

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2007-0518

ADMINISTRATIVE CIVIL LIABILITY  
IN THE MATTER OF

STATE OF CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION  
MULE CREEK STATE PRISON WASTEWATER TREATMENT PLANT  
AMADOR COUNTY

This Administrative Civil Liability Order (hereafter Order) is issued to the State of California, Department of Corrections and Rehabilitation (hereafter known as "CDCR" or "Discharger"), based on failure to comply with Waste Discharge Requirements (WDRs) Order No. 5-00-088 and Cease and Desist Order (CDO) No. R5-2007-0130. This Complaint is issued pursuant to California Water Code Section 13350, which authorizes the imposition of administrative civil liability.

The Executive Officer of the Central Valley Regional Water Quality Control Board (Regional Water Board) finds the following:

1. WDRs Order No. 5-00-088, which was adopted by the Regional Water Board on 28 April 2000, prescribes requirements for the CDCR Mule Creek State Prison wastewater treatment plant (WWTP). The WDRs set forth discharge requirements and specifications for discharge.
2. The CDCR Mule Creek State Prison, Preston Youth Correctional Facility, and California Department of Forestry are jointly responsible for compliance with the WDRs. However, this Order pertains to issues at the Mule Creek State Prison WWTP, and therefore is issued solely to the CDCR (hereafter referred to as Discharger).

**WASTE DISCHARGE REQUIREMENTS AND CEASE AND DESIST ORDER**

3. Discharge Prohibitions A.1, A.2, A.3, and A.7 of WDRs Order No. 5-00-088 prohibit the discharge of waste to surface waters, bypass of the treatment system, discharge of treated wastewater outside the disposal areas, and runoff of reclaimed water. Specifically:
  - a. Discharge Prohibition A.1 of WDRs Order No. 5-00-088 states: "*Discharge of wastes to surface waters or surface water drainage courses is prohibited.*"
  - b. Discharge Prohibition A.2 of WDRs Order No. 5-00-088 states: "*Bypass or overflow of untreated or partially treated waste is prohibited.*"
  - c. Discharge Prohibition A.3 of WDRs Order No. 5-00-088 states: "*Discharge [of] treated wastewater or runoff from spray irrigation disposal areas into wetlands or surface waters is prohibited.*"

- d. Discharge Prohibition A.7 of WDRs Order No. 5-00-088 states: *“Excessive irrigation with reclaimed water that results in runoff of reclaimed water, or irrigation of reclaimed water during periods of precipitation, and within 24 hours of cessation of precipitation, is prohibited.”*
4. In addition, Discharge Specification B.4 of WDRs Order No. 5-00-088 states that: *“The waste discharge shall at all times remain in the designated disposal area.”*
  5. On 8 December 2006, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2006-0130 for violations of WDRs Order No. 5-00-088. Pursuant to Sections 13301 and 13267 of the California Water Code, Order No. R5-2006-0130 requires, with the exception of Discharge Specification No. B.1, immediate compliance with all aspects of WDRs Order No. 5-00-088.
  6. Item 1 of CDO No. R5-2006-0130 states, in part, the following: *“With the exception of Discharge Specification No. B.1 of WDRs Order No. 5-00-088 (pertaining to the dry weather inflow to the wastewater treatment plant) the Discharger shall **immediately** comply with all aspects of WDRs Order No. 5 00-088.”*
  7. Item 10 of CDO No. R5-2006-0130 states the following: *“By **30 January 2007**, the Discharger shall submit a report certifying that it has installed an alarm feature on the filter belt press wet well to notify WWTP staff of potential overflows of the wet well.”*

#### **VIOLATIONS OF THE CDO AND WDRs**

8. July 2006 Spill of 12,000 Gallons to Mule Creek. During Regional Water Board staff's 16 August 2006 inspection, the Discharger stated that a spill had occurred at one of the spray disposal fields a few weeks prior to the inspection. According to the Discharger, the spill occurred when a sprayfield distribution line broke, allowing approximately 12,000 gallons of treated effluent to flow into Mule Creek. Staff was not notified of the spill. Also per the Discharger, Mule Creek was not flowing at the time of the spill, and the spill was reportedly contained within the Mule Creek State Prison property. The Office of Emergency Services spill reporting database does not contain any record of a report for this spill. Staff verbally reminded the Discharger of the proper spill reporting procedures during the inspection. The spill was a violation of Prohibitions A.1, A.3, and A.7, and Discharge Specification B.4 of the WDRs.
9. 16 August 2006 Spill of 20,000 Gallons to Mule Creek. During a 16 August 2006 inspection, Regional Water Board staff observed a wastewater spill in progress. The Discharger stated that a sprayfield pump was left running on the evening of 15 August 2006. This event resulted in an excessive amount of wastewater discharged to the disposal area. The Discharger estimated 20,000 gallons of wastewater ran off the disposal area and spilled into Mule Creek. Staff observed runoff flowing into a surface water drainage course that flows into Mule Creek. Because of the location of the spill

and the fact that Mule Creek was not flowing at the time of the spill, the wastewater was contained within the prison property and did not flow off site. The Discharger reported the spill to the Office of Emergency Services on 16 August 2006, following staff's inspection. The discharge was a violation of Prohibitions A.1, A.3, and A.7, and Discharge Specification B.4 of the WDRs.

10. 21 September 2006 Spill of 5,000 Gallons to Mule Creek. On 21 September 2006, the Amador County Environmental Health Department notified Regional Water Board staff that Department staff had observed tailwater runoff from the Discharger's sprayfields entering Mule Creek. In response, Regional Water Board staff immediately called the Discharger and requested that they investigate the complaint. On the evening of 21 September 2006, the Discharger notified staff that a spill did in fact occur at the sprayfield in question. The Discharger estimates that approximately 5,000 gallons of wastewater spilled into Mule Creek due to over- application to the sprayfields. Mule Creek was dry at the time of the spill and wastewater was contained within the prison property. The Discharger notified the Office of Emergency services on 21 September 2006. The spill was a violation of Prohibitions A.1, A.3, and A.7, and Discharge Specification B.4 of the WDRs.
11. 21 September 2006 Spill of 3,000 Gallons to Mule Creek. On 21 September 2006, the Discharger notified Regional Water Board staff and the Office of Emergency Services that a wastewater spill had occurred at a second sprayfield, and that the spill had also entered Mule Creek. The spill was approximately 3,000 gallons, and was also caused by excessive application of wastewater to the sprayfields. The Discharger stated that it removed wastewater from the Mule Creek drainage by placing loose dirt in the creek to soak up the water, and removing and placing the saturated dirt in the sprayfields. The spill was a violation of Prohibitions A.1, A.3, and A.7, and Discharge Specification B.4 of the WDRs.
12. 28 September 2006 Spill of 750 Gallons to Surface Drainage Course. On 28 September 2006, the Discharger notified Regional Water Board staff and the Office of Emergency Services that a 750-gallon spill occurred from the filter belt press wet well located at the sludge drying facility. The spill occurred because the wet well did not have an alarm system to notify plant personnel if the well was full. The spill entered a storm drain which discharges into a surface water drainage course that flows into Mule Creek. The surface drainage course was dry at the time of the spill, and wastewater did not flow into Mule Creek. The Discharger removed the spilled wastewater that was present in the drainage course. The spill was a violation of Prohibitions A.1 and A.2, and Discharge Specification B.4 of the WDRs. The Discharger has since submitted verification that a strobe light and audible alarm system had been installed and tested on the filter belt press wet well in accordance with Item 10 of CDO No. R5-2006-0130.
13. 11 October 2006 Spill of 4,000 Gallons to Adjacent Property. On 11 October 2006, the Discharger notified Regional Water Board staff and the Office of Emergency Services that a broken sprinkler main had resulted in the discharge of approximately 4,000 gallons

of secondary treated wastewater onto a neighboring property. The Discharger responded by scraping the soil into which the spill had infiltrated. The spill was a violation of Discharge Prohibition A.7 and Discharge Specification B.4 of the WDRs.

14. 9 January 2007 Spill of 5,000 Gallons to Surface Drainage Course. On 9 January 2007, the Discharger notified Regional Water Board staff and the Office of Emergency Services that an irrigation system valve had stuck in the open position resulted in the discharge of approximately 5,000 gallons of secondary treated wastewater from a manhole into a tributary of Mule Creek. The discharge was contained within the tributary, which was dry at the time of the spill. The Discharger responded by pumping the spilled effluent back into its sanitary sewer system, scraping the soil into which the spill had infiltrated, and clearing the valve. The spill violated Discharge Prohibition A.1 and Discharge Specification B.4 of the WDRs and Item 1 of CDO No. R5-2006-0130.
15. 24 January 2007 Spill of 5,000 Gallons to On-Site Land. On 24 January 2007, the Discharger notified Regional Water Board staff and the Office of Emergency Services that an irrigation system valve had stuck in the open position resulting in the discharge of approximately 5,000 gallons of secondary treated wastewater from a manhole. The Discharger's report stated that the spill was contained prior to entering any surface water drainage courses. The spill violated Discharge Specification B.4 of the WDRs and Item 1 of CDO No. R5-2006-0130.
16. As described in the above Findings, the Discharger has violated Waste Discharge Requirements Order No. 5-00-088, and Cease and Desist Order No. R5-2006-0130 by discharging waste to surface waters and by discharging outside of the designated disposal area. A summary of the eight spill events follows:

<u>Spill Dates</u>	<u>Spill Duration (days)</u>	<u>Volume Discharged (gallons)</u>
Late July 2006	1	12,000
15 August 2006	1	20,000
21 September 2006	1	5,000
21 September 2006	1	3,000
28 September 2006	1	750
11 October 2006	1	4,000
9 January 2007	1	5,000
24 January 2007	1	5,000
<b>Total</b>	<b>7 days</b>	<b>54,750 gallons</b>

### REGULATORY CONSIDERATIONS

17. California Water Code (CWC) Section 13271 states, in part, the following: "*(a) (1) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any*

*waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge... (b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division. (c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for a cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state."*

18. The Discharger violated CWC Section 13271 by failing to report the July 2006 report to the Office of Emergency Services.
19. CWC Section 13350(a) states, in part, the following: "*Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement...or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state,...except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."*
20. CWC Section 13350(e) states: "*The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.*"
21. CWC Section 13350(e)(1) states: "*The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.*"
22. CWC Section 13350(e)(2) states: "*The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.*"

### **CALCULATION OF LIABILITIES**

23. July 2006 Spill of 12,000 Gallons to Mule Creek. For discharging waste to surface waters in violation of the WDRs, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$120,000 (12,000 gallons x \$10 per gallon = \$120,000).
24. 16 August 2006 Spill of 20,000 Gallons to Mule Creek. For discharging waste to surface waters in violation of the WDRs, the Regional Water Board may assess administrative

civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$200,000 (20,000 gallons x \$10 per gallon = \$200,000).

25. 21 September 2006 Spill of 5,000 Gallons to Mule Creek. For discharging waste to surface waters in violation of the WDRs, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$50,000 (12,000 gallons x \$10 per gallon = \$50,000).
26. 21 September 2006 Spill of 3,000 Gallons to Mule Creek. For discharging waste to surface waters in violation of the WDRs, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$30,000 (3,000 gallons x \$10 per gallon = \$30,000).
27. 28 September 2006 Spill of 750 Gallons to Surface Drainage Course. For discharging waste to surface waters in violation of the WDRs, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$7,500 (750 gallons times \$10 per gallon = \$7,500).
28. 11 October 2006 Spill of 4,000 Gallons to Adjacent Property. For discharging waste in violation of the WDRs, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$40,000 (4,000 gallons x \$10 per gallon = \$40,000).
29. 9 January 2007 Spill of 5,000 Gallons to Surface Drainage Course. For discharging waste to surface waters in violation of the WDRs and CDO No. R5-2006-0130, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$50,000 (5,000 gallons x \$10 per gallon = \$50,000).
30. 24 January 2007 Spill of 5,000 Gallons to On-Site Land. For discharging waste in violation of the WDRs and CDO No. R5-2006-0130, the Regional Water Board may assess administrative civil liability based on CWC Section 13350. Pursuant to Section 13350(e), the maximum administrative civil liability for this spill is \$50,000 (5,000 gallons x \$10 per gallon = \$50,000).
31. Pursuant to CWC Section 13350(e), the total maximum liability for these eight violations is \$547,500.
32. CWC Section 13327 states: *"In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall*

*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.”*

33. The State Water Resources Control Board’s *Water Quality Enforcement Policy* states, at VII.I that “[i]t is the policy of the SWRCB that all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.” Pursuant to the *Water Quality Enforcement Policy*, the minimum administrative civil liability is equivalent to the economic benefit accrued by the Discharger for not implementing management measures necessary to prevent the discharges.
34. The late July, 15 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control. The remaining spills may not have been preventable, so the economic benefit obtained for these is probably minimal. However, adequate staffing at the facility would likely have reduced or mitigated the results of those spills.

Staff estimates that, at a minimum, at least one additional operations staff person should have been hired for routine maintenance and inspection of the treatment processes and disposal fields. It is estimated that the Discharger has avoided a cost of approximately \$36,000 by not employing necessary operations staff for facility oversight and maintenance.

35. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et. seq.*), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

### **CONSIDERATION OF FACTORS**

36. On 2 March 2007, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2007-0505 to the Discharger, proposing a \$50,000 administrative civil liability pursuant to CWC Section 13350. The amount of the liability was established based on a review of the factors cited in CWC Section 13327, as well as the State Water Resources Control Board’s *Water Quality Enforcement Policy*. The factors used to establish the amount of liability are discussed below.
37. *Enforcement Considerations:* Pursuant to CWC Section 13350, the maximum administrative civil liability that may be imposed for the WDR violations discussed above is \$547,500.
38. *Nature:* The Discharger has violated Discharge Prohibitions A.1, A.2, A.3, and A.7, and Discharge Specification B.4 of WDRs Order No. 5-00-088 by discharging partially-treated

sewage and sewage sludge to surface water drainage courses, including Mule Creek, and land outside the authorized disposal area on eight separate occasions from July 2006 through January 2007.

39. *Circumstances:* The circumstances are such that the late July, 16 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control and staffing oversight. The remaining spills may not have been preventable; however, adequate staffing at the facility would likely have reduced or mitigated the results of those spills.
40. *Extent:* The Discharger has violated Discharge Prohibitions A.1, A.2, A.3, and A.7, and Discharge Specification B.4 of WDRs Order No. 5-00-088 by discharging
  - a. 32,000 gallons of incompletely treated sewage to Mule Creek (resulting from spills on two separate occasions);
  - b. 13,000 gallons of undechlorinated secondary treated wastewater to Mule Creek and its tributaries (resulting from spills on three separate occasions);
  - c. 9,000 gallons of secondary treated wastewater outside the disposal area (resulting from spills on two separate occasions--off-site on one occasion); and
41. 750 gallons of sewage sludge to a tributary to Mule Creek (on one occasion).
42. *Gravity:* The Discharger failed to prevent the discharges of variously treated sewage to surface water drainage courses and to land outside the authorized disposal area. Potential health risks from bacteria and viruses resulting from incompletely treated sewage are a concern for humans and wildlife habitat. The spilled wastewater was chlorinated and not nitrified, and likely contained chlorine and ammonia in concentrations lethal to aquatic life.
43. *Susceptibility of the Discharges to Cleanup:* The Discharger did not submit any information indicating that the late July 2006 spill was cleaned up in any way. According to information provided by the Discharger on the remaining spills, the discharged wastewater was contained and allowed to soak into soils. The soils into which the wastewater soaked were then scraped and removed to the sludge drying beds.
44. *Degree of Toxicity:* There were no reported fish kills subsequent to the spills. Mule Creek and its tributaries were generally dry on the spill occasions, with the exception of isolated pools. Therefore, the degree of toxicity from the discharge appears to be minimal.
45. *Ability to Pay:* There has been no demonstration by the Discharger of any inability to pay the liability or any negative effect on the Discharger's ability to continue in operation. The Discharger was notified of the opportunity to provide such information when the ACL Complaint was issued and did not submit this information.

46. *Notification of Violation:* The Discharger failed to provide prompt notification of the July and August 2006 spills. For the remaining spills, the Discharger did provide timely notification to both the Office of Emergency Services and the Regional Water Board.
47. *Degree of Cooperation:* The Discharger has cooperated in providing the necessary technical reports, and has generally responded promptly to requests for information. Spill reporting has improved from the late July 2006 spill to the January 2007 spills. With the exception of the July 2006 spill, for which no information is available, some form of cleanup has been provided for all spills.
48. *Prior History of Violations:* Since adoption of the WDRs in 2000, the Discharger has received four Notices of Violation (NOVs) and a Cease and Desist Order (CDO) No. R5-2006-0130. The NOVs are described below.
- a. The first NOV was issued on 17 October 2000, in part for a discharge of chlorinated secondary treated sewage to a dry tributary to Mule Creek.
  - b. The second NOV was issued 17 November 2000 and cited the Discharger for violations observed during an inspection, including (1) spray pattern of sprinklers in disposal area discharged directly into an adjacent watercourse and (2) tailwater runoff flowing down the embankment toward Mule Creek.
  - c. The third NOV, issued 5 September 2006, cited the Discharger for the July and August 2006 spills (and other violations which are not the subject of this ACL Order).
  - d. The fourth NOV, issued on 23 October 2006, cited the Discharger for the September 2006 spills and violations identified during a facility inspection.
- CDO No. R5-2006-0130 was adopted 8 December 2006 for violations of the current WDRs, including capacity-related issues and some of the spills that are the subject of this proposed ACL Order.
49. *Degree of Culpability:* The Discharger was aware of the prohibition against discharges to surface waters. The late July, 16 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control; therefore, the Discharger is fully culpable for these events. The remaining spills may not have been preventable, so the degree of culpability is lower for these events. However, adequate staffing at the facility would likely have reduced or mitigated the results of those spills. Despite recommendations by operations staff, the Discharger did not act in a timely and proactive fashion to ensure adequate staffing and facilities.
50. *Economic Benefit:* The late July, 15 August, and both 21 September 2006 spills could have been avoided had the Discharger expended the necessary resources to provide adequate tailwater control. The remaining spills may not have been preventable, so the economic benefit obtained for these is probably minimal. However, adequate staffing at the facility would likely have reduced or mitigated the results of those spills. While none of these spills can be directly correlated to the WWTP being over capacity, any spill or

other problem in treatment or disposal is likely exacerbated by the excess flows. Regional Water Board staff estimates that, at a minimum, at least one additional operations staff person should have been hired for routine maintenance and inspection of the treatment processes and disposal fields and to make necessary improvements to the tailwater control system. At \$30 per hour and 40 hours per week for July 2006 (when capacity-related problems became evident) through January 2007, this yields an avoided cost of approximately \$36,000.

51. In addition to the considerations listed above, the Executive Officer considered the costs of preparing for and prosecuting a public hearing on the violations in ACL Complaint No. R5-2007-0505, the possible cost of responding to any request by the Discharger for administrative judicial review of an order assessing the recommended liability, the current compliance status of the Discharger, the deterrent effect of the proposed liability and the ability to recover staff costs from the amount tendered.
52. Following issuance of ACL Complaint No. R5-2007-0505, the Discharger proposed a Supplemental Environmental Project (SEP) for the full amount of the ACL Complaint. The Discharger and the Executive Officer have agreed to settle the administrative civil liability for the full amount proposed in the Complaint (\$50,000). This includes \$10,000 in staff costs (at \$80 per hour) and \$36,000 to recover the estimated economic benefit derived from the acts that constitute the violations.
53. The Discharger and the Executive Officer have agreed to resolve the ACL Complaint as follows: Completion of a SEP for \$50,000, as outlined in Attachment A. If any of the \$50,000 is not expended within one year of approval of the SEP, then CDCR proposes to pay the outstanding amount to the *Waste Discharge Permit Fund*, unless the project timeline is extended by the Regional Water Board. The proposed settlement takes into account the factors cited in CWC Section 13350 and the State Water Resources Control Board's *Water Quality Enforcement Policy*.
54. The Discharger has waived its right to a hearing before the Regional Water Board. This Order is issued to effectuate the Discharger's and the Executive Officer's settlement.
55. On 15 March 2007, the Regional Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger (Resolution R5-2007-0009).
56. Issuance of this Administrative Civil Liability Order to enforce California Water Code Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*), in accordance with Title 14 of the California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).
57. Public Notice of the proposed Order was published on 10 July 2007, initiating a thirty (30) day period for public review and comment. The Executive Officer considered all public

comments before issuing this Order.

58. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review this action. The State Water Board must receive the petition within thirty (30) days of issuance of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED THAT:

1. Civil liability is imposed upon the Discharger in the amount of fifty thousand dollars (\$50,000) pursuant to the settlement offer of the Discharger.
2. The Discharger shall satisfy this Order by timely completing the Supplemental Environmental Project set forth in Attachment A ("the SEP"), attached hereto.
3. The Discharger shall, **by 20 September 2007**, provide proof of a written agreement between the Discharger and the Foothill Conservancy, signed by the authorized persons, stating that no less than 94% of the payments are to be expended entirely on the approved SEP project, with the remaining 6% allowed for administrative and overhead costs incurred by the Foothill Conservancy.
4. The Discharger shall, **by 20 September 2008**, provide proof that the SEP has been completed as described in Attachment A and a full accounting of all SEP expenditures ("post-project accounting").
5. The Discharger shall, **by 20 September 2008**, remit payment for any unexpended portion of the \$50,000 liability by check, unless the project timeline is extended by the Executive Officer of the Regional Water Board. The check shall be made payable to the *Waste Discharge Permit Fund*, and shall have written upon it the number of this ACL Order.
6. If any task is not completed to the satisfaction of the Executive Officer by its respective due date (including any extensions approved by the Executive Officer), the amount of any suspended liability associated with that task in the SEP schedule shall be immediately due and payable to the *Waste Discharge Permit Fund*, with reference to this ACL Order on the check.
7. If the final cost of the successfully completed SEP is less than the amount suspended, the Discharger shall remit the difference to the *Waste Discharge Permit Fund* within thirty (30) days after submitting the post-project accounting.
8. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds, publicize any element of a SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against

the Discharger.

original signed by

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PAMELA C. CREEDON, Executive Officer

21 August 2007

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(Date)

Attachment A: SEP Information

MRH: 21-Aug-2007

RECEIVED  
SACRAMENTO  
CVRWQCB

**IN THE MATTER OF THE ADMINISTRATIVE CIVIL LIABILITY  
COMPLAINT  
NO. R5-2007-0505  
STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND  
REHABILITATION, MULE CREEK WASTEWATER PLANT  
AMADOR COUNTY**

07 JUN 14 PM 3:12

**DISCHARGER'S PROPOSAL FOR A SUPPLEMENTAL ENVIRONMENTAL  
PROJECT**

On March 2, 2007, the Central Valley Regional Water Quality Control Board issued the above Administrative Civil Liability Complaint, and proposed an administrative civil liability (ACL) of fifty thousand dollars (\$50,000.00). Discharger has not opposed the proposed ACL, and herein makes its proposal to divert the amounts represented by the ACL to a Supplemental Environmental Project (SEP).

**PROJECT TITLE: DRY CREEK FENCING AND RIPARIAN RESTORATION  
PROJECT**

**GEOGRAPHIC AREA OF INTEREST: CENTRAL VALLEY REGION (Ione  
Valley)**

**NAME OF RESPONSIBLE ENTITY: CALIFORNIA DEPARTMENT OF  
CORRECTIONS (CDCR), acting through the FOOTHILL CONSERVANCY**

**ESTIMATED COST TO COMPLETION: \$50,000.00**

**CONTACT INFORMATION: CHRISMAN L. SWANBERG  
Senior Staff Counsel  
California Department of Corrections and  
Rehabilitation  
Room 314S  
1515 S Street  
Sacramento, CA 95814**

**BRIEF PROJECT DESCRIPTION: CDCR proposes to devote the entire ACL amount of \$50,000 to a project wherein portions of Dry Creek, and its upper drainages in Amador County, California will be fenced to eliminate cattle from entering the creek. The project will identify property owners interested and willing to allow erection of fencing, and where appropriate, establishment of off-creek watering facilities to reduce the use of Dry Creek by cattle and eliminate the harmful effects caused thereby.**

Studies have shown that cattle have a deleterious effect on creeks. They damage the riparian vegetation, reducing shading and raising creek temperatures thereby. They cause erosion and both thereby and also directly cause destruction of gravel beds used by native

species for reproduction. They also introduce pathogens into the creek through defecation in and near the creek and creekbed.

Dry Creek is one of several creeks that pass through the lower Ione basin, and whose flows, in part, recharge the groundwater basin there. Improvement of water quality in these creeks is vital to assisting in long term water quality in the basin.

As a water quality improvement project, this SEP has a logical and practical nexus to the violations giving rise to the ACL. As Dry Creek is in the lower Ione valley and runs nearby the CDCR prison there, the required geographical nexus is likewise present. No rule, ordinance, law, or order by any regulatory agency requires this project, and the benefit derived is not for the benefit of the discharger, or the Regional Water Board but for the water basin and the water quality therein as a whole.

**WATER BODY/POLLUTANT ADDRESSED:** Dry Creek and its tributaries. Nitrates and coliform bacteria, sedimentation and riparian coverage.

**PROJECT PROPOSAL DETAILS (In addition to above):**

CDCR proposes to utilize the administrative and oversight capabilities of the Foothill Conservancy, an environmental group with principal offices in Pine Grove, California, to carry out this project. Their responsibility will be to identify areas of Dry Creek and tributaries impacted by cattle operations, and cooperatively enlist the property owners to enter into agreements to allow the affected creek areas to be fenced to eliminate cattle from entering the creek or damage the banks. They will either directly install or cause to be installed the requisite fencing along the creek. Typically the fencing will be 10-15 feet from the creek to protect not only the surface waters but the riparian habitat as well. CDCR will provide monies to the Foothill Conservancy in four increments of \$12,500. The first shall be upon approval of this SEP by the Regional Water Board, which payment shall mark the inception of the project. Three additional payments of an equal amount shall be paid to the Foothill Conservancy, on request accompanied with a project accounting demonstrating proper use of previously provided funds for fencing acquisition and installation. CDCR and Foothill Conservancy have agreed to 6% of the fund to be retained by the Foothills Conservancy to cover administrative and overhead costs in operating this SEP. At the time of this proposal, the Foothill Conservancy has already identified several property owners interested in participating in this project, and in time more are anticipated to participate. Participating owners will be required to commit to a definite period that the fencing will remain in place (10 years is the anticipated length of time) or will be required to reimburse for removal, based on a time based sliding scale.

The project will terminate one year after project inception, and any unexpended funds will be paid to the State Water Resources Control Board Waste Discharge Permit Fund and a final accounting will be provided, unless the project timeline is extended by the Board.

CDCR will be responsible to provide quarterly progress reports on the status of the SEP and the expenditures of monies associated – including areas fenced, both in location and total length of fencing installed, not less often than quarterly, commencing on a date 90 days following project approval. The Regional Water Board for good cause would agree to extend the reporting time when lack of activity does not warrant a report, such as during wet winter months. Should factors beyond the control of CDCR or the Foothill Conservancy prohibit completion of the project in the one year time period provided, the Regional Water Board would reserve the right to extend the time for full performance in their sole discretion and for good cause shown. The final report shall include a portion which shall set forth information to demonstrate watershed and water quality impacts of the project.