CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

In the matter of:	
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, CALIFORNIA MEN'S COLONY	**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER**
DECEMBER 2022 UNAUTHORIZED DISCHARGE FROM WASTEWATER TREATMENT PLANT, MAY 2023 – MAY 2024 EFFLUENT LIMITATION VIOLATIONS AT WASTEWATER TREATMENT PLANT, AND AUGUST 2023 UNAUTHORIZED DISCHARGES FROM DRINKING WATER TREATMENT PLANT	**PROPOSED ORDER R3-2025-0005**

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 (Central Coast Water Board) Prosecution Team (Prosecution Team) and California Department of Corrections and Rehabilitation (CDCR or Settling Respondent) (collectively, Parties), and is presented to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement pursuant to California Water Code (Water Code) section 13323 and 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 **$1,671,605**.

Section II: RECITALS

1. The Settling Respondent owns and operates the California Men's Colony's (CMC's) Wastewater Treatment Plant (WWTP), located off Highway 1, approximately six miles northwest of the City of San Luis Obispo, California, which provides wastewater treatment for the CMC prison, California Army National Guard's Camp San Luis Obispo, Cuesta College, and several San Luis Obispo County facilities.

2. The WWTP is regulated under *Waste Discharge Requirements for the California Department of Corrections and Rehabilitation California Men's Colony Wastewater Treatment Plant, Order R3-2020-0005, as amended by Order R3-2023-0010, National Pollutant Discharge Elimination System (NPDES) Permit CA0047856* (Permit).[1]

3. The Permit authorizes the Settling Respondent to discharge tertiary treated wastewater from the WWTP to Chorro Creek, a tributary to Morro Bay and the Pacific Ocean, all of which are waters of the United States (U.S.). The Permit contains waste discharge requirements, including discharge prohibitions and effluent limitations. Discharge Prohibition III.C. of the Permit prohibits the overflow of wastewater from the Settling Respondent's collection, treatment, or disposal facilities and the subsequent discharge of partially treated wastewater to waters of the U.S. Settling Respondent must maintain compliance with the effluent limitations set forth in Permit section IV.A.

4. The Settling Respondent owns and operates CMC's Drinking Water Treatment Plant (WTP), located at Lake Chorro Road, San Luis Obispo, California.

5. The Settling Respondent also supplies potable water to CMC facilities and other customers. The Settling Respondent receives most of the treated drinking water that it distributes to its customers from the Central Coast Water Authority. When that source is unavailable, the Settling Respondent uses its WTP to treat raw water from the Chorro Reservoir and Whale Rock Reservoir. Sand filters are a component of the drinking water treatment processes and filter backwash waste is generated as a waste stream when CDCR cleans the sand filters.

6. Federal Water Pollution Control Act (Clean Water Act) section 301 (33 U.S.C. § 1311) prohibits any person to discharge any pollutant into waters of the U.S. without authorization under specific Clean Water Act provisions, including section 402 (33 U.S.C. § 1342) for point source discharges. Point source discharges of pollutants to waters of the U.S. are to be authorized under an NPDES permit. NPDES permits are issued in accordance with Water Code section 13376.

[1] *Waste Discharge Requirements for the California Department of Corrections and Rehabilitation California Men's Colony Wastewater Treatment Plant, Order R3-2020-0005, as amended by Order R3-2023-0010, NPDES Permit CA0047856*: https://www.waterboards.ca.gov/centralcoast/board_decisions/adopted_orders/2020/r3-2020-0005-amended.pdf

7. Pursuant to Water Code section 13385, subdivision (a), a person that violates Water Code section 13376, waste discharge requirements issued for compliance with the Clean Water Act, and/or Clean Water Act section 301 is subject to administrative civil liability under Water Code section 13385, subdivision (c):

   > . . . in an amount not to exceed the sum of the following: (1) Ten thousand dollars ($10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

8. Water Code section 13385, subdivision (h)(1) requires the Central Coast Water Board to assess a $3,000 mandatory minimum penalty (MMP) for each serious violation.

9. Water Code section 13385, subdivision (h)(2) defines a "serious violation" as "any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant . . . by 20 percent or more or for a Group I pollutant . . . by 40 percent or more."

10. Water Code section 13385, subdivision (i)(1) requires, in part, requires the Central Coast Water Board to assess a $3,000 MMP for each non-serious (also known as "chronic") violation, not counting the first three violations, if a person violates a waste discharge requirement effluent limitation.

11. The Prosecution Team alleges the following:

    a. On December 11, 2022, the Settling Respondent violated Permit Discharge Prohibition III.C, Water Code section 13376, and/or Clean Water Act section 301 by discharging an estimated 50,000 gallons of partially treated domestic/municipal wastewater from the WWTP to Chorro Creek, a water of the U.S., as explained in Attachment A.

    b. From May 24, 2023, through May 31, 2024, the Settling Respondent violated Permit section IV.A by exceeding effluent limitations as shown in Attachments B and B-1.

    c. On seven separate days between August 14, 2023, and August 22, 2023, the Settling Respondent violated Clean Water Act section 301 and/or Water Code section 13376 by discharging an estimated

400,200 gallons of filter backwash waste to Chorro Reservoir and Chorro Creek, waters of the U.S., as explained in Attachment C.

12. To resolve the alleged violations listed in Section II, paragraph 11, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **$1,671,605** against the Settling Respondent. The Prosecution Team calculated the proposed liability using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (2017 Enforcement Policy)[2,3] as shown in Attachments A-C, which are incorporated herein by reference.

13. The Parties have agreed to settle this 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.

14. The Settling Respondent has also agreed with the U.S. Environmental Protection Agency (EPA) to take corrective actions to address Clean Water Act violations at CMC facilities through the following Administrative Orders on Consent (AOCs):

    a. On September 14, 2023, U.S. EPA and the Settling Respondent entered into an AOC (2023 AOC) to address certain violations at CMC water and wastewater facilities, including, but not limited to the following: WWTP effluent limitation violations from March 2019 to October 2022, plastics in WWTP influent and effluent, unauthorized discharges to Chorro Creek from a drinking water storage tank, estimated 50,000 gallons of partially treated wastewater from the WWTP to Chorro Creek, and approximately 6,000 gallons of sanitary sewer system overflows that discharged to Chorro Creek. The 2023 AOC requires the Settling Respondent to conduct studies and make repairs to CMC water and wastewater infrastructure. The 2023 AOC did not impose civil liability.

    b. On May 22, 2024, U.S. EPA and the Settling Respondent entered into an AOC (2024 AOC) regarding unauthorized discharges of filter

[2] State Water Board, 2017 Water Quality Enforcement Policy, effective October 5, 2017, https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

[3] The State Water Board amended the 2017 Enforcement Policy on December 5, 2023, and those amendments became effective on November 7, 2024. The Prosecution Team applied the 2017 Enforcement Policy's penalty methodology because the Parties reached an agreement-in-principle prior to November 7, 2024, and the alleged violations occurred when the 2017 Enforcement Policy was in effect.

backwash waste from the WTP to Chorro Reservoir. The 2024 AOC requires the Settling Respondent to produce and implement an approved work plan to address the unauthorized discharges. The 2024 AOC did not impose civil liability.

15. The Prosecution Team contends that the resolution of the alleged violations is fair, reasonable, and fulfills all its enforcement objectives; that no further action is warranted concerning the alleged 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:

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

2. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability of **$1,671,605** to resolve the alleged violations set forth in Section II, paragraph 11, as follows:

    a. **Payment to State Account:** No later than 30 days after the effective date of this Stipulated Order,[4] the Settling Respondent must mail a check for **$1,483,605**, made payable to "State Water Pollution Cleanup and Abatement Account," noting "ACL Order R3-2025-0005" on the check, and send to:

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

    The Settling Respondent must email a copy of the check to the Central Coast Water Board Contacts in Section III, paragraph 7.

    b. **Payment to Supplemental Environmental Project Program:** The Parties agree that the remaining $188,000 of the administrative civil liability shall be paid as supplemental environmental project (SEP)

[4] Upon signature/adoption of the Stipulated Order, Central Coast Water Board staff will convert to calendar dates all due dates stated herein that are relative to the signature/adoption date. Staff may transmit such calendar due dates in the transmittal letter for the Stipulated Order or in subsequent correspondence, and those due dates are hereby incorporated into this Stipulated Order by reference.

funds to the Bay Foundation of Morro Bay (Bay Foundation) for the Bay Foundation's Drinking Water Well Testing Program (Drinking Water Well Testing Program). No later than 30 days after the effective date of this Stipulated Order, the Settling Respondent must mail a check for **$188,000**, made payable to "Bay Foundation of Morro Bay," noting "ACL Order R3-2025-0005" on the check, and send to:

Bay Foundation of Morro Bay
Attn: Melodie Grubbs, Executive Director
601 Embarcadero, Suite 11
Morro Bay, CA 93442

The Settling Respondent must email a copy of the check to the Central Coast Water Board contact(s) in Section III, paragraph 7.

3. **SEP Description:** In accordance with the State Water Board's Policy on Supplemental Environmental Projects[5] and State Water Board Resolution 2024-0022,[6] the Parties agree to the Settling Respondent paying $188,000 (SEP Amount) to the Bay Foundation for use towards the Drinking Water Well Testing Program in the southern Central Coast region (San Luis Obispo, Santa Barbara, Ventura, and Kern counties), and that the SEP Amount will be treated as a suspended liability.[7] See the *Bay Foundation's Drinking Water Well Testing Program – Use of Supplemental Environmental Project Funds* summary document[8] for more details about the program. The Settling Respondent's SEP obligations will be satisfactorily completed, and the SEP Amount will be permanently suspended, upon proof and confirmation of payment of the SEP Amount to the Bay Foundation as required by Section III, paragraph 2.b. The Bay Foundation's annual report to the Central Coast Water Board will be considered a final accounting of SEP expenditures.

[5] State Water Board, 2017 Policy on Supplemental Environmental Projects, effective May 3, 2018, https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/seps/20180503_sep_policy_amd.pdf
[6] State Water Board Resolution 2024-0022, https://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/docs/2024/rs2024-0022.pdf
[7] State Water Board Resolution 2024-0022 allows 100 percent of the MMP amount ($138,000) plus $50,000 of the total discretionary administrative civil liability to go towards the Drinking Water Well Testing Program, because the receiving water is a water of the U.S. that recharges groundwater and the discretionary violations are for discharges with potential impacts to groundwater quality. A geographic nexus between the SEP and the violations exists, because the well testing will occur in the southern Central Coast region. Up to seven percent of the MMP amount ($13,160) may be used by the Bay Foundation to cover administrative fees for oversight of the Drinking Water Well Testing Program.
[8] Bay Foundation's Drinking Water Well Testing Program – Use of Supplemental Environmental Project Funds summary document: https://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/docs/2024/summary-drinking-water-well-testing-sep.pdf

4. **Publicity Associated with the SEP:** Whenever the Settling Respondent, or its agents or subcontractors (i.e., Bay Foundation), publicizes one or more SEP elements, it must state in a prominent manner that the Bay Foundation received funding for the Drinking Water Well Testing Program as part of a settlement of a Central Coast Water Board enforcement action.

5. **Central Coast Water Board is 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 persons or property resulting from the negligent or intentional acts or omissions by the Settling Respondent or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Coast Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Settling Respondent, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.

6. **Compliance with Applicable Laws:** The 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 be subject to further enforcement, including additional administrative civil liability.

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

For the Central Coast Water Board:	**For Settling Respondent:**
Tamara Anderson Central Coast Water Board 895 Aerovista Place, Suite 101 San Luis Obispo, CA 93401 tamara.anderson@waterboards.ca.gov (805) 549-3334	Gregor Larabee CA Department of Corrections and Rehabilitation 9838 Old Placerville Rd. Ste. B Sacramento CA 95827 gregor.larabee@cdcr.ca.gov (279) 223-2753
Counsel: Paul Ciccarelli State Water Board 801 K Street, Suite 2300 Sacramento, CA 95814 paul.ciccarelli@waterboards.ca.gov (916) 322-3227	Counsel: Eric Papathakis Office of Legal Affairs CA Department of Corrections and Rehabilitation eric.papathakis@cdcr.ca.gov (916) 531-9374

8. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party must bear all attorney fees and costs incurred pursuant to this Stipulated Order.

9. **Matters Addressed by this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's signature, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations listed in Section II, paragraph 11, 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 deadline specified in Section III, paragraph 2.

10. **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.

11. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Central Coast Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised and the Central Coast Water Board or its delegate 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 this Stipulated Order as necessary or advisable under the circumstances.

12. **No Waiver of Right to Enforce**: The failure of the Central Coast Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Central Coast Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. If the Settling Respondent fails to comply with this Stipulated Order, the Central Coast Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.

13. **Effect of the Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Central Coast Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.

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

15. **Modification**: The Parties must not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.

16. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or because 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 liability for the underlying alleged violations, 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, or in any other administrative or judicial proceeding and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; and any other applicable privilege under federal and/or state law. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors, or 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 violations alleged herein. The Parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or judicial review to the extent such period has been extended by these settlement proceedings.

17. **Waiver of Hearing:** The Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Central Coast Water Board or its delegate, hereby waives its right to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter

proceeds to the Central Coast Water Board or State Water Board for a hearing, the Settling Respondent does not waive its right to an adjudicatory hearing before an order other than this Stipulated Order is imposed.

18. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Central Coast Water Board or its delegate, the Settling Respondent hereby waives its right to petition the Central Coast Water Board's or its delegate'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 court.

19. **Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

20. **No Admission of Liability:** In settling this matter, the Settling Respondent does not admit to any of the allegations stated herein or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior "history of violations" consistent with Water Code sections 13327 and 13385, subdivision (e).

21. **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 must be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.

22. **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.

23. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.

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

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

26. **Effective Date:** This Stipulated Order becomes effective and binding on the Parties upon the date the Central Coast Water Board or its delegate signs and therefore 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

Thea S. Tryon
Digitally signed by Thea S. Tryon
Date: 2024.12.31 07:51:41 -08'00'
Water Boards

By: _____

Thea S. Tryon
Assistant Executive Officer
Central Coast Water Board

IT IS SO STIPULATED.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Original Signed by Dave Lewis
On December 30, 2024

Date: _____ By: _____

Dave Lewis
Director
Facility Planning, Construction and Management
California Department of Corrections and Rehabilitation

ORDER OF THE CENTRAL COAST WATER BOARD:

1. This Stipulated Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.

2. In accepting this Stipulated Order, the Central Coast Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the 2017 Enforcement Policy. The consideration of these factors and application of the 2017 Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order or otherwise provided to the Central Coast Water Board.

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

4. 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 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, Central Coast Region.

_____

Ryan E. Lodge
Executive Officer
Central Coast Water Board

Attachment A: Penalty Calculation Methodology for December 11, 2022 Unauthorized Discharge from Wastewater Treatment Plant

Attachment B: Penalty Calculation Methodology for May 2023 through May 2024 Effluent Limitation Violations at Wastewater Treatment Plant

Attachment C: Penalty Calculation Methodology for August 2023 Unauthorized Discharges from Drinking Water Treatment Plant

ATTACHMENT A

FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2025-0005

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION CALIFORNIA MEN'S COLONY WASTEWATER TREATMENT PLANT SAN LUIS OBISPO COUNTY

This document provides details on the proposed administrative civil liability related to the California Department of Corrections and Rehabilitation (CDCR or Discharger) California Men's Colony (CMC) Wastewater Treatment Plant (WWTP) overflow that resulted in an unauthorized discharge of partially treated domestic/municipal wastewater to waters of the United States on December 11, 2022. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team (Prosecution Team) derived the proposed administrative civil liability following the State Water Resources Control Board's (State Water Board's) 2017 Water Quality Enforcement Policy (Enforcement Policy).[1]

Application of the Water Board's Enforcement Policy

On April 4, 2017, the State Water Board adopted Resolution 2017-0020 amending the Enforcement Policy. The Office of Administrative Law approved the 2017 Enforcement Policy and it became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability for violations of the California Water Code (Water Code) and Federal Water Pollution Control Act (Clean Water Act). Use of the methodology incorporates Water Code sections 13327 and 13385 that require the Central Coast Water Board to consider specific factors when determining the amount of civil liability to impose, 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 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."

[1] Enforcement Policy: https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.shtml

The penalty methodology calculation procedural steps are discussed and shown in detail below.

Regulatory Basis for Alleged Violation and Proposed Liability

The Central Coast Water Board regulates the CMC WWTP under *Waste Discharge Requirements for the California Department of Corrections and Rehabilitation California Men's Colony Wastewater Treatment Plant, Order R3-2020-0005, as amended by Order R3-2023-0010, National Pollutant Discharge Elimination System (NPDES) Permit CA0047856* (Permit). Permit Discharge Prohibition III.C prohibits the overflow of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of partially treated wastewater to waters of the United States. The Prosecution Team alleges that on December 11, 2022, CDCR violated Discharge Prohibition III.C, Water Code section 13376, and Clean Water Act section 301 by discharging an estimated 50,000 gallons of partially treated domestic/municipal wastewater from its WWTP to Chorro Creek, which is tributary to Morro Bay (a State Marine Reserve Protected Area and part of the National Estuary Program) and the Pacific Ocean. All receiving waters are waters of the United States.

As described in Attachment F of the Permit, section II, the Discharger owns and operates a wastewater treatment facility designed to treat domestic wastewater to a tertiary level. The Permit authorizes the Discharger to discharge wastewater fully treated to a tertiary level[2] to Chorro Creek or distribute it to the County of San Luis Obispo for landscape irrigation. The wastewater contained in the overflow from the WWTP on December 11, 2022, was comprised of multiple waste streams within the WWTP with varying degrees of treatment.

The Discharger reported that the December 11, 2022 unauthorized discharge occurred because of a series of events at the WWTP, which are detailed below. The wastewater contained in the December 11, 2022 overflow from the WWTP only received some degree of primary, secondary, and/or tertiary treatment, but less than full tertiary treatment. In other words, the unauthorized discharge was composed of partially treated wastewater and none of the unauthorized discharge was disinfected. The overflow could have been prevented, or at least minimized, if the Discharger properly operated

[2] Wastewater treatment facilities generally apply two to three stages of treatment depending on the intended use of the treated discharge, with each stage building on the previous one to progressively reduce pollutant characteristics to levels protective of receiving water beneficial uses and public health. Generally, primary treatment comprises screening, skimming, and settling; secondary treatment provides biological/bacterial breakdown of organic material, aeration, and clarification; and tertiary treatment applies filtration and disinfection.

and maintained its WWTP and sanitary sewer collection system prior to and during the unauthorized discharge.

Despite knowing for months that the Supervisory Control and Data Acquisition (SCADA) system needed maintenance and knowing heavy rain was forecasted, the Discharger followed its typical procedure to have no overnight operator at the WWTP on December 11, 2022. The Discharger relies on the SCADA alarm call-out system to notify operators of treatment system alarms. When the alarm call-out system failed on December 11, 2022, a WWTP operator was not timely notified, reducing the likelihood for prevention and/or minimization of the overflow.

Additionally, the Discharger reported that plastics within the WWTP contributed to the December 11, 2022 unauthorized discharge for the reasons discussed in the "Culpability Factor Consideration" section below. Since at least 2009, the Discharger has been aware of and has acknowledged the issues related to plastic debris entering and within its sanitary sewer system and WWTP. The Discharger's failure to address this long-standing problem, in addition to the improper staffing considering the SCADA alarm was inoperable when heavy rain was forecasted, increases the Discharger's culpability behind the arguably preventable unauthorized discharge.

The overflow resulted in partially treated effluent spilling from a secondary clarifier to the WWTP's stormwater drainage system that discharges into Chorro Creek. A discharger who violates an NPDES permit, Water Code section 13376, and/or Clean Water Act section 301 is subject to administrative civil liability under Water Code section 13385, subdivision (a).

Penalty Calculation Methodology Procedural Steps

Step 1. Actual or Potential for Harm for Discharge Violations

This initial step for discharge violations is used to determine the actual harm or potential harm to the waterbody's beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge (i.e., the physical, chemical, biological, or thermal characteristics of the discharge); (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement.

Factor 1: The Degree of Toxicity of the Discharge

Factor 1 Background: The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or

material involved in the violation or violations, 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.

The Enforcement Policy specifies assigning a factor score ranging from 0 to 4 based on whether the risk or threat of the discharged material to potential receptors (i.e., human, environmental, ecosystem health exposure pathways) is negligible (0) to significant (4).

Factor 1 Consideration: Based on the physical, chemical, biological, or thermal characteristics of partially treated wastewater before discharge, the risk or threat the discharged material poses to potential receptors and beneficial uses is **above moderate (3)**. "Above Moderate" is assigned when the physical, chemical, biological, and/or thermal characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection.

The physical characteristics of partially treated and undisinfected municipal wastewater include solids that may settle or stay in suspension causing deposition in the creek affecting aquatic habitats or aesthetic uses throughout the water column. Biologically, municipal wastewater contains high levels of pathogenic organisms, including highly infectious and therefore toxic bacteria and viruses that cause disease. Municipal wastewater is harmful to human health through direct contact or ingestion, or via foodborne pathways such as fish and shellfish consumption. Organic material and ammonia can also 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.

On December 16, 2022, the Discharger described the initial assessment of the overflow in its Five-Day Follow-Up Report (Five-Day Report) as required by the Permit. The Discharger indicated that inflow and infiltration from heavy rainfall on December 10, 2022, resulted in hydraulic overloading in the WWTP. This overloading resulted in wastewater flowing through the system more rapidly than designed (a condition known as short-circuiting), which prevented full treatment, stirred up previously settled organic solids and plastic debris, and increased turbidity (smaller particles that persist in suspension and contribute to what is generally understood as cloudiness or lack of clarity). The increase in turbidity then caused poor light transmittance in the WWTP's ultraviolet light disinfection system, followed by the disinfection system's shut-down,

automatic closure of the effluent discharge gate (a safety mechanism to prevent the discharge of undisinfected effluent), and recirculation of the effluent to the WWTP headworks. In addition to the ongoing high flow into the WWTP from the sanitary sewer system due to inflow and infiltration from heavy rainfall, the effluent gate closure and recirculation of wastewater prevented discharge via the authorized outfall, which caused wastewater to back up within the WWTP. The increased organic solids and plastic debris in suspension coated and blocked screens in a secondary treatment clarifier. The blocked screens prevented flow to further treatment downstream and resulted in partially treated wastewater overflowing from the secondary clarifier and into the WWTP's stormwater drainage system and then into Chorro Creek.

Evaluation of the discharged material's toxicity accounts for all the characteristics of the material prior to discharge, including, but not limited to, whether it is partially diluted. The Discharger reported high volumes of stormwater inflow and infiltration into the California Men's Colony sanitary sewer system, which flowed into the WWTP during the overflow. Stormwater inflow and infiltration increases the volume of water within the collection and treatment systems and typically dilutes wastewater within the systems prior to an overflow. While this dilution may reduce some pollutant concentrations in an overflow, pathogenic organism numbers are not substantially reduced because of the large magnitude of their numbers in partially treated and undisinfected domestic wastewater. Any dilution due to inflow and infiltration within the treatment system does not reduce the substantial concerns for marine and human receptors represented by partially treated and undisinfected domestic wastewater. The levels of pathogenic organisms in the partially treated wastewater also exceed known risk factors for harm to human health.

The above circumstances indicate the discharge was composed of domestic/municipal wastewater without the benefit of full secondary treatment or disinfection to reduce the physical, biological, and chemical characteristics to permitted levels for the protection of beneficial uses. In addition, the reported short-circuiting due to high flows and resuspension of organic solids and plastics within the WWTP indicates the potential presence of elevated levels of turbidity, suspended organic solids, and plastics in the overflow.

The characteristics of the partially treated but undisinfected wastewater discussed above represent a substantial concern regarding aquatic and human receptor protection. The levels of pathogenic organisms in partially treated but undisinfected wastewater also exceed known risk factors for harm to human health. These considerations therefore warrant a factor score of **(3) above moderate**.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses

Factor 2 Background: The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving waterbody that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Central Coast Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. 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 factor. Actual harm as used in this section means harm that is documented and/or observed. Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters.

The Enforcement Policy specifies a score ranging from 0 to 5 based on a determination of whether direct or indirect harm, or potential for harm, from a violation is negligible (0) to major (5).

Factor 2 Consideration: The harm or potential harm to beneficial uses from the discharge is **above moderate (4**). "Above moderate" is assigned when potential significant impacts are observed or reasonably expected, and involves potential for actual partial or temporary (e.g., five days or less) restrictions on, or impairment of, beneficial uses.

The Water Quality Control Plan for the Central Coast Basin, 2019 Edition (2019 Basin Plan),[3] Chapter 2, *Present and Potential Beneficial Uses*, designates the beneficial uses of surface waters throughout the Central Coast Basin. The most relevant designated beneficial uses,[4] harmed or potentially harmed by the Discharger's unauthorized discharge to Chorro Creek, Morro Bay Estuary, and Morro Bay are: water contact recreation (REC-1),[5] non-contact water recreation (REC-2), cold fresh water habitat (COLD), warm fresh water habitat (WARM; Chorro Creek only), spawning, reproduction, and/or early development (SPWN; Chorro Creek and Morro Bay Estuary only), preservation of biological habitats of special significance (BIOL; Chorro Creek and Morro Bay Estuary only), rare, threatened, or endangered species (RARE), estuarine habitat (EST; Morro Bay Estuary only), aquaculture (AQUA; Morro Bay Estuary only),

[3] The 2019 Basin Plan was in effect at the time of the violation and is viewable at: https://www.waterboards.ca.gov/centralcoast/water_issues/programs/basin_plan/.
[4] See the 2019 Basin Plan for all listed beneficial uses.
[5] Capitalized abbreviations are those used in the 2019 Basin Plan and are provided for reference.

shellfish harvesting (SHELL; Morro Bay Estuary and Morro Bay only), and marine habitat (MAR; Morro Bay only).

The Clean Water Act section 303(d) List identifies waters within the Central Coast Water Board's jurisdiction not meeting water quality objectives and standards (impaired waters) for specific water quality parameters (i.e., pollutants). Chorro Creek is currently listed as impaired for several pollutants, including nutrients such as nitrogen. In 2006, the Central Coast Water Board adopted a Total Maximum Daily Load (TMDL) to address nutrient and dissolved oxygen impairments in Chorro Creek. The Chorro Creek nutrient and dissolved oxygen TMDL established wasteload allocations[6] for the WWTP for several pollutants related to nutrients and dissolved oxygen, all of which were incorporated into the Permit as effluent limitations and receiving water limitations. Additionally, in May 2003, the Central Coast Water Board adopted a TMDL to address pathogen impairments in Morro Bay, including Chorro Creek. The pathogen TMDL established wasteload allocations for fecal coliform. The Permit incorporates total coliform effluent limitations that are substantially lower than the pathogen TMDL's wasteload allocations and are considered to be more protective of water quality. The discharge of undisinfected and partially treated wastewater has the potential to: adversely affect nutrients, dissolved oxygen, and pathogenic-related constituents to potentially exceed the TMDL wasteload allocations; harm Chorro Creek's beneficial uses; and not align with the water quality protection plans established in the TMDLs.

In the event of a known release of untreated or partially treated wastewater into waters adjacent to a public beach, the local health officer must immediately post and close the beach until the source of the sewage release is eliminated, sample the affected waters, and continue closure or restriction until test results satisfy the bacteriological standards established under California Code of Regulations, title 17, section 7958. (California Code of Regulations, title 17, § 7961, subdivision (d); see also Health & Safety Code, § 115885, subdivision (a)(6)-(7).)

On December 28, 2022, the San Luis Obispo County Health Department (County Health) submitted a report via email to Central Coast Water Board staff. County Health reported that on December 11, 2022, it responded to the discharge of partially treated wastewater by issuing beach closures for the entire harbor area in Morro Bay. The analytical results of sampling conducted on December 12, 2022, indicated compliance with bacteriological water quality standards and County Health lifted the beach closures

[6] A wasteload allocation is the amount of pollutant allocated to a point source discharger that, when accounting for all other sources of the pollutant, will allow the waterbody to achieve and continue to meet water quality standards for the given pollutant.

due to the discharge on December 13, 2022. The unauthorized discharge resulted in a 3-day beach closure, representing an observed, actual partial or temporary restriction on, or impairment of, water contact beneficial uses[7] and warrants a factor score of **(4) above moderate**.

Factor 3: Susceptibility to Cleanup or Abatement

Factor 3 Background: The Enforcement Policy specifies assigning a factor score of (0) if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time. A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean up 50 percent or more of the discharge within a reasonable time. Natural attenuation of discharged pollutants in the environment is not considered cleanup or abatement for purposes of evaluating this factor.

Factor 3 Consideration: The Discharger reported that it was unable to recover any of the partially treated wastewater from Chorro Creek. A score of **(1)** is assigned for this factor.

Step 1 Final Score – Harm or Potential Harm to Beneficial Uses

The sum of the above factor scores is **(8)**. This value is used in Step 2 as the "Potential for Harm" score.

Step 2. Assessments for Discharge Violations

Step 2 Background:

The proposed administrative civil liability for the unpermitted discharge is based on a per day and per gallon liability pursuant to Water Code section 13385.

Per Gallon Assessments for Discharge Violations

The Enforcement Policy specifies that the Water Boards shall use the Potential for Harm score from Step 1 and the extent of Deviation from Requirement when determining an initial liability amount on a per gallon basis. The Deviation from

[7] The Prosecution Team acknowledges its consideration of other potential sources of harm to beneficial uses, such as the general characteristics of partially treated wastewater and its potential harm to the other designated beneficial uses listed above. The factor warranted by the actual partial or temporary restriction on water contact beneficial uses was as high or higher than other considerations and is therefore the appropriate consideration to include herein.

Requirement reflects the extent the alleged violation deviated from the specific requirement at issue and characterizes it as minor, moderate, or major. The Potential for Harm score in Step 1 and the Deviation from Requirement determination in Step 2 are used to determine a Per Gallon Factor from Table 1 of the Enforcement Policy. The per gallon assessment is then determined by multiplying the Per Gallon Factor by the number of gallons subject to penalty and the maximum per gallon penalty amount allowed under the Water Code.

Per Day Assessments for Discharge Violations

The Enforcement Policy also specifies that the Water Boards shall use the Potential for Harm score from Step 1 and the extent of Deviation from Requirement when determining an initial liability amount on a per day basis. Table 2 of the Enforcement Policy is used to determine a Per Day Factor for the alleged violation. The per day assessment is then determined by multiplying the Per Day Factor by the maximum per day amount allowed under the Water Code and number of days the violation occurred.

Step 2 Consideration:

As determined in Step 1, the Potential for Harm factor for this violation is **(8)**. The Prosecution Team determined that the Deviation from Requirement is **major**. “Major” is assigned when the requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Water Code section 13376 and/or Clean Water Act section 301 prohibit unpermitted discharges of waste to waters of the United States. Permit Discharge Prohibition III.C prohibits the overflow of wastewater from the Discharger’s collection, treatment, or disposal facilities and the subsequent discharge of partially treated wastewater to waters of the United States. The Prosecution Team alleges that on December 11, 2022, CDCR violated Discharge Prohibition III.C, Water Code section 13376, and/or Clean Water Act section 301 by discharging an estimated 50,000 gallons of partially treated domestic/municipal wastewater to Chorro Creek, which is tributary to Morro Bay (a State Marine Reserve Protected Area, and part of the National Estuary Program) and the Pacific Ocean. All receiving waters are waters of the United States. The unauthorized discharge of partially treated wastewater rendered Permit Prohibition III.C ineffective in its essential function. The Deviation from Requirement is **major**.

The Prosecution Team determined that the Per Gallon Factor from Table 1 and the Per Day Factor from Table 2 of the Enforcement Policy are each **0.6**.

Water Code section 13385, subdivision (c)(2) provides that liability of up to $10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons. The volume subject to per gallon liability is 49,000 gallons (50,000 minus 1,000 gallons).

Water Code section 13385, subdivision (c)(1) provides that an administrative civil liability of up to $10,000 per day shall apply for each day of violation. The discharge occurred on December 11, 2022, so one day of violation is subject to the per day liability.

Therefore, the per gallon and per day initial liability amounts, and the combined initial liability amount for the violation are as follows:

Per Gallon Liability:

$10/gallon x 49,000 gallons x 0.6 per gallon factor = $294,000

Per Day Liability:

$10,000/day x 1 day x 0.6 per day factor = $6,000

Initial Liability Amount:

Per Gallon Liability + Per Day Liability = $294,000 + $6,000 = $300,000

Step 3. Per Day Assessment for Non-Discharge Violations

This step does not apply to the violation because it is a discharge violation.

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 violations.

Culpability Factor Background: The culpability factor addresses the violator's degree of culpability regarding the violation. Adjustment should result in a multiplier from 0.75 to 1.5, with a lower multiplier for accidental, non-negligent violations and a higher multiplier for intentional or negligent behavior. A first step to analyzing the culpability factor is to identify any performance standards related to the violation (or, in their absence,

prevailing industry practices). The culpability factor then looks to what a reasonable and prudent person would have done or not done under similar circumstances.

Culpability Factor Consideration: The culpability factor for the violation is **1.4**.

On December 11, 2022, the Discharger was aware that the WWTP's telephone call-out system for the SCADA system was not working and that heavy rain was forecasted, yet the Discharger followed its typical procedure to have no overnight operator at the WWTP.

The Discharger's Five-Day Report dated December 16, 2022, indicates that multiple treatment system alarms were not transmitted to on-call operations staff due to the failure of the telephone land line connected to the alarm system. On March 28, 2023, the Prosecution Team issued a notice of violation and a Water Code section 13267 requirement to submit a technical report containing service and maintenance records for the alarm system's call-out functionality for the five-year period preceding the discharge, including dates that the system was tested. The Discharger's Technical Report dated May 31, 2023, provided service records dating back to September 6, 2018, relating to SCADA operations. The Discharger's SCADA maintenance and repair service contractor's June 16, 2022 report states, "Existing phone line for the SCADA system does not seem to be working. Recommend having someone service and test the phone line." The report indicates that the Discharger acknowledged the report on July 6, 2022. The Discharger's service records show no action taken in response to the contractor's recommendation. The telephone call-out system failed on December 11, 2022, indicating the Discharger had reasonable knowledge of the system's deficiency approximately five months prior to the system failure and unauthorized discharge event. If the Discharger had responded to the recommendation to service and test the telephone call-out system, then the Discharger may have been able to prevent or minimize the unauthorized discharge. This circumstance indicates a higher degree of negligence and culpability.

It is the Discharger's standard operating procedure to have no overnight operator at the WWTP and rely only on the alarm call-out system to notify them of treatment system alarms. Times of potentially heavy rainfall commonly include proportionally increased levels of inflow and infiltration into the sewage collection system; higher flow rates into the WWTP should be expected. Higher flow rates can create operational challenges at WWTPs that increase the risk of system failures.

A reasonable and prudent wastewater treatment facility would post operational staff at the facility when heavy rain is forecasted to reduce the likelihood of an overflow during a

high-risk period of heavy rainfall. Here, heavy rain was forecasted but CDCR failed to post overnight staff during the high-risk period when the alarm call-out system was inoperable. CDCR was also aware that the WWTP's secondary clarifier number 2 was offline, which substantially reduced the WWTP's capacity to accommodate higher flows. CDCR's negligence in its failure to have overnight staff when rain was forecasted and the WWTP had reduced capacity is compounded by the fact that it was aware of the inoperative telephone alarm call-out system.

Furthermore, CDCR reported that plastic debris contributed to the December 11, 2022 overflow. From at least 2009, CDCR has known that plastic debris in its wastewater facilities has caused overflows and could cause future overflows. Despite this knowledge, CDCR failed to take proactive measures to address the plastic debris which ultimately contributed to the overflow.

In CDCR's May 31, 2023 technical report, it reported that heavy flows due to the rainstorms caused hydraulic overloading, leading to short-circuiting, which caused wastewater flows to pull sludge from the bottom of the secondary clarifier, causing the clarifier to get stirred up with the mix liquor and also pushed settled plastics in the pipes and headworks further through the treatment processes. The plastics blinded the secondary clarifier screen and the mixed liquor coated the blinded screens with sludge, preventing the flow from progressing to the sand filters causing the secondary clarifier to overflow.

On July 13, 2018, the Central Coast Water Board transmitted a notice of violation and compliance evaluation October 6, 2017 inspection report, that documented observations of plastics in the WWTP's treatment processes, including the influent bar screens, inside the grit chamber, and in the ultraviolet (UV) units. Prevailing industry practice is to understand applicable regulations, monitor compliance, and take immediate and effective corrective action to avoid non-compliance or to return to compliance.

On January 14, 2017, CDCR had a sanitary sewer system spill of 4,000 gallons of untreated sewage to Chorro Creek. It reported that the spill was mainly caused by plastic bags, as well as grit and rags. CDCR's Sewer System Management Plans (SSMPs) dated December 23, 2009, and January 2020 both state:

> Debris in CMC's sanitary sewer collection system also represents a unique operational and maintenance challenged for Institution plant staff. Most of the debris is generated by inmates who one, dispose of shredded clothing, empty food packaging and plastic bags by flushing it down the toilet, and two, further abuse the system by intentionally flushing sheets,

> towels, and blankets. The material first ends up at the screening facilities, and if it passes the screens, is then conveyed to the WWTP . . . .

On December 18, 2015, CDCR had a sanitary sewer system spill of 11,100 gallons of untreated sewage to Chorro Creek. It reported that the December 18, 2015 spill occurred because of a blockage of plastic bags, and that the inmates have a habit of flushing waste, including plastics, down the toilets. CDCR's technical reports for the December 18, 2015 spill, included CDCR's SSMP Annual Audit dated June 27, 2014, stating that the sewer system screening facilities that might have prevented the plastic debris from causing the sewer system overflow had been out of service since approximately 2008.

Since at least December 23, 2009, the Discharger has been aware of plastic debris in the sanitary sewer system and within the WWTP that has the potential to cause, and has caused, sanitary sewer spills, as well as the potential to enter the WWTP if insufficiently screened. A reasonable and prudent Discharger would have taken immediate corrective action to address the plastic debris in the WWTP processes to avoid future non-compliance and performance issues. The Discharger's failure to take action to address the accumulated plastic debris within the WWTP indicates a higher degree of negligence.

The above circumstances demonstrate a high degree of negligence that caused and/or contributed to the unauthorized discharge. A multiplier of **1.4** is assigned.

Cleanup and Cooperation Factor Background: The **cleanup and cooperation** factor addresses the extent to which the 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 factor of 1.0 as it is assumed a reasonable amount of cooperation is the warranted baseline.

Cleanup and Cooperation Factor Consideration: The Discharger cooperated in a reasonable and prudent manner warranting a neutral factor of **1.0**.

History of Violations Factor Background: Where there is a history of repeat violations by a discharger, a minimum multiplier factor of 1.1 should be used. Where a discharger has no prior history of violations, this factor should be neutral, or 1.0.

History of Violations Factor Consideration: The Discharger has a history of violations related to unauthorized discharges and effluent limit violations at CMC facilities that it owns and operates. In approximately the last five years, from June 25, 2019, through September 26, 2023, the Central Coast Water Board issued six administrative civil liability orders to CDCR imposing $414,000 in mandatory minimum penalties for violating 138 effluent limitations violations for discharges from the CMC WWTP. Additionally, in 2020, the Central Coast Water Board issued an administrative civil liability order imposing a penalty of $166,896 for unauthorized discharges of untreated municipal and domestic wastewater from the Discharger's CMC sanitary sewer system to Chorro Creek and for the Discharger's failure to submit a technical report. A multiplier of **1.1** is assigned.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount for the violation is calculated by multiplying the Initial Liability Amount by the adjustment factors for the alleged violation (Initial Liability Amount) x (Culpability) x (Cleanup/Cooperation) x (History of Violations). The applicable Total Base Liability Amount for the violation is $462,000 as summarized below.

Total Base Liability Amount:

$300,000 x 1.4 x 1.0 x 1.1 = $462,000

Step 6. Ability to Pay and Continue in Business

The ability of the Discharger to pay an administrative civil liability is generally determined by its income (revenues minus expenses) and net worth (assets minus liabilities). Under the Enforcement Policy, the Combined Total Base Liability Amount may be adjusted to address a discharger's ability to pay or to continue in business if the Central Coast Water Board has sufficient financial information necessary to assess the discharger's ability to pay the Combined Total Base Liability Amount or to assess the effect of the Combined Total Base Liability Amount on the discharger's ability to continue in business. CDCR is a state agency with a budget for fiscal year 2024-2025 of approximately $14.3 billion. The Prosecution Team has no evidence of CDCR's inability to pay the proposed liability.

Step 7. Economic Benefit

The Prosecution Team determined that the economic benefit of noncompliance was $2,141. The Discharger realized financial benefits associated with the cause of the

violation by delaying phone line repair costs and avoiding the cost of having an operator onsite overnight.

The Discharger's technical report dated May 31, 2023, Attachment 3, pages 81 and 82, provides an invoice for $175 for one hour of contracted work related to the alarm notification system at the WWTP on December 18, 2022. Thae work occurred seven days after the unauthorized discharge on December 11, 2022, and is considered a delayed cost.

Page 80 of the same report documents 15 hours of contracted repair service on January 13 and 14, 2023, related to the phone notification system. No invoice was provided. Based on the hourly labor rate shown on other invoices for similar work, the Prosecution Team assumed a labor rate of $175 per hour for a total labor cost of $2,625. That work occurred 192 days after the Discharger acknowledged the SCADA maintenance and repair service contractor's June 16, 2022 report that stated, "Existing phone line for the SCADA system does not seem to be working. Recommend having someone service and test the phone line," as previously discussed above in Step 4 for culpability, and is considered a delayed cost.

The Discharger also avoided the cost of keeping at least one operator onsite overnight during the heavy rain conditions. The Prosecution Team assumed a base labor cost of $175 per hour adjusted up to a time-and-a-half rate of $262.50 for at least eight hours of operator staff time at a total labor cost of $2,118. That cost is considered an avoided cost.

Considering the above, the Discharger has delayed and avoided costs associated with rehabilitating and/or upgrading its automated notification system to prevent or minimize failures or deficiencies related to the overflow on December 11, 2022. The Discharger may have prevented or minimized the overflow had it implemented such projects before the overflow.

The Prosecution Team used the BEN financial model provided by the United States Environmental Protection Agency to compute the economic benefit of noncompliance. For computational purposes, the Prosecution Team estimated the penalty payment date as March 1, 2024. Changes to this date would affect the economic benefit estimate, but the Prosecution Team does not expect such changes to have a substantial effect on the calculated benefit amount or the final liability per the following sections. The economic benefit of delayed and avoided costs was determined to be approximately $2,141. The output from BEN detailing the compliance actions, assumptions, and benefit of non-compliance is available upon request.

Step 8. Other Factors as Justice May Require

The Central Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in a total administrative civil liability. Including some staff investigation and enforcement costs is valid from an economic standpoint as it requires those who commit water quality violations to pay a greater percentage of the full costs of their violations. However, this important consideration must be balanced against the potential of discouraging a discharge from exercising its right to be heard and other important due process considerations.

The Prosecution Team has incurred over $2,848 in staff costs associated with the investigation and preparation of this component of the enforcement action. No attorney fees were included in the calculation. It is appropriate to increase the Total Base Liability Amount by $2,848 in consideration of staff costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate specific and general deterrent against future violations. An itemization of the staff costs identified herein are available upon request.

Step 9. Maximum and Minimum Liability Amounts

Maximum Liability:

The maximum administrative liability amount pursuant to Water Code section 13385 is $10 per gallon discharged for every gallon over 1,000 that is not cleaned up, plus a maximum of $10,000 for each day in which each violation occurs.

The maximum liability amount is **$500,000** as calculated below.

The estimated volume of partially treated wastewater discharged to Chorro Creek is 50,000 gallons. The volume of that amount subject to liability is 49,000 gallons (50,000 gallons – 1,000 gallons).

Maximum Per Gallon Liability Amount:

49,000 gallons x $10/gallon = $490,000

Maximum Per Day Liability Amount:

1 day x $10,000/day = $10,000

Maximum Liability Amount:

$490,000 + $10,000 = $500,000

Minimum Liability:

The Enforcement Policy states that the Total Base Liability Amount should be at least 10 percent higher than the economic benefit amount, “so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.”

The minimum liability associated with economic benefit is $2,355.10 as calculated below.

Estimated Economic Benefit (from Step 7 above): $2,141

$2,141 x 10% = $214.10

$2,141 + $214.10 = $2,355.10

The Final Liability Amount is within the maximum and minimum liability amounts for the violation.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the Final Liability Amount is the sum of the Total Base Liability Amount and other factors as justice may require totaling **$464,848** ($462,000 + $2,848).

ATTACHMENT B

FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2025-0005

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION CALIFORNIA MEN'S COLONY WASTEWATER TREATMENT PLANT SAN LUIS OBISPO COUNTY

This document proposes administrative civil liability for certain effluent limitation violations committed by California Department of Corrections and Rehabilitation (CDCR or Discharger) at its California Men's Colony (CMC) Wastewater Treatment Plant (WWTP) from May 24, 2023, through May 31, 2024. The effluent limitation violations alleged herein are either assessed a discretionary administrative civil liability pursuant to California Water Code (Water Code) section 13385, subdivision (a), or a mandatory minimum penalty pursuant to Water Code section 13385, subdivisions (h) and (i). The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team (Prosecution Team) calculated the proposed discretionary administrative civil liability by following the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy).[1]

Application of the Water Board's Enforcement Policy

On April 4, 2017, the State Water Board adopted Resolution 2017-0020 amending the Enforcement Policy. The Office of Administrative Law approved the 2017 Enforcement Policy, which became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing discretionary administrative civil liability for violations of the Water Code and Federal Water Pollution Control Act (Clean Water Act). Use of the methodology incorporates Water Code sections 13327 and 13385 that require the Central Coast Water Board to consider specific factors when determining the amount of civil liability to impose, 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 ability to continue its business, any voluntary cleanup efforts undertaken,

[1] Enforcement Policy: https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.shtml

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."

The Enforcement Policy also acknowledges that the Central Coast Water Board must impose liability in amounts no less than the mandatory minimum prescribed by statute. Mandatory minimum penalties for effluent limitation violations are prescribed pursuant to Water Code section 13385, subdivisions (h) and (i). The mandatory minimum penalties, proposed administrative civil liability, and maximum administrative civil liability are considered below.

Regulatory Basis for Alleged Violation and Proposed Liability

The Central Coast Water Board regulates the CMC WWTP under *Waste Discharge Requirements for the California Department of Corrections and Rehabilitation California Men's Colony Wastewater Treatment Plant, Order R3-2020-0005, as amended by Order R3-2023-0010, National Pollutant Discharge Elimination System (NPDES) Permit CA0047856* (Permit). Permit section IV.A establishes effluent limitations that the Discharger must comply with before discharging treated effluent to waters of the United States. The Prosecution Team alleges that from May 24, 2023, through May 31, 2024, CDCR violated Permit section IV.A. by exceeding effluent limitations for pH, dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper as shown in Attachment B-1.[2] As explained below, the Prosecution Team proposes a discretionary administrative civil liability for dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation violations. Mandatory minimum penalties are proposed for the pH effluent limitation violations.

As detailed below, violations of effluent limitations set forth in the Discharger's Permit have typically been resolved through imposition of mandatory minimum penalties. For most of the effluent limitation violations alleged herein, however, the Prosecution Team is recommending the assessment of discretionary administrative liability pursuant to Water Code section 13385, subdivisions (a) and (c), and in accordance with the Enforcement Policy.

CDCR has a documented and extended history of resolving effluent limitation violations through payment of mandatory minimum penalties. Since February 2009, the Central Coast Water Board and CDCR have settled 447 effluent limitation violations for the

[2] In the Permit, the Discharger's eSMRs, industry, regulations, and standards and policies, dibromochloromethane and chlorodibromomethane are used interchangeably and dichlorobromomethane and bromodichloromethane are used interchangeably. Throughout the remainder of this document, dibromochloromethane and dichlorobromomethane will be used when referring to these two pollutants.

WWTP through payment of $1,341,000 in mandatory minimum penalties. Instead of addressing the cause of the violations, CDCR continues to improperly operate and maintain the WWTP, have recurring effluent limitation violations, and pay the associated mandatory minimum penalties as they accrue. CDCR's payment of the mandatory minimum penalties associated with its operation of the WWTP has effectively turned into a cost of doing business. The alleged effluent limitation violations from May 2023 to May 2024 support the Prosecution Team's position that CDCR has not changed the behavior causing the violations.

For these reasons, mandatory minimum penalties are not an appropriate deterrent to future violations. The Prosecution Team proposes discretionary administrative civil liability for the recent dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation violations.

During the preparation of this penalty methodology, the Prosecution Team determined that a discretionary liability for the pH effluent violations would result in a liability less than the mandatory minimum liability required by Water Code section 13385, subdivision (h) and/or (i). The Prosecution Team proposes the mandatory minimum penalty amount associated with the pH effluent limitation violations for that reason.

Penalty Calculation Methodology Procedural Steps

Step 1. Actual or Potential for Harm for Discharge Violations

This initial step for discharge violations is used to determine the actual harm or potential harm to the waterbody's beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge (i.e., the physical, chemical, biological, or thermal characteristics of the discharge); (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement.

Factor 1: The Degree of Toxicity of the Discharge

Factor 1 Background: The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation or violations, 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.

The Enforcement Policy specifies assigning a factor score ranging from 0 to 4 based on whether the risk or threat of the discharged material to potential receptors (i.e., human, environmental, ecosystem health exposure pathways) is negligible (0) to significant (4).

Factor 1 Consideration: Based on the physical, chemical, biological, or thermal characteristics of treated wastewater before discharge, the risk or threat the discharged material poses to potential receptors and beneficial uses can vary according to the pollutant. The four pollutants addressed in this factor consideration are dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper.

Dibromochloromethane and dichlorobromomethane effluent limitation violations are assigned a **minor (1)** toxicity score. "Minor" is assigned when characteristics of the discharged material are relatively benign and would not likely cause harm to potential receptors.

Total nitrogen and total copper are assigned a **moderate (2)** toxicity score. "Moderate" is assigned when discharge characteristics have some level of toxicity or pose a moderate level of threat to potential receptors.

Dibromochloromethane, dichlorobromomethane, and total copper are three of the 126 priority toxic pollutants included in the California Toxics Rule (CTR). The CTR includes numeric water quality criteria for the protection of aquatic life and/or human health. The State Water Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) describes the process that Central Coast Water Board staff follow to calculate appropriate effluent limitations based on the CTR's water quality criteria.

For dibromochloromethane, the CTR includes a water quality criterion for the protection of human health of 0.401 µg/L.[3] The CTR does not include criteria for dibromochloromethane for the protection of aquatic life. The CTR's human health criterion is applied in the Permit because Chorro Creek has the municipal and domestic supply beneficial use. The human health criterion was used to prescribe the monthly average effluent limit of 0.40 µg/L and the maximum daily effluent limit of 0.80 µg/L. In August 2023, the Discharger reported an effluent sampling result of 1 µg/L, in violation of both the average monthly and maximum daily dibromochloromethane effluent limitations.

[3] "µg/L" is an expression of the unit "micrograms per liter."

For dichlorobromomethane, the CTR includes a water quality criterion for the protection of human health of 0.56 µg/L. The CTR does not include criteria for dichlorobromomethane for the protection of aquatic life. The CTR's human health criterion is applied in the Permit because Chorro Creek has the municipal and domestic supply beneficial use. The human health criterion was used to prescribe the monthly average effluent limit of 0.56 µg/L and the maximum daily effluent limit of 0.88 µg/L. In January 2024, the Discharger reported an effluent sampling result of 0.57 µg/L, in violation of the average monthly dichlorobromomethane effluent limitation.

For additional context related to human health, there is a federal maximum contaminant level (MCL) of 80 µg/L for total trihalomethanes. Trihalomethanes are formed when certain disinfectants (e.g., chlorine) are used to treat organic matter in water. Total trihalomethanes represents the sum of trichloromethane (chloroform), dibromochloromethane, dichlorobromomethane, and bromoform.

As described above, the discharged concentrations of dichlorobromomethane and dibromochloromethane exceeded the Permit's effluent limitations, but by a relatively small amount. The risk or threat posed by the dichlorobromomethane and dibromochloromethane concentrations discharged warrant a factor score of **minor (1).**

The Permit prescribes a total nitrogen daily maximum effluent limit of 10 mg/L,[4] which is also the federal drinking water MCL deemed protective of human health. As listed in Attachment B-1, the Discharger reported seven violations of the effluent limitation ranging from 11 to 26 mg/L. Total nitrogen concentrations above the effluent limit and MCL are potentially toxic and harmful to human health. In addition, excess nutrients in the form of nitrogen can cause nutrient over-enrichment affecting aquatic plant life, depleting dissolved oxygen in waterbodies, and causing toxicity in aquatic life.

For total copper, the CTR includes a chronic freshwater criterion of 9.0 µg/L and a human health criterion of 1300 µg/L. Chorro Creek has the municipal and domestic supply beneficial use as well as several aquatic life beneficial uses. The CTR's aquatic life criterion is applied in the Permit because it is the lowest applicable criterion. The aquatic life criterion was used to prescribe the monthly average effluent limit of 7.5 µg/L and the maximum daily effluent limit of 17 µg/L. The Discharger reported effluent sampling results of 16.8 µg/L, 7.9 µg/L, and 7.6 µg/L, in violation of the monthly average effluent limit for June 2023, July 2023, and May 2024, respectively.

[4] "mg/L is an expression of the unit "milligrams per liter."

The characteristics of total nitrogen and total copper at the recorded concentrations discussed above indicate that these pollutants have some level of toxicity and pose a moderate level of threat to potential receptors. These considerations warrant a factor score of **(2) moderate** for total nitrogen and total copper.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses

Factor 2 Background: The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving waterbody that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Central Coast Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. 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 factor. Actual harm as used in this section means harm that is documented and/or observed. Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters.

The Enforcement Policy specifies a score ranging from 0 to 5 based on a determination of whether direct or indirect harm, or potential for harm, from a violation is negligible (0) to major (5).

Factor 2 Consideration: The harm or potential harm to beneficial uses from the discharge is **minor (1)** for dibromochloromethane, **minor (1)** for dichlorobromomethane, **moderate (3)** for total nitrogen, and **above moderate (4)** for total copper. “Minor” is assigned when there is a lack of observed impacts, but there is potential short-term impact to beneficial uses with no appreciable harm. “Moderate” is assigned when potential impacts are reasonably expected, but harm or potential harm is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects. “Above moderate” is assigned when potential significant impacts are reasonably expected, and there is potential for actual partial or temporary restrictions on, or impairment of, beneficial uses.

The Water Quality Control Plan for the Central Coast Basin, 2019 Edition (2019 Basin Plan),[5] Chapter 2, *Present and Potential Beneficial Uses*, designates the beneficial uses of surface waters throughout the Central Coast Basin. Of the designated beneficial

[5] The 2019 Basin Plan was in effect at the time of the violations and is viewable at: https://www.waterboards.ca.gov/centralcoast/water_issues/programs/basin_plan/

uses,[6] those most relevant to, and harmed or potentially harmed by, the Discharger's discharge to Chorro Creek, Morro Bay Estuary, and Morro Bay are municipal and domestic supply (MUN), water contact recreation (REC-1),[7] non-contact water recreation (REC-2), cold fresh water habitat (COLD), warm fresh water habitat (WARM; Chorro Creek only), spawning, reproduction, and/or early development (SPWN; Chorro Creek and Morro Bay Estuary only), preservation of biological habitats of special significance (BIOL; Chorro Creek and Morro Bay Estuary only), rare, threatened, or endangered species (RARE), estuarine habitat (EST; Morro Bay Estuary only), aquaculture (AQUA; Morro Bay Estuary only), shellfish harvesting (SHELL; Morro Bay Estuary and Morro Bay only), and marine habitat (MAR; Morro Bay only).

The Permit prescribes a dibromochloromethane daily maximum effluent limit of 0.8 µg/L, and a monthly average effluent limit of 0.4 µg/L. The Discharger reported an effluent sampling result of 1 µg/L in violation of both dibromochloromethane effluent limitations in August 2023. The Permit also prescribes a dichlorobromomethane monthly average effluent limit of 0.56 µg/L. The Discharger reported an effluent sampling result of 0.57 µg/L in violation of the dibromochloromethane monthly average effluent limit in January 2024.

Relating to the non-contact water recreation (REC-2) beneficial use of aesthetic enjoyment, a portion of the dibromochloromethane and dichlorobromomethane discharged to waterways volatilizes into the air and is characterized as having a sweet odor. This indicates potential to harm the aesthetic enjoyment of Chorro Creek or the Morro Bay Estuary and Morro Bay. With respect to the aquatic habitat beneficial uses listed above (i.e., COLD, WARM, SPWN, BIOL, RARE, EST, AQUA, SHELL, and MAR), dibromochloromethane and dichlorobromomethane may also be broken down by bacteria in waterways, do not accumulate in the food chain, and are not known to seriously affect the organs of animals exposed to low concentrations. Regarding the municipal and domestic supply (MUN) and water contact recreation (REC-1) beneficial uses, the effluent limitations prescribed in the Permit were developed based on water quality criteria established for the protection of human health. Federal drinking water standards allow up to 80 µg/L of total trihalomethanes, which are partially comprised of dichlorobromomethane and dibromochloromethane. Given the relatively low concentrations discharged, the Prosecution Team estimates a low threat of harm to

[6] See the Basin Plan for all listed beneficial uses.
[7] Capitalized abbreviations are those used in the Basin Plan and are provided for reference.

beneficial uses from the dichlorobromomethane and dibromochloromethane discharges warranting a factor score of **(1) minor**.

The Permit prescribes a total nitrogen daily maximum effluent limit of 10 mg/L, which is also the federal drinking water MCL for the protection of human health. The Discharger reported seven violations of the daily maximum effluent limit over seven non-consecutive days between May 31, 2023, through September 6, 2023, with results ranging from 11 to 26 mg/L. Excess nutrients in the form of nitrogen can cause nutrient over-enrichment in waterbodies and affect aquatic plant life, deplete dissolved oxygen, and cause toxicity in aquatic life, and therefore potentially harm the aquatic habitat beneficial uses listed above (i.e., COLD, WARM, SPWN, BIOL, RARE, EST, AQUA, SHELL, and MAR). Total nitrogen concentrations above the effluent limit and MCL are potentially toxic and harmful to human health and therefore potentially harm the MUN and REC-1 beneficial uses. These represent reasonably expected potential forms of harm, but the intermittent occurrence of the violations makes the potential harm likely to attenuate without appreciable medium or long term acute or chronic effects. This consideration regarding total nitrogen warrants a factor score of **(3) moderate**.

The Clean Water Act section 303(d) List identifies waters within the Central Coast Water Board's jurisdiction not meeting water quality objectives and standards (impaired waters) for specific water quality parameters (i.e., pollutants). Chorro Creek is listed as impaired for nutrients such as nitrogen. The beneficial uses associated with nutrient objectives are therefore not being protected due to these impairments. The Central Coast Water Board adopted, and the United States Environmental Protection Agency (USEPA) approved, a Total Maximum Daily Load (TMDL) to address nutrient impairments in Chorro Creek. Therefore, the nutrient impairment in Chorro Creek, which as previously stated can cause nutrient over-enrichment in waterbodies and affect aquatic plant life, deplete dissolved oxygen, and cause toxicity in aquatic life, potentially harms the aquatic habitat beneficial uses listed above (i.e., COLD, WARM, SPWN, BIOL, RARE, EST, AQUA, SHELL, and MAR). The Discharger's contribution of wastewater that adversely affects the nutrient impairment potentially harms Chorro Creek's beneficial uses and further supports a factor score of **(3) moderate** for total nitrogen.

The Permit prescribes a total copper monthly average effluent limit of 7.5 µg/L. The Discharger reported effluent sampling results of 16.8 µg/L, 7.9 µg/L, and 7.6 µg/L in violation of the monthly average effluent limit for June 2023, July 2023, and May 2024, respectively. Total copper's capacity to cause acute and chronic toxicity effects in freshwater animals including salmon and trout at concentrations equal to or less than

the Discharger's reported result indicates a reasonably expected potential for harm. Violations of monthly average effluent limitations indicate a violation for each day of discharge during that calendar month, even when compliance is determined from a single sample. This indicates a potentially longer period of aquatic life exposure to the elevated total copper concentration found in the effluent and a correspondingly increased expectation of potential significant impacts and potential for actual partial or temporary restrictions on, or impairment of, the aquatic life beneficial uses listed above (i.e., COLD, WARM, SPWN, BIOL, RARE, EST, AQUA, SHELL, and MAR). This consideration regarding total copper warrants a factor score of **(4) above moderate**.

Factor 3: Susceptibility to Cleanup or Abatement

Factor 3 Background: The Enforcement Policy specifies assigning a factor score of (0) if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time. A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean up 50 percent or more of the discharge within a reasonable time. Natural attenuation of discharged pollutants in the environment is not considered cleanup or abatement for purposes of evaluating this factor.

Factor 3 Consideration: The Discharger did not recover any of the wastewater from Chorro Creek. The volume recovered was therefore less than 50 percent of the estimated spill volume and warrants a factor of **(1)**.

Step 1 Final Score – Harm or Potential Harm to Beneficial Uses

The sums of the above factor scores are **(3) for dibromochloromethane**, **(3) for dichlorobromomethane, (6) for total nitrogen**, and **(7) for total copper**. These values are used in Step 2 as the "Potential for Harm" scores.

Step 2. Assessments for Discharge Violations

Step 2 Background: Generally, NPDES permit effluent limitation violations should be addressed on a per day basis only. However, where deemed appropriate, for some NPDES permit effluent limitation violations, and violations such as effluent spills or overflows, stormwater discharges, or unauthorized discharges, the Water Boards should consider whether to assess both per gallon and per day penalties. Here, the Prosecution Team proposes liability on a per day basis only for the effluent limitations subject to discretionary enforcement in this Attachment.

Per Day Assessments for Discharge Violations

The Enforcement Policy also specifies that the Water Boards shall use the Potential for Harm score from Step 1 and the extent of Deviation from Requirement when determining an initial liability amount on a per day basis. The Deviation from Requirement reflects the extent the alleged violation deviated from the specific requirement at issue and characterizes it as minor, moderate, or major. The Potential for Harm score in Step 1 and the Deviation from Requirement determination in Step 2 are used to determine a Per Day Factor from Table 2 of the Enforcement Policy. The per day assessment is then determined by multiplying the Per Day Factor by the maximum per day amount allowed under the Water Code and number of days the violation occurred.

Step 2 Consideration:

As determined in Step 1, the Potential for Harm scores are **(3) for dibromochloromethane**, **(3) for dichlorobromomethane, (6) for total nitrogen**, and **(7) for total copper**. The Prosecution Team determined that the Deviation from Requirement is moderate for dichlorobromomethane in January 2024 and for total copper in May 2024. The Deviation from Requirement for the other pollutant requirements is **major**. “Moderate” is assigned when the effectiveness of a requirement is only partially achieved. “Major” is assigned when a requirement is rendered ineffective in its essential functions.

Permit Effluent Limitations and Discharge Specifications section IV.A.1.a require CDCR to maintain compliance with the prescribed effluent limitations, including dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper. The Prosecution Team alleges that on the violation dates shown in Attachment B-1, CDCR violated Permit section IV.A.1.a by discharging effluent that exceeded the dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation requirements. For the monthly average effluent limitation requirement for dichlorobromomethane and total copper in January 2024 and May 2024, respectively, the Prosecution Team assigned a **moderate** Deviation from Requirement because the Discharger exceeded the effluent limitations by a small margin (less than 2 percent); the intended effectiveness of those two requirements were only partially achieved. (See CIWQS Violation Numbers 1125354 and 1129980 in Attachment B-1.)

The Prosecution Team assigned a **major** Deviation from Requirement for all other effluent limitation violations because the requirements were rendered ineffective in their essential function of protecting water quality.

The Per Day Factor from Table 2 of the Enforcement Policy is **0.04 for dibromochloromethane, 0.025 for dichlorobromomethane, 0.28 for total nitrogen, 0.27 for the May 2024 total copper violations, and 0.41 for all other total copper violations**.

Water Code section 13385, subdivision (c)(1) provides that liability of up to $10,000 per day shall apply for each day of violation. For dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation violations, 162 days of violation are subject to the per day liability as follows:

- Dibromochloromethane: One violation of the August 2023 monthly average effluent limit accounts for 31 days of violation (or one day of violation for each day in the calendar month of August 2023). There was also one violation of the daily maximum effluent limit on August 1, 2023, but that day of violation is encompassed by the 31 days of violation for the monthly average effluent limit. The number of days of violation for dibromochloromethane is 31.
- Dichlorobromomethane: One violation of the January 2024 monthly average effluent limit accounts for 31 days of violation (or one day of violation for each day in the calendar month of January 2024). The number of days of violation for dichlorobromomethane is 31.
- Total Nitrogen: Seven violations of the daily maximum effluent limit from May 31, 2023, through September 6, 2023, account for seven days of violation.
- Total Copper: Three violations of the monthly average effluent limit account for 92 days of violation (or one day of violation for each day in the calendar months of June 2023, July 2023, and May 2024).
- The total days of violation for all four pollutants is 161 (31 + 31 + 7 + 92 = 161)

The initial liability amounts for each of the above four pollutants are as follows:

Dibromochloromethane:

$10,000/day x 31 days x 0.04 per day factor = $12,400

Dichlorobromomethane:

$10,000/day x 31 days x 0.025 per day factor = $7,750

Total Nitrogen:

$10,000/day x 7 days x 0.28 per day factor = $19,600

Total Copper (May 2024):

$10,000/day x 31 days x 0.27 per day factor = $83,700

Total Copper:

$10,000/day x 61 days x 0.41 per day factor = $250,100

Combined Initial Liability Amount for the above four pollutants:

$12,400 + $7,750 + $19,600 + $83,700 + $250,100 = $373,550

Step 3. Per Day Assessment for Non-Discharge Violations

This step does not apply to the violations because these are discharge violations.

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 violations.

Culpability Factor Background: The **culpability** factor addresses the discharger's degree of culpability regarding the violation. Adjustment may be made to a multiplier from 0.75 to 1.5, with a lower multiplier for accidental, non-negligent violations and a higher multiplier for intentional or negligent behavior. A first step to analyzing the culpability factor is to identify any performance standards related to the violation (or, in their absence, prevailing industry practices). The culpability factor then looks to what a reasonable and prudent person would have done or not done under similar circumstances.

Culpability Factor Consideration: The Discharger's NPDES permits for the WWTP have prescribed effluent limitations for dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper since at least 2006, spanning multiple permit renewals. The long-standing applicability of these effluent limitations and previous enforcement of them indicates the Discharger's knowledge that exceeding these limitations is prohibited.

As explained throughout this Attachment, CDCR has a long history of effluent limitation violations for dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper, as well as other parameters at the WWTP. The Discharger's 2006 permit, R3-2006-0032, included a compliance schedule and interim effluent limitations for

dibromochloromethane, dichlorobromomethane, and total copper. The compliance schedule described actions the Discharger was required to take to identify and address the sources of these pollutant exceedances and provided over three and a half years of protection from mandatory minimum penalties for exceedances of the associated effluent limitations.

Additionally, the Discharger received time schedule order R3-2006-0088 which included a compliance schedule for WWTP upgrades that would result in compliance with the total nitrogen effluent limitation prescribed in the Discharger's 2006 permit. Time schedule order R3-2006-0088 originally provided a five-month compliance schedule and protection from mandatory minimum penalties associated with exceedances of the total nitrogen effluent limitation, and was later extended by a year to provide additional time due to delays in upgrading the WWTP. In CDCR's December 21, 2023 effluent limit achievement plan,[8] CDCR noted that "The [2007] O&M [Operation and Maintenance] manual [prepared by Carollo Engineers] indicates that the oxidation ditch treatment process is designed to produce an effluent quality less than 10 mg/L for total nitrogen."

In 2014, the WWTP was upgraded again to replace chlorine disinfection with ultraviolet (UV) disinfection. Chlorine disinfection generates dibromochloromethane and dichlorobromomethane and upgrading to ultraviolet disinfection is a disinfection method that dischargers can implement to substantially reduce the amount of these pollutants that is discharged and, in the case of CDCR, should have resulted in consistent compliance with the dibromochloromethane and dichlorobromomethane effluent limitations. In CDCR's December 21, 2023 effluent limit achievement plan, CDCR included an assessment of the causes and potential corrective actions for effluent limitation exceedances of dibromochloromethane. Section 2.4.5 of the effluent limit achievement plan explains that since the upgrade to ultraviolet disinfection, "there are no known sources of chlorine use within the WWTP and therefore dibromochloromethane is most likely coming from the drinking water source or other sources of chlorination use within the service area." However, CDCR has reported in eSMRs (e.g., June 2023 eSMR) that it has used chlorine to manage nocardia[9] issues at the WWTP. Considering CDCR indicated in its eSMRs that it does, at least occasionally, use chlorine at the WWTP, there appears to be a disconnect in

[8] On December 21, 2023, CDCR submitted an effluent limit achievement plan in response to the August 28, 2023 Administrative Order on Consent (AOC) issued to CDCR by the United States Environmental Protection Agency related to several compliance issues, including CDCR's history of effluent limitation violations at the WWTP.
[9] Nocardia is a type of bacteria that can cause foaming and problems with effluent quality if it is present in large amounts.

understanding and addressing all the potential sources of disinfection byproducts and integrating operational practices at the WWTP accordingly.

Despite the Discharger being aware of elevated levels of dibromochlormethane, dichlorobromomethane, total copper, and total nitrogen in the Discharger's effluent since at least 2006; being given time with protection from mandatory minimum penalties to assess the sources of the pollutants, implement operational changes, and perform WWTP upgrades; and successfully completing WWTP upgrades to infrastructure that should have resulted in compliance with its effluent limitations, CDCR continues to exhibit noncompliance with the Permit's effluent limitations. The exact reasons why CDCR continues to have these recurring effluent limitation violations are unclear; however, despite acknowledging the recurring effluent limitation violations, CDCR continues to improperly operate and maintain the WWTP, which is likely the underlying cause of the recurrent effluent limitation violations. Some potential reasons could be that CDCR has a high turnover of chief operators at the WWTP, leading to a lack of institutional knowledge to effectively and consistently run the WWTP effectively. Additionally, CDCR staff have expressed frustrations with long delays to get replacement equipment and parts to effectively maintain the WWTP and keep all systems properly functioning.

Due to all the above circumstances a culpability factor of **1.4** is warranted.

Cleanup and Cooperation Factor Background: The **cleanup and cooperation** factor addresses the extent to which the 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 factor of 1.0 as it is assumed a reasonable amount of cooperation is the warranted baseline.

Cleanup and Cooperation Factor Consideration: The Permit's monitoring and reporting program requires the Discharger to self-report violations, including clearly identifying violations of permit requirements including effluent limitation violations, discussing corrective actions taken or planned, and the proposed time schedule for corrective actions.

Between May 2023 and May 2024, the Discharger self-reported the two dibromochloromethane violations and one dichlorobromomethane violation. The Discharger did not report any specific actions implemented to return to compliance with the Permit's dibromochloromethane effluent limitation. For the dichlorobromomethane effluent limitation violation, the Discharger indicated that CDCR was looking into testing multiple times per month.

The Discharger self-reported the seven total nitrogen violations and reported that the Discharger operated the aerators to better control the air to return to compliance with the Permit's total nitrogen effluent limitation. In the short-term, the Discharger appears to be able to make sufficient operational changes to return to compliance with total nitrogen effluent limitation within a month to a few months. For example, the Discharger exceeded the daily maximum effluent limitation for total nitrogen in May and June 2023, complied with the effluent limitation in July 2023, exceeded it again in August and September 2023, and complied with it for the subsequent eight months through May 2024, which is the data cutoff for this discussion. However, despite the WWTP being designed to meet the total nitrogen effluent limitation, the Discharger continues to have total nitrogen effluent limitation exceedances.

The Discharger failed to self-report the three total copper violations, despite the Permit including total copper monitoring and reporting requirements since at least 2006. The total copper violations were identified by Central Coast Water Board permitting staff during review of the Discharger's self-monitoring reports. Because the total copper violations were not self-reported by the Discharger, the Discharger's reports did not comment on specific corrective measures implemented.

For the dibromochloromethane, dibromochloromethane, and total copper violations, the Discharger did not provide any information to demonstrate cleanup and cooperation. For the total nitrogen violations, the Discharger took actions after the effluent limitation violations occurred to return to Permit compliance at the WWTP for total nitrogen. However, had the Discharger operated the WWTP properly, the total nitrogen effluent limitation violations could have been minimized or prevented. The above considerations for cleanup and cooperation for the dibromochloromethane, dichlorobromomethane, total copper, and total nitrogen effluent limitation violations warrant a factor of **1.1**.

History of Violations Factor Background: Where a discharger has no prior history of violations, this factor should be neutral, or 1.0. Where a discharger has a history of prior violations within the last five years, the Central Coast Water Board should use a multiplier of 1.1. Where there is a history of similar or numerous dissimilar violations, the Water Board should consider using a multiplier above 1.1.

History of Violations Factor Consideration: From February 5, 2009 through September 26, 2023, the Central Coast Water Board issued thirteen administrative civil liability orders to the Discharger imposing $1,341,000 in mandatory minimum penalties for 447 effluent limitation violations.[10] Those thirteen administrative civil liability orders issued to the Discharger settled effluent limitation violations for dibromochloromethane 47 times, dichlorobromomethane 53 times, total nitrogen 94 times, and total copper 13 times.

In approximately the last five years, from June 25, 2019 through September 26, 2023, the Central Coast Water Board issued six administrative civil liability orders to the Discharger imposing $414,000 mandatory minimum penalties for 138 effluent limitations for a total penalty of $414,000.[11] Those six administrative civil liability orders issued to the Discharger settled effluent limitation violations for dibromochloromethane 2 times, dichlorobromomethane 0 times, total nitrogen 54 times, and total copper 10 times.

Due to the Discharger's substantial history of numerous effluent limitation violations, a history of violations factor of **1.4** is appropriate.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount for the violation is calculated by multiplying the Initial Liability Amount by the adjustment factors for the alleged violations (Initial Liability Amount) x (Culpability) x (Cleanup/Cooperation) x (History of Violations). The applicable Total Base Liability Amount for the violations is $805,374 as summarized below.

Individual Total Base Liability Amounts:

Dibromochloromethane:

$12,400 x 1.4 x 1.1 x 1.4 = $26,734

[10] Effluent limitation violations for the following pollutants: dibromochloromethane, dichlorobromomethane, total nitrogen, total copper, dissolved oxygen, total coliform, pH, sulfate, oil and grease, total suspended solids, bis-2(ethylhexyl) phthalate, total chlorine residual, and settleable solids.
[11] The summary of mandatory minimum liabilities issued for effluent limitation violations from June 25, 2019 through September 26, 2023, is a subset of the summary provided previously for the February 5, 2009 through September 26, 2023 date range.

Dichlorobromomethane:

$7,750 x 1.4 x 1.1 x 1.4 = $16,709

Total Nitrogen:

$19,600 x 1.4 x 1.1 x 1.4 = $42,258

Total Copper (May 2024):

$83,700 x 1.4 x 1.1 x 1.4 = $180,457

Total Copper:

$250,100 x 1.4 x 1.1 x 1.4 = $539,216

Combined Total Base Liability Amount:

$26,734 + $16,709 + $42,258 + $180,457 + $539,216 = **$805,374**

Step 6. Ability to Pay and Continue in Business

The ability of the Discharger to pay an administrative civil liability is generally determined by its income (revenues minus expenses) and net worth (assets minus liabilities). Under the Enforcement Policy, the Combined Total Base Liability Amount may be adjusted to address a discharger's ability to pay or to continue in business if the Central Coast Water Board has sufficient financial information necessary to assess the discharger's ability to pay the Combined Total Base Liability Amount or to assess the effect of the Combined Total Base Liability Amount on the discharger's ability to continue in business. CDCR is a state agency with a budget for fiscal year 2024-2025 of approximately $14.3 billion. The Prosecution Team has no evidence of CDCR's inability to pay the proposed liability.

Step 7. Economic Benefit

The Prosecution Team determined that the economic benefit of noncompliance was $271,725. The Discharger's existing WWTP has the capability of preventing total nitrogen effluent limitation violations.[12] The total nitrogen effluent limitation violations would not have occurred but for the Discharger's improper operation and maintenance

[12] The effluent limit achievement plan, submitted by CDCR on December 21, 2023 notes, "The [2007] O&M manual [prepared by Carollo Engineers] indicates that the oxidation ditch treatment process is designed to produce an effluent quality less than 10 mg/L for total nitrogen."

of its WWTP. The WWTP uses ultraviolet for disinfection, rather than chlorine, so the WWTP should not generate high concentrations of dibromochloromethane or dichlorobromomethane. However, as described below, chlorine has been used at the WWTP for purposes other than disinfection. Additionally, the Discharger has identified some potential sources of dibromochloromethane and dichlorobromomethane in the influent. For the total copper violations, the Discharger has identified sources of total copper and is aware that its WWTP is not currently designed to sufficiently treat total copper when influent concentrations are high. For the dibromochloromethane, dichlorobromomethane, and total copper effluent limitation violations, the Discharger has demonstrated a lack of implementing effective corrective measures, such as sufficient source control, assessing and implementing operational changes, or implementing WWTP upgrades to address recurring violations.

The Prosecution Team's economic benefit analysis conservatively focuses on the avoided costs associated with ensuring the WWTP had sufficient and effective operator coverage to minimize or prevent violations of the dibromochloromethane, dichlorobromomethane, total copper, and total nitrogen effluent limitations. Other activities and actions (e.g., WWTP upgrades, operational changes, timely repairs, timely procurement for necessary supplies and equipment, additional source control measures, additional overlap at the WWTP for the grade level IV operators, additional hours from the designated operator-in-charge (DOIC) and other support operators, expanded operational hours at the WWTP, additional training for operators and staff including improved onboarding for new operators and sufficient transfer of knowledge to new operators) were not considered for calculating the economic benefit of noncompliance. Those other activities and actions, however, are potentially needed for CDCR to functionally operate and manage the WWTP and to minimize and prevent future effluent limitation violations.

The WWTP is classified as Class IV, which requires a chief plant operator (CPO) with a minimum grade level of IV and a DOIC with a minimum grade level of III.[13] The CPO is required to appoint a certified operator to be the DOIC for any period of time during which the CPO is unable to carry out responsibilities of the position of CPO. A reasonable and prudent discharger would ensure that the CPO, DOIC, and all other operators associated with their WWTP are of the appropriate grade level and have received adequate training to successfully manage the WWTP and prevent violations.

[13] State Water Board's Wastewater Operator Certification Program includes information on wastewater treatment plant classifications and operator grade levels: https://www.waterboards.ca.gov/water_issues/programs/operator_certification/wwtp.html

CDCR has provided the following examples of changes or actions that are needed to be performed by operators at the WWTP to minimize or prevent violations of dibromochloromethane, dichlorobromomethane, total copper, and total nitrogen effluent limitations:

- In the February 2023 electronic self-monitoring report (eSMR),[14] the CPO noted the following corrective action related to a total nitrogen effluent limitation violation: “I monitor the air on the days when I am here at the plant. I will dialog with my operators more closely of how I want the air controlled and have them document air changes in the log book.” In the July 2023 eSMR, when the WWTP again experienced a total nitrogen effluent limitation violation, the CPO noted “My operator didn’t monitor the air closely when I wasn’t here,” and “The NO3 [nitrate] problem was related to too much air. I corrected the issue with staff to monitor more closely,” as well as “Too much air that day. Discussed with staff to monitor more closely and to update CPO on days off.” The recurring issue related to monitoring and maintaining appropriate aeration could have been resolved sooner, and therefore total nitrogen effluent limitation violations could have been minimized or prevented, if the WWTP had increased operator time, training, and experience to successfully manage the aeration.
- In the June 2023 eSMR, the CPO noted the following corrective actions taken related to ongoing pH effluent limitation violations that also may have had an impact on the management of disinfection byproducts: “Slowed down wasting. Used sodium bi carbonate to raise PH [pH] and eliminated the nocardia foam with CL2 [chlorine] which also had an effect on the PH. Currently the PH has rebounded beyond 7.0. Regular alkalinity testing will also be implemented. on a regular monitoring basis.” In this case, the CPO noted that chlorine was applied to treat the nocardia. While this treatment appears to have assisted with adjusting the WWTP’s pH and controlling the amount of nocardia, the addition of chlorine to the system can contribute to the generation of disinfection byproducts such as dibromochloromethane and dichlorobromomethane. The use of chlorine to treat nocardia, as well as the other corrective actions described above (e.g., the addition of sodium bicarbonate and regular alkalinity testing) all require an increased level of operator involvement and time to return the WWTP to compliance with its effluent limitations and to minimize or prevent future effluent limitation violations.

[14] eSMRs are submitted through the State Water Board’s public database, California Integrated Water Quality System (CIWQS). CDCR’s monthly eSMRs are required to include water quality monitoring data, self-reporting of permit violations, and corrective actions taken in response to permit violations.

- CDCR's December 21, 2023 effluent limit achievement plan includes an assessment of the causes and potential corrective actions for effluent limitation exceedances for total copper and total nitrogen. An example finding from the effluent limit achievement plan and a potential corrective action that CDCR could have taken to minimize or prevent the total nitrogen and total copper effluent limitation violations is: "Evaluation of the existing system performance and monitoring data for total nitrogen control and pH indicates the need to control alkalinity in the wastewater treatment process. Improvements to the WWTP process are proposed to help control compliance with both of these effluent limits and this same practice may improve copper removal through the WWTP process. Alkalinity control would most likely consist of addition of calcium or magnesium oxides post screening to maintain alkalinity and pH in the treatment process facilitating: consistent nitrification and denitrification, pH conditions through the treatment process, better control of metals." To achieve this improved alkalinity control, the operators would need to have sufficient time, experience, and training to monitor the alkalinity and make adjustments based on the WWTP's response to the addition of the suggested calcium or magnesium oxides.
- CDCR's December 21, 2023 effluent limit achievement plan also identified several operational changes that CDCR should implement at the WWTP, all of which require operator time, experience, and training to perform successfully. The operational changes that could potentially minimize or prevent effluent limitation violations, including total nitrogen, include: "Monitoring and maintaining the solids retention time in the oxidation ditch to maximize nitrogen removal to the extent necessary; monitor and manage the RAS [return activated sludge] flow rate and clarifier operation to maximize treatment process control; monitor and manage the dissolved oxygen and mixing in the oxidation ditch; sludge wasting process operational modifications (both prior to and following the sludge holding tank retrofit)."

In order to implement the management practices proposed by CDCR staff in the above examples, as well as other measures needed to minimize or prevent violations of diibromochloromethane, dichlorobromomethane, total copper, and total nitrogen effluent limitations, the Prosecution Team finds that additional operator coverage was necessary during the violation period and should be treated as avoided costs.

CDCR holds a contract with H20 Urban Solutions to provide operator coverage to several WWTPs throughout the state, including CMC's WWTP. The contract describes that H20 Urban Solutions will provide services from 7:00 am to 3:00 pm Mondays

through Fridays, with the caveat that hours may vary slightly at different locations. There is also the ability to request additional services at any time, including weekends and holidays, if needed. The contract also describes the hourly rate for operator grade level by facility.

If CDCR had utilized the option in its contract to obtain additional operator coverage, then it likely could have prevented several of the effluent limitation violations that occurred over 52 weeks (May 31, 2023, through May 31, 2024). Therefore, the Discharger avoided the cost of additional onsite grade level IV operator coverage for 52 weeks. The Prosecution Team used the contracted grade level IV operator compensation amount of $124.50 per hour for 40 hours per week for 52 weeks to estimate the labor costs for that period at $258,960.

The Prosecution Team used the BEN financial model provided by the United States Environmental Protection Agency to compute the estimated economic benefit of noncompliance based on the above assumptions. For computational purposes, the Prosecution Team estimated the penalty payment date as September 3, 2024. Changes to that date would affect the estimated economic benefit from the avoided costs, but the Prosecution Team does not expect such changes to have a substantial effect on the calculated benefit amount or the final liability per the following sections. The economic benefit of avoided costs was determined to be approximately $271,725. The output from BEN detailing the compliance actions, assumptions, and benefit of non-compliance is available upon request.

Step 8. Other Factors as Justice May Require

The Central Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in a total administrative civil liability. Including some staff investigation and enforcement costs is valid from an economic standpoint as it requires those who commit water quality violations to pay a greater percentage of the full costs of their violations. However, this important consideration must be balanced against the potential of discouraging a discharge from exercising its right to be heard and other important due process considerations.

The Prosecution Team has incurred over $4,381 in staff costs associated with the investigation and preparation of this component of the enforcement action. No attorney fees were included in the calculation. It is appropriate to increase the Total Base Liability Amount by $4,381 in consideration of staff costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate specific and general

deterrent against future violations. An itemization of the staff costs identified herein are available upon request.

Step 9. Maximum and Minimum Liability Amounts Including Mandatory Minimum Penalties for pH Alleged Violations

Maximum Liability:

The maximum administrative liability amount pursuant to Water Code sections 13385 is $10 per gallon discharged for every gallon over 1,000 that is not cleaned up, plus a maximum of $10,000 for each day in which each violation occurs. As previously noted, the Prosecution Team is recommending the application of per day liability only. Therefore, the maximum liability provided below accounts only for the maximum per day liability.

The maximum liability amount is **$1,610,000** as calculated below.

Maximum Per Day Liability Amount:

161 days x $10,000/day = $1,610,000

Minimum Liability:

The Enforcement Policy states that the Total Base Liability Amount should be at least 10 percent higher than the economic benefit amount, “so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.”

The minimum liability associated with economic benefit is $298,898 ($271,725 + 10 percent [or $27,173]). The mandatory minimum penalty for the dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation violations pursuant to Water Code section 13385, subdivisions (h) and (i), is $39,000.

The Final Liability Amount for the dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation violations is within the minimum and maximum liability amounts.

Mandatory Minimum Penalty for pH Violations:

Water Code section 13385 subdivisions (h) and (i) require the assessment of a $3,000 mandatory minimum penalty of $3,000 for specified serious and non-serious (also known as “chronic”) effluent limitation violations. The Discharger’s pH violations listed in Attachment B-1 are designated as non-serious or chronic effluent limitation violations

because each pH violation was preceded by three or more other effluent limitation violations within the 180-day period preceding a given pH violation. Therefore, each of the 46 pH violations is subject to a mandatory minimum penalty of $3,000 each. The total mandatory minimum penalty is **$138,000** (46 violations x $3,000).

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability portion for the Discharger's dibromochloromethane, dichlorobromomethane, total nitrogen, and total copper effluent limitation violations is the sum of the Total Base Liability Amount ($805,374 from Step 5 above) and other factors as justice may require ($4,381 from Step 8 above) totaling $809,755.

The final liability portion for the Discharger's pH effluent limitation violations is $138,000.

The Final Liability Amount is the sum of the portions described above, or **$947,755** ($809,755 + $138,000).

Attachment: B-1: List of Alleged Effluent Limit Violations

Attachment B-1: List of Effluent Limit Alleged Violations (Grouped by Pollutant)

Violation Date	CIWQS Violation Number	Pollutant	Effluent Limit	Effluent Limit Period	Reported Result	Days of Violation, or MMP as applicable
8/1/2023	1120832	Dibromochloromethane (Chlorodibromomethane)	0.8 µg/L	Daily Maximum	1.0 µg/L	0*
8/31/2023	1120831	Dibromochloromethane (Chlorodibromomethane)	0.4 µg/L	Monthly Average	1.0 µg/L	31
1/31/2024	1125354	Dichlorobromomethane (Bromodichloromethane)	0.56 µg/L	Monthly Average	0.57 µg/L	31
5/31/2023	1118156	Nitrogen, Total	10 mg/L	Daily Maximum	21 mg/L	1
6/6/2023	1119058	Nitrogen, Total	10 mg/L	Daily Maximum	16 mg/L	1
6/13/2023	1119059	Nitrogen, Total	10 mg/L	Daily Maximum	18 mg/L	1
6/20/2023	1119049	Nitrogen, Total	10 mg/L	Daily Maximum	26 mg/L	1
6/27/2023	1119034	Nitrogen, Total	10 mg/L	Daily Maximum	15 mg/L	1
8/29/2023	1120836	Nitrogen, Total	10 mg/L	Daily Maximum	11 mg/L	1
9/6/2023	1121273	Nitrogen, Total	10 mg/L	Daily Maximum	12 mg/L	1

Violation Date	CIWQS Violation Number	Pollutant	Effluent Limit	Effluent Limit Period	Reported Result	Days of Violation, or MMP as applicable
6/30/2023	1119405	Copper, Total	7.5 µg/L	Monthly Average	16.8 µg/L	30
7/31/2023	1129986	Copper, Total	7.5 µg/L	Monthly Average	7.9 µg/L	31
5/31/2024	1129980	Copper, Total	7.5 µg/L	Monthly Average	7.6 µg/L	31
5/24/2023	1118316	pH	7 mg/L	Daily Minimum	6.9 mg/L	MMP
5/25/2023	1118318	pH	7 mg/L	Daily Minimum	6.8 mg/L	MMP
5/26/2023	1118319	pH	7 mg/L	Daily Minimum	6.8 mg/L	MMP
5/27/2023	1118320	pH	7 mg/L	Daily Minimum	6.9 mg/L	MMP
5/28/2023	1118321	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
5/29/2023	1118315	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
5/30/2023	1118317	pH	7 mg/L	Daily Minimum	6.5 mg/L	MMP
5/31/2023	1118314	pH	7 mg/L	Daily Minimum	6.4 mg/L	MMP
6/1/2023	1119033	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
6/2/2023	1119054	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
6/3/2023	1119038	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/4/2023	1119061	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP

Violation Date	CIWQS Violation Number	Pollutant	Effluent Limit	Effluent Limit Period	Reported Result	Days of Violation, or MMP as applicable
6/5/2023	1119051	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/6/2023	1119050	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
6/7/2023	1119052	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
6/8/2023	1119056	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/9/2023	1119053	pH	7 mg/L	Daily Minimum	6.5 mg/L	MMP
6/10/2023	1119057	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
6/11/2023	1119063	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
6/12/2023	1119064	pH	7 mg/L	Daily Minimum	6.8 mg/L	MMP
6/13/2023	1119065	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/14/2023	1119066	pH	7 mg/L	Daily Minimum	6.4 mg/L	MMP
6/15/2023	1119067	pH	7 mg/L	Daily Minimum	6.3 mg/L	MMP
6/16/2023	1119068	pH	7 mg/L	Daily Minimum	6.1 mg/L	MMP
6/17/2023	1119069	pH	7 mg/L	Daily Minimum	6 mg/L	MMP
6/18/2023	1119070	pH	7 mg/L	Daily Minimum	5.8 mg/L	MMP
6/19/2023	1119071	pH	7 mg/L	Daily Minimum	5.6 mg/L	MMP

Violation Date	CIWQS Violation Number	Pollutant	Effluent Limit	Effluent Limit Period	Reported Result	Days of Violation, or MMP as applicable
6/20/2023	1119039	pH	7 mg/L	Daily Minimum	5.2 mg/L	MMP
6/21/2023	1119040	pH	7 mg/L	Daily Minimum	5.1 mg/L	MMP
6/22/2023	1119041	pH	7 mg/L	Daily Minimum	5.1 mg/L	MMP
6/23/2023	1119042	pH	7 mg/L	Daily Minimum	5.3 mg/L	MMP
6/24/2023	1119043	pH	7 mg/L	Daily Minimum	6.3 mg/L	MMP
6/25/2023	1119044	pH	7 mg/L	Daily Minimum	6.4 mg/L	MMP
6/26/2023	1119045	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/27/2023	1119046	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/28/2023	1119055	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/29/2023	1119047	pH	7 mg/L	Daily Minimum	6.6 mg/L	MMP
6/30/2023	1119048	pH	7 mg/L	Daily Minimum	6.9 mg/L	MMP
7/1/2023	1119587	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
7/2/2023	1119588	pH	7 mg/L	Daily Minimum	6.7 mg/L	MMP
7/3/2023	1119589	pH	7 mg/L	Daily Minimum	6.8 mg/L	MMP
7/5/2023	1119591	pH	7 mg/L	Daily Minimum	6.9 mg/L	MMP

Violation Date	CIWQS Violation Number	Pollutant	Effluent Limit	Effluent Limit Period	Reported Result	Days of Violation, or MMP as applicable
7/6/2023	1119592	pH	7 mg/L	Daily Minimum	6.8 mg/L	MMP
7/7/2023	1119590	pH	7 mg/L	Daily Minimum	6.8 mg/L	MMP
8/3/2023	1120829	pH	7 mg/L	Daily Minimum	6.9 mg/L	MMP
8/4/2023	1120834	pH	7 mg/L	Daily Minimum	6.9 mg/L	MMP

* As noted in Attachment B, this day of violation is already accounted for within the 31 days of violation of the dibromochloromethane monthly average effluent limit and is not counted twice.

ATTACHMENT C

FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER R3-2025-0005

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION CALIFORNIA MEN'S COLONY DRINKING WATER TREATMENT PLANT SAN LUIS OBISPO COUNTY

This document provides details on the proposed administrative civil liability related to unauthorized discharges of drinking water sand filter backwash waste (filter backwash waste) to waters of the United States from the California Department of Corrections and Rehabilitation (CDCR or Discharger) California Men's Colony (CMC) Drinking Water Treatment Plant (WTP) in August 2023. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team (Prosecution Team) derived the proposed administrative civil liability following the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (the Enforcement Policy).[1]

Application of the Water Board's Enforcement Policy

On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the Enforcement Policy. The Office of Administrative Law approved the 2017 Enforcement Policy, which became effective on October 5, 2017. The Enforcement Policy establishes a methodology for assessing administrative civil liability for violations of the California Water Code (Water Code) and Federal Water Pollution Control Act (Clean Water Act). Use of the methodology incorporates Water Code sections 13327 and 13385 that require the Central Coast Water Board to consider specific factors when determining the amount of civil liability to impose, 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 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."

[1] Enforcement Policy: https://www.waterboards.ca.gov/water_issues/programs/enforcement/water_quality_enforcement.shtml

The penalty methodology calculation procedural steps are discussed and shown in detail below.

Regulatory Basis for Alleged Violation and Proposed Liability

CDCR supplies potable water to CMC facilities and other customers. CDCR receives most of its treated drinking water that it distributes for customers from the Central Coast Water Authority. When treated water from the Central Coast Water Authority is unavailable, however, CDCR treats raw water from Chorro Reservoir and Whale Rock Reservoir at the WTP located on Lake Chorro Road in San Luis Obispo County. CDCR has owned and operated the WTP for approximately 75 years. Sand filters are a component of the WTP's treatment processes. Filter backwash waste is generated as a waste stream when CDCR cleans the sand filters. Without coverage under an NPDES permit, CDCR has discharged the filter backwash waste from the WTP to Chorro Reservoir, which receives natural flows from the upstream section of Chorro Creek and continuously flows into the lower section of Chorro Creek. Chorro Creek is tributary to Morro Bay Estuary, Morro Bay (a State Marine Reserve Protected Area and part of the National Estuary Program), and the Pacific Ocean. All receiving waters are waters of the United States.

As further explained below, the Central Coast Water Board has notified CDCR multiple times of the requirement to apply for and obtain NPDES permit coverage prior to discharging the WTP filter backwash waste to Chorro Reservoir.

In October 2021, CDCR submitted an incomplete application for coverage under the *General Permit for Discharges with Low Threat to Water Quality* (Low Threat Permit). Central Coast Water Board staff informed CDCR of the application's deficiencies and identified the information needed to complete the application. CDCR never submitted a complete application for coverage under the Low Threat Permit.

On July 31, 2023, Central Coast Water Board ordered CDCR to obtain permitted authority to discharge filter backwash waste to Chorro Reservoir by enrolling in an updated permit, Order R3-2022-0035, *National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges with Limited Threat to Water Quality* (Limited Threat Permit).[2] CDCR submitted an incomplete application and Central Coast Water Board staff informed CDCR of the required components for a complete application. To

[2] The Limited Threat Permit superseded the Low Threat Permit previously mentioned in this document. The Limited Threat Permit is available at: https://www.waterboards.ca.gov/centralcoast/board_decisions/adopted_orders/2022/att1-order-r3-2022-0035.pdf

date, CDCR has failed to submit a complete application for coverage under the Limited Threat Permit. Any discharge of filter backwash waste from the WTP to Chorro Reservoir is an unpermitted discharge of waste.

On August 15, 2023, CDCR notified Central Coast Water Board staff that the WTP had started producing drinking water because treated water from the Central Coast Water Authority was unavailable due to a temporary pipeline shutdown. The WTP's treatment process would result in the unauthorized discharge of filter backwash waste into Chorro Reservoir.

On August 23, 2023, Central Coast Water Board staff inspected the WTP. During the inspection, CDCR reported that it discharged a total of 400,200 gallons of filter backwash waste into Chorro Reservoir during seven days in August 2023, as shown in the Table 1.

On February 21, 2024, the Central Coast Water Board issued a notice of violation to CDCR that included, in part, alleged violations for the unauthorized discharges of filter backwash waste to Chorro Reservoir and for the incomplete application for enrollment in the Limited Threat Permit to permit such discharges to Chorro Reservoir.

Table 1: Unpermitted Discharges of WTP Filter Backwash Waste to Chorro Reservoir from August 14, 2023, to August 22, 2023

Date	Filter Backwash Waste Daily Discharge Volume (gallons)
8/14/2023	132,200
8/15/2023	3,700
8/16/2023	64,400
8/17/2023	46,700
8/18/2023	26,800
8/21/2023	31,500
8/22/2023	94,900
Total:	400,200

While CDCR's unpermitted discharge of filter backwash to Chorro Reservoir has occurred numerous times over many years, the Prosecution Team is exercising prosecutorial discretion to only allege days of violation that occurred in August 2023 for the discharges that occurred after the Central Coast Water Board's second directive, dated July 31, 2023, to obtain NPDES coverage for the unpermitted discharges to waters of the United States.

Clean Water Act section 301 and/or Water Code section 13376 prohibit all waste discharges to waters of the United States except those authorized by an NPDES permit.

CDCR's unpermitted discharges of filter backwash is in violation of Clean Water Act section 301 and/or Water Code section 13376.

The Prosecution Team alleges that CDCR violated Clean Water Act section 301 and/or Water Code section 13376 on each of the unpermitted discharge days shown in Table 1 above by discharging an estimated 400,200 gallons of filter backwash waste to waters of the United States (Chorro Reservoir and Chorro Creek, which is tributary to Morro Bay, and the Pacific Ocean).

Violations of Clean Water Act section 301 and/or Water Code section 13376 are subject to administrative civil liability under Water Code section 13385, subdivisions (a) and (c).

Penalty Calculation Methodology Procedural Steps

Step 1. Actual or Potential for Harm for Discharge Violations

This initial step for discharge violations is used to determine the actual harm or potential harm to the waterbody's beneficial uses caused by the violation using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge (i.e., the physical, chemical, biological, or thermal characteristics of the discharge); (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement.

Factor 1: The Degree of Toxicity of the Discharge

Factor 1 Background: The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation or violations, 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.

The Enforcement Policy specifies assigning a factor score ranging from 0 to 4 based on whether the risk or threat of the discharged material to potential receptors (i.e., human, environmental, ecosystem health exposure pathways) is negligible (0) to significant (4).

Factor 1 Consideration: Based on the physical, chemical, biological, or thermal characteristics of filter backwash waste before discharge, the risk or threat the discharged material poses to potential receptors and beneficial uses is **moderate (2)**. "Moderate" is assigned when the physical, chemical, biological, and/or thermal

characteristics of the discharged material have some level of toxicity or pose a moderate level of threat to potential receptors.

On August 21, 2023, the Discharger sampled the filter backwash waste during the period of discharge into Chorro Reservoir. Although the discharge was not regulated under the Limited Threat Permit, to characterize the potential toxicity and harm to receiving water beneficial uses and as a component of the application package for enrolling in the Limited Threat Permit, the Discharger analyzed the filter backwash waste for the pollutants regulated by that permit. The results indicated elevated concentrations of several pollutants that exceeded the Limited Threat Permit values deemed protective of water quality as shown in the table below. These values become effluent limitations for dischargers who successfully enroll in the Limited Threat Permit.

Table 2: WTP Filter Backwash Waste August 21, 2023 Sample – Pollutants Exceeding Limited Threat Permit Values

Pollutant	Limited Threat Permit Concentration Value (µg/L)[3]	Filter Backwash Waste Sample Concentration (µg/L)
Dibromochloromethane	0.401	7.4
Bromodichloromethane	0.56	27.9
Arsenic	10	14

Dibromochloromethane, dichlorobromomethane, and arsenic are three of the 126 priority toxic pollutants included in the California Toxics Rule (CTR). The CTR includes numeric water quality criteria for the protection of aquatic life and/or human health. The Limited Threat Permit incorporates numeric water quality criteria from several sources, including the CTR and state and federal maximum contaminant levels (MCLs), as effluent limitations that enrollees are required to comply with to protect water quality.

For dibromochloromethane, the CTR includes a water quality criterion for the protection of human health of 0.401 µg/L. The CTR does not include criteria for dibromochloromethane for the protection of aquatic life. The CTR criterion for dibromochloromethane is incorporated into the Limited Threat Permit as an effluent limitation. As shown in Table 2 above, the recorded concentration of dibromochloromethane in the discharge on August 21, 2023 was 7.4 µg/L, which is over 18 times the Limited Threat Permit's effluent limitation.

[3] "µg/L" is defined as "micrograms per liter".

For dichlorobromomethane, the CTR includes a water quality criterion for the protection of human health of 0.56 µg/L. The CTR does not include criteria for dichlorobromomethane for the protection of aquatic life. The CTR criterion for dichlorobromomethane is incorporated into the Limited Threat Permit as an effluent limitation. As shown in Table 2 above, the recorded concentration of dichlorobromomethane in the discharge on August 21, 2023, was 27.9 µg/L, which is over 49 times the Limited Threat Permit's effluent limitation.

For additional context related to human health, there is a federal maximum contaminant level (MCL) of 80 µg/L for total trihalomethanes. Trihalomethanes are formed when certain disinfectants (e.g., chlorine) are used to treat organic matter in water. Total trihalomethanes represents the sum of trichloromethane (chloroform), dibromochloromethane, dichlorobromomethane, and bromoform. The recorded concentrations of the trihalomethanes that were tested in the discharge are: 7.4 µg/L dibromochloromethane, 27.9 µg/L dichlorobromomethane, and 49 µg/L chloroform (bromoform was not analyzed). The sum of the analyzed trihalomethanes was 84.3 µg/L, which exceeds the MCL.

CDCR's discharge sampling indicates that dibromochloromethane and dichlorobromomethane exceeded the Limited Threat Permit's effluent limitations and that the sum of dibromochloromethane, dichlorobromomethane, and chloroform exceeded the federal MCL for total trihalomethanes. However, the discharge is not constant, occurring instead over a relatively short period of time. Therefore, the discharge can be characterized as posing moderate risk or threat of toxicity to human health that warrants a score of **moderate (2)**.

The federal drinking water MCL for arsenic is 10 µg/L and the federal MCL goal (MCLG) is zero (0). MCLGs are the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs are non-enforceable public health goals. MCLs are the highest level of a contaminant that is allowed in drinking water. They are set as close to the MCLG as feasible using the best available treatment technology and taking cost into consideration.[4] According to the United States Environmental Protection Agency's (U.S. EPA's) consumer fact sheet for arsenic in drinking water, risks associated with consuming drinking water containing arsenic in excess of U.S. EPA's standard include thickening and discoloration of the skin, stomach pain, vomiting, diarrhea, and liver effects; cardiovascular, pulmonary, immunological, neurological,

[4] EPA's National Primary Drinking Water Regulations website: https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations

reproductive, and endocrine effects; and cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate.[5] The federal MCL for arsenic of 10 µg/L matches the concentration allowable under the Limited Threat Permit as shown above in Table 2. CDCR's discharge sampling indicates that the arsenic concentration of 14 µg/L exceeded 10 µg/L. However, the discharge is not constant, occurring instead over a relatively short period of time. Therefore, the discharge can be further characterized as posing moderate risk or threat of toxicity to human health that warrants a factor of **moderate (2)**.

The USEPA's National Recommended Water Quality Criteria for Aquatic Life arsenic criterion for short-term, acute exposure is 340 µg/L, and the criterion for long-term, chronic exposure is 150 µg/L. These criteria are the highest concentrations of arsenic in water that are not expected to pose a significant risk to the majority of species in a given environment. The arsenic concentration of 14 µg/L in the filter backwash waste prior to discharge indicates only negligible risk or threat of toxicity to aquatic life.

The above combined considerations indicate that prior to discharge the filter backwash waste posed a moderate risk or threat of toxicity to potential receptors warranting a score of **moderate (2)**, as determined above from the highest factor warranted by the known chemical characteristics of the filter backwash waste.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses

Factor 2 Background: The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving waterbody that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Central Coast Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. 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 factor. Actual harm as used in this section means harm that is documented and/or observed. Potential harm should be evaluated in the context of the specific characteristics of the waste discharged and the specific beneficial uses of the impacted waters.

[5] Arsenic in Your Drinking Water – Just the Facts for Consumers: https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=60000E1E.txt

The Enforcement Policy specifies a score ranging from 0 to 5 based on a determination of whether direct or indirect harm, or potential for harm, from a violation is negligible (0) to major (5).

Factor 2 Consideration: The harm or potential harm to beneficial uses from the discharge is **below moderate (2**). "Below moderate" is assigned when there is observed or reasonably expected potential impacts, but based on the characteristics of the discharge and applicable beneficial uses, harm or potential harm to beneficial uses is measurable in the short term, but not appreciable.

The Water Quality Control Plan for the Central Coast Basin, 2019 Edition (2019 Basin Plan),[6] Chapter 2, *Present and Potential Beneficial Uses*, designates the beneficial uses of surface waters throughout the Central Coast Basin. Of the designated beneficial uses,[7] those most relevant to, and harmed or potentially harmed by, the CDCR's discharge to Chorro Reservoir, Chorro Creek, Morro Bay Estuary, and Morro Bay are municipal and domestic supply (MUN), water contact recreation (REC-1),[8] non-contact water recreation (REC-2), cold fresh water habitat (COLD), warm fresh water habitat (WARM; Chorro Creek only), spawning, reproduction, and/or early development (SPWN; Chorro Creek and Morro Bay Estuary only), preservation of biological habitats of special significance (BIOL; Chorro Creek and Morro Bay Estuary only), rare, threatened, or endangered species (RARE), estuarine habitat (EST; Morro Bay Estuary only), aquaculture (AQUA; Morro Bay Estuary only), shellfish harvesting (SHELL; Morro Bay Estuary and Morro Bay only), and marine habitat (MAR; Morro Bay only).

The Limited Threat Permit incorporates the CTR's water quality criteria for the protection of human health as effluent limits of 0.401 µg/L for dibromochloromethane and 0.56 µg/L for dichlorobromomethane. The Discharger reported concentrations of 7.4 µg/L for dibromochloromethane and 27.9 µg/L for dichlorobromomethane, which exceed their respective effluent limits in the Limited Threat Permit and therefore have the potential to impact the MUN beneficial use of Chorro Reservoir and downstream waterbodies. Additionally, based on the Discharger's reported concentration values for dibromochloromethane, dichlorobromomethane, and chloroform (49 µg/L), the discharged concentration of total trihalomethanes was 84.3 µg/L, which exceeds the total trihalomethanes MCL of 80 µg/L and presents additional potential for impacting the MUN beneficial use of the receiving waters. Dibromochloromethane and

[6] The 2019 Basin Plan was in effect at the time of the violation and is viewable at: https://www.waterboards.ca.gov/centralcoast/water_issues/programs/basin_plan/
[7] See the Basin Plan for all listed beneficial uses.
[8] Capitalized abbreviations are those used in the Basin Plan and are provided for reference.

dichlorobromomethane are volatile compounds, so some amount of the discharged concentration may have been lost to the atmosphere during and after discharge. However, the exact amount that may have volatilized is unquantified. The discharged concentrations represent reasonably expected potential forms of harm, but the intermittent nature of the discharge means the potential harm may attenuate without appreciable medium or long term acute or chronic effects. This consideration regarding dibromochloromethane and dichlorobromomethane warrants a score of **below moderate (2)**.

The discharged arsenic concentration of 14 µg/L was below the USEPA's National Recommended Water Quality Criteria for Aquatic Life arsenic criterion for short-term, acute exposure of 340 µg/L, and below the criterion for long-term, chronic exposure of 150 µg/L. According to the Agency for Toxic Substances and Disease Registry Fact Sheet for arsenic, arsenic cannot be destroyed in the environment, though most arsenic in water will ultimately end up in soil or sediment. In addition, fish and shellfish can accumulate arsenic, but mostly in a much less harmful form called arsenobetaine. The low concentration discharged relative to the aquatic life criteria indicates little to no threat of harm to aquatic habitat beneficial uses (cold fresh water habitat (COLD), warm fresh water habitat (WARM; Chorro Creek only), spawning, reproduction, and/or early development (SPWN; Chorro Creek and Morro Bay Estuary only), preservation of biological habitats of special significance (BIOL; Chorro Creek and Morro Bay Estuary only), rare, threatened, or endangered species (RARE), estuarine habitat (EST; Morro Bay Estuary only), aquaculture (AQUA; Morro Bay Estuary only), shellfish harvesting (SHELL; Morro Bay Estuary and Morro Bay only), and marine habitat (MAR; Morro Bay only). However, arsenic's persistence and accumulation in aquatic life and the environment does indicate a low threat of potential harm to those beneficial uses

The potential for harm is higher when considering the MUN beneficial use. The federal MCL for arsenic is 10 µg/L and the federal MCL goal (MCLG) is zero (0). The California public health goal (PHG) for arsenic is 0.004 µg/L. A PHG is the level of a contaminant in drinking water that, based on currently available data, does not pose a significant risk to health. Arsenic in drinking water is associated with relatively high risks of lung and bladder cancer and, to a lesser extent, with an increased risk of cancer of the skin, liver, and kidneys.[9] The discharged arsenic concentration of 14 µg/L exceeded the MCL, MCLG, and PHG. However, the discharge is not constant, instead occurring over a limited period of time. This consideration indicates a below moderate threat of potential

[9] Office of Environmental Health Hazard Assessment (OEHHA)'s Public Health Goal for Arsenic factsheet: https://oehha.ca.gov/media/downloads/water/chemicals/arsenicfinalphgfacts.pdf

harm to the municipal and domestic supply (MUN) beneficial use and warrants a factor of **below moderate (2)**.

The above combined considerations indicate that the discharged filter backwash waste posed a minor risk or threat to beneficial uses warranting a score of **below moderate (2)**.

Factor 3: Susceptibility to Cleanup or Abatement

Factor 3 Background: The Enforcement Policy specifies assigning a factor score of (0) if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time. A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean up 50 percent or more of the discharge within a reasonable time. Natural attenuation of discharged pollutants in the environment is not considered cleanup or abatement for purposes of evaluating this factor.

Factor 3 Consideration: The Discharger did not recover any of the filter backwash waste from Chorro Reservoir or Chorro Creek. The volume recovered was less than 50 percent of the estimated spill volume and warrants a score of **(1)**.

Step 1 Final Score – Harm or Potential Harm to Beneficial Uses

The sum of the above factor scores is **(5)**. This value is used in Step 2 as the “Potential for Harm” score.

Step 2. Assessments for Discharge Violations

Per Gallon Assessments for Discharge Violations

The Enforcement Policy specifies that the Water Boards shall use the Potential for Harm score from Step 1 and the extent of Deviation from Requirement when determining an initial liability amount on a per gallon basis. The Deviation from Requirement reflects the extent the alleged violation deviated from the specific requirement at issue and characterizes it as minor, moderate, or major. The Potential for Harm score in Step 1 and the Deviation from Requirement determination in Step 2 are used to determine a Per Gallon Factor from Table 1 of the Enforcement Policy. The per gallon assessment is then determined by multiplying the Per Gallon Factor by the number of gallons subject to penalty and the maximum per gallon penalty amount allowed under the Water Code.

Per Day Assessments for Discharge Violations

The Enforcement Policy also specifies that the Water Boards shall use the Potential for Harm score from Step 1 and the extent of Deviation from Requirement when determining an initial liability amount on a per day basis. Table 2 of the Enforcement Policy is used to determine a Per Day Factor for the alleged violation. The per day assessment is then determined by multiplying the Per Day Factor by the maximum per day amount allowed under the Water Code and number of days the violation occurred.

Step 2 Consideration:

Both per gallon and per day amounts may be assessed under Water Code section 13385. As determined in Step 1, the Potential for Harm factor for this violation is **(5)**. The Prosecution Team determined that the Deviation from Requirement is **major**. "Major" is assigned when the requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).

Water Code section 13376 and/or Clean Water Act section 301 prohibit the unpermitted discharge of filter backwash waste from the Discharger's WTP to waters of the United States. CDCR disregarded the requirement and discharged filter backwash waste to waters of the United States without an NPDES permit, rendering the requirement ineffective in its essential function of protecting water quality. The Deviation from Requirement is **major**.

The Prosecution Team determined that the Per Gallon Factor from Table 1 and the Per Day Factor from Table 2 of the Enforcement Policy are **0.15**.

Water Code section 13385, subdivision (c)(2) provides that liability of up to $10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons. The discharges were not a continuous event. The discharges occurred during seven distinct periods on each of the seven days from August 14, 2023, to August 22, 2023. Seven days of violation are subject to the per day liability. The volume subject to per gallon liability is 393,200 gallons as shown in Table 3 below.

Table 3: WTP Filter Backwash Waste Discharge Volumes Subject to Liability

Discharge Date	Estimated Volume Discharged (gallons)	Volume Not Subject to Liability (gallons)	Volume Subject to Liability (gallons)
August 14, 2023	132,200	1,000	131,200

Discharge Date	Estimated Volume Discharged (gallons)	Volume Not Subject to Liability (gallons)	Volume Subject to Liability (gallons)
August 15, 2023	3,700	1,000	2,700
August 16, 2023	64,400	1,000	63,400
August 17, 2023	46,700	1,000	45,700
August 18, 2023	26,800	1,000	25,800
August 21, 2023	31,500	1,000	30,500
August 22, 2023	94,900	1,000	93,900
		Total:	393,200

Water Code section 13385, subdivision (c)(1) provides that liability of up to $10,000 per day shall apply for each day of violation.

The Enforcement Policy acknowledges that the volume of certain discharges can be very high and specifies that the Water Boards may elect to use a value between $2 per gallon and $10 per gallon to determine the per gallon amount for discharges that are between 100,000 gallons and 2,000,000 gallons for each discharge event, whether it occurs on one or more days. The Prosecution Team determined that because the discharge occurred over mostly consecutive days, and the total discharge volume was within 100,000 gallons and 2,000,000 gallons, a $2.00 per gallon maximum was used to determine an appropriate liability.

Therefore, the per gallon and per day initial liability amounts, and the combined initial liability amount for the violation are as follows:

Per Gallon Liability:

$2/gallon x 393,200 gallons x 0.15 per gallon factor = $117,960

Per Day Liability:

$10,000/day x 7 days x 0.15 per day factor = $10,500

Initial Liability Amount:

Per Gallon Liability + Per Day Liability = $117,960 + $10,500 = $128,460

Step 3. Per Day Assessment for Non-Discharge Violations

This step does not apply to the violations because they are discharge violations.

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 violations.

Culpability Factor Background: The culpability factor addresses the discharger's degree of culpability regarding the violation. Adjustment may be made to a multiplier from 0.75 to 1.5, with a lower multiplier for accidental, non-negligent violations and a higher multiplier for intentional or negligent behavior. A first step to analyzing the culpability factor is to identify any performance standards related to the violation (or, in their absence, prevailing industry practices). The culpability factor then looks to what a reasonable and prudent person would have done or not done under similar circumstances.

Culpability Factor Consideration: The culpability factor for the violation is **1.5**.

On October 9, 2021, CDCR submitted an application, including a notice of intent and filter backwash waste analytical data, for enrollment in the Low Threat Permit for the seasonal disposal of 35,000 to 70,000 gallons per day of filter backwash waste into Chorro Reservoir. Central Coast Water Board staff reviewed the October 9, 2021 application, and found that the discharge did not meet several effluent limitations of the Low Threat Permit.

On October 25, 2021, in a written memorandum sent via electronic mail, the Central Coast Water Board required CDCR to submit updated analytical data for the filter backwash waste and a plan describing how the WTP would achieve compliance with the Low Threat Permit's effluent limitations. CDCR did not submit the updated analytical data or plan to the Central Coast Water Board and continued to send unpermitted discharges of filter backwash waste to Chorro Reservoir in 2021 and 2022. Central Coast Water Board staff continued to inform CDCR via emails and phone conversations that these discharges were unauthorized.

On December 8, 2022, the Central Coast Water Board issued the Limited Threat Permit. On July 31, 2023, the Central Coast Water Board ordered CDCR pursuant to Water Code section 13376 to file an application to discharge waste (also referred to as a report of waste discharge and notice of intent) to apply for enrollment in the Limited Threat Permit by September 1, 2023. The Central Coast Water Board provided CDCR with the alternative option to submit a written response to the Central Coast Water

Board describing how the filter backwash waste disposal method will prevent future unauthorized discharges of filter backwash waste to waters of the United States.

On August 14, 2023, Central Coast Water Board staff spoke with CDCR staff to discuss the Limited Threat Permit application requirements. On August 14, 2023, CDCR submitted an incomplete application for enrollment in the Limited Threat Permit. To date, CDCR has not submitted a complete application for enrollment in the Limited Threat Permit.

On August 15, 2023, CDCR informed Central Coast Water Board staff via phone that treated water from the Central Coast Water Authority was unavailable due to a pipeline shut down for temporary service, that the WTP would start up on August 15, 2023, and discharge filter backwash waste into Chorro Reservoir. Central Coast Water Board staff informed CDCR staff via phone that CDCR is not permitted to discharge filter backwash waste into Chorro Reservoir and that CDCR needs to obtain regulatory coverage for the filter backwash waste discharge if it plans to discharge to Chorro Reservoir.

The events above demonstrate that CDCR knew it did not have authorization to discharge filter backwash waste to Chorro Reservoir and did not take measures to prevent the unauthorized discharges. CDCR's longstanding failure to find an alternate authorized disposal option for the filter backwash waste or complete its enrollment in an NPDES permit further indicates a higher degree of culpability. A reasonable and prudent discharger would have found an alternate authorized disposal option for the filter backwash waste or completed its enrollment under an appropriate NPDES permit prior to discharging the waste to waters of the United States.

The Prosecution Team determined that the alleged violations were intentional and warrant a multiplier of **1.5**.

Cleanup and Cooperation Factor Background: The cleanup and cooperation factor addresses the extent to which the 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 factor of 1.0 as it is assumed a reasonable amount of cooperation is the warranted baseline.

Cleanup and Cooperation Factor Consideration: CDCR ceased operating its WTP on August 25, 2023. However, CDCR cooperated in a less than reasonable and prudent manner because it has failed to provide the information required to complete its application for enrollment in the Limited Threat Permit. CDCR's response falls substantially below the reasonably expected response of submitting the required information in a timely and complete manner to determine whether a proposed waste discharge is eligible for enrollment in the Limited Threat Permit. This consideration warrants a multiplier of **1.2**.

History of Violations Factor Background: Where there is a history of repeat violations by a discharger, a minimum multiplier factor of 1.1 should be used. Where a discharger has no prior history of violations, this factor should be neutral, or 1.0.

History of Violations Factor Consideration: The Discharger has a history of violations related to unauthorized discharges and effluent limit violations at CMC facilities that it owns and operates. In approximately the last five years, from June 25, 2019, through September 26, 2023, the Central Coast Water Board issued six administrative civil liability orders to CDCR imposing $414,000 in mandatory minimum penalties for violating 138 effluent limitation violations for discharges from the CMC WWTP. Additionally, in 2020, the Central Coast Water Board issued an administrative civil liability order imposing a penalty of $166,896 for unauthorized discharges of untreated municipal and domestic wastewater from the Discharger's CMC sanitary sewer system to Chorro Creek and for the Discharger's failure to submit a technical report. A multiplier of **1.1** is assigned.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability amount for the violation is calculated by multiplying the Initial Liability Amount by the adjustment factors for the alleged violation (Initial Liability Amount) x (Culpability) x (Cleanup/Cooperation) x (History of Violations). The applicable Total Base Liability amount for the violation is $254,351 as summarized below.

Total Base Liability Amount:

$128,460 x 1.5 x 1.2 x 1.1 = $254,351

Step 6. Ability to Pay and Continue in Business

The ability of the Discharger to pay an administrative civil liability is generally determined by its income (revenues minus expenses) and net worth (assets minus liabilities). Under the Enforcement Policy, the Combined Total Base Liability amount

may be adjusted to address a discharger's ability to pay or to continue in business if the Central Coast Water Board has sufficient financial information necessary to assess the discharger's ability to pay the Combined Total Base Liability amount or to assess the effect of the Combined Total Base Liability Amount on the discharger's ability to continue in business. The California Department of Corrections and Rehabilitation is a state agency with a budget for fiscal year 2024-2025 of approximately $14.3 billion. The Prosecution Team has no evidence of CDCR's inability to pay the proposed liability.

Step 7. Economic Benefit

The Prosecution Team determined that the economic benefit of noncompliance was $4,026. The Discharger realized financial benefits associated with the cause of the violation by avoiding the costs of hauling the sand filter backwash waste to its own sanitary sewer system for authorized discharge via its wastewater treatment facility.

For the purpose of estimating the Discharger's potential economic benefit, the Prosecution Team assumed that the Discharger may have been able to transport the filter backwash water to its wastewater treatment facility by using trucks to haul the wastewater to its nearest sanitary sewer system manhole. The Discharger's sanitary sewer system map and overhead imagery indicate that a manhole was available approximately one mile from the WTP and source of the filter backwash waste. Making various assumptions about the cost of trucks, drivers, and fuel, and the number of trips needed to haul 400,200 gallons of filter backwash waste, the Prosecution Team determined a hauling cost per gallon of approximately $0.01/gallon or $4,000. That cost is considered an avoided cost.

Considering the above, the Discharger has avoided costs associated with properly disposing its filter backwash waste to prevent the unauthorized discharges on the seven alleged days of violation. The Discharger may have prevented the unauthorized discharges had it implemented such alternative actions.

The Prosecution Team used the BEN financial model provided by the United States Environmental Protection Agency to compute the economic benefit of noncompliance. For computational purposes, the Prosecution Team estimated the penalty payment date as October 17, 2024. Changes to this date would affect the economic benefit estimate, but the Prosecution Team does not expect such changes to have a substantial effect on the calculated benefit amount or the final liability per the following sections. The economic benefit of avoided costs was determined to be approximately $4,026. The output from BEN detailing the compliance actions, assumptions, and benefit of non-compliance is available upon request.

Step 8. Other Factors as Justice May Require

The Central Coast Water Board may exercise its discretion to include some of the costs of investigation and enforcement in a total administrative civil liability. Including some staff investigation and enforcement costs is valid from an economic standpoint as it requires those who commit water quality violations to pay a greater percentage of the full costs of their violations. However, this important consideration must be balanced against the potential of discouraging a discharge from exercising its right to be heard and other important due process considerations.

The Prosecution Team has incurred over $4,651 in staff costs associated with the investigation and enforcement of these violations.

Step 9. Maximum and Minimum Liability Amounts

Maximum Liability:

The maximum administrative liability amount pursuant to Water Code sections 13385 is $10 per gallon discharged for every gallon over 1,000 that is not cleaned up, plus a maximum of $10,000 for each day in which each violation occurs.

The maximum liability amount is **$4,002,000** as calculated below.

Estimated Volume Discharged to creek: 400,200 gallons

Volume subject to liability: 400,200 – 7,000 (1,000 gallons subtracted from each of the seven days of discharge as shown in Table 3 above) = 393,200 gallons

Maximum Per Gallon Liability Amount:

393,200 gallons x $10/gallon = $3,932,000

Maximum Per Day Liability Amount:

7 days x $10,000/day = $70,000

Maximum Liability Amount:

$3,932,000 + $70,000 = $4,002,000

Minimum Liability:

The Enforcement Policy states that the Total Base Liability Amount should be at least 10 percent higher than the economic benefit amount, “so that liabilities are not

construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations."

The minimum liability associated with economic benefit is $4,428.60 as calculated below.

Estimated Economic Benefit (from Step 7 above): $4,026

$4,026 x 0.10 = $402.60

4,026 + $402.60 = $4,428.60

The Final Liability Amount is within the maximum and minimum liability amounts for the violation.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the Final Liability Amount is the sum of the Total Base Liability Amount and other factors as justice may require totaling **$259,002**.