

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

In the Matter of:

**CITY OF MODESTO,
SANITARY SEWER SYSTEM,
STANISLAUS COUNTY**

ORDER R5-2024-0505

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

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the City of Modesto (individually, the City or Discharger) (collectively, the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 13323 and 11415.60.

II. Recitals

2. The Discharger owns and operates the City of Modesto's sanitary sewer collection system, which serves the City of Modesto in Stanislaus County. The City's sanitary sewer system consists of approximately 59,903 service laterals, 655 miles of sewer lines, 12,977 manholes, 48 lift stations, and other related infrastructure. Sewage from the collection system is routed to the City of Modesto's Wastewater Treatment Plant.¹ When the City's sanitary sewer system overflows, discharges to waters of the United States may occur.
3. The Discharger's sanitary sewer system is regulated by the State Water Resources Control Board's (State Water Board) *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, Order No. 2006-0003-DWQ, as revised by WQ-2013-0058-EXEC (General Order).² The General Order requires that the Discharger operate and maintain its collection system to prevent sanitary sewer overflows and spills. Prohibition C.1 of the General Order prohibits the discharge of untreated or partially treated wastewater from the collection system to waters of the United States.

¹ This facility is regulated under Waste Discharge Requirements Order R5-2022-0034 (NPDES CA0085316).

² The revised General Order became effective on 5 June 2023.

4. Clean Water Act section 301 (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The General Order is not an NPDES permit.
5. On 24 October 2021, a sanitary sewer overflow (SSO) occurred at Beard Brook Park in Modesto. The spill began around 10:45 pm on October 24th and subsided around 12:00 am on October 25th. During this time, approximately 211,654 gallons of raw sewage was discharged into Dry Creek, a tributary of the Tuolumne River, which is a waters of the United States. On 26 October 2021, the Discharger discovered a severely corroded pipeline in this area, which coupled with heavy rains, contributed to the SSO. The pipeline was so corroded that the top half of the pipe was missing.
6. On 30 October 2021, another SSO occurred at Beard Brook Park in the same location as the incident on 24-25 October, 2021. The Discharger reported that two bypass pumps (deployed to divert flows into a separate sewer line) failed while repairs were being made to the corroded pipeline described above. The bypass pumps became clogged and were unable to handle the incoming wastewater flows, thus discharging approximately 211,650 gallons of raw sewage into Dry Creek, a tributary of the Tuolumne River.
7. The Prosecution Team alleges that the City violated Prohibition C.1 of the General Order, Clean Water Act section 301, and Water Code section 13376 by discharging a total of 423,304 gallons of untreated sewage to a waters of the United States during both SSO events in October 2021.
8. Pursuant to Water Code section 13385, subdivision (a), any person who violates Water Code section 13376 or any requirements of Clean Water Act section 301 is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (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.
9. Pursuant to Water Code section 13327 and 13385, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, 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 the ability to continue in business, any voluntary cleanup efforts undertaken, any

prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

10. The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) was adopted on 4 April 2017 and became effective on 5 October 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability.
11. The factors required to be considered when imposing administrative civil liability are set forth in detail in Attachment A, which is incorporated herein by reference. The total amount of the administrative civil liability (ACL) calculated using the penalty methodology for the alleged violation is three hundred sixty thousand ninety-five dollars (\$360,095).
12. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. To resolve the violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of administrative civil liability in the amount of **three hundred twenty-five thousand dollars (\$325,000)** against the Discharger. The reduction in the amount calculated using the penalty methodology in the Enforcement Policy is appropriate given the risks of litigation inherent in proceeding to a contested evidentiary hearing. The Prosecution also took into consideration the City's multi-year River Trunk Project meant to realign the River Trunk Line away from the Tuolumne River and reduce the risk of SSOs in the future.
13. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

14. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
15. **Administrative Civil Liability:**
 - a. The Discharger hereby agrees to the imposition of an ACL in the amount of **three hundred twenty-five thousand dollars (\$325,000)** to the

Central Valley Water Board to resolve the violations specifically alleged in Attachment A to this Order.

- b. The State Water Board's May 3, 2018 Policy on Supplemental Environmental Projects (SEP Policy) section VIII.B. provides:

Unless otherwise permitted by statute or approved by the Director of [the Office of Enforcement (OE)] based on a finding of compelling justification due to exceptional circumstances . . . no settlement shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the settling party. The total adjusted monetary assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs.

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment in cases where the SEP is located in or benefits a disadvantaged community, an environmental justice community, a community that has a financial hardship, or where the SEP substantially furthers the human right to water.

Pursuant to the Director of OE's April 30, 2021 (revised August 8, 2023) memorandum on approving disadvantaged community and environmental justice SEPs greater than 50 percent of the total monetary liability, more than 50 percent of the total monetary liability here may be dedicated to the SEP described in Attachment C because the SEP is located in and/or benefits a disadvantaged community. The Prosecution Team provided written notification of the SEP to the Director of OE and obtained approval for the SEP to exceed 50 percent of the administrative civil liability. Therefore, the entire administrative civil liability amount of **three hundred twenty-five thousand dollars (\$325,000)** (hereinafter, SEP Amount) shall be directed to the SEP identified in Paragraph 17 below.

16. **Representation and Agreement:** The Discharger agrees that the completion of the SEP is a material condition of this settlement of liability between the Discharger and the Central Valley Water Board. As a material condition for the Board's acceptance of this Stipulated Order, the Discharger represents and agrees that it will expend the SEP Amount to implement the SEP as described herein and in Attachment C. The Discharger shall not be liable for Central Valley Water Board administrative and oversight costs associated with the SEP described in Attachment C. The SEP Amount shall be treated as a suspended administrative civil liability at the time of SEP completion for purposes of this Stipulated Order. The Central Valley Water Board is entitled to recover any portion of the SEP Amount that is not expended in accordance with this Stipulated Order.

17. **SEP Description:** The SEP Amount will fund the installation and construction of sanitation facilities, including restrooms, showers, laundry, and other associated infrastructure, as part of the City and Stanislaus County's bridge housing project located at 402 9th Street in Modesto. The bridge housing project at 402 9th Street will consist of approximately 42 units for the unhoused community in Modesto. By providing basic sanitation, the SEP will prevent pollutants that may otherwise result from the lack of sanitation facilities from being discharged to nearby surface waters, including Dry Creek and the Tuolumne River. The Discharger is partnering with the Stanislaus County to oversee maintenance of this housing project. The complete SEP description, project milestones, budget, and reporting schedule are contained in Attachment C, incorporated herein by reference.
18. **SEP Completion Deadline:** The Discharger shall complete all SEP requirements by **January 31, 2025**. Additionally, the Discharger shall submit a Final Report upon the completion of the SEP declaring such completion and detailing fund expenditures and goals achieved. The Final Report submission deadlines are outlined in Attachment C.
19. **Extension of SEP Implementation Schedule Deadlines:** If the Discharger cannot meet any of the deadlines contained in Attachment C of this Order due to circumstances beyond the Discharger's anticipation or control, the Discharger or its designated representative shall notify the Executive Officer of the Central Valley Water Board in writing within thirty (30) days of the date the City first knew of the event or circumstance that caused or could have caused a violation of this Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the Discharger to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The Discharger shall adopt all reasonable measures to avoid and minimize such delays. The determination as to whether the circumstances were beyond the reasonable control of the Discharger will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the City, due to circumstances beyond its control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence, a new compliance deadline shall be established and provided to the Discharger in writing with the effect of revising this Stipulated Order. The Executive Officer will endeavor to grant a reasonable extension of time, if warranted.
20. **SEP Oversight:** The Discharger will oversee implementation of the SEP.
21. **Certification of Completion:** Within 30 days of completing the SEP, the Discharger shall submit a certified statement of completion of the SEP

("Certification of Completion"). The Discharger shall submit the Certification of Completion under penalty of perjury to the designated Central Valley Water Board contact identified in Paragraph 29. The Certification of Completion shall include the following:

- a. Certification documenting all expenditures by the Discharger. The expenditures may include, but are not limited to, invoices and receipts to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by Central Valley Water Board staff that is reasonably necessary to verify SEP expenditures.
- b. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
- c. Certification that all applicable environmental laws and regulations were followed in the implementation of the SEP including, but not limited to, the California Environmental Quality Act.

22. **Third Party Audit:** At the written request of the Central Valley Water Board or its delegee, the Discharger shall submit, at its sole cost, a report prepared by an independent third party acceptable to the Central Valley Water Board or its delegee, stating that in its professional opinion, the Discharger has expended money in the amounts claimed. In the event of such an audit, the Discharger agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Central Valley Water Board contact within three (3) months of notice from the Central Valley Water Board to the Discharger of the need for an independent third-party audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

23. **Failure to Expend the SEP Amount on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board that it has spent the entire SEP Amount of \$325,000 on the SEP in accordance with the terms of this Stipulated Order, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP as an administrative civil liability. Within 30 days of receipt of the Central Valley Water Board's notice that the Discharger failed to demonstrate the entire SEP Amount was spent to complete the SEP, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP to the State Water Pollution Cleanup and Abatement Account.

24. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Deadline required by this Stipulated Order and an extension has not been granted by the Central Valley Water Board's Executive Officer pursuant to Paragraph 19 above, the Executive Officer shall issue a "Notice of Failure to Complete SEP." Within 30 days of receipt of this notice, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP to the State Water Pollution Cleanup and Abatement Account.
25. **Replacement SEP:** If there is a material failure, in whole or in part, to perform the SEP described in Paragraph 17, due to circumstances beyond the control of the Discharger, and the Central Water Board does not move to collect the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP as provided in Paragraph 24 above, the Parties agree that the Discharger may propose a Replacement SEP. Whether there is a material failure to perform the SEP shall be determined by the Executive Officer. The Discharger shall have 60 days from the date of the Executive Officer's determination to propose a Replacement SEP. The cost of the Replacement SEP shall be for the entire SEP Amount or some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same conditions provided for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both parties and approved by the Central Valley Water Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy and shall be completed within 36 months of the Central Valley Water Board's or its delegee's approval of the Supplemental Agreement (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complies with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a "Notice of Failure to Complete SEP" as described in Paragraph 24. The Discharger shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.
26. **Completion of the SEP to the Central Valley Water Board's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order, and any audit requested by the Central Valley Water Board, Central Valley Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. Receipt of this letter shall terminate any further SEP obligations of the Discharger and result in the dismissal of the Suspended Liability.

27. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, it shall state in a prominent manner that the SEP is being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the Discharger.
28. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
29. **Party Contacts for Communications Related to Stipulated Order:**
- For the Central Valley Water Board:
- Xuan Luo
Senior Water Resources Control Engineer
NPDES Compliance and Enforcement
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4848
Xuan.Luo@waterboards.ca.gov
- For the Discharger:
- William Wong
City of Modesto, Director of Utilities
1010 10th Street
Modesto, CA 95354
(209) 577-5395
wwong@modestogov.com
30. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
31. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged in this Stipulated Order and any other violations which could have been asserted based on the specific facts alleged in Attachment A as of the effective date of this Stipulated Order. The

provisions of this Paragraph are expressly conditioned on Discharger's completion of the SEP referenced in Paragraph 17 or full payment of the associated suspended liability.

32. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
33. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
34. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Stipulated Order.
35. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
36. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
37. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this

Stipulated Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.

38. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
39. **If Stipulated Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the Stipulated Order or decision by settlement may be subject to administrative or judicial review.
40. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
41. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
42. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue

any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.

43. **Water Boards Not Liable:** Neither the Central Valley Water Board members nor the Central Valley 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 Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
44. **Authority to Enter Stipulated Order:** 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.
45. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
46. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
47. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
48. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Stipulated Order.
49. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: _____
John Baum
Assistant Executive Officer

City of Modesto

By: Originally Signed by on 11 September 2024
Joseph P. Lopez
City Manager

Originally Signed by on 11 September 2024
Diane Nayaes-Perez, CMC, City Clerk
City Manager

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region that the Stipulated Order is approved.

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

Attachment A: Specific Factors Considered for Administrative Civil Liability
Attachment B: Economic Benefit Analysis
Attachment C: Bridge Housing Supplemental Environmental Project

Attachment A
Specific Factors Considered for Administrative Civil Liability
City of Modesto
Sanitary Sewer Collection System
Stanislaus County

This document provides details on the penalty calculation methodology related to the City of Modesto's (Discharger's) alleged violations of the State Water Resources Control Board's (State Water Board) Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ (Statewide General Order), and the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (Clean Water Act) for sanitary sewer overflows (SSOs). These SSOs occurred on 24-25 October 2021 and 30 October 2021, resulting in a total volume of approximately 423,304 gallons of raw sewage discharged to Dry Creek, a tributary of the Tuolumne River.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team derived the proposed administrative civil liability in accordance with the State Water Board's Water Quality Enforcement Policy that went into effect on 5 October 2017 (Enforcement Policy).

State Water Board's Enforcement Policy

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

Regulatory Basis for Alleged Violations

The Discharger is required to comply with the Statewide General Order because it is a municipality that owns or operates a sanitary sewer collection system greater than one mile in length. The Discharger has been enrolled under the Statewide General Order since 2006. Prohibition C.1 of the Statewide General Order provides that "[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." Additionally, section 301 of the Clean Water Act prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. (33 U.S.C. § 1311.) Here, the Statewide General Order is not an NPDES permit.

The Prosecution Team alleges that on two occasions in October 2021, the Discharger discharged untreated domestic and municipal wastewater from its collection system to waters of the United States without an NPDES permit. Pursuant to Water Code section 13385, subdivision (a), a discharger who violates section 301 of the Clean Water Act is

subject to administrative civil liability in an amount not to exceed the sum of \$10,000 per day of violation and \$10 per gallon of waste discharged over 1,000 gallons but not cleaned up. (Water Code § 13385(c).)

VIOLATION 1: SSO OCCURRING ON 24 – 25 OCTOBER 2021

On 24 October 2021 until the early hours of 25 October 2021, inflow of stormwater into the wastewater system surcharged the River Trunk pipeline and caused an SSO at Beard Brook Park.³ Based on flow data at a nearby storm line at Bodem Street (approximately 1 mile away), the SSO began at approximately 10:45pm on October 24th and was receding at approximately 12:00am on October 25th. However, the SSO was not discovered by the Discharger until 9:45am on October 25th. On October 26th, the Discharger uncovered a severely corroded pipeline section in this area that contributed to the SSO. The pipe was so corroded that the top half of the pipe was missing. The Discharger estimated that 211,654 gallons of raw sewage mixed with stormwater was discharged to Dry Creek, a tributary of the Tuolumne River.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation. A three-factor scoring system is used for each violation or group of violations: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: The Degree of Toxicity of the Discharge

The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge involved in the violation and the risk of damage the discharge could cause to receptors or beneficial uses. Potential receptors are human, environmental, and ecosystem exposure pathways. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. In this case, the discharge contained raw sewage, which generally contains elevated concentrations of pathogens, coliform bacteria, total suspended solids, biochemical oxygen demand, nitrate, and ammonia. Elevated levels of these constituents can lead to low dissolved oxygen in the receiving water, which impacts aquatic life, and can impact human health through direct or indirect contact. Because the discharged material possesses an

³ City of Modesto, Technical Report – River Trunk Sanitary Sewer Overflow (Dec. 9, 2021), p. 5.

above moderate risk or a direct threat to potential receptors, a score of **3** is assigned for this factor.

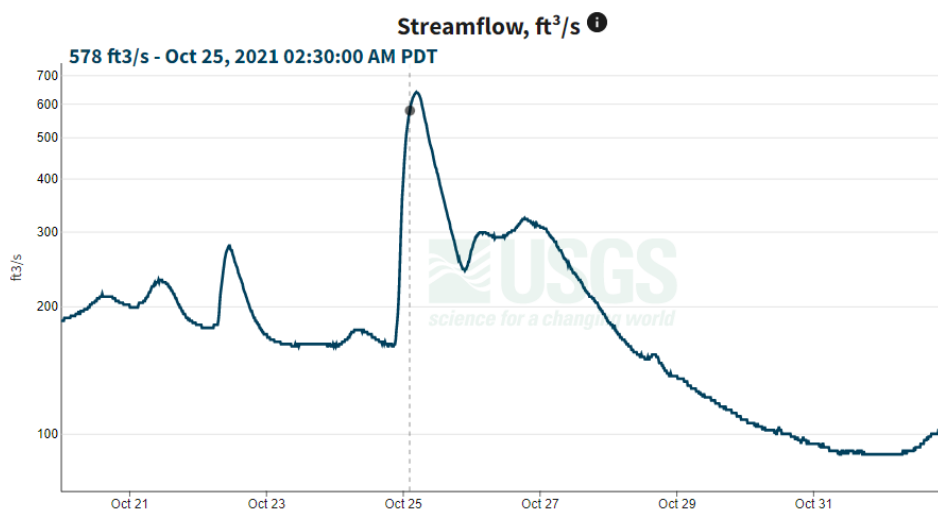
Factor 2: Actual Harm or Potential Harm to Beneficial Uses

The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

The 24-25 October 2021 spill consisted of untreated raw sewage, which discharged into Dry Creek, a tributary to the Tuolumne River. The designated beneficial uses of the Tuolumne River that could be impacted by the discharge are outlined in the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins, Fifth Edition, revise February 2019* (Basin Plan).⁴ The beneficial uses include municipal and domestic supply, agricultural irrigation, stock watering, contact and non-contact recreation, warm and cold freshwater habitat, migration, spawning, and wildlife habitat.

The flow rates of the Tuolumne River were recorded at the U.S. Geological Survey (USGS) river monitoring station, USGS 11290000,⁵ located near the spill location. As shown in Figure 1 below, the flow rates were above average when the violation occurred.

Figure 1: Tuolumne River Flow on 25 October 2021 – USGS 11290000



⁴ The Basin Plan can be found here, https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201902.pdf.

⁵ Global positioning system (gps) coordinates are 37°37'38", 120°59'00".

Although the spill volume was large at 211,654 gallons, the 24-25 October 2021 SSO occurred during a high intensity storm event which diluted the discharge, thus reducing the potential harm to beneficial uses. Therefore, the harm or potential harm to beneficial uses was measurable in the short term, but not appreciable. The discharge was expected to have a “below moderate” impact to beneficial uses to the Tuolumne River; thus, a score of **2** is assigned to this factor.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if the discharger cleans up 50% or more of the discharge within a reasonable amount of time. A score of 1 is assigned if less than 50% 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. For Violation 1, a factor of **1** is assigned because less than 50% of the discharge was susceptible to cleanup or abatement.

Final Score: “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation. In this case, a final score of **6** was calculated. The total score is then used in Step 2 below.

Step 2 – Assessment for Discharge Violations

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

Deviation from Requirement

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. “Major” is assigned when the requirement has been rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

Here, the Statewide General Order, Prohibition C.1, prohibits any SSO that results in a discharge of untreated wastewater, like raw sewage, to waters of the United States. As such, the Central Valley Water Board Prosecution Team finds the Deviation from Requirement is “major” for this violation because the discharge of raw sewage into Dry Creek, which ultimately reaches the Tuolumne River, rendered this requirement ineffective.

Per Gallon Assessment for Discharge Violation

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

Table 1 of the Enforcement Policy is used to determine a per gallon factor based on the Potential for Harm score from Step 1 and the Deviation from Requirement. With a Potential for Harm Score of 6 and a major Deviation from Requirement, the per gallon factor is 0.28. This value of 0.28 is multiplied by the volume of discharge and the days of discharge, as described below.

Pursuant to Water Code section 13385, subdivision (c), the per gallon administrative civil liability shall not exceed \$10 per gallon of waste discharged over 1,000 gallons that was not cleaned up. Of the 211,654 gallons of raw sewage discharged into Dry Creek, a total of 210,654 gallons exceeded 1,000 gallons and was not cleaned up.

The Enforcement Policy allows for a reduction from the maximum penalty of \$10 per gallon when the discharge is considered high volume. For high volume discharges between 100,000 gallons and 2,000,000 gallons, the Central Valley Water Board may elect to use a value between \$2.00 per gallon and \$10.00 per gallon. For this violation, the discharge volume subject to administrative civil liability is 210,654 gallons and is considered high volume. The Prosecution Team determined that an assessment of \$2.00 per gallon is appropriate and will not result in an inappropriately small administrative civil liability for this violation.

Violation 1: Per Gallon Assessment

$0.28 \text{ per gallon factor} \times 210,654 \text{ gallons} \times \$2 \text{ per gallon} = \$117,966.24$

Per Day Assessment for Discharge Violation

When there is a discharge, the Central Valley Water Board determines an initial liability amount on a per day basis using the same Potential for Harm and Deviation from Requirement scores used in the per gallon analysis. Using Table 2 from the Enforcement Policy, the per day factor is 0.28. Although this violation spans two days, starting on October 24th and ending on the 25th, the duration of the spill was estimated at 75 minutes. For the purposes of this calculation, the Prosecution Team is counting only one day of violation. The liability is calculated as the per day factor multiplied by the number of days multiplied by the statutory maximum of \$10,000 per day of violation. (Water Code § 13385(c)(1).)

Violation 1: Per Day Assessment

$0.28 \text{ per day factor} \times 1 \text{ Day} \times \$10,000 \text{ per day} = \$2,800$

Initial Liability Amount

The value is determined by adding together the per gallon assessment and the per day assessment. For Violation 1, the total initial liability is \$120,766.24 (\$117,966.24 + \$2,800).

Step 3 – Per Day Assessment for Non-Discharge Violation

This step does not apply because this is an alleged discharge violation.

Step 4 – Adjustment Factors

The Central Valley Water Board considers three additional factors for potential modification of the initial liability amount: the violator's degree of culpability, the violator's prior history of violations, and the violator's voluntary efforts to cleanup or its cooperation with regulatory authorities after the violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence and a lower multiplier for simple negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have. A multiplier of less than 1.0 should only be used when a discharger demonstrates that it has exceeded the standard of care expected of a reasonably prudent person to prevent the violation.

Here, the Discharger has been enrolled under the Statewide General Permit since 2006 and is responsible for ensuring that its collection system is inspected and maintained to prevent spills. Specifically, Section D.13(viii) in the Statewide General Permit requires the Discharger to identify and evaluate any hydraulic deficiencies in its collection system and make improvements to prevent spills due to a storm or wet weather event. In October 2016, the Discharger experienced a similar SSO from the same location at Beard Brook Park caused by the failure of a different pipe segment. Therefore, the Discharger was aware of the deficiencies in this section of the collection system and should have prioritized inspection and maintenance of this section, which could have prevented the spill. Based on the extent of corrosion on the failed pipe, the Prosecution Team believes that the 24-25 October 2021 SSO could have been prevented if the Discharger had performed a closed-circuit television (CCTV) inspection of this portion of the pipeline, especially after a similar spill occurred in October 2016. Therefore, a multiplier of 1.1 is assigned to Violation 1.

History of Violations

When there is a prior history of violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. On 28 July 2017, the Discharger entered into a settlement with

the Central Valley Water Board to resolve SSO violations that occurred in December 2015 and October 2016. (See Stipulated Administrative Civil Liability Order No. R5-2017-0520.) Therefore, the Discharger has a prior history of violations and a multiplier of 1.1 is appropriate.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

Once the SSO was discovered on October 25th, the Discharger promptly notified the California Office of Emergency Services (Cal-OES), the Central Valley Water Board, and other regulatory agencies. The spill area was barricaded to prevent public access and warning signs were posted. On October 27th, the Discharger hired a contractor to perform an emergency repair of the corroded pipe. To prevent future SSOs, the Discharger is in the process of a multi-phase plan to replace and realign the River Trunk Line and to install an emergency bypass line so that surcharges of the River Trunk Line are diverted to the Cannery Segregation Line. Because the Discharger timely responded to the SSO, voluntarily returned to compliance, and has plans to prevent future SSOs in this area, a neutral multiplier of 1.0 is appropriate.

Step 5 - Determination of Total Base Liability Amount

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

Violation 1: Total Base Liability Amount $\$120,766.24 \times 1.1 \times 1.1 \times 1.0 = \$146,127.15$
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VIOLATION 2: SSO OCCURRING ON 30 OCTOBER 2021

On 30 October 2021, an SSO occurred at Beard Brook Park at the same location as the 24-25 October 2021 incident. The Discharger reported that two bypass pumps, deployed to bypass flows into a separate sewer line while repairs were made to the corroded pipeline described in Violation 1, failed. The bypass pumps clogged and failed to keep up with incoming wastewater flows, thus causing an SSO upstream of the repair location. An estimated 211,650 gallons of raw sewage was released into Dry Creek, a tributary of the Tuolumne River.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation. A three-factor scoring system is used for each violation or group of violations: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Degree of Toxicity of the Discharge

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

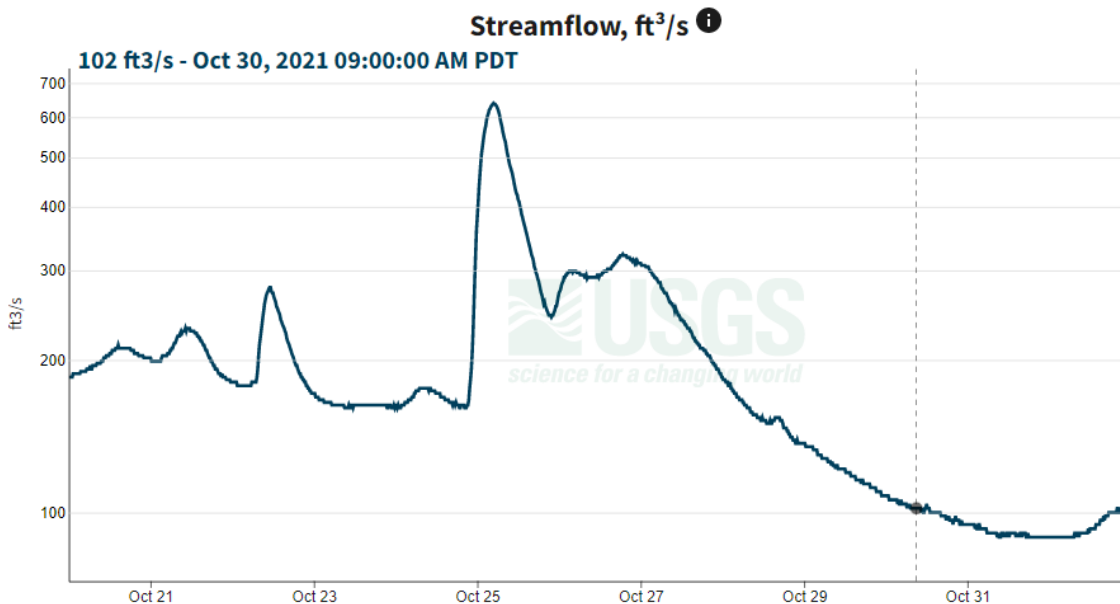
The description of the toxicity of discharge containing raw sewage, potential receptors, and beneficial uses in Violation 1 applies to this violation as well. Because the discharged material possesses an above moderate risk or a direct threat to potential receptors, a score of **3** is assigned for this factor.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses

The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5). Because Dry Creek is a tributary to the Tuolumne River, the description of the beneficial uses of the Tuolumne River in Violation 1 apply to this violation as well.

The 30 October 2021 spill consisted of raw sewage, which discharged directly into Dry Creek, and ultimately to the Tuolumne River. The flow rate of the Tuolumne River on October 30th, measured near the spill location, is depicted in Figure 2 below.

Figure 2: Tuolumne River Flow on 30 October 2021– USGS 11290000



The flow rate on October 30th (Figure 2) was 6 times lower than the flow rate on October 25th (Figure 1) though the spill volume was similar. Without significant dilution from a heavy rainfall event, the harm or potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, a score of **3** is assigned to this factor.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if the discharger cleans up 50% or more of the discharge within a reasonable amount of time. A score of 1 is assigned if less than 50% 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. For Violation 2, a factor of **1** is assigned because less than 50% of the discharge was susceptible to cleanup or abatement.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation. In this case, a final score of **7** was calculated. The total score is then used in Step 2 below.

Step 2 – Assessment for Discharge Violations

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

Deviation from Requirement

As described in the Enforcement Policy, a “major” deviation is assigned when the requirement has been rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions). Here, the Statewide General Order, Prohibition C.1, prohibits any SSO that results in a discharge of untreated wastewater, like raw sewage, to waters of the United States. As such, the Central Valley Water Board finds the Deviation from Requirement is “major” for Violation 4 because the discharge of raw sewage into Dry Creek, which ultimately reaches the Tuolumne River, rendered this requirement ineffective.

Per Gallon Assessment for Discharge Violation

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

Using Table 1 of the Enforcement Policy and with a Potential for Harm score of 7 and a major Deviation from Requirement, the per gallon factor is 0.41.

Pursuant to Water Code section 13385, subdivision (c), the civil liability amount shall not exceed \$10 per gallon of waste discharged but not cleaned up that exceeds 1,000 gallons. For this violation, of the 211,650 gallons discharged, 210,650 gallons exceeded 1,000 gallons and was not cleaned up.

For high volume discharges, the Central Valley Water Board may elect to use a value between \$2.00 per gallon and \$10.00 per gallon. For this violation, the discharge volume subject to administrative civil liability is 210,650 gallons and is considered high volume. The Prosecution Team determined that an assessment of \$2.00 per gallon is appropriate and will not result in an inappropriately small administrative civil liability for this violation.

Violation 2: Per Gallon Assessment

0.41 per gallon factor x 210,650 gallons x \$2 per gallon = \$172,733

Per Day Assessment for Discharge Violations

When there is a discharge, the Central Valley Water Board determines an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per gallon analysis. Using Table 2 in the Enforcement Policy, the per day factor is 0.41. According to the Discharger’s technical report, the Discharger’s contractor working on the pipe repair estimates that this SSO began around 10:15am and stopped around 11:30am on the same day. The liability is

calculated as the per day factor multiplied by the number of days multiplied by the statutory maximum of \$10,000 per day of violation. (Water Code § 13385(c)(1).)

Violation 2: Per Day Assessment

0.41 per day factor x 1 Day x \$10,000 per day = \$4,100

Initial Liability Amount

This value is determined by adding together the per gallon assessment and the per day assessment. For Violation 2, the initial liability is \$176,833 (\$172,733 + \$4,100).

Step 3 – Per Day Assessment for Non-Discharge Violation

This factor does not apply because the spill is a discharge violation.

Step 4 – Adjustment Factors

The Central Valley Water Board considers three additional factors for potential modification of the initial liability amount: the violator's degree of culpability, the violator's prior history of violations, and the violator's voluntary efforts to cleanup or its cooperation with regulatory authorities after the violation.

Culpability

As described in Violation 1, higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence and a lower multiplier for simple negligence.

In the Discharger's technical report, the Discharger attributes this SSO to wastewater flows that exceeded the bypass pump capacity while repairs were being made to the corroded pipe described in Violation 1 above. As noted in the report, the repairs began in the morning, within the peak flow times for a Saturday when people are waking up and performing household tasks like laundry (termed a "morning flush"). Under these circumstances, the Discharger could have scheduled the repair to occur during off-peak flows or advised their contractor performing the repairs to utilize a bypass pump with greater capacity. Instead, the Discharger's contractor used two 8" pumps but could have used pumps with larger capacity.

Additionally, the Discharger's contractor failed to monitor rising flows within the pipe segment which resulted in the SSO occurring in the same location at Beard Brook Park as in Violation 1. A reasonable and prudent person would have monitored the repair work on the pipe segment more closely and be able to immediately identify the rising flows to

prevent or limit another SSO. However, in this case, the SSO started around 10:15am but was not identified until approximately 11:30am. The SSO was identified by a private citizen and not the contractor or city personnel.

The Discharger's conduct was negligent because it failed to take reasonable and prudent actions to evaluate the capacity of the bypass pumps during peak flows and to monitor the repair area. Thus, a multiplier of 1.1 is appropriate for this violation.

History of Violations

When there is a prior history of violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The description of the Discharger's history of violations in Violation 1 above apply here as well. Although this SSO occurred in a similar area as in Violation 1, the Prosecution Team recognizes that the Discharger was repairing the corroded pipeline when this spill occurred; as such, a multiplier of 1.1 is appropriate instead of a higher multiplier.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

Here, the Discharger immediately dispatched staff to the spill location once it was notified of the event by a private citizen. Within 75 minutes, the Discharger addressed the bypass pumps, flows were restored, and the SSO receded. Cleanup activities were initiated on the same day. Because the Discharger timely responded to the spill and voluntarily returned to compliance, a neutral multiplier of 1.0 is appropriate.

Step 5 - Determination of Total Base Liability Amount

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

Violation 2: Total Base Liability Amount $\$176,833 \times 1.1 \times 1.1 \times 1.0 = \$213,967.93$

Step 5 (Combined): Total Base Liability for All Violations

The combined total base liability is the sum of the total base liability for each of the violations discussed above, as summarized in the following table:

Table A: Summary of the Total Calculated Base Penalty

Date	Spill Volume (Gallons Evaluated)	Culpability	History of Violation	Cleanup and Cooperation	Total Calculated Base Penalty
10/24-25/21	210,654	1.1	1.1	1	\$146,127.15
10/30/21	210,650	1.1	1.1	1	\$ 213,967.93
				Total	\$360,095.08

The total base liability is \$360,095.08 rounded to **\$360,095**.

Step 6 - Ability to Pay and Ability to Continue in Business

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

In this case, the Discharger is a governmental entity with the ability to raise revenue to satisfy the proposed liability through the imposition of fees and taxes. A review of the City of Modesto's 2021-22 Adopted Operating Budget shows the City has approximately \$153 million in its general fund, with approximately \$58.9 million allocated to the wastewater fund. Their final budget can be accessed at the following website:
<https://www.modestogov.com/ArchiveCenter/ViewFile/Item/3357>.

Step 7 – Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's Economic Benefit Model (BEN) penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Using standard economic principals such as the time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes. For this case, BEN was determined to be the appropriate method and BEN Version 2023.0.1 was used to calculate the economic benefit.

Here, the alleged SSO violations were caused by structural failures like the corroded pipeline in the River Trunk Line (Violation 1) and operational failures like wastewater flows exceeding bypass pump capacity (Violation 2). Timely implementation of corrective actions could have

prevented or mitigated the SSOs; instead, these avoided and delayed expenses benefited the Discharger.

Specifically, the 24-25 October 2021 and 30 October 2021 SSOs would have been prevented or mitigated if the Discharger had conducted a CCTV inspection, which would have shown a severely corroded pipe needing replacement. The CCTV inspection is considered an avoided compliance action since the Discharger can no longer conduct the CCTV that would have identified the need for pipe replacement. The replacement of the pipe is considered delayed since the Discharger ultimately replaced that section of pipe. The avoided CCTV compliance action resulted in an economic benefit of \$699, while the delayed pipe replacement resulted in an economic benefit of \$97.

For computational purposes, the penalty payment date was established as 1 July 2024. Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be approximately \$796. Additional details regarding this calculation are included in Attachment B.

Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation. The Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." Therefore, the minimum total liability associated with the economic benefit is \$875.60 (\$796 + \$79.60), rounded to \$876.

Step 8 – Other Factors as Justice May Require

The Central Valley Water Board may adjust the potential liability amount under this step, but only if express findings are made to justify the adjustment. For purposes of settlement, the Prosecution Team is not adjusting the base liability by any factors including staff costs.

Step 9 – Maximum and Minimum Liability Amounts

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

Maximum Liability: Pursuant to Water Code section 13385, subsection (c), the maximum liability is \$10,000 for each day in which the violation occurs and, where there is a discharge, up to \$10 per gallon for each gallon discharged over 1,000 gallons. The Discharger discharged 423,304 gallons of raw untreated sewage on 2 separate occasions to waters of the United States. Thus, the combined maximum liability for all violations at \$10 per gallon and \$10,000 per day is \$4,233,040 as shown in Table B below.

Table A: Summary of the Total Calculated Base Penalty

Date	Spill Volume (Gallons Evaluated)	Max. Per Gallon Liability	Max. Per Day Liability	Total Calculated Base Penalty
10/24-25/21	210,654	\$10	\$10,000	\$2,106,540
10/30/21	210,650	\$10	\$10,000	\$2,106,500
Total Maximum Liability				\$4,213,040

Minimum Liability: The minimum liability is calculated as the economic benefit plus 10%. The minimum liability is \$876.

Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. Using the Penalty Calculation Methodology, as described above, the proposed penalty is **\$360,095**, which is within the maximum and minimum liability amounts.

Attachment B

Economic Benefit Analysis									
City of Modesto									
Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?					
October 2021 Discharges: CCTV	\$ 685	ECl	1/1/2023	N	10/24/2021	7/1/2024	7/1/2024	2.80%	699
October 2021 Discharges: Pipe Replacement	\$ 198,000	CCI	10/30/2021	Y	10/24/2021	10/30/2021	7/1/2024	2.80%	97
Income Tax Schedule: Municipality USEPA BEN Model Version: Version 2023.0.1 (September 2023) Analyst: German Myers Date/Time of Analysis: 5/7/24 14:57 Assumptions: See Appendix A									Total Benefit: \$ 796

Attachment C: Supplemental Environmental Project (SEP)

1. **Project Title:** Bridge Housing for Modesto's Unsheltered Population - Water Use Facilities.
2. **Geographical Area of Interest:** 402 9th Street, Modesto, California 95351, as depicted in Figure 1 below.
3. **Name of Responsible Entity:** City of Modesto (City)

4. **Contact Information:**

William Wong
City of Modesto, Director of Utilities
1010 10th Street
Modesto, CA 95354
Ph: (209) 577-5395
wwong@modestogov.com

5. **Project Goals and Description:** The project will provide sanitary and shelter-related units for the unhoused population in Modesto. The City's unsheltered community tends to reside in City parks, trails, public spaces (adjacent to public roads), rivers (Tuolumne River and Dry Creek), and structurally unsafe hand-dug caves. While there are restrooms in some park locations, many of these areas have no access to appropriate sanitary facilities. The bridge housing project underway at 402 9th Street will create a living environment with up to 42 cabins that will provide temperature-controlled shelter space and will provide meals and sanitary facilities such as restrooms, showers, and laundry facilities. This SEP will focus on installing restrooms, showers, laundry units, and associated water and sewer infrastructure for this bridge housing project (SEP Units).

The City has partnered with the County of Stanislaus (County), who will oversee the maintenance and upkeep of the SEP Units located at 402 9th Street, Modesto, California.

6. **Estimated Cost of Project Completion:** The entire settlement amount of \$325,000 will be allocated towards installation of the SEP Units. The SEP Units are funded entirely by the City and not funded by any other source. The total cost of construction for the entire bridge housing project is approximately \$3.1 million, which includes the SEP Units. Of the \$3.1 million, approximately \$2.7 million is funded by a grant from the Department of Health Care Services (DHCS). The SEP Units are not funded by the DHCS grant.

- 7. Environmentally Beneficial:** The bridge housing project will provide support to the unsheltered community to relocate from public spaces such as areas around the Tuolumne River and Dry Creek, which may be negatively impacted by trash, human waste, drug paraphernalia, and other pollution. Installation of sanitary facilities will help eliminate surface water pollution in these water bodies and protect water quality. Additionally, the City has experienced sanitary sewer overflows discharging into Dry Creek, so encouraging the unsheltered community away from public spaces like Dry Creek will reduce unsheltered communities' potential exposure to raw sewage from spills.

Overall, the installation and availability of sanitary facilities will help reduce contamination of the City's rivers, prevent further pollution, and improve the public health of individuals experiencing homelessness as demonstrated by multiple agencies across the state, including the local Central Valley Regional Water Board 2020 Homelessness Project⁶ and as demonstrated by the Water Education Foundation's study on the connection between sanitary facilities and California water quality.⁷ Thus, the project will improve, protect, and reduce risks to public health and the environment. The project will benefit disadvantaged communities as it will directly benefit the unhoused community in Modesto.

Compliance with SEP Criteria

- a. Above and Beyond Discharger's Obligations:** The City of Modesto has no obligation to provide emergency shelter for the unsheltered community on City-owned property. The City voluntarily agrees to undertake the SEP in settlement of an enforcement action to offset civil penalties. The SEP is not commenced until after the stipulated order is in effect (SEP Policy, section III.3.)
- b. No Benefit to the Water Board Functions, Members, or Staff:** This project would not benefit any Water Board functions, members, or staff.
- c. Nexus to the Violation:** The SEP Policy requires that a SEP have a nexus to the alleged violation. (SEP Policy, section VIII.F.) This SEP has a nexus to the location of the alleged violation because the water quality benefits of this SEP are designed to improve the water quality of the receiving waters at issue in the alleged violations (Tuolumne River and Dry Creek).

⁶ Central Valley Regional Water Board 2020 Homelessness Project, available at https://www.waterboards.ca.gov/centralvalley/water_issues/homeless/.

⁷ Water Institute Foundation, "Can Providing Bathrooms to Homeless Protect California's Water Quality" (June 27, 2019), available at <https://www.watereducation.org/western-water/can-providing-bathrooms-homeless-protect-californias-water-quality>.

- d. **SEP Category:** The SEP Policy provides for seven categories of SEPs. (SEP Policy, section V.) This SEP falls under the “Public Health” and “Pollution Prevention” categories.
- e. **Project Maintenance:** The City has partnered with the County, who will oversee the maintenance and upkeep of the project, via an executed operating agreement with Modesto BHBH LP, a qualified site operator. Through this operating agreement, the site operator will maintain the SEP Units to ensure they are kept in adequate condition throughout the duration of this project. The City, County, and site operator will continue to hold regular meetings throughout the duration of the project to ensure agreement responsibilities are being met.
- f. **Documented Support:** Ongoing collaboration between the City and County in support of this project.
- g. **Project Milestones, Schedule, and Budget:** The City expects the SEP Units to be completed by January 31, 2025, which is within thirty-six (36) months, as recommended by the State Water Board’s SEP Policy.

Bridge housing project milestones schedule:

- April 30, 2024: County received Board of Supervisor approval for an Agreement with a Construction and Project Management firm to oversee the construction of the project.
- July 26, 2024: Conclude pre-design week.
- July 30, 2024: County to take Operating Agreement to Board of Supervisors.
- August 26, 2024: Submit construction plan to City for planning and permit review.
- September 15, 2024: Final permits issued by City.

SEP milestones schedule:

- September 10, 2024: Stipulated Order presented to City Council.
- October 14, 2024: Begin construction of SEP units after Stipulated Order is entered by Central Valley Water Board or its delegee.
- By October 30, 2024: Preliminary site preparation estimated to be complete, including rough-in of site sewer and rough-in of domestic water.
- By November 11, 2024: City sewer tie-in estimated to be complete.

- By November 30, 2024: Initial underground work estimated to be complete.
 - December 18, 2024: Tie in SEP Unit utilities.
 - December 31, 2024: SEP Units estimated to be complete.
 - January 13, 2025: Final City inspections.
 - January 17, 2025: Certificate of Occupancy issued by City.
 - January 31, 2025: Occupancy.
- h. Final Post-Project Accounting of Expenditures:** The City will submit a final, post-project accounting of expenditures to the Central Valley Water Board.

Reports to the Water Board

- i. **Monthly Report:** The City will submit monthly progress reports documenting progress made on the SEP. The monthly reports will be due on the last day of the month following the end of each month, beginning with October 2024. Monthly progress reports shall summarize project expenditures and describe the work completed during the preceding quarter.
- ii. **Final Report:** Following SEP completion, the City will submit a Final Report documenting distribution of funds. The Final Report shall be submitted to the Central Valley Water Board no later than January 31, 2025.

Table C-1 Project Proposal Budget

402 9th Street Project Budget	SEP Grant Budget
SITE IMPROVEMENTS	
Water Tie-In Location On-Site (Labor)	\$ 30,000
Sewer Tie-In Location On-Site (Labor)	\$ 30,000
SUBTOTAL SITE IMPROVEMENTS:	\$ 60,000
UNDERGROUND WORK*	
Potable Water Backflow (Material)	\$ 30,000
Underground Water Distribution (Labor)	\$ 40,000
Underground Sewer Distribution (Labor)	\$ 30,000
SUBTOTAL UNDERGROUND:	\$ 100,000
MODULAR WET UNIT WITH INSTALLATION	
Placement and Assembly of Wet Units on Site** (Labor)	\$ 19,000
Connection of the units to the sewer and water pipe locations (Labor)	\$ 15,000
Restroom/Laundry Units** (Material)	\$ 131,000
SUBTOTAL MODULAR UNIT PLACEMENT:	\$ 165,000
TOTAL SEP PROJECT BUDGET:	\$ 325,000

*Underground work consists of underground potable water and sewer line piping installed from the wet units to the public connections of the site. This includes underground distribution of water and sewer from the point of underground piping to the units containing the restrooms, shower, laundry, and the Will Scott trailer that will contain a staff-only restroom.

**There will be a total of five wet units that will require this underground work. One wet unit is a staff only restroom located in a Will Scott trailer, three self-contained units that include a restroom and shower, and one laundry unit.

Figure C-1: Supplemental Environmental – SEP Units (Circled)

