

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

In the matter of:

**CALIFORNIA DEPARTMENT
OF CORRECTIONS AND
REHABILITATION,
CALIFORNIA MEN'S COLONY;
2015 AND 2017 SANITARY
SEWER OVERFLOWS AND
FAILURE TO SUBMIT A
TECHNICAL REPORT**

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

ORDER NO. R3-2020-0040

SECTION I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, Central Coast Region, Prosecution Team (Prosecution Team), and the California Department of Corrections California Men's Colony (Settling Respondent) (collectively, Parties), and is presented to the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), or its delegate, for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the Settling Respondent in the amount of **\$166,896**.

SECTION II: RECITALS

2. The Settling Respondent is required to comply with, among other things, the State Water Resources Control Board's (State Water Board's) *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ* (Statewide General Order) because it is a state agency that owns or operates a sanitary sewer collection system greater than one mile in length.

Settlement Agreement and Stipulated Administrative Civil Liability
Stipulated Order No. R3-2020-0040
California Men's Colony

3. Prohibition C.1 of the Statewide General Order prohibits any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to waters of the United States.

4. On April 19, 2016, the Assistant Executive Officer of the Central Coast Water Board issued a Water Code section 13267 Order (Investigative Order), requiring the Discharger to submit a technical report on an SSO that occurred on December 18, 2015, to clarify actions that happened prior to and during the spill, determine potential water quality problems due to the spill, and describe the actions that would be taken to prevent such a spill in the future. The due date for the technical report was June 6, 2016.

5. The Prosecution Team alleges that on at least two separate occasions, the Settling Respondent discharged untreated sewage from its collection system to Chorro Creek, a water of the United States, as summarized below and shown in Table 1 of Attachment A, which is attached hereto and incorporated herein by reference.

- a. SSO #1: On December 18, 2015, the Settling Respondent discharged 11,100 gallons of untreated sewage from the Settling Respondent's sanitary sewer collection system to Chorro Creek. The unauthorized discharge occurred without a National Pollutant Discharge Elimination System (NPDES) permit in violation of Water Code section 13376, federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. § 1311), and Prohibition C.1 of the Statewide General Order.
- b. SSO #2: On January 14, 2017, the Settling Respondent discharged 4,000 gallons of untreated sewage from the Settling Respondent's sanitary sewer collection system to Chorro Creek. The unauthorized discharge occurred without an NPDES permit in violation of Water Code section 13376, Clean Water Act section 301, and Prohibition C.1 of the Statewide General Order.

6. The Prosecution Team alleges that the Settling Respondent failed to timely submit a complete technical report required pursuant to Water Code section 13267, as shown in Table 1 of Attachment A.

7. Water Code section 13385, subdivision (a)(5) states that a person who violates Clean Water Act section 301 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of \$10,000 per day of violation and \$10 per gallon of waste discharged over 1,000 gallons but not cleaned up.

8. Water Code section 13268, subdivision (a)(1), states that a person who fails to furnish a technical report required pursuant to Water Code section 13267

Settlement Agreement and Stipulated Administrative Civil Liability
Stipulated Order No. R3-2020-0040
California Men's Colony

is guilty of a misdemeanor, and is subject to administrative civil liability pursuant to Water Code section 13268, subdivision (b)(1), in an amount not to exceed one thousand dollars (\$1,000) per day of violation.

9. To resolve the alleged violations shown in Table 1 of Attachment A by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$166,896** against the Settling Respondent. The Prosecution Team calculated the proposed liability using the Penalty Calculation Methodology in the State Water Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A.

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

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

SECTION III: STIPULATIONS

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

12. **Jurisdiction:** The Parties agree that the Central Coast Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

13. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of **\$166,896** in administrative civil liability, in accordance with Section III, paragraphs 14 and 15, to resolve the violations as set forth in Section II, paragraphs 5 and 6, and Attachment A.

14. **Payment:** The Settling Respondent must submit a check for **\$88,594** in administrative civil liability no later than 30 days following the date the Central Coast Water Board or its delegate signs this Stipulated Order. The check must be made payable to "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Stipulated Order, and be submitted to:

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

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

15. **Enhanced Compliance Action (ECA) and Suspended Liability:** The Enforcement Policy (October 2017) section IX provides,

ECAs are projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. The Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary [administrative civil liability] for completion of an ECA. Except as specifically provided [in the Enforcement Policy], any such settlement is subject to the rules that apply to Supplemental Environmental Projects [established in the *State Water Board Policy on Supplemental Environmental Projects*, effective May 3, 2018 (SEP Policy)].

Furthermore, the SEP Policy limits ECAs to 50 percent of the total administrative civil liability excluding the Prosecution Team's investigative and enforcement costs. The Prosecution Team has determined that the Settling Respondent's proposed ECA complies with the Enforcement and SEP Policies.¹

Subtracting the Prosecution Team's documented investigative and enforcement costs of \$10,292 from the total administrative civil liability of \$166,896 leaves \$156,604. Half of that amount, \$78,302 (ECA Amount), can be treated as a suspended liability for completion of an ECA. Therefore, **\$78,302** of the total administrative civil liability will be suspended pending completion of the ECA summarized below and described in Attachment B, which is attached hereto and incorporated herein by reference.

16. **ECA Description:** The Settling Respondent proposes the *California Men's Colony Sanitary Sewer System Flow Monitoring Project* (the ECA) as set forth in Attachment B. The Settling Respondent agrees to purchase and install 13 new manhole covers capable of obtaining real time flow and level information with alarms so operators can respond before SSOs occur. The new manhole covers will be installed at key locations within the sanitary sewer collection system along Chorro Creek and at hotspots identified in the Sanitary System Management Plan (SSMP). The Settling Respondent must revise its SSMP to

¹ Compliance Determination Forms documenting the Prosecution Team's review of the ECA for compliance with the Enforcement Policy and the SEP Policy are available upon request.

include a section for the operation, maintenance, and scheduled replacement of the new manhole covers. The Settling Respondent's estimated budget for the ECA is \$82,732.

17. **ECA Completion Deadline:** The Settling Respondent must fully implement and complete the ECA in accordance with the *ECA Project Schedule* set forth in Attachment B, including expenditure of the ECA Amount within 260 days following the date the Central Coast Water Board or its delegate signs this Stipulated Order (ECA Completion Deadline).

18. **Time Extension for ECA:** The Central Coast Water Board's Executive Officer may extend the deadlines set forth in the *ECA Project Schedule* in Attachment B if the Settling Respondent demonstrates delays from unforeseeable circumstances beyond the Settling Respondent's control, provided that the Settling Respondent continues to undertake all appropriate measures to meet the deadlines. The Settling Respondent must notify the Executive Officer in writing at least 30 days prior to the deadline, or as soon as possible if the delay event occurs less than 30 days from the deadline. The written notice must specifically refer to this Paragraph and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the Settling Respondent to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. Any approval of an extension request by the Executive Officer must be sent to the Settling Respondent in writing with the effect of revising this Stipulated Order.

19. **Reporting Requirements for the ECA:** The Settling Respondent must submit the following reports on ECA implementation to the designated Central Coast Water Board contact identified in Paragraph 29 below:

- a. **Final Report:** The Settling Respondent must submit a Final Report no later than 30 days after the ECA Completion Deadline. The Final Report must document project completion, provide the Certification of Completion pursuant to Paragraph 20, and confirm that an electronic copy of the revised SSMP as required by Paragraph 15 is available on the California Integrated Water Quality System (CIWQS) SSO Module.
- b. **Quarterly and Progress Reports:**
 - i. The Settling Respondent must submit a Quarterly Report every 90 days after the Central Coast Water Board or its delegate signs this Stipulated Order and until the ECA Completion Deadline or until the Executive Officer approves a time extension for the ECA greater than 90 days. The Quarterly Report(s) must describe the ECA implementation actions taken during the last 90 days,

whether the Settling Respondent is in compliance with the *ECA Project Schedule*, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order.

- ii. If the Executive Officer approves a time extension for the ECA greater than 90 days, the Settling Respondent must submit a Progress Report every 30 days after the date the Executive Officer approves the time extension and until the ECA is completed. The Progress Report(s) must describe the ECA implementation actions taken during the last 30 days, whether the Settling Respondent is in compliance with the revised *ECA Project Schedule* approved by the Executive Officer, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order.

20. **Audits and Certification of Enhanced Compliance Action Completion**

- a. **Certification of Completion:** No later than 30 days after the ECA Completion Deadline, the Settling Respondent must submit a certified statement of ECA completion (Certification of Completion) as part of the Final Report. An authorized representative of the Settling Respondent must submit the Certification of Completion, signed under penalty of perjury, that includes the following:

- i. **Certification of Expenditures**

Certification documenting all expenditures by the Settling Respondent. The expenditures may include external payments to outside vendors or contractors implementing the ECA. If applicable, the expenditures may include the costs of internal environmental management resources and internal business unit resources, provided that such expenditures are directly related to development and implementation of the ECA. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The Settling Respondent must provide any additional information requested by Central Coast Water Board staff that is reasonably necessary to verify ECA expenditures. The certification need not address any costs incurred by the Central Coast Water Board for oversight.

ii. **Certification of Performance of Work**

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

iii. **Certification that Work Performed on ECA Met or Exceeded Requirements of CEQA and other Environmental Laws [where applicable]**

Certification that the ECA meets or exceeds the requirements of CEQA and/or other environmental laws. Unless the Settling Respondent is exempted from compliance with CEQA, the Settling Respondent must, before the ECA is implemented, consult with other interested state agencies regarding potential impacts of the ECA. To ensure compliance with CEQA where necessary, the Settling Respondent must provide the Central Coast Water Board with the following documents:

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

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

requires the audit. The audit need not address any costs incurred by the Central Coast Water Board for oversight.

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

22. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved ECA:** If the Settling Respondent is unable to demonstrate to the reasonable satisfaction of the designated Central Coast Water Board contact that the Settling Respondent has spent the entire ECA Amount on the completed ECA, the Settling Respondent must pay as an administrative civil liability the difference between the ECA Amount and the amount the Settling Respondent can demonstrate was actually spent on the ECA (the Difference). The designated Central Coast Water Board contact will issue a "Notice of Violation" that will require the Settling Respondent to pay the Difference to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the Notice of Violation's issuance date. The Settling Respondent must submit payment consistent with the payment method described in Paragraph 14. Payment of the Difference will satisfy the Settling Respondent's obligations to implement the ECA.

23. **Failure to Complete the ECA:** If the ECA is not fully implemented by the ECA Completion Deadline and the Executive Officer has not granted an extension pursuant to Paragraph 18, the designated Central Coast Water Board contact will issue a "Notice of Violation." As a consequence, the Settling Respondent will be liable to pay the entire ECA Amount to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the Notice of Violation's issuance date. The Settling Respondent must submit payment consistent with the payment method described in Paragraph 14. Payment of the suspended liability will satisfy the Settling Respondent's obligations to implement the ECA.

24. **Central Coast Water Board Not Liable:** Neither the Central Coast Water Board members nor the Central Coast Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Coast Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Settling Respondent, its directors, officers, employees,

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

25. **Covenant Not to Sue:** The Settling Respondent and its contractor(s) covenant not to sue or pursue any administrative or civil claim or claims against any state agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the ECA. This provision does not preclude the Settling Respondent from opposing a Notice of Violation.

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

27. **Site Inspections:** The Settling Respondent agrees that Central Coast Water Board staff has permission to inspect without notice, during normal business hours, any location where the ECA is being implemented and any documents associated with ECA implementation.

28. **Compliance with Applicable Laws:** Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

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

For the Central Coast Water Board:

Thea Tryon
Assistant Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Thea.Tryon@waterboards.ca.gov
(805) 542-4776

For Settling Respondent:

Jason Steck
Associate Warden, Business Services
California Men's Colony
Hwy 1 North
San Luis Obispo, CA 93409

Jason.Steck@cdcr.ca.gov

805-547-7918

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

31. **Matters Addressed by this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of all claims, violation(s), or causes of action alleged in this Stipulated Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Settling Respondent as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 14 and completion of the ECA as described in Paragraph 15.

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

33. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Coast Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast Water Board, or its delegate, have the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Coast Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

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

35. **Modification:** The Parties must not modify this Stipulated Order by oral representation made before or after its execution. Except as otherwise provided

in Paragraph 18, all modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.

36. **If the Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

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

37. **No Admission of Liability:** In settling this matter, the Settling Respondent does not admit any of the allegations, or that it has been or is in violation of the Water Code, or any federal, state, or local law, regulation, or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e), and the Enforcement Policy.

38. **Waiver of Hearing:** Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption.

39. **Waiver of Right to Petition or Appeal:** Settling Respondent hereby waives its right to petition the Central Coast Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

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

41. **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.

42. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations 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.

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

44. **Counterpart Signatures; Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by electronic signature, and any such electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature were an original signature.

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

IT IS SO STIPULATED.

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

Date: _____

By: _____
Thea S. Tryon
Assistant Executive Officer

 Digitally signed by Thea S. Tryon
Date: 2020.04.24 16:33:04
Water Boards

Settlement Agreement and Stipulated Administrative Civil Liability
Stipulated Order No. R3-2020-0040
California Men's Colony

IT IS SO STIPULATED.

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
CALIFORNIA MEN'S COLONY**

Date: April 24, 2020

By: *Josie Gastelo*
Josie Gastelo
Warden, California Men's Colony

ORDER OF THE CENTRAL COAST WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. The timeline for completion of the terms of this Stipulated Order:

Task I.D.	Task Description	Deadline
a.	Pay \$88,594 to the State Water Pollution Cleanup and Abatement Account	No later than 30 days after this Stipulated Order is adopted.
b.	Submit Quarterly Report(s) on ECA implementation	Every 90 days after the Central Coast Water Board or its delegate signs this Stipulated Order and until the ECA Completion Deadline or until the Executive Officer approves an ECA time extension greater than 90 days.
c.	Submit Progress Report(s) on ECA implementation (required only if the Executive Officer approves an ECA time extension greater than 90 days)	Every 30 days after the date the Executive Officer approves the ECA time extension and until the ECA is completed.
d.	Complete Smart Cover ECA and upload revised SSMP to CIWQs	No later than 260 days after this Stipulated Order is adopted.
e.	Submit Final Report with Certification of Completion and confirmation that the revised SSMP is available on CIWQs	No later than 30 days after the ECA Completion Deadline.

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

Settlement Agreement and Stipulated Administrative Civil Liability
Stipulated Order No. R3-2020-0040
California Men's Colony

obtained by the Prosecution Team in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Coast Water Board.

4. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.

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

IT IS HEREBY ORDERED pursuant to Water Code section 13323, Government Code section 11415.60, Resolution No. R3-2014-0043, and Executive Officer Matthew T. Keeling's delegation of authority memorandum (April 20, 2020), on behalf of the California Regional Water Quality Control Board, Central Coast Region.



June 9, 2020

Angela Schroeter
Supervising Engineering Geologist
California Regional Water Quality Control Board
Central Coast Region

Date

Attachment A: Administrative Civil Liability Factors and Penalty Calculation Methodology

Attachment B: Enhanced Compliance Action Proposal

ATTACHMENT A

ALLEGED VIOLATIONS AND FACTORS IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION CALIFORNIA MEN'S COLONY SANITARY SEWER SYSTEM SAN LUIS OBISPO COUNTY

This document provides details to support recommendations for enforcement in response to violations related to the sanitary sewer system at the California Department of Corrections and Rehabilitation's California Men's Colony (Discharger). The Central Coast Regional Water Quality Control Board (Central Coast Water Board) Prosecution Team derived the proposed administrative civil liability following the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy.

Application of State Water Board's Enforcement Policy

The State Water Board's 2010 Water Quality Enforcement Policy (Enforcement Policy)¹ establishes a methodology for assessing administrative civil liability (ACL) to address the factors required by California Water Code (Water Code) section 13385, subdivision (e), including "...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 its ability to continue its 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 that justice may require."

This document shows the calculations associated with the Enforcement Policy's steps as discussed in detail below.

Discharger Information

The Discharger is enrolled under, and required to comply with, the State Water Board's *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ* (Statewide General Order) because it is a state agency that owns or operates a sanitary sewer collection system greater than one mile in length. The

¹ On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the [2010 Enforcement Policy](#). The 2017 Enforcement Policy became effective on October 5, 2017. Except for the use of the 2017 Enforcement Policy for clarifications of elements common to both versions of the policy, this document applies the 2010 Enforcement Policy because it was in effect at the time the alleged violations occurred.

Discharger’s Wastewater Treatment Plant (WWTP) is regulated under Order No. R3-2012-0027 (NPDES No. CA0047856), which authorizes the WWTP’s discharge of treated wastewater. Both the Statewide General Order and Order No. R3-2012-0027 prohibit the overflow of untreated wastewater from the Discharger’s collection system. Specifically, Prohibition C.1 of the Statewide General Order prohibits any sanitary sewer overflow² (SSO) that results in a discharge of untreated or partially treated wastewater to waters of the United States (U.S.). Discharge Prohibition III.C of Order No. R3-2012-0027 prohibits the overflow and subsequent discharge of untreated or partially treated wastewater from the Discharger’s collection, treatment, or disposal facilities. Order No. R3-2012-0027 acknowledges the Discharger’s coverage under the Statewide General Order and requires compliance with, among other things, the Statewide General Order’s prohibitions, provisions, and monitoring and reporting requirements for SSOs.³

The Discharger has a documented history of SSOs. From 2007 to 2013, the Discharger reported 80 SSOs that occurred due to debris blockages within the sanitary sewer system. As detailed in the allegations below, on December 18, 2015, and January 14, 2017, debris blockages again caused SSOs that resulted in unauthorized discharges of untreated sewage to waters of the U.S in violation of the Statewide General Order. The Discharger has also recently reported three additional SSOs that flowed to land: (1) a 1,500 gallon overflow on January 3, 2017, which was likely due to plastics in the sewer line, (2) a 1,600 gallon overflow on March 22, 2018, which was caused by a root ball, (3) a 1,800 gallon overflow on March 2, 2019, which was possibly due to grease, and (4) a 118 gallon overflow on August 1, 2019, which was due to “general debris.”

As detailed below, this liability assessment only alleges three violations: two violations of Prohibition C.1 of the Statewide General Order (the December 18, 2015 and January 14, 2017 SSOs) and a failure to submit a complete technical report in response to a Water Code section 13267 Order. The Prosecution Team is exercising its prosecutorial discretion to focus on the SSOs that were of significant volume and resulted in a discharge of untreated sewage to a water of the U.S.

² Definition A.1 of the Statewide General Order defines a “sanitary sewer overflow” as “any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a sanitary sewer system.”

³ See Attachment F of Order No. R3-2012-0027, Other Special Provisions 6.b (requiring coverage by and compliance with the Statewide General Order).

Alleged Violations and Regulatory Basis for Proposed ACL

The following table summarizes the three alleged violations that are the subject of this proposed ACL.

Table 1: Summary of Alleged Violations

Violation Summary	Date(s) of Violation	Days of Violation	Volume Discharged to Waters of the U.S.
The Discharger reported that 78,000 gallons of untreated sewage overflowed near the intersection of Kern Avenue and Ventura Avenue. The spill was caused by plastic bags.	December 18, 2015	1 day	11,100 gallons to Chorro Creek ⁴
The Discharger reported that 5,000 gallons of untreated sewage overflowed from the California Men’s Colony at the Mental Health CTC building. The spill was mainly caused by plastic bags.	January 14, 2017	1 day	4,000 gallons to Chorro Creek
The Discharger failed to submit a complete technical report in response to a Water Code section 13267 Order.	June 7, 2016 to October 2, 2019 ⁵	1,213 days (collapsed to 46 days)	Not Applicable

December 18, 2015 and January 14, 2017 Sanitary Sewer Overflows

On December 18, 2015, and January 14, 2017, SSOs from the Discharger’s sanitary sewer collection system resulted in discharges of untreated sewage to a water of the U.S., Chorro Creek. In both instances, additional untreated sewage flowed to land near the creek. The two discharges to Chorro Creek occurred without a National Pollutant Discharge Elimination System (NPDES) permit in violation of Water Code section 13376, federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. § 1311), and Prohibition C.1 of the Statewide General Order.

Pursuant to Water Code section 13385, subdivision (a)(5), a discharger who violates Clean Water Act section 301 is subject to ACL pursuant to Water Code section 13385,

⁴ The Discharger reported that 6,000 gallons flowed to the creek. See Violation 1 section of this document for a description of how staff derived a more accurate flow volume.

⁵ The Discharger has not submitted a complete report as of October 2, 2019, the date on which the Prosecution Team issued a settlement invitation to the Discharger.

subdivision (c), in an amount not to exceed the sum of \$10,000 per day of violation and \$10 per gallon of waste discharged over 1,000 gallons but not cleaned up.

Failure to Comply with a Water Code section 13267 Order

On April 19, 2016, the Assistant Executive Officer of the Central Coast Water Board issued a Water Code section 13267 Order, requiring the Discharger to submit a technical report regarding the December 18, 2015 SSO. The Discharger failed to submit an adequate report and is subject to ACL pursuant to Water Code section 13268, subdivision (b), in an amount not to exceed \$1,000 per day of violation.

Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violations is presented below.

VIOLATION 1:

December 18, 2015 Sanitary Sewer Overflow

The Discharger reported that an estimated 78,000 gallons of untreated sewage overflowed from a manhole located near the intersection of Kern Avenue and Ventura Avenue on the Camp San Luis Obispo Army Base. The overflow occurred on December 18, 2015. According to the Discharger, approximately 6,000 gallons of the untreated sewage discharged into Chorro Creek, which is a water of the U.S. that flows to Morro Bay (a State Marine Reserve Marine Protected Area). The Discharger reported that the SSO was caused by plastic bags/debris caught by root intrusion within the collection system, the prison inmates’ tactic of flushing trash down toilets, and the absence of screening facilities designed to prevent impacts due to plastic debris.

Step 1. Potential for Harm for Discharge Violations

This step considers the actual or threatened impact to beneficial uses by quantifying (1) the potential for harm to beneficial uses, (2) the degree of toxicity of the discharge, and (3) the discharge’s susceptibility to cleanup or abatement. Because actual harm is not always quantifiable due to untimely reporting, inadequate monitoring, and/or other practical limitations, potential harm can be used under this step.

Factor 1: Potential for Harm to Beneficial Uses: Moderate (3)

According to the Enforcement Policy, “The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation.” The score for this factor ranges from 0 to 5.

The Amended Monitoring and Reporting Program for the Statewide General Order requires water quality sampling within 48 hours of all SSOs of 50,000 gallons or more that result in a discharge to surface waters. The Discharger collected samples for a five-day period, beginning on the day of the discharges. According to the chain of custody, the Discharger collected the samples from two locations (“200 feet upstream” and “25 feet downstream”⁶). The samples were analyzed for total coliform organisms and fecal coliform organisms. The results are found in Table 2, below.

Table 2: Discharger’s Analytical Results for the December 18, 2015 SSO

Date	Location	Total Coliform (MPN/100 ml)	Fecal Coliform (MPN/100 ml)	Did SSO impact creek?
Dec 18, 2015	200’ upstream	920	220	
	25’ downstream	22,000	14,000	YES
Dec 19, 2015	200’ upstream	5,400	1,700	
	25’ downstream	3,500	1,600	INCONCLUSIVE
Dec 21, 2015	200’ upstream	350	79	
	25’ downstream	9,200	5,400	YES
Dec 22, 2015	200’ upstream	1,400	490	
	25’ downstream	11,000	3,300	YES
Dec 23, 2015	200’ upstream	630	310	
	25’ downstream	1,100	220	YES

MPN/100 ml = Most Probable Number per 100 milliliters

A review of the data shows that the untreated sewage spill significantly increased concentrations of total coliform and fecal coliform in Chorro Creek, downstream of the point at which the sewage discharged into the creek.

The Water Quality Control Plan for the Central Coast Basin, 2011 and 2016 editions (Basin Plan), lists the following beneficial uses for Chorro Creek: municipal and domestic supply; agricultural supply; groundwater recharge; water contact recreation; non-contact water recreation; wildlife habitat; cold fresh water habitat; warm fresh water habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; preservation of biological habitats of special significance; rare, threatened, or endangered species; freshwater replenishment; and commercial and sport fishing. The beneficial uses of the downstream Morro Bay Estuary include

⁶ Based on a map submitted by the Discharger on June 3, 2016, it appears that the “upstream” sample was collected about 200’ upstream of the main spill location while the “downstream” sample was taken about 25’ downstream of the bridge from which additional sewage spilled into the creek.

industrial service supply; water contact recreation; non-contact water recreation; wildlife habitat; cold fresh water habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; preservation of biological habitats of special significance; rare, threatened, or endangered species; commercial and sport fishing; estuarine habitat; aquaculture; and shellfish harvesting.

Chorro Creek provides habitat for anadromous fish and is listed on the U.S. Environmental Protection Agency's (EPA's) Clean Water Act section 303(d) list of impaired water bodies for nutrients, fecal coliform, and sediment/siltation. Chorro Creek flows into Morro Bay, a federally designated natural estuary that is also on the Clean Water Act section 303(d) list for metals, pathogens, and sediment/siltation. Chorro Creek enters Morro Bay in an area recently designated as a State Marine Recreational Management Area, adjacent to a recently designated State Marine Reserve.

Due to the potential exposure to the documented elevated levels of pathogens present in the untreated sewage that discharged into Chorro Creek, the association of fecal contamination in recreational waters with an increased risk of gastrointestinal and respiratory illness, aesthetic impacts of the discharge, shellfish (oyster) harvesting in Morro Bay, and the designation of Morro Bay as a State Marine Reserve Marine Protection Area, the beneficial uses deemed most sensitive to potential harm by the SSOs are water contact recreation; non-contact water recreation; spawning, reproduction, and/or early development; commercial and sport fishing; estuarine habitat; aquaculture; and shellfish harvesting.

The above considerations warrant a reasonable expectation of moderate impacts to beneficial uses that likely attenuated without appreciable acute or chronic effects. Therefore, a score of **moderate (3)** is assigned.

Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge: Above Moderate (3)

According to the Enforcement Policy, this factor considers the degree of toxicity of the discharge and the risk of damage the discharge could cause to the receptors or beneficial uses. Evaluation of the discharged material's toxicity should account for all the characteristics of the material *prior to discharge*, including, but not limited to, whether it is partially treated, diluted, concentrated, and/or a mixture of different constituents. Toxicity analysis should include assessment of both lethal and sublethal effects such as effects on growth and reproduction. Factor 1 (above) focuses on impacts or the threat of impacts to beneficial uses in specific receiving waters; whereas Factor 2 focuses on the nature and characteristics of the material discharged in the context of potential impacts to beneficial uses more generally. The score for this factor

ranges from 0 to 4.

The physical characteristics of untreated sewage include solids that may settle, depositing on the creek bottom and affecting aquatic habitats. Solids may also remain in suspension throughout the water column, impacting aesthetic uses or aquatic life. Oil and grease may be present and float at the receiving water surface causing aesthetic impacts. Biologically, untreated sewage contains high levels of pathogenic organisms harmful to human health through direct contact, ingestion, or via foodborne pathways such as fish consumption. Organic material and ammonia can deplete dissolved oxygen in receiving waters, adversely affecting aquatic organisms and wildlife. Excess nutrients in the form of nitrogen or phosphorus can cause nutrient over-enrichment, affecting plant life. Chemically, ammonia can cause toxicity in aquatic life, as can toxic pollutants from industrial sources that may be present in the Discharger's sewage. While many industrial pollutants are not directly removed by treatment methods commonly employed at wastewater treatment plants, sewage overflows like the ones considered here eliminate the possibility of any indirect or coincidental removal during treatment (e.g., removal with solids/organic materials, volatilization during agitation).

Given the above facts, the Discharger's untreated sewage poses an above-moderate risk of a direct threat to potential human or aquatic receptors because the physical, biological, and/or chemical characteristics of the waste material exceed known risk factors and/or there is substantial concern regarding receptor protection. A score of **above moderate (3)** is assigned.

Factor 3: Susceptibility to Cleanup or Abatement: (1)

The Enforcement Policy states that a score of 0 or 1 shall be assigned, based on whether a discharge is susceptible to cleanup or abatement. If 50 percent or more of the discharge is susceptible to cleanup or abatement, then a score of (0) applies. If less than 50 percent of the discharge is susceptible to cleanup or abatement, then a score of (1) applies.

For the December 18, 2015 SSO, the Discharger reported that 78,000 gallons of untreated sewage spilled from the collection system, of which 6,000 gallons discharged into Chorro Creek. Because none of the sewage in the creek was recovered, a score of **(1)** is assigned.

Step 1 Final Score –Potential for Harm: (7)

The sum of the above scores is **7**. This value is used in Step 2 as the "Potential for Harm" score.

Step 2: Assessment for Discharge Violations

This step addresses per gallon and per day assessments for discharge violations.

Per Gallon Assessment for Discharge Violations

The per gallon assessment is the Per Gallon Factor (determined by the Potential for Harm score and the Deviation from Requirement) multiplied by the number of gallons subject to liability multiplied by the maximum per gallon liability amount allowed under the Water Code.

Deviation from Requirement: (major)

The Deviation from Requirement reflects the extent the alleged violation deviated from the specific requirement at issue, and is expressed as either minor, moderate, or major. The Prosecution Team determined that the Deviation from Requirement is **major**. “Major” is assigned when the requirement has been rendered ineffective (e.g., the discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Prohibition C.1 of the Statewide General Order prohibits any SSO that results in a discharge of untreated or partially treated wastewater to waters of the U.S. Similarly, Clean Water Act section 301 prohibits the point source discharge of any pollutant to waters of the U.S., except as authorized by an NPDES permit issued in accordance with Water Code section 13376. The unpermitted discharge of untreated sewage to a water of the U.S. without an NPDES permit renders each requirement ineffective in their essential function. The Deviation from Requirement is **major**.

Per Gallon Factor: (0.31)

Using Table 1 of the Enforcement Policy, a Potential for Harm score of 7 and a major Deviation from Requirement results in a Per Gallon Factor of 0.31. This value is then multiplied by the gallons discharged and the maximum per gallon amount authorized in the Water Code.

Gallons Discharged: (11,100 gallons)

The Discharger reported that an estimated 78,000 gallons of untreated sewage spilled from the collection system. Of this volume, about 56,000 gallons was recovered by diverting overland flows to a downgradient manhole, 6,000 gallons discharged into Chorro Creek, and the remaining 16,000 gallons presumably soaked into the ground. This liability assessment only considers the volume of untreated sewage that discharged into Chorro Creek.

Despite requests by Central Coast Water Board staff, the Discharger did not substantiate its reported spill volume by demonstrating how it estimated that 6,000 gallons discharged into Chorro Creek. The Prosecution Team used other available

information to estimate the discharge volume (see below) and has determined that the actual volume that discharged into Chorro Creek was closer to 11,100 gallons. Absent other information provided by the Discharger, a discharge volume of 11,100 gallons is used in this liability assessment.

The Discharger reported that Camp San Luis Obispo staff first observed the spill at 0730⁷ and that the Discharger stopped the direct discharge to Chorro Creek by placing dirt berms between the manhole and the creek at 0830. The Discharger also reported that the flow rate during the spill was 150 gallons per minute (gpm) based on the influent flowrate at the wastewater treatment plant during the spill as compared to the flow the previous morning. The Prosecution Team confirmed the Discharger’s estimated flowrate by comparing the Discharger’s spill photographs with commonly used visual spill estimation tools.⁸ Using the Discharger’s flow rate data, the Prosecution Team estimates that the volume discharged into Chorro Creek from 0730 to 0830 was 9,000 gallons (150 gpm x 60 minutes).

The Discharger reported that most of the discharge to the creek occurred directly between the manhole and the creek, as described above. The Discharger also reported that a lesser amount discharged into the creek from the nearby bridge during efforts to divert the overflow back to the collection system via a downgradient manhole on the other side of the bridge. To estimate the volume of this portion of the discharge, the Prosecution Team used the Discharger’s spill response pictures and a commonly available web-based mapping tool to estimate the area of unpaved dirt covered by the overflow between the manhole and the bridge. Coupling this area estimate with the Discharger’s spill timeline and several assumptions derived from the Sewer Spill Estimation Guide,⁹ the Prosecution Team estimates that the volume spilled from the bridge and discharged into Chorro Creek from 0830 to 0900 was 2,100 gallons. The calculation for this portion of the volume estimate is as follows:

- A conservative estimate of the affected soil area is 7,130 ft² (Basis: Discharger’s photos taken during the SSO: IMG_6303, IMG_6305, IMG_6306, and IMG_6311, and corresponding online aerial mapping tool outline of depicted area prepared by the Prosecution Team)

⁷ The Discharger did not provide a start time for the spill, only the time when the spill was discovered. Therefore, the Prosecution Team’s calculated discharge volume is conservative and likely less than the actual discharge volume.

⁸ *Sewer Spill Estimation Guide*, developed by the Orange County Area Waste Discharge Requirements Steering Committee, February 18, 2014 (Revised May 15, 2014). *UCSD Sanitary Sewer Overflow Emergency Response Field Guide*, July 2014.

⁹ *Sewer Spill Estimation Guide*, developed by the Orange County Area Waste Discharge Requirements Steering Committee, February 18, 2014 (Revised May 15, 2014). *UCSD Sanitary Sewer Overflow Emergency Response Field Guide*, July 2014.

- No soil absorption or saturation data is available for the spill site, so the Prosecution Team assumed that 3 inches (or 0.25 feet) of soil depth was saturated prior to discharge from the bridge and into the creek. (Basis: Sewer Spill Estimation Guide, p. 24, Saturated Soils, example uses 3 inches. Given the hard-pan appearance of the soils in the photos, the Prosecution Team believes this estimate to be conservative, overestimating the soil saturation depth and the spill volume absorbed and not discharged into the creek.)
- The Prosecution Team assumed an 18% moisture content in the soil at saturation (Basis: Sewer Spill Estimation Guide, p. 24, Saturated Soils)
- Calculation: $7,130 \text{ ft}^2$ of affected soil x 0.25 ft of saturated soil depth = $1,782.5 \text{ ft}^3$
- Calculation: $1,782.5 \text{ ft}^3$ x 7.48 gallons/ ft^3 = 13,333 gallons
- Calculation: 13,333 gallons x 0.18 (moisture content) = approximately 2,400 gallons of sewage that was absorbed by the soil in the affected area prior to runoff.
- The reported flowrate was 150 gpm. Dividing the estimated 2,400 gallons by the 150 gpm flowrate = 16 minutes, which is the theoretical time it would take to spill 2,400 gallons and saturate the area before the SSO reached the bridge and from there, discharged into the creek.
- Conclusion: the overflow spilled to the dirt area from 0830 to 0846, and to the bridge and creek from 0846 to 0900 (or 14 minutes) before the bridge drains were sealed as reported by the Discharger.
- $150 \text{ gpm} \times 14 \text{ min.} = 2,100$ gallons of untreated sewage flowed on to the bridge and discharged into the creek.

Based on the above calculations, the estimated total volume discharged to Chorro Creek from 0730 to 0900 is 11,100 gallons (9,000 gallons plus 2,100 gallons).

Per Gallon Liability

Water Code section 13385, subdivision (c)(2) states that the maximum liability is “\$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.” The Discharger did not recover any portion of the 11,100 gallons that discharged into Chorro Creek. The volume used in this liability assessment is 10,100 gallons (11,100 gallons discharged and not cleaned up minus 1,000 gallons).

→ $10,100 \text{ gallons} \times \$10/\text{gallon} \times 0.31 \text{ Per Gallon Factor} = \$31,310$

Per Day Assessment for Discharge Violations

The Enforcement Policy also specifies that where there is a discharge, the Central Coast Water Board shall determine an initial liability factor per day based on the same parameters discussed above. Using Table 2 of the Enforcement Policy, a Potential for

Harm score of 7 and a major Deviation from Requirement results in a Per Day Factor of **0.31**. Water Code section 13385, subdivision (c)(1) states that the maximum ACL is \$10,000 per day. The spill took place over one day.

→ 1 day x \$10,000/day x 0.31 Per Day Factor = \$3,100

Step 2 Summary (Initial Liability):

The combined per gallon and per day assessment is \$31,310 + \$3,100 = \$34,410

Step 3: Per Day Assessment for Non-Discharge Violations

This step is not applicable to the December 18, 2015 SSO.

Step 4: Adjustment Factors

The Enforcement Policy requires the consideration of the Discharger’s conduct using three additional factors to modify the initial liability: the violator’s culpability, the extent to which the violator voluntarily cooperated in returning to compliance including voluntary cleanup efforts, and the violator’s history of violation.

Culpability: (1.4)

This factor addresses a discharger’s conduct, which could include oversight, disregard, lack of attention or precaution, or omission (i.e., negligence) that may have caused or contributed to the violation. For example, the omission of any reasonable precaution, care, or preventive action related to a violation would increase this factor above a neutral score of 1, as would a failure to care for or give proper attention to anything materially or administratively related to a violation. These characteristics can also include actions or inactions leading up to and potentially influencing or causing the event such as maintenance practices, adherence to manufacturer recommendations, operational error, staffing, training, funding, planning, and design. The culpability characteristics discussed above are examples of considerations useful in determining whether to adjust this factor above a neutral score of 1. The multiplier ranges from 0.5 to 1.5, with a value below 1 for accidental incidents and a value above 1 for intentional or negligent behavior.

The Prosecution Team assigned a multiplier of **1.4** to the December 18, 2015 SSO. The Discharger reported that the SSO occurred because of a blockage of plastic bags, and that the inmates have a habit of flushing waste, including plastics, down their toilets. The Discharger’s Sanitary System Management Plan (SSMP) dated December 23, 2009, states that “The sewer mains for the West and East Facilities each pass through a screening facility upstream of the trunk sewer.” Further, the SSMP states, “Debris in [California Men’s Colony’s] sanitary sewer collection system also represents a unique operational and maintenance challenge for Institution plant staff. Most of the debris is

generated by inmates who dispose of shredded clothing and empty food packaging by flushing it down the toilet. The material first ends up at the screening facilities, and if it passes the screens, is then conveyed to the WWTP...” However, the Discharger’s SSMP Annual Audit Report, dated June 27, 2014, reported that both screening facilities were out of service at the time of the audit. The same audit states that 80 SSOs occurred from 2007 through 2013 – all of which were due to debris blockage. These data indicate chronic problems with the operation and maintenance of the screening facilities. During a 2018 inspection, the Discharger stated that the screens had been abandoned and inoperable for approximately eight years, or since approximately 2010.¹⁰ The SSMP audit clearly acknowledges that the lack of screens led to 80 overflows of untreated sewage over a six-year period. The screens were not in operation at the time of the December 18, 2015 SSO and the Discharger knew that without proper screening facilities, SSOs can and do occur in violation of the Statewide General Order. The Discharger’s negligence in installing and maintaining operational screening facilities—or otherwise preventing plastics from entering the sewage collection system—directly contributed to the December 18, 2015 SSO.

Cleanup and Cooperation: (1.0)

This factor addresses the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken after a violation. Adjustment of this factor 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 a higher multiplier where the response falls below what would be considered a reasonably expected response. A reasonable and prudent response to a discharge violation or timely response to a Water Board order should receive a neutral multiplier of 1.0 as it is assumed a reasonable amount of cooperation is the warranted baseline.

The Prosecution Team assigned a multiplier of **1.0** to the December 18, 2015 SSO. The Discharger appropriately reported the spill, initiated cleanup actions, and collected samples. These responses are reasonable and expected of all dischargers.

History of Violations: (1.2)

This factor considers whether a discharger has a history of violations for which a Water Board has previously prosecuted violations by taking formal enforcement action. If a discharger has such history, then a minimum multiplier of 1.1 should be used. Where a discharger has no prior history of violations, the multiplier should be neutral, or 1.0.

¹⁰ Page 4 of the Compliance Evaluation Inspection report, an attachment to the July 13, 2018 Notice of Violation and Order to Submit a Technical Report.

The Prosecution Team assigned a multiplier of **1.2**. The Discharger has a history of SSOs at the California Men’s Colony for which the Central Coast Water Board has taken formal enforcement actions.

On July 8, 2005, the Central Coast Water Board adopted ACL Order R3-2005-0037 in the amount of \$600,000. The ACL Order assessed penalties for six discharges of untreated or partially treated sewage into Chorro Creek (10,000 gallons from the WWTP on February 25, 2004, due to excessive stormwater inflow; 100,000 gallons from the sewer line on October 24, 2004, due to the introduction of incompatible waste; 20,000 gallons from the WWTP on December 31, 2004, due to excessive stormwater inflow; 3,000 gallons from the WWTP on January 7, 2005, due to excessive stormwater inflow; 60,000 gallons from the sewer line on January 8, 2005, due to excessive stormwater inflow; and 30,000 gallons from the WWTP on January 9, 2005, due to excessive stormwater inflow).

On August 14, 2008, the Central Coast Water Board adopted ACL Order R3-2008-0026 in the amount of \$40,000. The ACL Order assessed penalties for an overflow of 20,000 gallons of untreated sewage from the WWTP to Chorro Creek on January 27, 2008.

Step 5. Determination of Total Base Liability for Violation 1

The Total Base Liability is calculated by multiplying the initial liability amount by the three adjustment factors.

$$\rightarrow \$34,410 \times 1.4 \times 1.0 \times 1.2 = \$57,809$$

Steps 6 through 10

These steps are discussed after the Total Base Liability is determined for each of the three violations.

VIOLATION 2:

January 14, 2017 Sanitary Sewer Overflow

The Discharger reported that an estimated 5,000 gallons of untreated sewage overflowed from the California Men’s Colony at the Mental Health CTC building. The overflow occurred on January 14, 2017, from both a manhole and a lateral cleanout. According to the Discharger, approximately 4,000 gallons of the untreated sewage discharged into Chorro Creek, which is a water of the U.S. that flows to Morro Bay. The Discharger reported that the spill was mainly caused by plastic bags, as well as grit and rags.

Step 1. Potential for Harm for Discharge Violations

This step considers the actual or threatened impact to beneficial uses by quantifying (1) the potential for harm to beneficial uses, (2) the degree of toxicity of the discharge, and

(3) the discharge’s susceptibility to cleanup or abatement. Because actual harm is not always quantifiable due to untimely reporting, inadequate monitoring, and/or other practical limitations, potential harm can be used under this step.

Factor 1: Potential for Harm to Beneficial Uses: Moderate (3)

The Discharger has provided less information about the January 14, 2017 SSO than was provided for Violation 1. For example, although the CIWQS Spill Report states that samples were collected, the Prosecution Team was not provided with sampling information or the analytical results. However, it is still possible to assess the Potential for Harm, based on the rationale used for Violation 1. Both spills consisted of untreated sewage that resulted in discharges to Chorro Creek, a waterbody with multiple beneficial uses (see above) that flows into Morro Bay, a State Marine Reserve Marine Protected Area. It is expected that the untreated sewage in both spills would cause a similar potential harm to beneficial uses. As described in detail under Violation 1, a score of **(3) moderate** is assigned.

Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge: Above Moderate (3)

The same material (untreated sewage) that discharged during Violation 1 discharged during Violation 2. The Factor 2 discussion for Violation 1 also applies to Violation 2. As described in detail under Violation 1, a score of **(3) above moderate** is assigned.

Factor 3: Susceptibility to Cleanup or Abatement: (1)

The Enforcement Policy states that a score of 0 or 1 shall be assigned, based on whether a discharge is susceptible to cleanup or abatement. If 50 percent or more of the discharge is susceptible to cleanup or abatement, then a score of (0) applies. If less than 50 percent of the discharge is susceptible to cleanup or abatement, then a score of (1) applies.

For the January 14, 2017 SSO, the Discharger reported that 5,000 gallons of untreated sewage spilled from the collection system, of which 4,000 gallons discharged into Chorro Creek. None of the sewage in the creek was recovered. A score of **(1)** is assigned.

Step 1 Final Score –Potential for Harm: (7)

The sum of the above scores is **7**. This value is used in Step 2 as the “Potential for Harm” score

Step 2: Assessment for Discharge Violations

This step addresses per gallon and per day assessments for discharge violations.

Per Gallon Assessment for Discharge Violations

The per gallon assessment is the Per Gallon Factor (determined by the Potential for Harm score and the Deviation from Requirement) multiplied by the number of gallons subject to liability multiplied by the maximum per gallon liability amount allowed under the Water Code.

Deviation from Requirement: (major)

The discussion of Deviation from Requirement for Violation 1 also applies to Violation 2. The Deviation from Requirement is **major**.

Per Gallon Factor: (0.31)

Using Table 1 of the Enforcement Policy, a Potential for Harm score of 7 and a major Deviation from Requirement results in a Per Gallon Factor of 0.31. This value is then multiplied by the gallons discharged and the maximum per gallon liability amount authorized in the Water Code.

Gallons Discharged: (4,000 gallons)

This liability assessment only considers the volume of untreated sewage which discharged into a water of the U.S. (Chorro Creek). The Discharger reported that an estimated 5,000 gallons of sewage spilled from the collection system. Of this volume, about 4,000 gallons discharged into Chorro Creek. Despite requests by Central Coast Water Board staff after the December 18, 2015 SSO, the Discharger has not provided documentation as to how it calculates the volume of a sewage spill. Although the Discharger’s estimate for the January 14, 2017 SSO seems low, the Prosecution Team used the estimate for this liability assessment. However, if this matter proceeds to a contested hearing before the Central Coast Water Board, the Prosecution Team reserves the right to reevaluate the gallons discharged.

Per Gallon Liability

Water Code section 13385, subdivision (c)(2) states that the maximum liability is “\$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.” The Discharger did not recover any portion of the estimated 4,000 gallons that discharged into Chorro Creek. The volume used in this liability assessment is 3,000 gallons (4,000 gallons discharged and not cleaned up minus 1,000 gallons).

→ 3,000 gallons x \$10/gallon x 0.31 Per Gallon Factor = \$9,300

Per Day Assessment for Discharge Violations

The Enforcement Policy also specifies that where there is a discharge, the Central

Coast Water Board shall determine an initial liability factor per day based on the same parameters discussed above. Using Table 2 of the Enforcement Policy, a Potential for Harm score of 7 and a major Deviation from Requirement results in a Per Day Factor of **0.31**. Water Code section 13385, subdivision (c)(1) states that the maximum ACL is \$10,000 per day. The spill took place over one day.

→ 1 day x \$10,000/day x 0.31 Per Day Factor = \$3,100

Step 2 Summary (Initial Liability):

The combined per gallon and per day assessment is \$9,300 + \$3,100 = \$12,400

Step 3: Per Day Assessment for Non-Discharge Violations

This step is not applicable to the January 14, 2017 SSO.

Step 4: Adjustment Factors

The Enforcement Policy requires the consideration of the Discharger’s conduct using three additional factors to modify the initial liability: the violator’s culpability, the extent to which the violator voluntarily cooperated in returning to compliance including voluntary cleanup efforts, and the violator’s history of violation.

Culpability: (1.4)

The discussion of culpability for Violation 1 also applies to Violation 2. The screening facilities were inoperable at the time of this SSO. The Discharger could have installed or retrofitted its screening facilities after the December 18, 2015 SSO but did not do so. In the time period between Violation 1 and Violation 2, the Discharger reported a 1,500 gallon SSO that occurred on January 3, 2017, and it was contained on land. The Discharger again reported that the SSO was probably due to plastics in the sewer line. The Prosecution Team assigned a multiplier of 1.4 for continual failure to fix the screening facilities to avoid discharges of untreated sewage due to plastics.

Cleanup and Cooperation: (1.0)

The discussion of cleanup and cooperation for Violation 1 also applies to Violation 2. The Prosecution Team assigned a multiplier of 1.0.

History of Violation: (1.2)

The discussion of history of violation for Violation 1 also applies to Violation 2. The Prosecution Team assigned a multiplier of 1.2.

Step 5. Determination of Total Base Liability for Violation 2

The Total Base Liability is calculated by multiplying the initial liability amount by the three adjustment factors.

$$\rightarrow \$12,400 \times 1.4 \times 1.0 \times 1.2 = \$20,832$$

Steps 6 through 10

These steps are discussed after the Total Base Liability is determined for each of the three violations.

VIOLATION 3:

Failure to Comply with a Water Code Section 13267 Order

On April 19, 2016, the Assistant Executive Officer of the Central Coast Water Board issued a Notice of Violation and a Water Code section 13267 Order (Investigative Order) to the Acting Warden of the California Men’s Colony, California Department of Corrections and Rehabilitation. The Investigative Order documented that the December 18, 2015 SSO was in violation of the Statewide General Order and the Clean Water Act. In addition, the Investigative Order required the Discharger to submit a technical report in order to clarify actions that happened prior to and during the spill, determine potential water quality problems due to the spill, and describe the actions that would be taken to prevent such a spill in the future.

The Investigative Order required the submittal of a technical report by June 6, 2016, and clearly stated how the report was to be organized and the information it was to contain. On June 3, 2016, the Discharger submitted a response. However, it was extremely deficient, as documented in staff’s email dated June 9, 2016. The Discharger did not sign the document, and submitted information related to only one of the four sections of questions included in the Investigative Order. The Discharger subsequently submitted a more detailed document during a meeting with Central Coast Water Board staff on June 22, 2016. However, the second report was still inadequate (see Deviation from Requirement discussion, below), as documented in a series of emails between Central Coast Water Board staff and the Discharger dated August 31, 2016, through September 21, 2016. As of October 2, 2019, the Discharger has not submitted an adequate response to the Investigative Order.

The failure to submit a complete technical report as required by the Investigative Order is a violation of Water Code section 13267 and is subject to ACL under Water Code section 13268.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because Violation 3 is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because Violation 3 is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of deviation from the applicable requirements.

Potential for Harm: (Moderate)

The failure to comply with the Investigative Order and submit a complete technical report has resulted in a moderate potential for harm. For example, the Discharger did not explain how it determines the volume of its SSOs. The volume reported for the January 14, 2017 SSO is questionable. During the State Water Board Compliance Inspection conducted on September 8, 2017, the Discharger stated that it “does not utilize any standard operating procedures (SOPs) for estimating spill volumes” and “is not currently conducting any field spill estimation training for its staff members.”¹¹ Accurate reporting of SSO volumes is a key concept in compliance with the Statewide General Order. The Investigative Order required that the Discharger describe its process for estimating spill volumes, yet the Discharger did not do so. As explained below, the failure to provide required information undermines the Central Coast Water Board’s ability to perform its statutory and regulatory functions and results in at least a **moderate** potential for harm.

Deviation from Requirement: (Moderate)

A “moderate” deviation from requirement is assigned when “the intended effectiveness of the requirement was partially compromised.” The Discharger partially complied with the Investigative Order by providing information related to the actions taken to clean up the spill, but did not submit information describing how the spill volume was determined, a detailed explanation of how the spill was discovered, the time the spill began, or how far the untreated wastewater spread between when the spill began and when it was reported. The Discharger provided historical maintenance records, but in the form of reports from its Standard Automated Preventative Maintenance System (SPAMS). The Discharger did not provide an explanation of how these records relate to the “failure location and any upstream locations where failure or maintenance needs or practices may have caused or contributed to the SSO” as required by the Investigative Order. The Discharger presented minimal information regarding the actions it will take to prevent future SSOs but did not provide the detailed information the Investigative Order requires.

¹¹ Page 6 of the Compliance Evaluation Inspection report attached to the July 13, 2018 Notice of Violation and Order to Submit a Technical Report.

For requirements with more than one part, the Enforcement Policy requires the Central Coast Water Board to consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement. After the Discharger submitted an inadequate response on June 22, 2016, Central Coast Water Board staff emphasized the importance of responding to all of the Investigative Order requirements, including Item I.c., which required the Discharger to provide a “Detailed description of the methodology employed and available data used to calculate the volume of the SSO and, if applicable, the SSO volume recovered.” In an email dated August 31, 2016, Central Coast Water Board staff reemphasized the need to understand the circumstances of the SSO, including how the Discharger calculated the SSO volume. Central Coast Water Board staff clarified that “it’s important [for the Discharger] to clearly explain the method of [SSO volume] calculation, including, for example, mathematical calculations, industry standards referenced, [and] basis of visual estimates ... to assess the strength of the estimate’s basis to see if [the Discharger’s] conclusions are repeatable and ... supportable....” In response, the Discharger submitted a spreadsheet of wastewater treatment plant flows for December 2015, to show “high flows for the day in question ... because of the plastic bags preventing flow and causing the high readings.” On September 20, 2016, Central Coast Water Board staff informed the Discharger that the flow spreadsheet did not satisfy Investigative Order Item I.c. and reiterated the importance of the requirement. The Discharger acknowledged and committed to submitting a “more in-depth explanation about the flows and [SSO volume] estimate,” but failed to do so.

The failure to comply with the Investigative Order harmed or undermined a Central Coast Water Board regulatory program and compromised the Board’s ability to perform a regulatory function. Specifically, the lack of information regarding how spill volumes are determined and the start date for each spill hindered staff’s review of Violation 1 and Violation 2. The Prosecution Team used its own time and resources to calculate a more realistic volume for the December 18, 2015 SSO that discharged into Chorro Creek (11,100 gallons versus 6,000 gallons reported by the Discharger). As previously explained, the Prosecution Team’s volume is low because the Discharger did not provide the start time of the spill. For Violation 2, the Discharger reported that 4,000 gallons discharged into the creek but did not include any documentation as to how that volume was determined. One purpose of the Investigative Order was for the Discharger to formalize and describe how it reports its spill volumes. Despite written reminders by Central Coast Water Board staff, the Discharger did not submit the required information and the intended effectiveness of the Investigative Order was partially compromised.

Per Day Factor: (0.35)

Using Table 3 in the Enforcement Policy, a moderate Potential for Harm and a

moderate Deviation from Requirement results in a Per Day Factor of 0.35. The Per Day Factor is multiplied by the days of violation and the statutory maximum per day liability.

Days of Violation: (46)

The Investigative Order required the Discharger to submit the technical report by June 6, 2016. The Discharger submitted a partial, unsigned report on June 3, 2016. Central Coast Water Board staff responded by email on June 9, 2016, documenting that the Discharger only provided responses to one of the four sections of the Investigative Order and that a complete, signed response was required. Central Coast Water Board staff also pointed out that the Discharger was accruing potential penalties of up to \$1,000 per day for the inadequate report. On June 22, 2016, during a meeting with Central Coast Water Board staff, the Discharger submitted a second version of the technical report. As described above and in Central Coast Water Board staff’s emails dated August 31, 2016, and September 20, 2016, the report was still inadequate. As of October 2, 2019, the Discharger has not submitted a complete technical report.

The Enforcement Policy states that for certain violations that are assessed a civil liability on a per-day basis, the number of days may be collapsed if one of three express findings are made. Here, the Prosecution Team has determined that the Discharger’s failure to submit an adequate technical report has not resulted in a discrete economic benefit that can be measured on a daily basis. The Prosecution Team has elected to collapse the days of violation as allowed in the Enforcement Policy, which reduces the days of violation from 1,213 days to 46 days.

Statutory Maximum Liability

The Investigative Order was issued pursuant to Water Code section 13267. Water Code section 13268, subdivision (b)(1) authorizes the Central Coast Water Board to impose an ACL of \$1,000 per day for each violation of Water Code section 13267.

Initial Liability Amount

The initial liability amount is the statutory maximum liability multiplied by the Per Day Factor multiplied by the collapsed days of violation.

$$\rightarrow \$1,000/\text{day} \times 0.35 \times 46 \text{ days} = \$16,100$$

Step 4. Adjustment Factors

The Enforcement Policy specifies the consideration of violator conduct using three additional factors for modification of the amount of the initial liability determined in Steps 1 through 3: the violator’s culpability, the extent to which the violator voluntarily cooperated in returning to compliance including voluntary cleanup efforts, and the violator’s history of violation.

Culpability: (1.3)

The culpability multiplier ranges between 0.75 and 1.5 with a lower multiplier for accidental incidents and a higher multiplier for intentional or negligent behavior. The Discharger is fully culpable for the failure to submit a complete technical report. The Investigative Order clearly described what was required and provided contact information for Central Coast Water Board staff if the Discharger had any questions related to the technical reporting requirements. If the Discharger had any questions, it could have contacted Central Coast Water Board staff. In addition, Central Coast Water Board staff provided the Discharger with more time than usual to complete the report. As stated in Central Coast Water Board staff's June 9, 2016 email to the Discharger, "Staff typically requires such reports within 30 days, but provided [the Discharger] with 45 days given the depth of the technical reporting requirements. This was in addition to the original 45 days [Central Coast Water Board] staff provided immediately after the 12/18/15 SSO."

The Discharger had prior knowledge of the need to submit a technical report before the Assistant Executive Officer issued the Investigative Order. As described in the Investigative Order:

On January 13, 2016, and January 22, 2016, Central Coast Water Board staff and the Discharger's staff discussed the requirement for a SSO technical report. The technical report would provide the information specified in Order No. WQ 2013-0058-EXEC, Amending Monitoring and Reporting Program for the Statewide General Waste Discharge Requirement for Sanitary Sewer Systems (Amended MRP), Section C.5, SSO Technical Report. Central Coast Water Board staff noted that although the technical report was not mandatory because the Discharger's estimate of the spill volume to reach waters of the U.S. was less than 50,000 gallons, staff required the SSO Technical Report due to the large overall spill volume, the threat to water quality, and the apparent repetitiveness of the cited cause of the SSO (plastic debris blockage).

Although the Discharger uploaded five documents to CIWQS on February 8, 2016, the documents were insufficient to satisfy the SSO Technical Reporting requirements. Therefore, the Assistant Executive Officer issued the Investigative Order to formally require the outstanding information.

Given the Discharger's prior knowledge of the need to submit a technical report, the extended timeline afforded by Central Coast Water Board staff to submit the information, the clear description of what was to be submitted, and the fact that the Discharger could have contacted Central Coast Water Board staff if it had any questions, a multiplier of 1.3 is assigned.

Cleanup and Cooperation: (1.3)

This factor reflects the extent to which the Discharger has voluntarily cooperated in

returning to compliance after the violation, and ranges from 0.75 to 1.5. The Investigative Order required that the technical report be submitted by June 6, 2016. The Discharger submitted a partial, unsigned report on June 3, 2016. Central Coast Water Board staff responded by email on June 9, 2016, describing the report’s inadequacies. The Discharger submitted an updated report on June 22, 2016, during a meeting with Central Coast Water Board staff. As described above and in Central Coast Water Board staff’s emails dated August 31, 2016 and September 20, 2016, the report was still inadequate. The Discharger responded on September 21, 2016, stating that a “more in-depth explanation about flows” would be submitted, but it failed to do so. As documented a year later, during the September 8, 2017 Compliance Inspection, the Discharger still did not have standard protocols for estimating the size of an SSO. A multiplier of 1.3 is assigned.

History of Violations: (1.1)

Although the Discharger does not have a history of failing to submit adequate technical reports in response to a Water Code section 13267 Order (Investigative Order), the Discharger does have a history of formal violations as described in detail for Violation 1. A multiplier of 1.1 is assigned.

Step 5. Determination of Total Base Liability for Violation 3

The Total Base Liability is calculated by multiplying the initial liability amount by the three adjustment factors.

$$\rightarrow \$16,100 \times 1.3 \times 1.3 \times 1.1 = \$29,930$$

Steps 6 through 10

These last steps apply to the combined Total Base Liability amounts for all violations.

Combined Total Base Liability for All Violations

Violation 1 = \$57,809

Violation 2 = \$20,832

Violation 3 = \$29,930

Combined Total Base Liability = \$ 108,571

Step 6. Ability to Pay and Continue in Business

The Enforcement Policy states that the Water Board may adjust the Total Base Liability amount if financial information is available to assess the Discharger’s ability to pay the Total Base Liability amount or the effect of that amount on the Discharger’s ability to continue in business. The Central Coast Water Board determines a discharger’s ability to pay an ACL based on its revenues and assets. The California Department of

Corrections and Rehabilitation is a California state agency with a budget for FY 2018-2019 of over \$12 million. Given this information, the Combined Total Base Liability amount was not adjusted for the Discharger’s ability to pay.

Step 7. Other Factors as Justice May Require

The cost of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Prosecution Team has incurred \$10,292 in staff costs to prepare this action. This represents (a) 50 hours by an Environmental Program Manager, Retired Annuitant to review the facility history, SSMP, and spill documentation, and to prepare the draft liability assessment; and (b) 23 hours by a Central Coast Water Board Water Resource Control Engineer to respond to the Discharger’s spill notifications, meet with the Discharger, prepare the Investigative Order, follow up regarding the Investigative Order, and re-calculate the volume that spilled to surface water during the December 18, 2015 SSO. The staff costs were calculated using a rate of \$135/hour for the Environmental Program Manager, Retired Annuitant (hourly rate and overhead) and a rate of \$154/hour for the Water Resource Control Engineer (hourly rate, overhead, and benefits). No attorneys’ fees or Central Coast Water Board management staff rates were included in this calculation. The Prosecution Teams finds that it is appropriate to increase the Total Base Liability amount by \$10,292 in consideration of these investigation and enforcement costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate specific and general deterrent against future violations.

Step 8. 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 benefit, if any, derived from the acts that constitute the violation. In addition, the Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.”

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency’s (US EPA’s) Economic Benefit Model (BEN) penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 2019.0.0.¹² For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN

¹² At the time this document was prepared, [BEN was available for download at the US EPA’s website.](#)

calculates a violator’s economic benefit derived from delaying or avoiding compliance with environmental statutes.

Here, the Discharger failed to properly operate the wastewater collection system in order to effectively screen and prevent debris such as plastic from creating blockages. The failure resulted in at least two SSOs (Violations 1 and 2) while critical equipment was out of service from approximately 2010 to 2019. Invoices for replacement auger/grinder equipment amounted to \$489,952, which were installed in February 2019, but were not fully functional until as late as December 2019. These costs exclude additional maintenance activities that would have been routinely incurred over the years the equipment was out of service. As the equipment was eventually replaced, the compliance action is considered “delayed” for input into BEN. The noncompliance date is assumed to be January 1, 2010, for conservative purposes, based on discussions with the Discharger regarding how long the equipment has been out of service. The compliance date is considered the date of initial replacement installation, or February 20, 2019.

In addition to the equipment replacement described above, the Discharger failed to properly respond to the Investigative Order. Based on communications with Central Coast Water Board staff, the Discharger neglected to provide a detailed rationale for how the SSO volume estimation was made by facility staff, as required in Investigative Order Item I.c. CMC eventually stipulated to the Prosecution Team’s volume calculation on November 13, 2019. As a result, the Discharger received an economic benefit for delaying response to the Central Coast Water Board for over three years. It is estimated that the response required review and adoption of various estimation methods available, which likely would exceed 10 hours of staff time. Assuming a labor rate of \$100 per hour, the cost to summarize and provide response per the Investigative Order is estimated to be at least \$1,000. Because the response was ultimately received, the compliance action is considered “delayed” for input into BEN. The non-compliance date is considered the day after the due date in the Investigative Order. The compliance date is considered to be November 13, 2019, the date on which the Discharger stipulated to the December 18, 2015 SSO spill estimation procedures.

For both compliance actions, the penalty payment date is assumed to be October 14, 2019, the date the Discharger agreed to enter into settlement discussions with the Prosecution Team. Based on information provided by the Discharger and summarized above, in addition to standard accounting assumptions, the BEN model was used to determine the total economic benefit of the delayed expenditures to be approximately \$115,200.¹³ More specifically, the economic benefit associated with Violations 1 and 2

¹³ The output from BEN detailing the compliance actions, assumptions, and benefit of non-compliance is available upon request.

is approximately \$115,158. The economic benefit associated with Violation 3 is approximately \$42.

Step 9. Maximum and Minimum Liability Amounts

The maximum and minimum amounts for each violation must be determined for comparison to the amount of civil liabilities being proposed. Where the amount calculated for a particular violation exceeds the statutory maximum, the amount proposed must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed.

Minimum Liability:

The minimum liability associated with economic benefit for Violations 1 and 2 is approximately \$126,674 (\$115,158 [Economic Benefit] + 10%).

The minimum liability associated with economic benefit for Violation 3 is approximately \$47 (rounded) (\$42 [Economic Benefit] + 10%).

Maximum Liability:

The maximum liability for the two discharge violations is described in Water Code section 13385, subdivision (c), as \$10 per gallon discharged for every gallon over 1,000 gallons that is not cleaned up and \$10,000 for each day of violation. The maximum liability for the reporting violations is described in Water Code section 13268, subdivision (b)(1), as \$1,000 per day.

Violation 1: [(11,100 gallons – 1,000 gallons) x \$10] + [1 day x \$10,000] = \$111,000

Violation 2: [(4,000 gallons – 1,000 gallons) x \$10] + [1 day x \$10,000] = \$40,000

Violation 3: 1,213 days x \$1,000 per day = \$1,213,000

Combined maximum liability = \$1,364,000

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the three violations discussed above, including staff costs, is **\$166,896**. The proposed final liability amount imposes the minimum liability for Violations 1 and 2 (\$126,674), the Total Base Liability for Violation 3 (\$29,930), and staff costs (\$10,292).

ATTACHMENT B

California Men's Colony Enhanced Compliance Action (ECA)

ECA: California Men's Colony Sanitary Sewer System Flow Monitoring Project

ECA Project Scope of Work:

The California Men's Colony (CMC) will purchase Smart Covers from Smart Cover Corporation or another competitive bidder, utilizing the competitive process, and will install the covers within its sanitary sewer system. The awarded contractor will install the covers at CMC. The Smart Covers will provide CMC with real time flow and level information and alarms, which will allow CMC staff to respond before Sanitary Sewer Overflows (SSOs) occur. CMC will purchase thirteen (13) Smart Cover manhole lids and install the lids at key locations within the sanitary sewer collection system along Chorro Creek and at hotspots identified in the Sanitary System Management Plan (SSMP).

The project will include the following tasks:

- Identify specific locations for installation of Smart Covers - to be completed by CMC plumbers
- Install Smart Covers - to be completed by the awarded contractor
- Configure sensors appropriate to the depth at each Smart Cover location - to be completed by the awarded contractor
- Program alarm and notifications system - to be completed by the awarded contractor
- Test system - to be completed by the awarded contractor
- Train CMC supervisors, plumbers, and waste water staff regarding all aspects of the functionality of the system - to be completed by the awarded contractor
- Revise CMC SSMP to include a section for Smart Cover operation, maintenance, and replacement schedule - to be completed by CMC.

Table 1: ECA Project Schedule

Task	Completion (Days After Central Coast Water Board Approval)*
Identify Smart Cover Locations	14
Order Smart Covers	180
Smart Covers Delivered	225
Complete Installation of Smart Covers	240
Perform Testing and Confirm Alarms Operational	255
System Operational (Close of Project)	260

* Completion time frames account for contracting and estimated impacts due to COVID-19 pandemic.

ECA Project Budget:

Each Smart Cover costs approximately \$6,000 per unit. Support via web page and satellite communication for data for the Smart Cover costs approximately \$364 per unit annually. Thirteen units, at \$6,000 each, with \$364 in support costs, brings the total budget of this project to \$82,732.