

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

IN THE MATTER OF:

**E. & J. GALLO WINERY  
LIVINGSTON WINERY  
MERCED COUNTY**

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

**ORDER NO. R5-2022-0510**

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**SECTION I: Introduction**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) 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 E. & J. Gallo Winery (Discharger) (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 Water Code section 13323 and Government Code section 11415.60.

**Section II: Recitals**

2. Waste Discharge Requirements Order 91-135 (WDRs) authorizes discharge of process wastewater to land for the Discharger's Livingston Winery (Winery). The WDRs incorporate revised Monitoring and Reporting Program 91-135 adopted on 1 July 2000 and Standard Provisions and Reporting Requirements, dated 1 March 1991. According to the WDRs, the Discharger owns 4,000-acres of land along the south side of the Merced River which can be used for winery wastewater irrigation.
3. On 9 August 2021, California Department of Fish and Wildlife (CDFW) staff reported a spill to the Governor's Office of Emergency Services (Cal OES). The Cal OES report indicated "a pump on a private property is discharging material directly into a waterway, material is flowing into waterway from an 18-inch pipe<sup>1</sup>..." The outfall of the discharge pipe was to the Merced River, a water of the

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<sup>1</sup> A fish kill was observed by inspectors investigating the discharge; however, given the ambient air temperatures, low flow of the river and lack of any other evidence, California Department of Fish and Wildlife staff and Central Valley Water Board staff were not able to definitively attribute the fish kill to the discharge.

state and the United States. The spill location was reported at the intersection of Highway 165 and River Road near Hagaman Park, approximately 7 miles west/southwest of the City of Livingston.

4. On 9 August 2021 at 1:30 PM, a Turlock Irrigation District (TID) staff biologist arrived at the discharge location and witnessed the discharge to the river. He observed black water discharging from the pipe and took video of the discharge.
5. On the same day, at 3:37 PM, CDFW staff arrived at the spill location and met with TID staff and also observed the discharge of dark murky water from the 18-inch pipe outfall to the river. CDFW staff also reported detecting foul odors at the outfall. CDFW staff collected six water samples which included the 18-inch pipe outfall water to the river, one upstream of the discharge, and four downstream of the discharge at different river locations. Gallo represents that CDFW staff prohibited Discharger staff from observing, sampling, or smelling the discharge or accessing the shutoff valve. CDFW staff denied this assertion.
6. At 5:05 PM, the Discharger ceased discharging to the river.
7. The Central Valley Water Board staff investigation, including inspections on 10 August 2021 and 18 August 2021, and witness interviews indicates that the 9 August 2021 discharge to the river lasted for approximately 3 hours and 35 minutes (215 minutes).
8. On 21 September 2021, Discharger staff setup a trial run at the pump station near the spill location (Pump Station 29) to simulate the discharge conditions which occurred on 9 August 2021. During the trial run, Central Valley Water Board staff collected two water samples from the 18-inch pipeline that was connected to the discharge pipe outfall (Sample ID numbers HA20210921-1 and HA20210921-2). The sample analytical results when compared to the sample of wastewater discharged to the river on 9 August 2021 (C1H1883-01) and wastewater puddle sample collected on 10 August 2021 (HA20210810-2) support that the water discharged on 9 August 2021 was not just agricultural well water and did contain waste as evidenced by the 9 and 10 August 2021 samples containing significantly higher concentrations of constituents for potassium, total organic carbon (TOC), total dissolved solids (TDS), electrical conductivity (EC), biochemical oxygen demand (BOD<sub>5</sub>), total nitrogen (TN), and total kjeldahal nitrogen (TKN) as shown in Table 1 of Attachment A, herein incorporated by reference.
9. Analytical results for water samples collected on 9 August 2021 and 10 August 2021 indicate that the water discharged to the Merced River from the Discharger's pipe contained waste (hereafter referred to as wastewater) and that

the wastewater quality was similar to typical winery wastewater (HA20210818-6) as shown in Table 2 of Attachment A.

10. On 24 January 2022, Central Valley Water Board staff issued a Notice of Violation (NOV) to the Discharger regarding the 9 August 2021 discharge to the river and provided a Facility Inspection Report (FIR) and several supporting documents which included Summary of Laboratory Analytical Results and initial Flow Calculation's details. Central Valley Water Board staff's initial investigation and estimates indicated that approximately 1,607,000 gallons of a dark murky wastewater discharged to the Merced River. The initial estimates were based on the assumptions of 18 inches for inside diameter of the discharge pipe, 75 percent of full pipe flow, and the pipe elevation change of 5 feet from the pump station to the discharge pipe outlet at the river. The assumptions for flow were based on limited information about the piping system.
11. In January 2022, CDFW staff released their 9 August 2021 inspection report to Central Valley Water Board staff. The report indicated that the discharge pipe was 70 percent full during the 9 August 2021 discharge. For the purposes of settlement, Central Valley Water Board staff have elected to use 70 percent full pipe in the flow calculations.
12. On 22 February 2022, the Central Valley Water Board staff visited the spill location and measured the discharge pipe inside diameter to be 17-5/8 inches (17.625 inches) and measured the elevation change from the bottom of the pipe at the pump station to the bottom of the pipe at the pipe outfall to the river to be 11.91 feet.
13. On 25 February 2022, the Discharger submitted a response to the NOV. The Discharger denied that the discharge to the river was wastewater. The Discharger also indicated that it installed two check valves or back-flow preventers on 8 December 2021 in the 18-inch pipeline south of the pump station which could be a conduit to deliver winery wastewater to the 18-inch pipe outfall by the river.
14. The Parties engaged in confidential settlement negotiations and agreed to fully settle the violations alleged in this Stipulated Order and Attachment B, herein incorporated by reference, 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 Water Code section 13323 and Government Code section 11415.60.
15. The discharge of wastewater to the Merced River, a water of the state and United States, is in violation of the WDRs Discharge Prohibition A.1 and Discharge

Specification B.3 for unauthorized and direct discharge of waste to surface waters and for failing to keep the discharge of wastewater within the designated disposal area, as well as Water Code section 13376 and Clean Water Act section 301.

16. A discharger who violates Water Code section 13376 or Clean Water Act section 301 is subject to administrative civil liability under Water Code section 13385, subdivision (a). Additionally, the unauthorized discharge in violation of WDRs Discharge Prohibition A.1 and Discharge Specification B.3 is subject to administrative civil liability under Water Code section 13350.
17. The Prosecution Team has elected to pursue enforcement of the alleged violations pursuant to Water Code section 13385, subdivision (a). Pursuant to Water Code section 13385, subdivision (c), the administrative civil liability shall not exceed the sum of \$10,000 per day of violation and \$10 per gallon of waste discharged over 1,000 gallons that was not cleaned up.
18. Pursuant to Water Code sections 13327 and 13385, subdivision (e), 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 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 violations, and other matters as justice may require.
19. The State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (Enforcement Policy) was adopted on 4 April 2017. The Enforcement Policy's effective date is 5 October 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability.
20. Based on the confidential settlement negotiations and additional evidence provided by the Discharger during negotiations, the parties agreed that a total of 92,358 gallons of wastewater reached the river, which is revised from the Central Valley Water Board staff's initial estimate. The revised total discharge volume is based on the capacity of the irrigation well, metered process wastewater flows to the irrigation system from the Discharger on the day of discharge, and piping and valving constraints associated with the irrigation system. Wastewater was comingled with well water through a leaky valve resulting in a 92,358-gallon discharge of waste on 9 August 2021 to the Merced River over a span of some 215 minutes. The assumptions used in determining the discharge volume are

consistent with a mass balance performed on the system and sample concentrations of the well water, the wastewater, and the waste discharged to the river.

21. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of **three hundred seventy-eight thousand six hundred sixty-eight dollars (\$378,668)** in administrative civil liability against the Discharger.
22. 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 III: Stipulations**

The Parties stipulate to the following:

23. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
24. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **three hundred seventy-eight thousand six hundred sixty-eight dollars (\$378,668)** by the Central Valley Water Board to resolve the violations alleged in this Stipulated Order as follows:
  - a. **One hundred eighty-nine thousand three hundred and thirty-four dollars (\$189,334)** 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 (R5-2022-0510). The Discharger shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. The Discharger shall provide a copy of the check via email the State Water Board, Office of Enforcement ([Kailyn.Ellison@waterboards.ca.gov](mailto:Kailyn.Ellison@waterboards.ca.gov)) and the Central Valley Water Board ([Dale.Harvey@waterboards.ca.gov](mailto:Dale.Harvey@waterboards.ca.gov)).

- b. **One hundred eighty-nine thousand three hundred and thirty-four dollars (\$189,334)** (SEP Amount) shall be permanently suspended upon completion of the Supplemental Environmental Project (SEP) described in paragraph 26 and in Attachment C to this Order, herein incorporated by reference.
25. **Representations and Agreements:** The Discharger agrees that the completion of the SEP described in paragraph 26 below is a material condition of this settlement of liability between the Discharger and the Central Valley Water Board Prosecution Team. As a material condition for the Central Valley Water Board's acceptance of this Stipulated Order, the Discharger represents and agrees that it (a) will spend the SEP Amount and (b) is informed and believes Merced County will complete the SEP as described herein and in Attachment C. The Discharger shall not be liable for Central Valley Water Board administrative and oversight costs associated with the SEP described in Attachment C. The SEP Amount shall be treated as a suspended administrative civil liability at the time of SEP completion for purposes of this Order. The Central Valley Water Board is entitled to recover any portion the SEP Amount that is not expended in accordance with this Order.
26. **Supplemental Environmental Project:** The Discharger will fund a portion of Merced County's Hagaman Park Restroom Septic Tank and Leach Field Relocation Project located at Hagaman Park, 19914 River Road, Livingston, CA. Merced County, which is overseeing the project, will relocate the existing restrooms septic tank and leachfield to a higher elevation above the flood zone along the Merced River. The SEP Amount will fund the installation of the new septic tank and the construction of the new leach field. The SEP does not include funding for the construction or installation of any buildings or fixtures (e.g., toilets, sinks, etc.). The SEP has a geographic nexus to the alleged violations.
27. **SEP Completion Deadlines:** The Discharger shall complete all the SEP requirements by 31 January 2024 or within one (1) year of the effective date of this Order, whichever is later (the "Completion Deadline"). Additionally, the Discharger shall submit a Final Report upon the completion of the SEP declaring such completion and detailing fund expenditures and goals achieved. The Final Report submission deadlines are outlined below.
28. **Extension of the Implementation Schedule Deadlines:** If the Discharger cannot meet any of the deadlines or the Completion Deadline contained in paragraph 27 due to circumstances beyond the Discharger's anticipation or control, the Discharger shall notify the Executive Officer in writing within thirty (30) days of the date the Discharger first knew of the event or circumstance that caused or could cause a violation of this Order. The notice shall describe the

reason for the nonperformance 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. 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 may be established, and this Order revised accordingly. The Executive Officer will endeavor to grant a reasonable extension of time if warranted.

29. **Certification of Completion**: Within thirty (30) days of completion of the SEP, but not later than the Completion Deadline (except to the extent the Completion Deadline has been extended pursuant to paragraph 28), the Discharger shall submit a certified statement of completion of the SEP (“Certification of Completion”). The Discharger’s authorized representative shall submit the Certification of Completion under penalty of perjury to the Central Valley Water Board contacts identified in paragraph 37. The Certification of Completion shall include the following:
- i. Certification documenting all expenditures by the Discharger. The expenditures may include invoices and receipts evidencing payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Central Valley Water Board staff that is reasonably necessary to verify SEP expenditures.
  - ii. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such certification may be in the form of a declaration by a County employee that the project (of which the SEP forms a part) has been completed according to plan, or other material reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
  - iii. Certification that all applicable environmental laws and regulations were followed in the implementation of the SEP including but not limited to, the California Environmental Quality Act (CEQA).

- iv. Other relevant documents validating or documenting completion, if appropriate.
30. **Third Party Audit:** At the written request of the Central Valley Water Board or delegee, the Discharger shall submit, at its sole cost, an audit report prepared by an independent third party (or parties) acceptable to the Central Valley Water Board or delegee, stating that in its professional opinion, the Discharger has or has not expended money in the amounts claimed. In the event of such an audit, the Discharger agrees that they will provide the third-party auditor with reasonable access to all documents which the auditor requests. Such information shall be provided to the designated Central Valley Water Board contact within three months of the completion of the Discharger's SEP obligations.
  31. **Completion of the SEP to the Central Valley Water Board's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order, and any audit requested by the Central Valley Water Board, Central Valley Water Board staff shall send the Discharger a letter certifying satisfactory completion of its obligations under the SEP. Receipt of this letter shall terminate any further SEP obligations of the Discharger and result in the dismissal of the SEP Amount.
  32. **Failure to Expend SEP Amount on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board that the entire SEP Amount has been spent for the completed SEP, the Discharger shall pay the difference between the SEP amount and the amount the Discharger can demonstrate was actually spent on the SEP, as an administrative civil liability to the State Water Pollution Cleanup and Abatement Account. The Discharger shall be liable to pay the State Water Pollution Clean and Abatement Account this amount within 30 days of receipt of notice of the Central Valley Water Board's determination that the Discharger failed to demonstrate that the entire SEP Amount was spent to complete the SEP.
  33. **Failure to Complete the SEP:** If the SEP is not fully implemented as described herein and in Attachment C by the SEP Completion Deadline required by this Stipulated Order, the Executive Officer shall issue a "Notice of Failure to Complete SEP." The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Central Valley Water Board or its delegee. The Discharger shall be liable to pay the entire SEP Amount, or, if shown by the Discharger, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the



Central Valley Water Board or its delegee determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP prior to the issuance date of the Notice. Within 30 days of the Central Valley Water Board's or its delegee's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in paragraph 24.a. Payment of the assessed amount shall satisfy the Discharger's obligations to implement the SEP.

34. **Replacement SEP:** If, by the Completion Deadline (or by any later date approved pursuant to paragraph 28), there is a material failure, in whole or in part, to perform the SEP described in paragraph 26, due to circumstances beyond the control of the Discharger and/or the SEP Implementing Party, and the Central Valley Water Board does not move to collect the payment of suspended liability amount as provided in paragraph 33, above, the Parties agree that the Discharger may propose a Replacement SEP. Whether there is a material failure to perform the SEP described in paragraph 26 shall be determined by the Executive Officer. The Discharger shall have 60 days from the date of the Executive Officer's determination to propose a Replacement SEP. The cost of the Replacement SEP shall be for the entire SEP Amount, or some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same conditions provided for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both parties and approved by the Regional Water Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy and shall be completed no later than two years of the effective date of this Stipulated Order (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complied with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a "Notice of Failure to Complete SEP" as described in paragraph 33. The Discharger shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.
35. **Publicity:** Whenever the Discharger or its agents or subcontractors publicize one or more elements of the SEP, 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.

36. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an 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 additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. 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.

37. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:

Dale Harvey  
Supervising Water Resource Control Engineer  
1685 E Street  
Fresno, CA 93706  
[dale.harvey@waterboards.ca.gov](mailto:dale.harvey@waterboards.ca.gov)  
(559) 445-6190

With copy to:

Hossein (Hoss) Aghazeynali, P.E.  
Water Resources Control Engineer  
Compliance and Enforcement Unit  
1685 E Street  
Fresno, CA 93706  
[hossein.aghazeynali@waterboards.ca.gov](mailto:hossein.aghazeynali@waterboards.ca.gov)  
(559) 445-6194

For the Discharger:

Chris Savage, Vice President  
Global Environmental, Health & Safety and Sustainability  
E. & J. Gallo Winery  
600 Yosemite Blvd.  
Modesto, CA 95354  
[Chris.savage@ejgallo.com](mailto:Chris.savage@ejgallo.com)  
(209) 341-7402

38. **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.
39. **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 the violations alleged above and any other violations that could have been asserted against the Discharger based on the facts alleged in this Stipulated Order, 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 administrative civil liability by the deadline specified in paragraph 24.a and completion of the SEP referenced in paragraph 26 or full payment of the associated suspended liability.
40. **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.
41. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
42. **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 administrative civil liability complaints or orders for violations other than those addressed by this Stipulated Order.

43. **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 Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
44. **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.
45. **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.
46. **Integration:** This Stipulated Oder constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
47. **If Stipulated Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Central Valley Water Board as proposed. 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 administrative civil liability 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; 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.
48. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and provided that this Stipulated Order is approved by the Central Valley Water Board or its delegee, hereby waives its right to a hearing before the Central Valley Water Board. However, should the settlement not be adopted, and should the matter proceed to the Central Valley Water Board or State Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
  49. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Central Valley Water Board, 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.
  50. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, 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, board members, employees, attorneys, representatives arising out of or relating to any matter expressly addressed by this Stipulated Order.
  51. **Water Board Not Liable:** Neither the Central Valley Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order including the SEP described above, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order including the SEP.
  52. **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.

53. **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 the 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.
54. **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.
55. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
56. **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 Order incorporating the terms of this Stipulated Order.
57. **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.

[SIGNATURES FOLLOW IMMEDIATELY ON NEXT PAGE]

Stipulated Administrative Civil Liability Order R5-2022-0510  
E. & J. Gallo Winery  
Livingston Winery

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board  
Central Valley Region Prosecution Team

By: **Original Signed by Clay Rogers**  
Clay Rodgers  
Assistant Executive Officer

Date: **12/12/2022**

Stipulated Administrative Civil Liability Order R5-2022-0510  
E. & J. Gallo Winery  
Livingston Winery

**IT IS SO STIPULATED.**

E. & J. GALLO WINERY

By: **Original Signed by Mike Roland**  
Mike Roland  
Vice President  
Commercial Manufacturing and Engineering

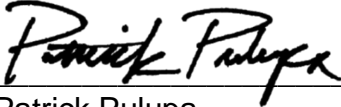
Date: **12/9/2022**



**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 III 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 Discharger 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 Central Valley 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(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

02/02/23

\_\_\_\_\_  
Date

**Attachment A:** Tables 1 and 2  
**Attachment B:** Penalty Calculation Methodology  
**Attachment C:** Supplemental Environmental Project

Stipulated Administrative Civil Liability Order R5-2022-0510  
Attachment A  
E. & J. Gallo Winery  
Livingston Winery

Tables 1 and 2

**Table 1. Summary of Analytical Results for Selected Constituents – Liquid (Water) Samples**

Sample ID	Description	Sampled By	Sample Date	HCO <sub>3</sub>	Cl	TKN	Total N	EC	pH	TDS	BOD <sub>5</sub>	TOC	K
	LIQUIDS			mg/L	mg/L	mg/L	mg/L	umhos/cm		mg/L	mg/L	mg/L	mg/L
C1H1883-01	Source (from discharge pipe outfall)	DFW	8/9/2021	640	87				6.3			1200	270
HA20210810-2	Puddle below discharge pipe	RB	8/10/2021	940	97	68	74	2500	6.6	3300	2000	1200	420
	<b>Average of Discharge to River</b>			<b>790</b>	<b>92</b>	<b>68</b>	<b>74</b>	<b>2500</b>	<b>6.5</b>	<b>3300</b>	<b>2000</b>	<b>1200</b>	<b>345</b>
HA20210921-1	Irrigation well water after pump station	RB	9/21/2021	380	100	ND	15	1200	8.1	770	ND	3.3	8.7
HA20210921-2	Irrigation well water after pump station	RB	9/21/2021	390	94	ND	18	1200	8.2	780	ND	1.8	5.6
	<b>Average of Irrigation well water</b>			<b>385</b>	<b>97</b>	<b>ND</b>	<b>17</b>	<b>1200</b>	<b>8.2</b>	<b>775</b>	<b>ND</b>	<b>2.6</b>	<b>7.2</b>

Blank cells=no analysis was performed, ND=non-detect, HCO<sub>3</sub>=Bicarbonate, K=Potassium

**Table 2. Summary of Analytical Results for Selected Constituents – Liquid (Water) Samples**

Sample ID	Description	Sampled By	Sample Date	HCO <sub>3</sub>	Cl	TKN	Total N	EC	pH	TDS	BOD <sub>5</sub>	TOC	K
	LIQUIDS			mg/L	mg/L	mg/L	mg/L	umhos/cm		mg/L	mg/L	mg/L	mg/L
C1H1883-01	Source (from discharge pipe outfall)	DFW	8/9/2021	640	87				6.3			1200	270
HA20210810-2	Puddle below discharge pipe	RB	8/10/2021	940	97	68	74	2500	6.6	3300	2000	1200	420
	<b>Average of Discharge to River</b>			<b>790</b>	<b>92</b>	<b>68</b>	<b>74</b>	<b>2500</b>	<b>6.5</b>	<b>3300</b>	<b>2000</b>	<b>1200</b>	<b>345</b>
C1H1883-06	364 Yards upstream from discharge pipe	DFW	8/9/2021	63	18			260	7.7			2.8	2.8
C1H1883-02	20 Yards Upstream from discharge pipe	DFW	8/9/2021	63	18			260	7.4			2.7	3
HA20210810-3	400 feet Upstream from discharge pipe	RB	8/10/2021	56	17	ND	6.1	240	7.2	160	ND	3.2	2.2
HA20210818-1	0.6 mile upstream from discharge pipe	RB	8/18/2021	79	17	ND	6.8	250	7.6	160	ND	2.6	2.3
	<b>Average of River Upstream</b>			<b>65</b>	<b>18</b>	<b>ND</b>	<b>6</b>	<b>253</b>	<b>7.5</b>	<b>160</b>	<b>ND</b>	<b>3</b>	<b>3</b>
C1H1883-04	292 Yards downstream of discharge pipe	DFW	8/9/2021	110	18			280	7.7			6.2	8.2

Sample ID	Description	Sampled By	Sample Date	HCO <sub>3</sub>	Cl	TKN	Total N	EC	pH	TDS	BOD <sub>5</sub>	TOC	K
	LIQUIDS			mg/L	mg/L	mg/L	mg/L	umhos/cm		mg/L	mg/L	mg/L	mg/L
C1H1883-03	0.6 Miles downstream of discharge pipe	DFW	8/9/2021	140	20			340	7.7			33	20
C1H1883-05	Turner Ave. & Faith Home Road	DFW	8/9/2021	130	35			390	7.9			7.5	9.2
	Average of River Downstream			127	24			337	7.8			16	12
HA20210818-6	Liquid Gallo Effluent at Land Disposal Area	RB	8/18/2021	820	93	120	120	2600	5.6	2900	4400	2300	72

Blank cells=no analysis was performed, ND=non-detect, HCO<sub>3</sub>=Bicarbonate, K=Potassium

**ATTACHMENT B**  
**PENALTY CALCULATION METHODOLOGY FOR**

**9 August 2021 Discharge**  
**E. & J. GALLO WINERY**  
**LIVINGSTON WINERY**  
**MERCED COUNTY**

The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (Water Code) sections 13327 and 13385, subdivision (e). Each factor of the ten-step penalty calculation methodology is discussed below, as is the basis for assessing the corresponding score. [The Enforcement Policy](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf) can be found at:

([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf))

The following steps are used to calculate the final liability amount:

**STEP 1 – Actual or Potential for Harm for Discharge Violations**

This factor considers the actual harm or potential harm to the water body's beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

***Factor 1: The Degree of Toxicity of the Discharge***

This factor evaluates the degree of toxicity by considering the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation and the risk of damage the discharge could cause to the receptors or beneficial uses. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

A score of above moderate (3) was assigned for this factor. Water samples collected on 9 August 2021 (Sample ID C1H1883-01) and 10 August 2021 (HA20210810-2) indicated elevated concentrations of TDS, EC, TOC, BOD<sub>5</sub>, TN, TKN, and other substances when compared to the average of upstream water samples. These substances are known to adversely impact aquatic life. See Table 2 in Attachment A of the Stipulated Order for a summary of these data.

A discharge with elevated concentrations of BOD<sub>5</sub> and nitrogen can cause the reduction in the dissolved oxygen of the water where it can impact aquatic life. Consequently, an

above moderate risk or a direct threat to potential receptors with a score of 3 was assigned for this factor.

***Factor 2: Actual Harm or Potential Harm to Beneficial Uses***

The evaluation of the actual harm or potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0) to major (5).

A score of moderate (3) was assigned to this factor because there was a moderate harm or potential harm to the beneficial uses. Based on the sample analytical results provided in Table 1 in Attachment A of the Stipulated Order, the discharge on 9 August 2021 was some type of wastewater (which may have been mixed or diluted by agricultural well water), which is supported by the sample analytical results provided in Table 2 in Attachment A of the Stipulated Order that indicate the discharge had similar characteristics to winery wastewater.

The designated beneficial uses of Merced River are municipal, industrial, and agricultural supply; recreation; esthetic enjoyment; and preservation and enhancement of fish, wildlife, and other aquatic resources. The beneficial uses most likely impacted by this discharge were preservation and enhancement of fish and other aquatic resources. The wastewater that was discharged from the pipe outfall to the river contains elevated concentrations of potassium, TOC, BOD<sub>5</sub>, TN, TKN, EC, TDS, and other constituents. In addition, the wastewater was dark and murky indicating high concentrations of solids or high turbidity; black solids were also observed in the bottom of the river downstream of the discharge. CDFW staff also reported foul odors detected at the 18-inch pipe outfall to the river. Elevated levels of constituents listed above coupled with a high concentration of solids or turbidity can lead to low levels of dissolved oxygen in the receiving water and impact aquatic life. Therefore, the discharge of the wastewater from the 18-inch pipe outfall to the river is reasonably expected to impact the receiving waters aquatic life and potentially harm or impair the designated beneficial uses for aquatic life. A score of moderate is typified by observed or reasonably expected potential impacts, but harm or potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects. In this case, the potential impact is likely to attenuate without medium- or long-term effects. Therefore, a score of moderate (3) was assigned to this factor.<sup>1</sup>

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

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<sup>1</sup> For purposes of settlement, the fish kill observed in the Merced River on 9 August 2021 was not considered under this factor as related evidence is circumstantial.

A score of 0 is assigned for this factor if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time. A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean up 50 percent or more of the discharge within a reasonable time.

In this case, none of the discharge was cleaned up and less than 50 percent of the discharge was susceptible to cleanup. Therefore, a score of 1 was assigned.

### ***Final Score – “Potential for Harm”***

The scores for the three factors are added to provide a Potential for Harm score.

In this case, a **final score of 7** was calculated from Factors 1, 2, and 3 ( $3+3+1 = 7$ ). The final score is then used in Step 2, below.

### **STEP 2 – Assessments for Discharge Violations**

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

### ***Per Gallon Assessment for Discharge Violation***

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Deviation from Requirement of the violation.

### **Deviation from Requirement**

The Deviation from the Requirement is either Minor, Moderate, or Major. Water Code section 13376 and Clean Water Act section 301 prohibit unauthorized discharge of waste to waters of the United States. The discharge alleged here rendered this requirement ineffective in its essential function of protecting water quality and represents a Major Deviation from the Requirement.

### **Per Gallon Factor**

Table 1 of the Enforcement Policy (P. 14) is used to determine a “per gallon factor” based on the Potential for Harm Score from **Step 1** and the Deviation from Requirement. The Potential for Harm Score was determined to be **7**. The Deviation from Requirement is Major. Therefore, the per gallon factor is **0.41**.

Pursuant to Water Code section 13385, subdivision (c), the per-gallon administrative civil liability shall not exceed \$10 per gallon of waste discharged over 1,000 gallons that was not cleaned up.

According to the Central Valley Water Board staff's investigations and final revised flow calculations during settlement negotiations, approximately **92,358 gallons** of wastewater was discharged to the river and not recovered. The total volume discharged minus 1,000 gallons is **91,358 gallons**.

The Per Gallon Assessment is calculated on a per gallon basis is as follows  $0.41 \text{ per gallon factor} \times 91,358 \text{ gallons} \times \$10 \text{ per gallon} = \$374,568$

### ***Per Day Assessment for Discharge Violations***

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Deviation from Requirement that was used in the per-gallon analysis.

Central Valley Water Board staff investigation indicated the discharge occurred on 9 August 2021. Therefore, there is one day of violation.

The Per Day Assessment is calculated as the per day factor multiplied by the number of days multiplied by the statutory maximum per day (\$10,000). In this case:  $0.41 \text{ per day factor} \times 1 \text{ day} \times \$10,000 \text{ per day} = \$4,100$

**Initial Liability Amount:** The Initial Liability Amount is determined by adding together the per gallon assessment and the per day assessment. For this case, the initial liability is  $\$374,568 + \$4,100 = \$378,668$ .

### **STEP 3 – Per Day Assessment for Non-Discharge Violation**

This factor does not apply to discharge violations.

### **STEP 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's degree of culpability, the violator's prior history of violations, and efforts to clean-up or cooperate with regulatory authorities after the violation. After each of these factors is considered for the violation involved, the applicable factor should be multiplied by the proposed amount for the violation to determine the revised amount for that violation.



### ***Degree of Culpability***

Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence.

The cause of the discharge is unknown. The Discharger's efforts to identify the root cause of the discharge have been inconclusive. The Discharger was not aware of the discharge until it was discovered by TID and CDFW staff. The Prosecution Team was not able to independently identify the cause of the discharge. Therefore, a multiplier of 1.0 is assigned for this factor.

### ***History of Violations***

Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1.

In this case, the Discharger does not have a history of violations. A neutral multiplier of 1.0 is assigned for this factor.

### ***Cleanup and Cooperation***

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. Adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and higher multiplier where there is not.

After learning of the discharge, the Discharger shut off the two valves near the 18-inch pipe outfall on 9 August 2021. On 8 December 2021, the Discharger voluntarily installed two check valves or back-flow preventers in the 18-inch pipeline that could be a conduit to deliver winery wastewater to the river. Therefore, a multiplier of 1.0 is assigned for this factor.

### **STEP 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by multiplying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Total Base Liability Amount =  $1.0 \times 1.0 \times 1.0 \times \$378,668 = \$378,668$

### **STEP 6 - Ability to Pay and Ability to Continue in Business**

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. The Enforcement Policy states that if the Central Valley Water Board has sufficient financial information to assess the Discharger's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the Discharger's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this case, the Discharger has an ability to pay and continue in business. E. & J. Gallo Winery is one of the largest family-owned wineries in the world and has sufficient assets to not qualify for a downward adjustment.

### **STEP 7 – Economic Benefit**

Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

As a result of the 9 August 2021 discharge, the Discharger installed two check valves on 8 December 2021 in the 18-inch pipeline south of the pump station that could be a conduit to deliver winery wastewater to the river. The economic benefit calculation was based on a 15 December 2021 invoice provided by the Discharger detailing the costs associated with installing the two check valves. The economic benefit of noncompliance for this violation is estimated at **\$187**.

### **STEP 8 – Other Factors as Justice May Require**

If the Central Valley 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 this.

The Central Valley Water Board staff has spent considerable time on this case, but the Prosecution Team chooses to use its enforcement discretion to not include these costs in the liability.

### **STEP 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed.

Water Code maximum liability amount: Based on Water Code section 13385, the maximum liability is \$10,000 per day per spill and \$10 per gallon of waste discharged over 1,000 gallons that was not cleaned up. The maximum liability for the violation is **\$923,580**.

Water Code and Enforcement Policy minimum liability amount: Under Water Code section 13385, subdivision (e), the minimum liability must be at least the economic benefit of non-compliance. In this case, the statutory minimum liability is \$187. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%, which in this case is **\$206**.

**STEP 10 – Final liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Using the Penalty Calculation Methodology, as described above, the final liability amount is **\$378,668**.

**ATTACHMENT C**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**  
**FOR**  
**E. & J. GALLO WINERY**  
**LIVINGSTON WINERY**  
**MERCED COUNTY**

- 1. Project Name**  
Merced County Hagaman Park Septic Tank and Leach Field Relocation Project
- 2. Project Amount**  
The Discharger will dedicate one hundred eighty-nine thousand three hundred and thirty-four dollars (\$189,334) for a supplemental environmental project (SEP).
- 3. Project Lead**  
Merced County Department of Public Works, Parks and Recreation Division  
(Merced County)
- 4. Project Contact(s)**  
Bryan D. Behn, Deputy Director  
Merced County Department of Public Works  
Parks and Recreation Division  
345 West 7th Street  
Merced, CA 95341  
Bryan.behn@countyofmerced.com  
(209) 385-7426
- 5. Project Description**  
The Discharger will fund a portion of Merced County's Hagaman Park Restroom Septic Tank and Leach Field Relocation Project located at Hagaman Park, 19914 River Road, Livingston, CA. Merced County, which is overseeing the project, will relocate the existing restrooms septic tank and leachfield to a higher elevation above the flood zone along the Merced River. The SEP Amount will fund the installation of the new septic tank and the construction of the new leach field. The SEP does not include funding for the construction or installation of any buildings or fixtures (e.g., toilets, sinks, etc.). The SEP has a geographic nexus to the alleged violations.
- 6. Project Location**  
Hagaman Park at 19914 River Road, Livingston, CA 95334

## 7. Compliance with SEP Criteria

### a. Above and Beyond Discharger's Obligation

This project is not mandatory for compliance with any applicable legal requirements at this time.

### b. No Benefit to the Water Board Functions, Members, or Staff

This project would not benefit any California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) functions, members, or staff.

### c. Nexus to the Nature or Location of Violation

The alleged violation occurred in the general vicinity of the SEP and is not related to the alleged violation.

### d. Project Maintenance

The Merced County will manage construction and maintenance of the new restroom, lift station, septic tank, and the leach field.

### e. Project Milestones, Schedule, and Budget

The Project will be overseen and implemented by Merced County, which has provided milestones and schedules including the following:

- i. Complete final concept plan by the 27 January 2023.
- ii. Complete bid package by 2 June 2023.
- iii. Begin construction by 10 July 2023.
- iv. Complete construction by 15 January 2024.

The above schedule may change if the design phase takes longer, or the material availability is limited during the construction phase. The SEP portion of the project is estimated \$189,334 to complete installation of a new septic tank and construction of the new leach field. The remaining parts of the project, such as construction of the restrooms themselves, will be funded by Merced County.

### f. Reports to the Water Board

The Discharger will submit quarterly progress reports documenting progress made on the SEP. The quarterly reports will be due on the last day of the month following the end of each quarter. Quarterly report due dates are listed below.

For 1<sup>st</sup> quarter 2023, the report is due on 30 April 2023.

For 2<sup>nd</sup> quarter 2023, the report is due on 31 July 2023.

For 3<sup>rd</sup> quarter 2023, the report is due on 31 October 2023.  
For 4<sup>th</sup> quarter 2023, the report is due on 31 January 2024, if needed.

Following SEP completion, a Certification of Completion is required as detailed in the Stipulated Order.