

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

In the Matter of:

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

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

ORDER NO R5-2020--XXXX

Section I: Introduction

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

Section II: Background

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

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

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

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

Table 1: Laboratory Results from 4 January 2018 Samples

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

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

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

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

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

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

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

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

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

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

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

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

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

Total Days: 79

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

Section III: Statutory and Regulatory Considerations

29. Water Code section 13385(a) provides, in relevant part, “A person who violates any of the following shall be liable civilly in accordance with this section: ... (5) A requirement of Section 301...of the federal Clean Water Act (33 USC Sec. 1311...), as amended...”
30. Water Code section 13385(c) states: “Civil liability may be imposed administratively by...the regional board pursuant Article 2.5 (Commencing with Section 13323) of Chapter 5...” The penalty shall not exceed the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and ten dollars (\$10) per gallon for each gallon in excess of the first one thousand (1,000) gallons discharged.
31. Pursuant to Water Code section 13327, in determining the amount of discretionary civil liability, the Central Valley Water Board is required to take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
32. The estimated economic benefit plus an additional 10% is the minimum amount for an ACLO under the 2017 Enforcement Policy. In this instance, the estimated economic benefit plus 10% is \$1,605,811, which amounts to the estimated cost of compliance plus 10% as determined in Attachment A.

Section IV: Settlement

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

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

Section V: Stipulations

The Parties stipulate to the following:

35. **Administrative Civil Liability:** Without admitting the truth of any violations alleged in this Stipulated Order, the Discharger hereby agrees to the imposition of two million five hundred thousand dollars (\$2,500,000) in administrative civil liability to the Central Valley Water Board to resolve the violations alleged in this Stipulated Order. The Discharger agrees to pay the following amounts:
- a. **One million six hundred and five thousand eight hundred and eleven (\$1,605,811)** shall be paid to the State Water Pollution Cleanup and Abatement Account. Payment shall be made no later than thirty (30) days after adoption of an order approving this Stipulated Order by the Central Valley Water Board, or its delegee, by check payable to the State Water Pollution Cleanup and Abatement Account. The Discharger shall indicate on the check the number of this Stipulated Order (R5-2020-xxxx). The Discharger shall send the original signed check to the Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Nickolaus Knight, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Kari Holmes, Enforcement Coordinator, Central Valley Water Board, 11020 Sun Center Drive Suite 200, Rancho Cordova, CA 95670.
 - b. **Eight hundred ninety-four thousand one hundred and eighty-nine dollars (\$894,189)** shall be permanently suspended on the condition that CDCR spends \$894,189 on completing the Enhanced Compliance Actions (ECA) described in Attachments B and C of this Order, hereby incorporated by reference. Failure to complete all aspects of the ECAs shall result in the Discharger's payment of the entire suspended penalty amount to the State Water Pollution Cleanup and Abatement Account.
36. **Enhanced Compliance Actions (ECAs):** The \$894,189 in suspended administrative civil liability shall be satisfied through the implementation of the ECAs described in Attachments B and C, incorporated herein by reference, and summarized below. The Discharger proposes to implement the following ECAs:
- a. **Irrigation Replacement ECA (Attachment B)**
 - b. **SCCWRP Study ECA (Attachment C)**
37. **ECA Completion Deadlines:** The Discharger shall comply with the deadlines in the ECA proposals. The deadlines shall begin with the effective date of this Order.

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

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

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

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

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

- i. **Certification of Expenditures**

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

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

ii. Certification of Performance of Work

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

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

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

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

iv. Third Party Audit

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

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

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

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

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

42. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

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

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

For the Discharger:

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

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

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

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

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

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

IT IS SO STIPULATED.

California Regional Water Quality Control Board
Central Valley Region Prosecution Team

By: Original Signed By
John J Baum
Assistant Executive Officer

Date: 01/28/2021

IT IS SO STIPULATED.

California Department of Corrections and Rehabilitation

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

Date: 01/27/2021

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

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

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region that the Stipulated Order is approved.

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality
Control Board

Settlement & ACL Order R5-2020-xxxx
California Department of Corrections and Rehabilitation

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

Attachment B: Irrigation Repair ECA

Attachment C: SCCWRP Study ECA

Attachment D: Economic Benefit Estimate