|----------|-------------------------|---|--------------------|
| 1        | <b>Quarterly Report</b> | 2020 3rd Quarter Report                 | Oct 30, 2020       |
| 2        | <b>Quarterly Report</b> | 2020 4th Quarter Report                 | January 31, 2021   |
| 3        | <b>Quarterly Report</b> | 2021 1st Quarter Report                 | April 30, 2021     |
| 4        | <b>Quarterly Report</b> | 2021 2nd Quarter Report                 | July 31, 2021      |
| 5        | <b>Quarterly Report</b> | 2021 3rd Quarter Report                 | October 31, 2021   |
| 6        | <b>Quarterly Report</b> | 2021 4th Quarter Report                 | January 31, 2022   |
| 7        | <b>Quarterly Report</b> | 2022 1st Quarter Report                 | April 30, 2022     |
| 8        | <b>Quarterly Report</b> | 2022 2nd Quarter Report                 | July 31, 2022      |
| 9        | <b>Quarterly Report</b> | 2022 3rd Quarter Report                 | September 30, 2022 |
| 10       | <b>Quarterly Report</b> | 2022 4th Quarter Report                 | January 31, 2023   |
| 11       | <b>Quarterly Report</b> | 2023 1st Quarter Report                 | April 30, 2023     |
| 12       | <b>Quarterly Report</b> | 2023 2nd Quarter Report                 | July 17, 2023      |

|    |  |  |                 |
|----|--|--|-----------------|
| 13 | <b>Certification of Project Completion</b> |  | August 17, 2023 |
|----|--|--|-----------------|

**Reporting Requirements for Report Types Identified in Table 3**

**Quarterly Reports:** Quarterly Reports on Project implementation must describe the tasks completed during the previous quarter, whether CWC and MMI are in compliance with the SEP Project Schedule in Table 1 above, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with the SEP Project Schedule, and whether MMI is in compliance with the SEP Amount Payment Schedule in Table 2 above. Quarterly Reports shall also include descriptions and photos of activities completed during the previous quarter, results of any monitoring completed during the previous quarter, and an analysis of the Project’s progress.

**Certification of Project Completion:** The Certification of Project Completion is a certified statement, signed under penalty of perjury, that documents Project completion as required in Section III, paragraph 7.b. of Stipulated Order No. R3-2020-0048, which approves the Project as SEP.

**Report Due Dates:** Report due dates in Table 3 are 30 days after the end of the quarter upon which the report is based.

**Table 4: Key Project Partners**

| <b>Partner Name</b>    | <b>Background Information</b>  | <b>Role</b>   |
|------------------------|--|---|
| Community Water Center | Experienced environmental justice NGO located in Watsonville that focuses on short and long-term solutions for low-income households with contaminated drinking water. | Project lead. Responsible for outreach and enrollment of pilot project participants, management of contractors, and all project deliverables. |

|                              |   |  |
|------------------------------|---|--|
| Technical Advisory Committee | State and Regional Water Board staff, other NGOs and companies working on pilot projects for 1,2,3-TCP, County Environmental Health                                       | Provide guidance and feedback on project design and implementation on a voluntary basis  |
| Contractor/ Engineering Firm | Firm with relevant expertise, experience, and capacity TBD based on CWC's procurement policy, which requires a Request for Proposals (RFP), once funds secured.           | Project design (with input from CWC and TAC), installation, treatment, monitoring and documentation of results. A licensed Professional Engineer will oversee the Project.   |
| Study Participants           | All participants rely on domestic wells with 1,2,3-TCP contamination exceeding the MCL, and the majority will be located in a DAC block group in northern Monterey County | Agree to installation of POE treatment system and allow contractor and CWC access to system for installation, treatment and monthly monitoring over the course of the study. |

10) Total Project cost and amount of SEP money requested. If there are other funding sources, indicate if the funds have been committed and whether there are any restrictions on the funds:

CWC is seeking **\$599,775** in funding for the Project. The Project will be completed and results will be shared with the public within three years.

11) Project readiness, including status of CEQA, permits, and landowner agreements:

The Project is ready with several community members interested in being part of the Phase 1. Following execution of a funding agreement, CWC would issue the RFQ, select the sites for Phase 1, and begin recruitment of the TAC in order to initiate the Project in July 2020.

a) CEQA: CWC is non-profit organization and would serve as the lead public agency for CEQA compliance. CWC has determined

that CEQA does not apply for this Project because a permit is not required.<sup>2</sup>

- b) Permits: No permits are necessary for this Project.
- c) Landowner Agreements: CWC will contact property owners to secure permission to install the system.

12) Expected benefits or improvements to water quality or beneficial uses:

The Project will improve drinking water quality and reduce exposure to 1,2,3-TCP for all Project participants. The Project will also provide a better understanding of the cost of implementation of treatment technologies for 1,2,3-TCP for statewide implementation.

13) Is the Project located within, or does it benefit, an Environmental Justice community, a Disadvantaged Community (DAC), or a community that has a financial hardship? If yes, describe:

Yes, the vast majority of households likely to be served by this Project are located in a DAC Block Group (060530101012) which is located approximately 4 miles away from the MMI facility in Las Lomas/Royal Oaks that is subject to the Stipulated Order. Two other potential households are located in a DAC block group (060690002002) in San Benito County, approximately 14 miles from the MMI facility located on Hall Road, which is also subject to the Stipulated Order.

14) Will this Project further the State Water Board's core value of the human right to water? If yes, describe:

Yes. CWC's vision is that all communities have access to safe, clean and affordable water and this Project advances the human right to water by studying and publishing information on effective treatment for a very health-harming drinking water contaminant found throughout the state – 1,2,3-TCP. The State of California declared 1,2,3-TCP a carcinogen over 15 years ago, but 1,2,3-TCP remained unregulated until a legal limit was set in 2017. To understand the scope of the problem, more than 90 public water systems alone in CA have recently tested over the MCL for 1,2,3-TCP, but given the lack of data on state and local small water systems and private domestic wells, widespread understanding of the full scale of 1,2,3-TCP contamination is limited. By connecting Central

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<sup>2</sup> "CEQA applies to projects undertaken, funded or requiring an issuance of a permit by a public agency."

<https://www.co.monterey.ca.us/government/departments-a-h/assessor/clerk/ceqa>

Coast residents reliant on domestic wells to the Central Coast Water Board's free private well testing program, CWC has been able to gain a greater understanding of local impacts on DAC households. In the area north of Moss Landing, the proposed Project area, 46% of the wells tested came back over the MCL for 1,2,3-TCP. Cost effective treatment methods for 1,2,3-TCP have not been widely studied or implemented for the potentially thousands of low-income households reliant on domestic wells and state and local small water systems that contain this dangerous contaminant. This study will provide much needed monitoring, effective engineering options, and cost data to help inform broader efforts to cost effectively treat 1,2,3-TCP for DAC households and communities across the state, especially those unregulated systems such as domestic wells.

15) Optional information. If appropriate, discuss the following:

Is this Project resilient to climate change and conforms with State Water Board Resolution No. 2017-0012, Comprehensive Response to Climate Change?

Yes. The Project aligns with the following under Section III, in regard to developing underutilized water resources (groundwater contamination unsuitable for human consumption due to 1,2,3-TCP contamination): "Respond to Climate Change Impacts: State Water Board staff shall coordinate with the Water Boards and relevant agencies to identify and recommend actions the Water Boards could take for effective permitting of projects to develop new and underutilized water resources, expand surface water and groundwater storage where appropriate, and add operational flexibility to build and enhance resilience to impacts of climate change."

Can this Project be the basis for additional funding from other sources?

Community Water Center existing relationships with a number of governmental and private foundation funders who share interest in the implementation of the human right to water and effective solutions to address California's drinking water crisis. CWC will approach additional funders if useful or necessary to successfully complete the Project. Once the Project is complete, CWC may seek funding to continue the operation, maintenance and monitoring of treatment systems for the Project participants if feasible.

Is this Project required by another entity or agency?

No.

Does this Project have monitoring, success criteria, or other tools to track long-term success?

This Project includes 3 years of monitoring for 1,2,3-TCP to ensure systems are working effectively; Technology effectively treats 1,2,3-TCP to safe drinking water levels, below the MCL; Success criteria include obtaining accurate cost information to not only install, but also to maintain and monitor 1,2,3-TCP treatment systems.

Does the applicant have an established record of completing projects with the Water Board or other agencies?

Yes. Community Water Center currently has an active partnership with the Central Coast Water Board that is in good standing in relation to work completed and reports and invoices submitted in a timely manner. Community Water Center has also successfully completed a SEP project with the State Water Board in 2016 to create and implement a private well testing program in the San Joaquin Valley. All project deliverables and reports were completed on time and within budget.

Does the applicant have the institutional stability and capacity to complete the SEP Project as proposed?

CWC was founded in 2006, and expanded to the Central Coast by opening an office in Watsonville in fall 2018. Since opening, CWC has grown staff and capacity to conduct outreach, education and organizing; provide interim bottled water, engage in Sustainable Groundwater Management Act (SGMA) activities and advance long-term drinking water solutions. CWC has many, diverse private foundation and governmental partners who currently fund CWC's work in the Central Coast, including many that have made multi-year commitments. CWC's leadership is dedicated to ensure organizational stability in the form of staffing and funding to ensure the Project is completed as proposed. The Project lead, Heather Lukacs, PhD, M.Eng, has experience implementing and overseeing projects to identify problems and solutions facing low-income communities in Monterey County and throughout California. Specifically, she convened the Technical Advisory Committee and led the overall project team to conduct the Integrated Plan to Address Drinking Water and Wastewater Needs of Disadvantaged Communities in the Salinas Valley and Greater Monterey County IRWM Region (2017)<sup>3</sup> and also CWC's role

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<sup>3</sup> <http://www.greatermontereyirwmp.org/documents/disadvantaged-community-plan-for-drinking-water-and-wastewater/>

in a State Water Board funded pilot project of Point-of-Use arsenic treatment systems in Kern County, California.

## Appendix A - Project Location Map and DAC Overlay



