

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

In the Matter of:

ORDER R5-2021-0503

**CITY OF JACKSON, CALIFORNIA
DEPARTMENT OF TRANSPORTATION,
AND CENTRAL COAST FINANCIAL
GROUP, Inc., dba CCFG
CONSTRUCTION;
AMADOR COUNTY**

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

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 Jackson, the California Department of Transportation, and Central Coast Financial Group, Inc., dba CCFG Construction (together Respondents), (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by the imposition of administrative civil liability against the Respondents in the amount of **two hundred three thousand five hundred eighty dollars (\$203,580)**.

II. Recitals

2. In November 2017, the California Department of Transportation (Caltrans) initiated a contract in the amount of \$166,708 to repair and replace two storm drain lines within the state right of way in the City of Jackson (City) at 516 Sutter Street. Central Coast Financial Group, Inc. dba CCFG Construction (CCFG) was awarded the contract to replace the storm drain lines.
3. As described in Attachment A, on 1-2 February 2018 during construction to replace the storm drain lines, a discharge of approximately 81,012 gallons of raw sewage occurred, of which approximately 57,000 gallons were discharged into the North Fork of Jackson Creek, a water of the United States. Section 301 of the Clean Water Act (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 discharge of raw sewage that occurred on 1-2 February 2018 is in violation of Section 301 of the Clean Water Act and Water Code section 13376.

4. Pursuant to Water Code section 13385 subdivision (a), any person who violates Water Code section 13376 or any requirements of Section 301 of the Clean Water Act 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.
5. Pursuant to Water Code section 13327, 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.
6. The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) was adopted on 4 April 2017. The Enforcement Policy's effective date is 5 October 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability.
7. Attachment A to this Order is the penalty methodology as applied to the discharge of untreated sewage that occurred on 1-2 February 2018. The total amount of the administrative civil liability (ACL) calculated using the penalty methodology for the alleged violation is **three hundred nine thousand one hundred forty dollars (\$309,140)**.
8. 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 violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of **two hundred three thousand five hundred eighty dollars (\$203,580)**. 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.

9. The Central Valley Water Board 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 violation alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

10. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.

11. **Administrative Civil Liability:**

- a. The Respondents hereby agree to the imposition of administrative civil liability in the amount of **two hundred three thousand five hundred eighty dollars (\$203,580)** to resolve the violation specifically alleged in Attachment A to this Order.
- b. The entire liability amount of **two hundred three thousand five hundred eighty dollars (\$203,580)** will be suspended pending completion of two Supplemental Environmental Projects (SEPs) as set forth in Paragraph 13, below. The cost of the SEPs will be referred to as the SEP Amount.

12. **Representations and Agreements:** The Respondents agree that the completion of the two SEPs described in Paragraph 13, below, is a material condition of this settlement of liability between the Respondents and the Central Valley Water Board Prosecution Team. As a material consideration for the Central Valley Water Board's acceptance of this Stipulated Order, the Respondents represent and agree that they will spend the SEP Amount and the City will complete the SEPs as described herein and in Attachment B. Respondents shall not be liable for Central Valley Water Board administrative and oversight costs associated with the SEPs described in Attachment B.

13. **Supplemental Environmental Projects (SEPs) and Suspended Liability:** Public Resources Code section 71118(a)(3) defines a SEP as "an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake, in settlement of the action and to offset a portion of a civil penalty."

The State Water Board's Policy on Supplemental Environmental Projects, effective 3 May 2018, allows up to 100% of an administrative civil liability to be used to fund one or more SEPs in cases where the SEP is located in or benefits a disadvantaged community, and environmental justice community or a community that has a financial hardship, or where the SEP substantially furthers the human right to water. The Prosecution Team has determined that each of the SEPs complies with the SEP Policy and that each of the SEPs is located in the City of Jackson, which is a community with a financial hardship. Therefore, the entire penalty amount may be used.

The Respondents propose to fund, and the City proposes to implement, the following SEPs:

- i. **Private Lateral Replacement SEP:** The City will provide grant funds for the replacement of private lateral connections to the City's wastewater collection system. Aging laterals are a major source of risk for future spills. They are privately owned and not maintained or operated by the City. Replacing private laterals helps ensure that they do not fail and cause a spill or act as a source of infiltration into the collection system. The Private Lateral Replacement SEP is described in additional detail in Attachment B.
- ii. **Slip Lining SEP:** The City will implement a slip lining project for a segment of the City's wastewater collection system that passes in close vicinity to and under Jackson Creek. The project location is in working order at this time; however, lining this portion of the collection system will reduce the risk of future breaks that could cause a spill into the Creek, or of infiltration from the Creek into the collection system that could also be a sources of spills. The Slip Lining SEP is described in additional detail in Attachment B.

14. SEP Completion Deadlines:

- a. Private Lateral Replacement SEP: The proposed timeline for completion of the Private Lateral Replacement SEP is 30 June 2023. The Final Report shall be submitted to the Regional Water Board no later than 30 August 2023. This Final Report deadline shall be treated as an interim milestone deadline for the entire SEP and the liabilities associated with this aspect of the proposal shall be permanently suspended upon receipt of the Final Report for the Private Lateral Replacement SEP. The City shall provide quarterly monitoring reports on the progress of the Private Lateral Replacement SEPs on the last day of the month following the end of each quarter, beginning on 30 September 2021.

- b. **Slip Lining SEP:** The proposed timeline for completion of the Slip Lining SEP is 1 March 2024. The Final Report shall be submitted to the Central Valley Water Board no later than 30 August 2024. This Final Report deadline shall be treated as an interim milestone deadline for the entire SEP and the liabilities associated with this aspect of the proposal shall be permanently suspended upon receipt of the Final Report for the Slip Lining SEP. The City shall provide quarterly monitoring reports on the progress of the Slip Lining SEP on the last day of the month following the end of each quarter, beginning on 30 September 2021.
15. **Request for Extension of Final SEP Completion Deadlines:** If the City cannot meet one or both SEP Completion Deadlines due to circumstances beyond its anticipation or control, the City or its designated representative shall notify the Executive Officer 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 Stipulated 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 City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. The City 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 City and its agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite the timely good faith efforts of the 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 City in writing with the effect of revising this Stipulated Order. The Executive Officer will endeavor to grant a reasonable extension of time, if warranted.

16. Audits and Certification of Supplemental Environmental Projects:

- a. **Certification of Completion:** Within 30 days of completion of each SEP, the City shall submit a certified statement of completion of the SEP ("Certification of Completion"). The City' authorized representative shall submit the Certification of Completion under penalty of perjury to the designated Central Valley Water Board contact. The Certification of Completion shall include the following:

- i. **Certification of Expenditures:** Certification documenting all expenditures by the City. The expenditures may include external payments to outside vendors or contractors implementing the SEP. If applicable, the expenditures may include the costs of internal environmental management resources and internal business unit resources, provided that such expenditures are directly related to development and implementation of the SEP. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors. The City shall provide any additional information requested by Central Valley Water Board staff that is reasonably necessary to verify SEP expenditures.
- ii. **Certification of Performance of Work:** 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 City.
- iii. **Certification that Work Performed Met or Exceeded Requirements of CEQA and other Environmental Laws [where applicable]:** Certification that the SEP meets or exceeds the requirements of CEQA and/or other environmental laws. Unless the City is exempted from compliance with CEQA, they shall, before the SEP implementation date, consult with other interested state agencies regarding potential impacts of the SEP.
- iv. **Third Party Audit:** If the Central Valley Water Board contact obtains information that causes the representative to reasonably believe that the City has not expended money in the amounts claimed, or has not adequately completed any of the work in the SEP, the Central Valley Water Board contact may require, and the City shall submit, at its sole cost, a report prepared by an independent third party(ies), stating that in its professional opinion, the City has expended money in the amounts claimed. In the event of such an audit, the City agree that they 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 months of the completion of the City's SEP obligations. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

- b. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEPs:** In the event that the City is not able to demonstrate to the reasonable satisfaction of the designated Central Valley Water Board contact that the entire SEP amounts pursuant to Paragraph 12 have been spent for the completed SEPs, the Respondents shall be jointly and severally liable to pay as an administrative civil liability the difference between the SEP amounts and the amounts the Respondents can demonstrate were actually spent on the SEPs.
- c. **Failure to Complete the SEPs:** If the SEPs are not fully implemented by the SEP Completion Deadlines required by this Stipulated Order and an extension has not been granted by the Central Valley Water Board's Executive Officer pursuant to Paragraph 15 above, the designated Central Valley Water Board contact shall issue a Notice of Violation. As a consequence, the Respondents shall be jointly and severally liable to pay the entire Suspended Liability to the State Water Pollution Cleanup and Abatement Account.

17. **Publicity:** Whenever the Respondents or their agents or subcontractors publicize the SEP, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the Respondents.

18. **Site Inspections:** The City shall permit Central Valley Water Board's staff to inspect during normal business hours any location where the SEP(s) is being implemented as well as review any documents associated with implementation of the SEP(s) at any time with reasonable notice.

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

20. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

Kari Holmes, Supervising Water Resources Control Engineer
NPDES Compliance and Enforcement
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4848
kari.holmes@waterboards.ca.gov

With copy to:

Xuan Luo, Senior Water Resource Control Engineer
NPDES Compliance and Enforcement
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4606
xuan.luo@waterboards.ca.gov

For the City of Jackson:

Yvonne Kimball, City Manager
City of Jackson
33 Broadway, Jackson, CA 95642

With copy to:

Joshua Nelson
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

For the California Department of Transportation:

Pamela Marquez, Acting Division Chief Central Region Construction
3663 Arch Road, Suite 500
Stockton, CA 95215

With copy to:

Cassandra Hoff
Caltrans Legal Division
1120 N Street, MS 57
Sacramento, CA 95814

For Central Coast Financial Group, Inc., dba CCFG Construction:

Michael Niven
CCFG Construction
17750 Wards Ferry Road
Sonora, CA 95370
(209) 743-4911
michaelniven10@gmail.com

With copy to:

Nicole E. Granquist
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
(916) 520-5369
ngranquist@downeybrand.com

21. **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.
22. **Public Notice:** The Respondents understand 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 Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
23. **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 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.
24. **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 Order.
25. **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. Upon the Central Valley Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order conditioned on the funding and completion of the SEPs described in Attachment B.

26. **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.
27. **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 Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
28. **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.
29. **If 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 violation, 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:
- 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 laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
30. **Waiver of Hearing:** The Respondents have 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.
31. **Waiver of Right to Petition:** The Respondents hereby waive 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 waive the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

32. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Respondents shall and do 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.
33. **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 the Respondents or their respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Respondents, or their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
34. **No Admission of Liability:** In settling this matter, Respondents do not admit to any of the allegations stated herein, or that they have been or are in violation of the Water Code, or any other federal, State or local law or ordinance, including, but not limited to California Government Code §§ 4216 et seq., with the understanding that in the event of any future enforcement actions by the Central Valley Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).
35. **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 Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
36. **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 Respondents 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 Respondents of their obligation to obtain any final written approval required by this Stipulated Order.
37. **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.

38. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
39. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
40. **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. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

IT IS SO STIPULATED.

Central Valley Regional Water Board Prosecution Team

By: Original Signed By
John J Baum
Assistant Executive Officer

04/21/2021
Date

City of Jackson

By: Original Signed By
Yvonne Kimball
City Manager

03/29/2021
Date

California Department of Transportation

By: Original Signed By
Dennis T Agar
District 10 Director

03/29/2021
Date

Central Coast Financial Group, Inc., dba CCFG Construction

By: Original Signed By
Michael Niven
CEO, CCFG Construction

03/26/2021
Date

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 Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 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 Respondents fail to perform any of their 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.

 Date: 2021.06.14
17:01:59 -07'00'

Water Boards

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

June 14, 2021

Date

Attachment A: Penalty Methodology
Attachment B: Supplemental Environmental Projects
Attachment C: Economic Benefit Calculation

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

Water Quality Enforcement Policy

Background Facts

In November 2017, California Department of Transportation (Caltrans) initiated a contract in the amount of \$166,708 to repair and replace two storm drain lines within the state right of way in the City of Jackson (City) at 516 Sutter Street. Central Coast Financial Group, Inc, dba CCFG Construction (CCFG Construction or CCFG) was awarded the contract to replace the storm drain lines.

On Wednesday, 24 January 2018, at approximately 1300 hours, CCFG Construction notified Underground Service Alert of Northern California and Nevada (USA) that CCFG would be excavating near the intersection of State Route 49 and Rex Avenue in the City of Jackson starting on Friday, 26 January 2018 at 1701 hours. California Government Code section 4216.2, subsection (b) states, "...an excavator planning to conduct an excavation shall notify the appropriate regional notification center of the excavator's intent to excavate at least two working days, and not more than 14 calendar days, before beginning that excavation. The date of the notification shall not count as part of the two-working-day notice..."

USA emailed CCFG on Wednesday, 24 January 2018, at 1306 hours, stating that USA sent the dig ticket to: Amador Water Agency; Comcast Calaveras; City Jackson Sewer; City of Jackson Water; Pacific Bell; PG&E Distribution Stockton, and Volcano Telephone Company. California Government Code section 4216.2, subsection (e), states, "[t]he regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation..."

On Sunday, 28 January 2018, at approximately 1800 hours, CCFG began excavating at the site to replace the storm drain lines, though the City had not responded to the dig ticket. California Government Code section 4216.2, subsection (g) states, "...an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation ..." USA's California Excavation Manual provides guidance to excavators when a utility fails to respond to a dig ticket, including calling USA and requesting "No Response Follow-up", "Second No Response Follow-Up", and "Third No Response Follow-Up" notifications be sent by USA to the utility.

On 29 January 2018, at 0813 hours, the City responded to the dig ticket but failed to mark the sewer line within the designated excavation area.

On Thursday, 1 February 2018, between 0200 and 0300 hours, Caltrans inspector told CCFG that they had hit a sewer line. CCFG believed the water in the excavation to be groundwater, and CCFG had also observed abandoned irrigation pipeline which, it asserts, caused good faith confusion at the implementation stage and some delay in discovering the additional source of flow. Between 0330 and 0400 hours, CCFG began diverting the discharge to a storm drain inlet (DI) that discharges to the North Fork of Jackson Creek. According to Caltrans daily inspection report, the Caltrans inspector stated, "...I believed it to be sewer - However, even after digging around the DI in parking lot - Where the water was bubbling up no pipe could be found- I don't know why, if USA'd, and no sewer lines were marked here, then it could be groundwater?" The Caltrans inspector left the site at about 0600 hours. CCFG continued with construction activities on the morning of 1 February 2018, secured the excavation with trench plates, and left the construction site at about 0900 hours. Neither the Caltrans inspector nor CCFG checked on the water in the excavation until returning to the construction site at approximately 2200 hours. At that time, the Caltrans inspector and CCFG discovered that the excavation was caving-in, there was a strong sewage smell, and sewage was present in the excavation. The Caltrans inspector contacted his supervisor to identify the City's emergency contact information, and at 2330 hours he called the Amador County Sheriff's Dispatch.

On 2 February 2018, at 0013 hours, the Amador County Sheriff's Dispatch contacted Jason Fishback with the City's Public Works/Wastewater Department. Mr. Fishback arrived at the site at 0023 hours and called for extra help. The City began pumping out of the upstream manhole (N010) and/or the excavation, though the vactor truck was not working properly. The City called Amador Water Agency and Sweet Pea Septic for assistance.

The City began rodding from the downstream manhole (N009) towards the upstream excavation site, attempting to clear any blockages from the sewer line. While rodding, the City's equipment went in 45 to 50 feet. Mud was coming out of the sewer line, indicating that the sewer main had been damaged.

CCFG participated in the City's response efforts. At about 0700 hours, and once the City's contractors arrived, CCFG left the site.

At 0800 hours, due to impending peak sewer flows, the City began preparations to have Express Sewer and Drain set up a bypass in upstream manhole (N010). At 0845 hours, the City began sampling the North Fork of Jackson Creek. Sweet Pea Septic arrived on-site with a vactor truck. Between 0930 and 1005 hours, the City reported the Category 1 sanitary sewer overflow to the California Office of Emergency Services. The City stated that the notification was made "7.5 hours late because their first priority was to eliminate the spill". Express Sewer and Drain arrived at 0945 hours and set up a bypass at upstream manhole (N010). At 1000 hours the bypass began operating and discharge to the creek ceased.

The City then excavated the site to expose and repair the damaged sewer main. However, the soil was saturated and sluffing into the excavation occurred, which required extra time and equipment. The City contacted Campbell Construction, which arrived at 1100 hours and began assisting the City with repairing the sewer main. Campbell Construction determined that over a 6-foot span of sewer main had been damaged, with longitudinal cracks extending out even farther. At 2100 hours, the City turned the repairs over to Caltrans and CCFG. On 3 February 2018, CCFG replaced the damaged force main pipeline. Caltrans paid for all repair costs of the damaged sewer pipeline.

The City reported that it closed part of the ACE parking lot and sidewalk and had City staff on-site to secure the area and answer the public's questions. A County Health Department "Health Hazard" sign was placed near the release and raw sewage signs were placed adjacent to the creek. The City conducted five days of creek sampling and removed the signs by the creek once two consecutive days of sample results showed that downstream concentrations were similar to upstream concentrations.

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(s). 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 or potential for harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement.

Factor 1: The Degree of toxicity of the discharge:

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

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 sanitary sewer overflow was raw sewage, which routinely contains highly elevated concentrations of coliform organisms, total suspended solids, biochemical oxygen demand, nitrate, and ammonia. Elevated levels of these constituents can lead to low dissolved oxygen in the receiving water, impacts to aquatic life, and impacts to human health. Although there were no reports of fish kills or other toxic-related impacts tied to the event, because the discharged material possesses "an above moderate risk or a direct threat to potential receptors," a score of 3 was assigned for this factor.

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

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

During the 1 and 2 February 2018 incident, raw sewage was discharged to Jackson Creek, a tributary to Lake Amador, which is used as a drinking water source. The designated beneficial uses of Jackson Creek and its tributaries that could be impacted by the unauthorized discharge include municipal and domestic supply, irrigation supply, contact and non-contact recreation, warm and cold freshwater habitat, warm and cold migration, warm and cold spawning, wildlife habitat, and navigation.

Discharges of sewage to surface water must typically be treated to a high standard to prevent adverse impacts to human and aquatic life. In this case, the discharge consisted of raw sewage, which contains pathogens, nitrogen, ammonia, total suspended solids and biological oxygen demand. The SSO occurred during the month of February 2018, typically considered wet weather; however, January 2018 through mid-February 2018 there was little to no precipitation, and Jackson Creek had low flow during the incident, so there was little opportunity for dilution and therefore additional contact time with sensitive species.

The City of Jackson collected water samples upstream and downstream of the spill. Based on the analytical results of the downstream samples, the spill caused elevated levels of bacteria (enterococcus) on 2, 3, and 4 February 2018. Analytical sample results show that the effects of the spill had ended or had become diluted by 5 February 2018 in Jackson Creek. Results are shown in the table below:

Table A: Water Quality Sample Results and Monitoring Locations

| Date | Constituents | Units | Upstream #1 365 ft upstream from discharge location | Upstream #2 310 ft upstream from discharge location | Downstream #3 150 ft downstream from discharge location | Downstream #4 350 ft downstream from discharge location | Downstream #5 1115 ft downstream from discharge location |
|--------|--------------|----------------|--|--|--|---|--|
| 2/2/18 | Enterococcus | MPN/ 100 mL | 75 | 120 | 770 | 120 | 690 |
| 2/3/18 | Enterococcus | MPN/ 100 mL | 33 | 32 | 42 | 36 | 260 |
| 2/4/18 | Enterococcus | MPN/ 100 mL | 27 | 30 | 17 | 50 | 260 |
| 2/5/18 | Enterococcus | MPN/ 100 mL | 32 | 50 | 28 | 45 | 40 |
| 2/6/18 | Enterococcus | MPN/ 100 mL | 39 | 44 | 36 | 40 | 31 |

Ammonia as Nitrogen were also analyzed and reported as non-detect (ND), with reporting limit of 0.2 mg/L, for all the monitoring locations.

The spill resulted in a moderate potential harm to beneficial uses. "Moderate" is defined as "observed or reasonably expected potential impacts, but harm or potential harm to beneficial uses are moderate and likely to attenuate without appreciable medium or long term acute or chronic effects." Therefore, a score of 3, moderate, is assigned for 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 less than 50% or more of the discharge is susceptible to cleanup and abatement but the discharger failed to clean up 50% or more of the discharge within a reasonable amount of time. In this case, less than 50% of the discharge was susceptible to cleanup or abatement as the wastewater entered Jackson Creek and was not recoverable. Therefore, a factor of 1 is assigned.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for the effluent limit violations. 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 unauthorized discharge based on both a per-gallon and a per-day basis.

1. Per Gallon Assessments for Discharge Violations

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Extent of Deviation from Requirement of the violation. The Potential for Harm Score was determined in Step 1 and is 7. The Statewide General Waste Discharge Requirements for Sanitary Sewer System (SSS General Order) No. 2006-0003-DWQ prohibits any sanitary sewer overflow (SSO) that results in discharge of untreated wastewater to waters of the United States. Similarly, the Clean Water Act prohibits the discharge of a pollutant from a point source to waters of the United States without first having obtained an NPDES permit. In this case, the discharge of untreated sewage is a major deviation from these required standards.

Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is 0.41. This value of **0.41** is multiplied by the volume of discharge and the days of discharge, as described below.

The Enforcement Policy allows for a reduction in the maximum penalty amount of \$10 per gallon for high volume discharges between 100,000 gallons and 2,000,000 gallons for each discharge event. The City of Jackson estimated that a total of 81,012 gallons spilled during the incident and that 12,100 gallons was recovered during the cleanup with a vacuum truck, resulting in 68,912 gallons reaching Jackson Creek. CCFG disputed the City’s discharge volume estimate. After conducting an independent review of the available evidence, including the dimensions of the excavation and backfill volume using photographs of the excavation, the SSO technical report, site plans and aerial imagery to determine the approximate residual wastewater that may have been contained in the backfill and not recovered or discharged, as well as the volume of unrecovered wastewater saturating the undisturbed subsurface of the excavation cavity using regional soil data and the period of the SSO release, the Prosecution Team estimates that an additional 12,000 gallons was not recovered by the vacuum truck and did not discharge, resulting in an estimated 57,000 gallons of raw sewage flowing into Jackson Creek. Since the spill is reported to be 81,012 gallons and approximately 57,000 gallons reached surface waters, the 1 and 2 February 2018 spill incident is not considered to be “high volume” based on the total gallons discharged and therefore the **\$10/gallon** penalty should be used in this case. CWC section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged but not cleaned up, over 1,000 gallons for each spill event. Of the 57,000 gallons spilled that

reached surface water, a total of 56,000 gallons were discharged in excess of 1,000 gallons into waters of the United States.

Therefore, the per gallon assessment is calculated as:

| |
|---|
| Discharge Liability $0.41 \times 56,000 \text{ gallons} \times \$10 \text{ per gallon} = \$229,600$ |
|---|

2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per-gallon analysis. The “per day” factor (determined from Table 2 of the Enforcement Policy) is **0.41**. The spill event took place over two days, 1 and 2 February 2018.

Water Code section 13385(c)(1) states that the maximum civil liability is \$10,000 per day of violation.

| |
|--|
| Per Day Liability $0.41 \times 2 \text{ days} \times \$10,000 \text{ per day} = \$8,200$ |
|--|

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment.

| |
|--|
| Initial Liability $\$229,600 \text{ per gallon assessment} + \$8,200 \text{ per day assessment} = \$237,800$ |
|--|

Step 3 – Per Day Assessment for Non-Discharge Violation

This step is not applicable.

Step 4 – Adjustment Factors

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

Degree of Culpability

This factor considers a discharger's degree of 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 negligent behavior. In this case, three different parties are involved, and Board staff evaluated each party's degree of culpability individually and assigned an overall multiplier to this incident.

CCFG was responsible for excavation and installation of the storm water pipeline for Caltrans. CCFG notified USA and initiated a USA dig ticket on Wednesday 24 January 2018. The California Government Code requires utility operators to respond to USA ticket notifications within 48 hours, either by marking their utility lines or contacting the excavator. However, the City failed to mark or respond to the USA ticket notification in a timely manner.

Although CCFG did not receive a response from the City, CCFG began excavating the site on 28 January 2018 despite the requirement to wait to dig until the receiving a response from all known utilities (California Government Code section 4216.2 subsection (g)). Both the City and CCFG should have taken steps to ensure the City's utility lines were marked prior to the start of excavation.

Additionally, CCFG and Caltrans should have taken steps to investigate the source of water in the excavation once it was detected. CCFG and a Caltrans inspector observed water coming into the excavation area in the early-morning hours of 1 February 2018. The Caltrans inspector's daily inspection report noted that water was bubbling into the excavation area around 0200 and 0300. Neither Caltrans nor CCFG stopped the construction work to investigate the source of the water. CCFG and Caltrans should have verified if the water in the excavation area was sewage or groundwater. Instead, CCFG and Caltrans chose to divert the discharge to the storm drain inlet and leave the construction site without confirming the source of the water in the excavation area.

Although the City attempted to mark its infrastructure, groundwater and abandoned irrigation pipes were observed within the excavation site. f CCFG, Caltrans, and the City would have taken reasonable steps to communicate with one another, mark the sewer line, and investigate the source of the water at the site, this spill could have been avoided or mitigated; however, all parties failed to respond appropriately. Therefore, Board staff assigns a multiplier of 1.3 for culpability.

History of Violations

The Enforcement Policy states that if the discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Because three different parties are involved in this incident, Board staff evaluated each party's "History of Violations" individually and assigned an overall multiplier to this incident.

In the past five years, the Central Valley Water Board issued Administrative Civil Liability Order (ACLO) R5-2017-0506 against the City of Jackson. The ACLO was issued because the City had an inadequate Sanitary Sewer Management Plan (SSMP) and the City failed to report sanitary sewer overflows as required by the Statewide General Waste Discharge Requirements for Sanitary Sewer System Order (SSS General Order) No. 2006-0003-DWQ. Since the issuance of the ACLO, the City submitted a revised SSMP and has initiated actions to fully comply with the SSS General Order.

CCFG does not appear to have a history of violations with sanitary sewer overflows and/or previous Central Valley Water Board enforcement actions.

In the past ten years, the Central Valley Water Board issued ACLO R5-2013-0589 against Caltrans. The ACLO was issued for failure to properly install best management practices (BMPs) in the State Route 108 East Sonora Bypass Project Stage II (Sonora Bypass Project), which resulted in approximately 822,701 gallons of unauthorized discharge. Caltrans has a history of unauthorized discharges to waters of the United States; however, the previous enforcement action was not based on sanitary sewer overflows.

Because CCFG does not have a history of violations, Central Valley Water Board staff has taken a conservative approach and assessed an overall multiplier of 1.0 for history of violations.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Since this case involves multiple parties, Board staff evaluated each party's cleanup and cooperation and then assigned an overall multiplier.

After the City received notification that CCFG damaged its sewer main pipeline and an overflow occurred, it took reasonable and prudent steps to respond to the discharge. The City installed a bypass line to prevent further SSO from entering Jackson Creek until the damaged pipeline was replaced. Once the bypass line was in-place, CCFG repaired the damaged sewer main pipeline and Caltrans paid the costs to repair the pipeline.

Overall, all parties involved in this incident cooperated with Board staff by providing appropriate information when requested and promptly repairing the damaged pipeline. The parties acted as would be expected of a reasonable and prudent person. Therefore, Board staff assigns the parties an overall multiplier of 1.0 for cleanup and cooperation.

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.

$$\begin{aligned} & \textbf{Total Base Liability} \\ & \text{Initial Liability} \times \text{Culpability Multiplier} \times \text{History of Violations Multiplier} \times \text{Cleanup and} \\ & \text{Cooperation Multiplier} = \text{Total Base Liability} \\ & \$237,800 \times 1.3 \times 1.0 \times 1.0 = \$309,140 \end{aligned}$$

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

CCFG, Caltrans, and the City have the ability to pay a penalty of \$309,140. Caltrans is a state agency with a budget of \$14.6 billion for the 2019-2020 fiscal year. The City has an estimated revenue of \$4 million in the 2018- 2019 fiscal year. In 2018, the City's reserve balance was over \$1 million. CCFG has an annual revenue of \$1 million to \$2.5 million and employs a staff of approximately four people, based on information available on the internet.

Step 7 – Other Factors as Justice May Require

Additional factors were not considered in this Administrative Civil Liability.

Step 8 – Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) [Economic Benefit Model \(BEN\)](#) penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 2020.0.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

In this case, the involved parties failed to adequately communicate between each other, resulting in damage to a municipal sewer line. After damaging the line, CCFG and Caltrans failed to investigate indicators of a potential break, resulting in a significant discharge of raw sewage. Had the parties immediately excavated the compromised pipe, the SSO discharge volume could have been greatly mitigated. However, had an investigation proceeded in this manner, project work would have likely been suspended and equipment idled, resulting in costs for standby equipment and labor. By not immediately investigating, the parties likely benefitted by not suspending project work.

The Prosecution Team estimates that idle costs for two days are approximately \$12,660, which includes both labor and rental equipment. Because neither Caltrans nor CCFG suspended work activities, these costs are considered avoided. Based on this cost estimate and other economic assumptions, the BEN model was used to determine 82201.00017\33668675.1

the economic benefit of avoided standby costs. Using a penalty payment date of March 1, 2021, the economic benefit was determined to be \$9,023. A copy of the BEN output is shown in Attachment C.

Final adjusted liability

The final adjusted liability is \$309,140.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts must be determined for comparison to the proposed liability.

Maximum Liability Amount:

The maximum penalty is the sum of the statutory per day and per gallon penalties. Pursuant to Water Code section 13385(c)(1), the per day maximum penalty for two days of violation is \$20,000. Pursuant to Water Code section 13385(c)(2), the per gallon maximum penalty is \$560,000. Therefore, the maximum penalty when combining the per day and per gallon statutory penalties is \$580,000.

Minimum Liability Amount: The minimum liability for a discretionary penalty is equal to the economic benefit of noncompliance plus 10%. Using an economic benefit of \$9,023, the mandatory minimum penalty is \$9,925.30.

Step 10 – Final liability Amount

The final liability amount consists of the added amounts for the violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. The proposed administrative civil liability is \$309,140.

Proposed Supplemental Environmental Project 1.

1. Project Name

City of Jackson Private Lateral Replacement Grant Project.

2. Project Amount

The parties propose to dedicate \$67,860 to the Private Lateral Replacement SEP. In Central Valley Regional Water Quality Control Board (Regional Board) Order No R5-2019-0514, the Regional Board found that the City of Jackson is a small community with a financial hardship. The City's wastewater treatment plant and collection system serves a population of 4,651 with a median household income (MHI) of \$45,278, which is 67% of the statewide MHI, according to the 2013-2017 American Community Survey 5-Year Estimates.

Pursuant to State Water Resources Control Board Resolution 2017-0074, Policy on Supplemental Environmental Projects, 100% of the proposed civil liability of an enforcement action may be dedicated to a Supplemental Environmental Project in a City that is designated as a small community with a financial hardship.

The City of Jackson is a small community with a financial hardship, and it is therefore appropriate to dedicate 100% of the proposed liability to a SEP or SEPs within the City. This proposed project, along with the City of Jackson (City) Slip Lining Project, will use 100% of the proposed liability in this case.

3. Project Lead

The City of Jackson

4. Contacts

Yvonne Kimball, City Manager, City of Jackson.

5. Project Description

The project involves providing grants to private property owners to reimburse them for the cost of replacing their private lateral connection to the City of Jackson's wastewater collection system. The project is a continuation of a SEP that the Regional Board approved in Order R5-2018-0517. The project will provide additional funding for this existing program.

6. Compliance with SEP Criteria

a. Above and Beyond Discharger's Obligations

The City of Jackson has no obligation to replace lateral connection lines on private property. Lateral connections to the City's wastewater collection system are the responsibility of the property owner. The grant program will provide funds for residents of the City to connect to the City's system.

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 Nature or Location of Violations

The incidents leading to the alleged violation in the ACL occurred within the City of Jackson and involved damage to the City's wastewater collection system. Replacing private laterals within the City will help prevent future blockages, breaks and overflows that lead to sewage spills to surface waters.

d. Project Maintenance

The City will manage the grant program until the funds are expended.

e. Documented Support

None documented at this time.

f. California Environmental Quality Act (CEQA) Compliance

The project is exempt from CEQA pursuant to California Public Resources Code section 21080.21 and 23 Cal Code Regs 15061(b)(3).

g. Project Milestones, Schedule, and Budget

Based on the existing program, the City expects the funds to be expended by 30 June 2023, which is within thirty-six (36) months, as recommended by the State Water Board's SEP Policy.

h. Final Post-Project Accounting of Expenditures

The City will submit a final, post-project accounting of expenditures to the Regional Board.

i. Extension if Necessary

If the City cannot meet the SEP Completion Deadline due to circumstances beyond its anticipation or control, the City or its designated representative shall notify the Executive Officer in writing within thirty (30) days of the date any of the City first knew of the event or circumstance that caused or could have caused a violation of this Stipulated 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 City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated

Order. The City shall adopt all reasonable measures to avoid and minimize such delays.

j. **Project Performance Measures**

Documentation of SEP funding distributed to reimburse private property owners for replacement of their private lateral connection.

k. **Reports to the Water Board**

The City will submit quarterly progress reports documenting progress made on the SEP. The quarterly reports will be due on the last day of the month following the end of each quarter, beginning on 30 September 2021. Quarterly progress reports for both the Private Lateral Replacement SEP and the Slip Lining SEP can be combined into one report, clearly identifying the progress made on each SEP.\

Following SEP completion, the City will submit a Final Report documenting distribution of grant funds. The Final Report shall be submitted to the Regional Water Board no later than August 30, 2023.

l. **Third Party Oversight Organization**

None anticipated at this time.

Proposed Supplemental Environmental Project 2.

1. Project Name

City of Jackson (City) Slip Lining Project.

2. Project Amount

The parties seek to devote a total of \$135,720 to this SEP (which reflects the remaining amount of penalty funds once the City of Jackson Private Lateral Replacement Grant Project is funded). The project cost is estimated to be approximately \$315,000. The SEP funds will make up approximately 42% of the total project cost.

Pursuant to State Water Resources Control Board Resolution 2017-0074, Policy on Supplemental Environmental Projects, 100% of the proposed civil liability of an enforcement action may be dedicated to a Supplemental Environmental Project in a City that is designated as a small community with a financial hardship. The SEP policy defines a community with financial hardship as, inter alia, any community where the median household income (MHI) is less than 80% of the statewide average.

In Order No R5-2019-0514, the Central Valley Regional Board found that the City of Jackson is a small community with a financial hardship. The City's wastewater treatment plant and collection system serves a population of 4,651 with an MHI of \$45,278, which is 67% of the statewide MHI, according to the 2013-2017 American Community Survey 5-Year Estimates.

The City of Jackson is a small community with a financial hardship, and it is therefore appropriate to dedicate 100% of the proposed liability to a SEP or SEPs within the City. This proposed project, along with the City of Jackson Private Lateral Replacement Grant Project, will use 100% of the proposed liability in this case.

3. Project Lead

The City of Jackson.

4. Contacts

Yvonne Kimball, City Manager, City of Jackson.

5. Project Description

The project involves slip lining a section of the City of Jackson's wastewater collection system at a point where it is adjacent to and crosses under Jackson Creek. While this project is not currently necessary to undertake for compliance purposes, the incident underlying the proposed penalty action highlights the need to proactively address sewer lines in close proximity to surface waters, and reduce the

likelihood that the sewer line could contribute waste to surface waters in the future. Given the scarce resources of the City's ratepayers, the opportunity to complete a non-essential, pro-active, rather than reactive, project is unique.

6. Compliance with SEP Criteria

a. Above and Beyond Discharger's Obligations

While the City is generally obligated to maintain its collection system, this project is not a mandatory for compliance any applicable requirement at this time.

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 Nature or Location of Violations

The incident involved in the alleged violation that is the basis for the ACL occurred within the City and involved damage to a sewer line located near Jackson Creek. In the preparation of this SEP proposal, the City considered other sewer lines near surface waters that are currently sound, but aging, that could be upgraded before significant issues arise. The project will ensure protection of surface waters involved in the ACL incident, and minimize the likelihood of waste from the City's collection system reaching surface waters.

d. Project Maintenance

The City will maintain this segment of its collection system once the project is complete. The City will be responsible for project management, payment of contractors and reporting to the Regional Board.

e. Documented Support

None documented at this time.

f. California Environmental Quality Act (CEQA) Compliance

The project is exempt from CEQA pursuant to California Public Resources Code section 21080.21 and 23 Cal Code Regs 15061(b)(3).

g. Project Milestones, Schedule, and Budget

The project is estimated to cost approximately \$315,000 to complete. The City estimates that it will be completed by 1 March 2024, which is within thirty-six (36) months, as recommended by the State Water Board's SEP Policy. The City will fund the remaining cost of construction not covered by the SEP funds (approximately \$180,000).

h. Final Post-Project Accounting of Expenditures

The City will submit task orders and notices of completion to the Regional Board to document expenditure of the SEP funds and completion of the project.

i. **Extension if Necessary**

If the City cannot meet the SEP Completion Deadline due to circumstances beyond its anticipation or control, the City or its designated representative shall notify the Executive Officer in writing within thirty (30) days of the date any of the City first knew of the event or circumstance that caused or could have caused a violation of this Stipulated 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 City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. The City shall adopt all reasonable measures to avoid and minimize such delays.

j. **Project Performance Measures**

The City will submit task orders and notices of completion to the Regional Board to document expenditure of the SEP funds and completion of the project.

k. **Reports to the Water Board**

The City will submit quarterly progress reports documenting progress made on the SEP. The quarterly reports will be due on the last day of the month following the end of each quarter, beginning on 30 September 2021. Quarterly progress reports for both the Private Lateral Replacement SEP and the Slip Lining SEP can be combined into one report, clearly identifying the progress made on each SEP.

Following SEP completion, the City will submit a Final Report including task orders and notices of completion to the Regional Board to document expenditure of the SEP funds and completion of the project. The Final Report shall be submitted to the Central Valley Water Board no later than August 30, 2024.

l. **Third Party Oversight Organization**

None anticipated at this time.

Stipulated Order R5-2021-0503
 Attachment C: Economic Benefit Calculator

Economic Benefit Analysis
 Jackson SSO – Caltrans/City of Jackson/CCFG

| One Time Non-Depreciable Expenditure | | | | | | | | | |
|--------------------------------------|----------|-------|----------|----------|---------------------|-----------------|----------------------|---------------|---------------------------|
| Compliance Action | Amount | Basis | Date | Delayed? | Non-Compliance Date | Compliance Date | Penalty Payment Date | Discount Rate | Benefit of Non-Compliance |
| Project Standby/Equipment Idling | \$12,660 | CCI | 3/1/2021 | No | 2/1/2021 | Blank Cell | 3/1/2021 | 7.70% | 9,023 |

Income Tax Schedule: For Profit (Other than C-Corporation)
USAEPA BEN Model Version Version 2020.0.0 (June 2020)
Analyst Bryan Elder
Date/Time of Analysis 1/14/2021 16:46

Total Benefit \$9,023

- Assumptions:**
1. Cost estimate based on two days of project standby and equipment idling due to SSO investigation and repair. Estimates include 4 field staff @ \$150 per hour (assumes 8 hours per day), 1 excavator @ \$750 per day, 1 backhoe @ \$337 per day, 1 light stand @ \$30/day, and 3 work trucks @ \$100 per day.
 2. Time and material estimates provided by Regional Board Staff.
 3. Costs indexed using the Construction Cost Index (CCI).
 4. Non-compliance date is assumed to be the estimated start date of the SSO (2/1/2018).
 5. Costs are assumed to be avoided.
 6. Penalty payment date assumed to be 3/1/2021.
 7. For conservative purposes, costs are assumed to be undertaken by a for-profit, non-corporate entity.