

**§ 13327. Determination of amount of civil liability; factors considered**

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.

(Added by Stats.1984, c. 1541, § 4. Amended by Stats.1989, c. 1445, § 1; Stats.1999, c. 779 (S.B.807), § 5, eff. Oct. 10, 1999; Stats.2001, c. 869 (A.B.1664), § 4.5.)

**Historical and Statutory Notes**

The 1989 amendment included the factor of the degree of toxicity of the discharge.

Stats.1999, c. 779 (S.B.807), substituted "13320" for "13324", and deleted "such" preceding "other".

Stats.2001, c. 869 (A.B.1664), § 4.5, inserted "benefit or".

**TABLE 1 - Per Gallon Factor for Discharges**

Deviation from Requirement	Potential for Harm									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

**Minor** – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

**Moderate** – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

**Major** – The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

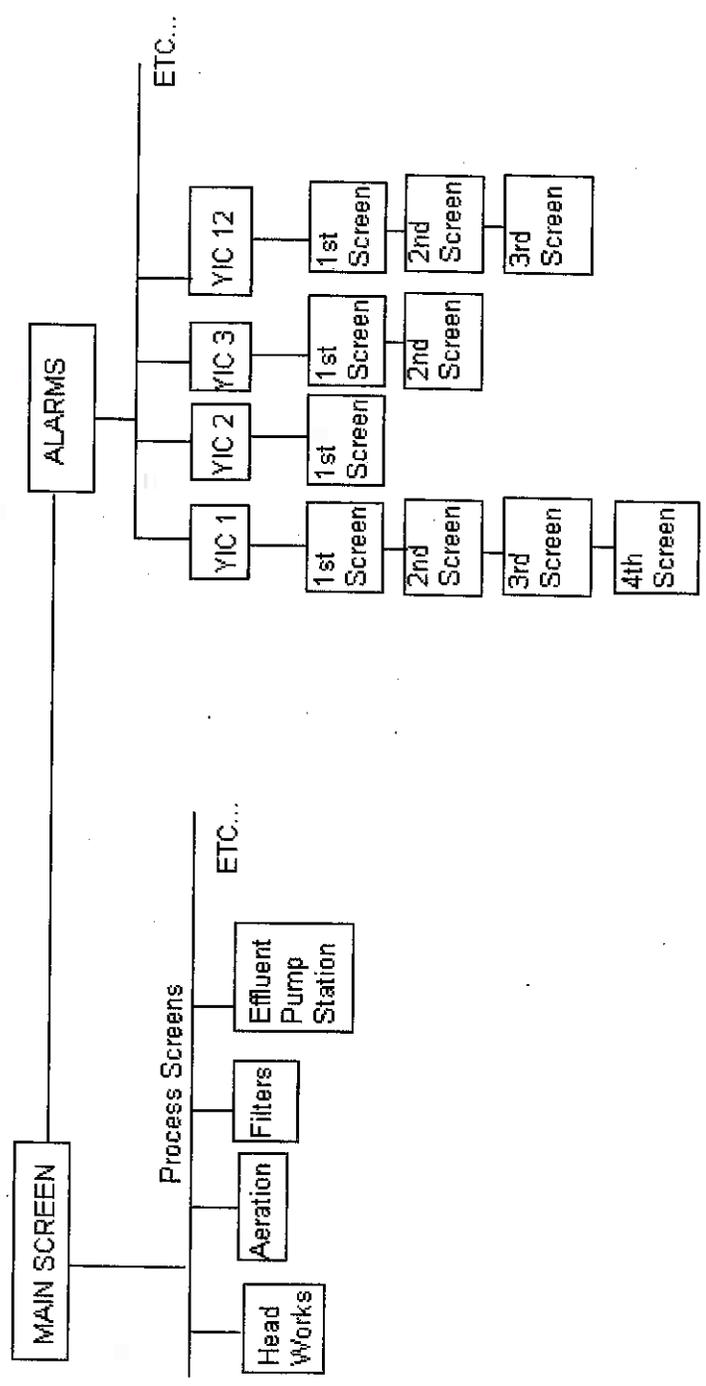
For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

**High Volume Discharges**

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of \$2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of \$1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

**Per Day Assessments for Discharge Violations**

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such



3st CtrlHL

pen Layout...  
ave Layout...

CO

CLOSE

ALARM SUMMARY

High Level SP

5.3 FT

WARM

SPRINGS  
2,735,633 GAL  
5,382 GPM

PALA

1,652,187 MG  
2,713 GPM

DIAZ

1,386,740 GAL  
2,469 GPM

CONTROL  
BARS SCREENS  
AUTO

BYPASS

Inlet Junction  
BOX

2.5 FT

Grit Channel Inlet  
1.9 FT  
7.0 pH  
1,768 gpm

GRIT  
BASIN 2  
LOCAL

GRIT  
BASIN 1  
LOCAL

SUMP PUMPS  
LOCAL

UW

SCREENING WASHER/COMPACTOR

SETPOINTS

UW

FROM  
FOUL AIR  
TREATMENT

3,198 GAL  
0.1 GPM

TO FeCl

TO  
PLANT 2

TO  
PLANT 1

TO POLY

23,453 GAL  
0.0 GPM

TO GRIT PUMPS

TO BIOFILTERS

FROM  
SOLIDS AREA  
RECYCLE

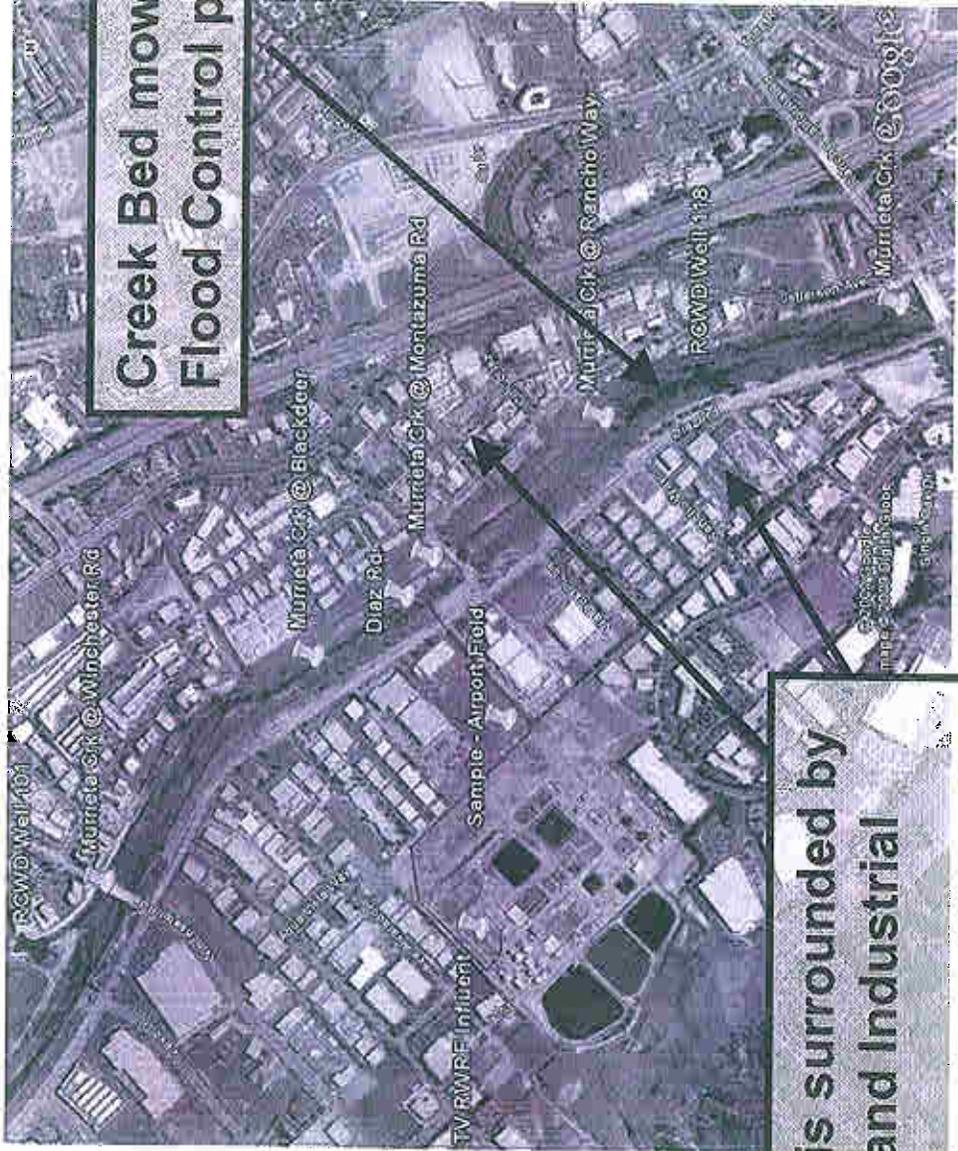
**Photos of the Release from  
EMWD's TVRWRP on  
December 25, 2009**

**September 21, 2010**



# Aerial View of Release Site

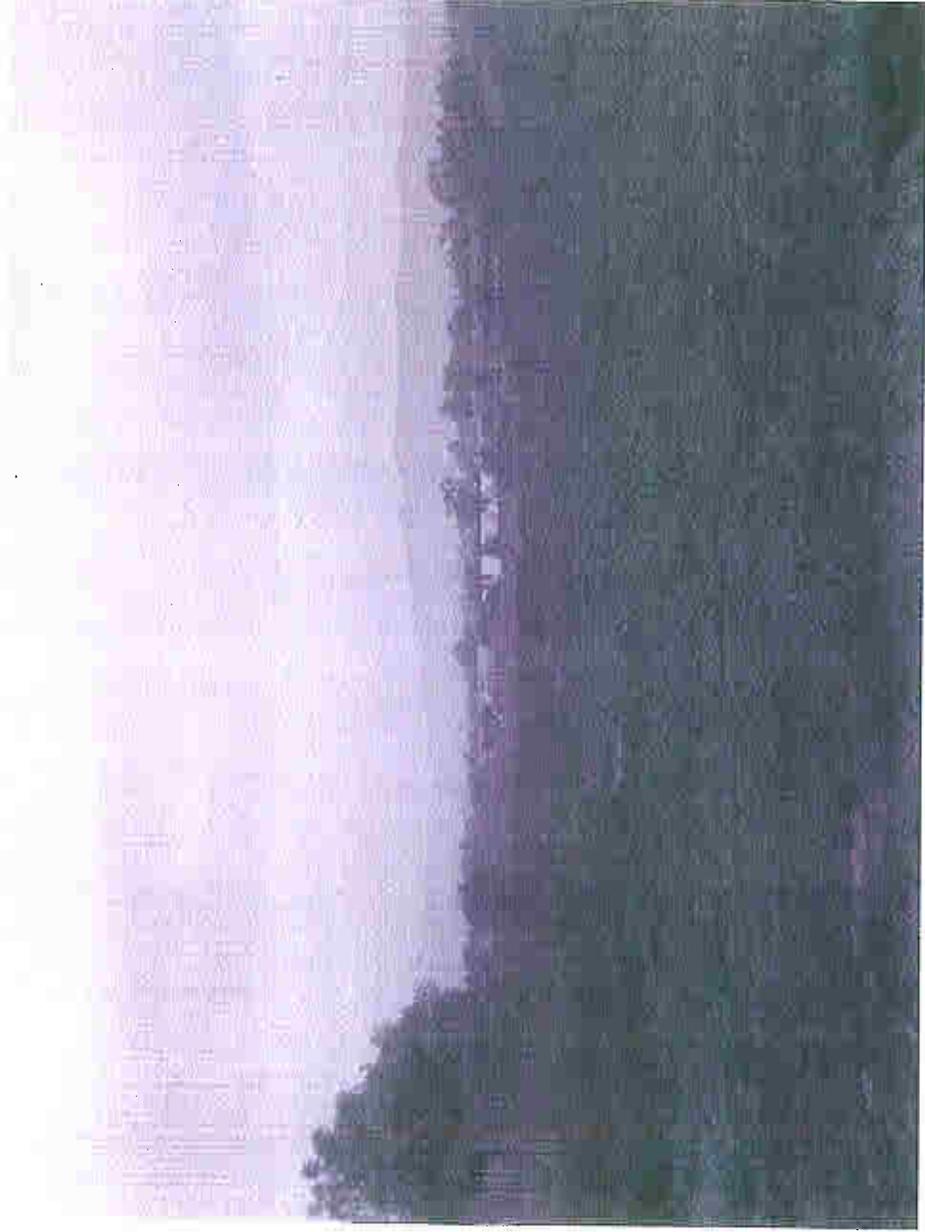
## Murrieta Creek, Temecula



Creek Bed mowed for Flood Control purposes.

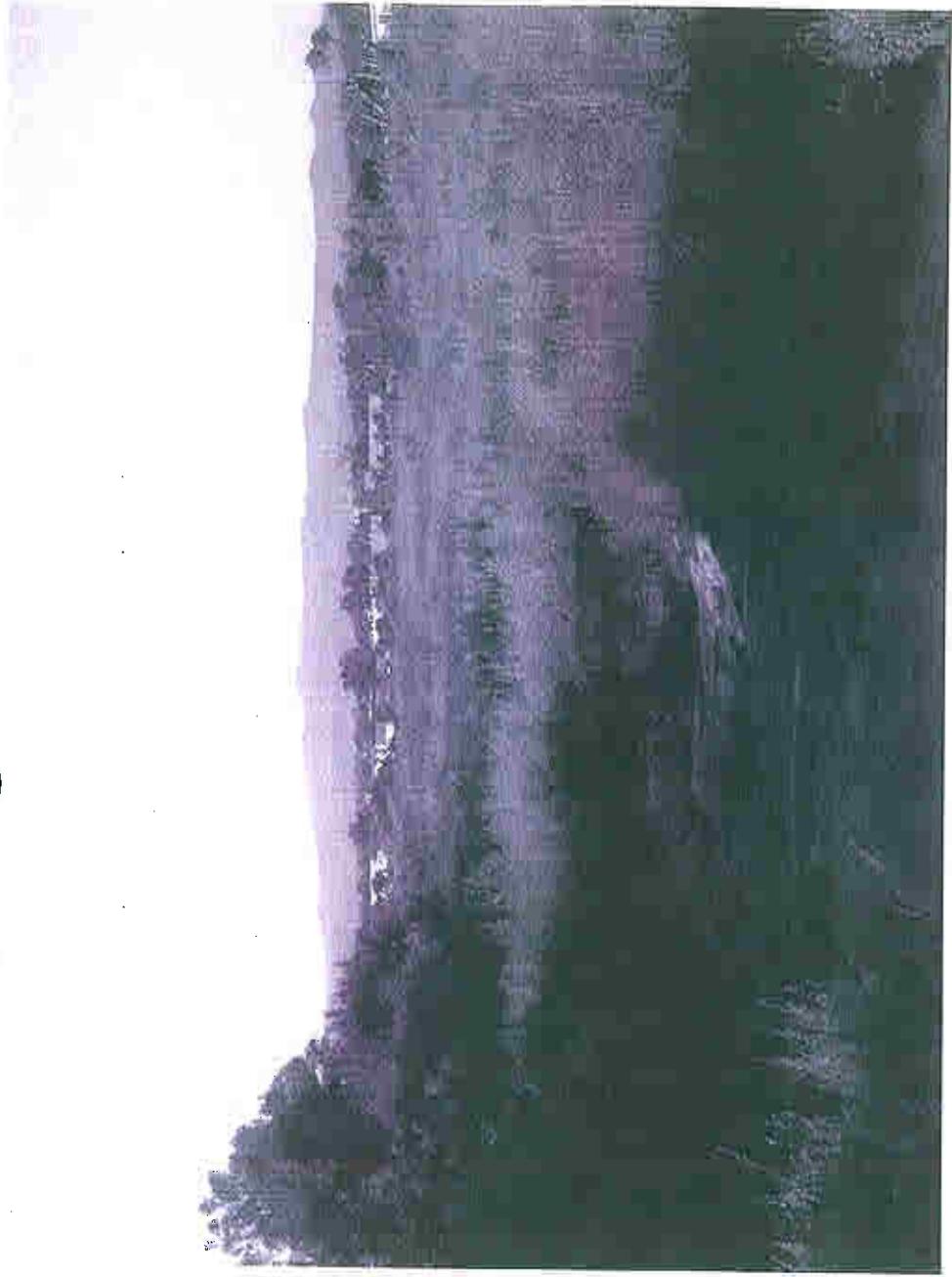
Release site is surrounded by Commercial and Industrial Businesses.

# **Murrieta Creek from Rancho California Road facing North *December 2009***



**Riverbed was mowed prior to the Release for Flood Control purposes**

# **Murrieta Creek from Rancho California Road facing North *August 2010***



**Riverbed is healthy.**

# **Murrieta Creek from Via Montezuma facing South *August 2010***



**Riverbed is healthy.**