

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Augustine v. Shirley

No. 1:23-cv-00520-SAB (PC) · No. 1:23-cv-00520-SAB (PC) · Decided May 28, 2025

SUMMARY

The document contains an order directing random assignment of a district judge and findings and recommendations on defendants’ motion for summary judgment in a 42 U.S.C. § 1983 action. Plaintiff alleged that Wasco State Prison officials were deliberately indifferent to risks from contaminated drinking water. The magistrate judge recommended granting summary judgment to defendants and entering judgment in their favor, subject to the parties’ opportunity to file objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 28, 2025
DOCKET	1:23-cv-00520-SAB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending that defendants' motion for summary judgment in a prisoner civil-rights action be granted. The matter was ordered randomly assigned to a district judge, and the parties were given fourteen days to object.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court may not weigh conflicting evidence or make credibility determinations and must draw reasonable inferences in favor of the nonmoving party. On an Eighth Amendment conditions-of-confinement claim, the plaintiff must show an objectively sufficiently serious deprivation and that prison officials acted with deliberate indifference by knowing of and disregarding an excessive risk to inmate health or safety.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; not a final adjudication unless adopted by the assigned district judge.

PARTIES

Carlos Augustine v. Heather Shirley, James Cronjager, Scott DeGough

TOPICS

section 1983

prisoners rights

summary judgment

cruel and unusual punishment

civil procedure

PRACTICE AREAS

prisoner civil rights

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether the undisputed evidence established an objectively substantial risk of serious harm from Augustine's exposure to TCP in Wasco State Prison's drinking water.
2. Whether the undisputed evidence established that defendants knew of and disregarded an excessive risk to Augustine's health or safety.
3. Whether defendants were entitled to summary judgment on Augustine's Eighth Amendment deliberate-indifference claim.

HOLDINGS

1. The evidence did not establish that the TCP concentrations in Wasco State Prison's water created an objectively sufficiently serious risk of harm or that Augustine's medical conditions were caused by the exposure; exceeding a state environmental or drinking-water standard alone did not establish a constitutional violation.
2. The undisputed evidence did not show that Shirley, Cronjager, or DeGough knew of and disregarded an excessive risk of serious harm to inmates.
3. Defendants were entitled to summary judgment on Augustine's deliberate-indifference claim.

KEY QUOTATIONS

"Violations of environmental regulatory standards are not tantamount to a constitutional violation." (at 7)

"In sum, the undisputed evidence presented demonstrates that Wasco State Prison officials did not ignore the issue but rather investigated and made reasonable attempts to resolve the issue." (at 13)

FACTUAL BACKGROUND

Augustine, a California state prisoner housed at Wasco State Prison beginning in January 2023, alleged that prison officials knowingly exposed inmates to drinking water containing levels of 1,2,3-trichloropropane above California's regulatory maximum contaminant level. He alleged that the exposure caused abdominal pain, kidney irritation, painful urination, dry mouth, sore throat, and vomiting. Testing showed TCP concentrations ranging from 0.000 to 0.016 ug/L, while prison officials pursued installation of a granular activated carbon filtration system and posted quarterly notices. Defendants submitted toxicological evidence that the concentrations were safe to drink and had not caused Augustine's alleged conditions; Augustine did not oppose the motion or submit contrary evidence.

PROCEDURAL HISTORY

Augustine proceeded pro se and in forma pauperis under 42 U.S.C. § 1983 on an Eighth Amendment deliberate-indifference claim concerning allegedly contaminated drinking water at Wasco State Prison. Defendants answered the second amended complaint and later moved for summary judgment. Augustine did not oppose the motion, and the magistrate judge recommended judgment for defendants, subject to review by an assigned district judge.

DISPOSITION

other

REMAND INSTRUCTIONS

The Clerk was directed to randomly assign a district judge. The findings and recommendations were to be submitted to the assigned district judge, and the parties were permitted fourteen days to file objections.

CASES CITED

- Washington Mut. Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011)
- Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001)
- Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010)
- Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007)
- Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011)
- Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir. 2012)
- Rand v. Rowland, 154 F.3d 952, 960-61 (9th Cir. 1998)
- McElyea v. Babbitt, 833 F.2d 196, 197-98 (9th Cir. 1987)
- Lew v. Kona Hospital, 754 F.2d 1420, 1423 (9th Cir. 1985)
- Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006)
- Rhodes v. Chapman, 452 U.S. 337, 347 (1981)
- Farmer v. Brennan, 511 U.S. 825, 828, 833-34, 837-38 (1994)
- Thomas v. Ponder, 611 F.3d 1144, 1151-52 (9th Cir. 2010)
- Richardson v. Runnels, 594 F.3d 666, 672 (9th Cir. 2010)
- Toguchi v. Chung, 391 F.3d 1051, 1057, 1060 (9th Cir. 2004)
- Wallis v. Baldwin, 70 F.3d 1074, 1076-77 (9th Cir. 1995)
- Nguyen v. Biter, No. 1:11-cv-00809-AWI-SKO (PC), 2015 WL 5232163 (E.D. Cal. Sept. 8, 2015)
- Helling v. McKinney, 509 U.S. 25, 33, 35-36 (1993)
- Lopez v. McGrath, No. C 04-4782, 2007 WL 1577893, at *13 (N.D. Cal. May 31, 2007)
- Reed v. Harrington, No. 1:11-CV-01883, 2013 WL 1627622, at *3 (E.D. Cal. Apr. 15, 2013)
- Robinson v. Gonzalez, No. CV 11-5639, 2012 WL 405006, at *11 (C.D. Cal. Feb. 7, 2012)

- Kern County Taxpayers Ass'n v. Cal. State Water Res. Control Bd., No. 34-2017-80002769, 2019 Cal. Super. LEXIS 15602, at *13 (Sac. Sup. Ct. Mar. 4, 2019)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(PC) Augustine v. Shirley

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 CARLOS AUGUSTINE, No. 1:23-cv-00520-SAB (PC)

12 Plaintiff, ORDER DIRECTING CLERK OF COURT TO

RANDOMLY ASSIGN A DISTRICT JUDGE

13 v. TO THIS ACTION

14 HEATHER SHIRLEY, et al.,. FINDINGS AND RECOMMENDATIONS

RECOMMENDING DEFENDANTS'

15 Defendants. MOTION FOR SUMMARY JUDGMENT BE

GRANTED

16 (ECF No. 24) 17 18 Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 19 U.S.C. § 1983. 20 Currently before the Court is Defendants' motion for summary judgment, filed December 21 13, 2024. (ECF No. 24.) 22 I.

23 RELEVANT BACKGROUND

24 This action is proceeding on Plaintiff's deliberate indifference claim against Defendants 25 Heather Shirley, James Cronjager, and Scott DeGough relating to alleged contaminated water at 26 Wasco State Prison. (ECF No. 12.) 27 Defendants filed an answer to the operative second amended complaint on December 7, 28 2023. (ECF No. 16.) 1 On January 5, 2024, the Court issued the discovery and scheduling order. (ECF No. 20.) 2 After receiving an extension of time, Defendants filed the instant motion for summary 3 judgment on December 13, 2024.1 (ECF No. 24.) 4 On January 27, 2025, Plaintiff filed a notice of change of address. (ECF No. 26.) 5 On March 18, 2025, the Court directed the Clerk to serve a copy of Defendants' motion 6 for summary judgment at Plaintiff's most recent address of record. (ECF No. 27.) 7 Plaintiff has not filed an opposition to Defendants' motion for summary judgment and the 8 time to do so has passed. Local Rule 230(l). 9 II.

10 LEGAL STANDARD

11 A. Summary Judgment Standard 12 Any party may move for summary judgment, and the Court shall grant summary judgment 13 if the movant shows that there is no genuine dispute as to any

material fact and the movant is 14 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks omitted); 15 *Washington Mut. Inc. v. U.S.*, 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's position, 16 whether it be that a fact is disputed or undisputed, must be supported by (1) citing to particular 17 parts of materials in the record, including but not limited to depositions, documents, declarations, 18 or discovery; or (2) showing that the materials cited do not establish the presence or absence of a 19 genuine dispute or that the opposing party cannot produce admissible evidence to support the fact. 20 Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may consider other materials in the 21 record not cited to by the parties, but it is not required to do so. Fed. R. Civ. P. 56(c)(3); *Carmen 22 v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001); accord *Simmons v. 23 Navajo Cnty., Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010). 24 In judging the evidence at the summary judgment stage, the Court does not make 25 credibility determinations or weigh conflicting evidence, *Soremekun v. Thrifty Payless, Inc.*, 509 26 1 Concurrently with the motion for summary judgment, Defendant served Plaintiff with the requisite notice of the 27 requirements for opposing the motion. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 960-61 (9th Cir. 1998). 28 1 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all 2 inferences in the light most favorable to the nonmoving party and determine whether a genuine 3 issue of material fact precludes entry of judgment, *Comite de Jornaleros de Redondo Beach v. 4 City of Redondo Beach*, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation 5 omitted). 6 In arriving at these Findings and Recommendations, the Court carefully reviewed and 7 considered all arguments, points and authorities, declarations, exhibits, statements of undisputed 8 facts and responses thereto, if any, objections, and other papers filed by the parties. Omission of 9 reference to an argument, document, paper, or objection is not to be construed to the effect that 10 this Court did not consider the argument, document, paper, or objection. This Court thoroughly 11 reviewed and considered the evidence it deemed admissible, material, and appropriate. 12 III.

13 DISCUSSION

14 A. Summary of Plaintiff's Complaint 15 Plaintiff alleges the water system at Wasco State Prison recently failed the drinking water 16 standard. 17 On or about December 14, 2017, Defendants Scott DeGough, J. Cronjager, and Heather 18 Shirley became aware that the water wells at Wasco were contaminated with high levels of 19 Trichloropropane (TCP) and failed the drinking standards for human consumption. TSP is a 20 chemical contaminant that can cause physical harm and cancer if consumed. Plaintiff alleges a 21 report set a three-year deadline for Defendants to correct the contaminated water, but they have 22 failed to do for almost seven years. Plaintiff also claims that Defendant Shirley failed to provide 23 inmates with safe drinking water for consumption and Defendant DeGough has done nothing to fix 24 the problem. As a result, Plaintiff is currently suffering from abdominal pain, kidney irritation, 25 pain during urination, dry mouth, sore throat, and vomiting. 26 /// 27 /// 28 /// 1 B. Statement of Undisputed Facts2,3 2 1. Plaintiff is a California inmate in the custody of the California Department of 3 Corrections and

Rehabilitation (CDCR). Plaintiff has been incarcerated at Wasco State Prison 4 since January 10, 2023. (Declaration of Carolyn G. Widman (Widman Decl.) ¶ 3, Ex. B ¶ 4, Ex. 5 C., Pl. Dep. at 19:12-14.) 6 2. Defendant Shirley was the Acting Warden of Wasco State Prison in November 7 2020 and the Warden from June 2022 to January 16, 2024. (Declaration of Heather Shirley 8 (Shirley Decl.) ¶ 2.) 9 3. Defendant Cronjager became Wasco State Prison's Associate Warden in 2013 and 10 retired on December 30, 2021. (Declaration of James Cronjager (Cronjager Decl.) ¶ 2.) 11 4. At all relevant times, Defendant DeGough was the Correctional Plant Manager at 12 Wasco State Prison that oversees the maintenance of physical plant operations and construction 13 projects at Wasco State Prison. (Declaration of Scott DeGough (DeGough Decl.) ¶ 2.) 14 5. 1, 2, 3 – TCP is a manmade chlorinated hydrocarbon that is 15 Typically used as an industrial solvent and as a cleaning and degreasing agent. (Declaration of 16 Durrani (Durrani Decl.) ¶ 15.) 17 6. In 1992, TCP was added to the list of chemicals known to the State of California to 18 cause cancer under California's Safe Drinking Water and Toxic Enforcement Act. In 1999, the 19 California State Water Quality Control Board established a 0.005 ug/L drinking water notification 20 level for TCP. (Durrani Decl. ¶ 16.) 21 7. There is no federal MCL for TCP in drinking water, but the U.S. Environmental 22 Protection Agency requires many large water utilities to monitor for TCP with a minimum 23 reporting level of 0.03 ug/L. Some states have established their own MCLs. For example, Hawaii 24 25 2 Hereinafter referred to as "UF." 3 Because Plaintiff did not file an opposition to Defendant's motion, the Court was left to compile the summary of 26 undisputed facts from Defendant's statement of undisputed facts and Plaintiff's verified complaint. A verified complaint in a pro se civil rights action may constitute an opposing affidavit for purposes of the summary judgment 27 rule, where the complaint is based on an inmate's personal knowledge of admissible evidence, and not merely on the inmate's belief. *McElyea v. Babbitt*, 833 F.2d 196, 197-98 (9th Cir. 1987) (per curium); *Lew v. Kona Hospital*, 754 28 F.2d 1420, 1423 (9th Cir. 1985); F.R.C.P. 56(e). 1 established a state MCL of 0.6 ug/L. (Durrani Decl. ¶ 19.) 2 8. In December 2017, a California regulation established a much more stringent 3 MCL of 0.005 ug/L. The regulation went into effect on January 1, 2018. The regulation also 4 required all water systems in California to conduct quarterly monitoring for TCP in water sources. 5 (Durrani Decl. ¶ 19; DeGough Decl. ¶ 4; Cronjager Decl. ¶ 3.) 6 9. Wasco State Prison's water was tested quarterly by an independent laboratory, 7 Environmental Agricultural Analytical Chemists, as required by the regulation. (DeGough Decl. 8 ¶ 6 Ex. A at 36-42, 46-52, 56-65, 69-73, 91-95, 99-105, 109-116, 120-126.) 9 10. Since January 2023 (when Plaintiff arrived at Wasco State Prison), eight quarterly 10 tests have been conducted, the latest in October 2024. The TCP levels were as follows: 2023: 1st 11 Quarter:.008-.008 ug/L; 2nd Quarter: .008-.011 ug/L; 3rd Quarter: .007-.012 ug/L; 4th Quarter: 12 .000-.006 ug/L. 2024: 1st Quarter .000-.000 ug/L; 2nd Quarter: .009-.021 ug/L; 3rd Quarter .000- 13 .009 ug/L; 4th Quarter: .008-.016 ug/L. (DeGough Decl. ¶ 6 Ex. A at 36-42, 46-52, 56-65, 69-73, 14 91-95, 99-105, 109-116, 120-126.) 15 11. Notices reporting the independent laboratory's findings were posted throughout 16 the institution for each quarter that the TCP levels

in Wasco State Prison's water exceeded the 17 MCL. (DeGough Decl. ¶ 7, Ex. A at 29-32, 84-87; Cronjager Decl. ¶ 4; Shirley Decl. ¶ 8.) 18 12. Defendant DeGough was listed as the point of contact for more information. 19 (DeGough Decl. ¶ 7, Ex. A at 29-32, 84-87.) 20 13. Defense expert, medical toxicologist Timur Durrani, M.D., M.P.H, reviewed 21 relevant literature, Wasco State Prison's water records, Plaintiff's complaint, Plaintiff's 22 deposition transcript, and Plaintiff's medical records from October 2015 through July 2024. 23 (Durrani Decl. ¶ 20.) 24 14. On May 9, 2023, Plaintiff reported to a registered nurse that he had stomach pain, 25 dry mouth, and blood in his urine the week before. He was noted to be taking antacids and saliva 26 substitute tablets. Plaintiff was unable to provide a urine specimen. (Durrani Decl. ¶ 26.) 27 15. Plaintiff denied having a sore throat after exposure to TCP on March 22, 2023, 28 September 22, 2023, January 18, 2024, and July 10, 2024. (Durrani Decl. ¶ 26.)

1 16. Dr. Durrani calculated Plaintiff's maximum daily ingestion of TCP as 2 0.000001074918567 mg/kg/day, based on Plaintiff's self-reported ingestion of 5 quarts of water 3 per day and body weight of 92.1 kg. (Durrani Decl. ¶¶ 21-22; Pl. Dep. 25:17-20.) 4 17. As part of California's TCP MCL regulation, California designated Granular 5 Activated Carbon (GAC) treatment as the best available technology for TCP removal. (DeGough 6 Decl. ¶ 10.) 7 18. Activated carbon treatment requires installation of several large vessels containing 8 thousands of pounds of activated carbon. (DeGough Decl. ¶ 10.) 9 19. As water passes through the vessels, the TCP attaches to the carbon granules and 10 filters out of the water. (DeGough Decl. ¶ 10.) 11 20. Defendant DeGough worked with the State Water Resources Board to come up 12 with a Corrective Action Plan, which included a Capital Outlay Budget Change Proposal to install 13 a GAC filtration system. (DeGough Decl. ¶ 12.) 14 21. Wasco State Prison's Warden at the time, John Sutton, signed off on the plan, 15 which was submitted to the State Water Resources Board and submitted the GAC construction 16 project to the Facility Asset Management Branch on August 31, 2018. (DeGough Decl. ¶ 12.) 17 22. According to the Capital Outlay Budget Change Proposal, the estimated cost of 18 installing the GAC system was \$1,017,100.00. (DeGough Decl. ¶ 12, Ex. A at 26-28.) 19 23. Defendant DeGough did not participate further in planning or implementing the 20 Corrective Action Plan. Once the Corrective Action Plan was submitted, Defendant DeGough had 21 no authority to do anything regarding Wasco State Prison's water supply except issue quarterly 22 notices when the TCP levels in the water system exceeded the MCL. (DeGough Decl. ¶ 13.) 23 24. Between August 2018 and April 2021, the Facilities Management Group reviewed 24 and researched the proposed Corrective Action Plan. (DeGough Decl. ¶ 14, Ex. A at 127-137.) 25 25. On April 20, 2021, the Facilities Management Group received final drawings and 26 specifications approval and initiated the bid process for the proposed GAC system. (DeGough 27 Decl. ¶ 14, Ex. A at 137.) 28 /// 1 26. In September 2021, the Facilities Management Group submitted contract 2 documents to CDCR's Office of Business Services (OBS). (DeGough Decl. ¶ 15, Ex. A at 139.) 3 27. By May 5, 2022, CDCR accepted W.M. Lyles Construction's bid to install the 4 GAC system. (DeGough Decl. ¶ 16, Ex. A at 140-141.) 5 28. Construction began on November 1, 2022.

(DeGough Decl. ¶ 17, Ex. A at 142.) 6 29. By July 24, 2023, foundation excavation, underground utilities, and piping 7 installation had begun. (DeGough Decl. ¶ 18, Ex. A at 53.) 8 30. By January 29, 2024, the cement foundation was completed, and the GAC vessels 9 were set with partial piping and valving. However, inclement weather delayed completion of 10 construction. (DeGough Decl. ¶ 19, Ex. A at 88.) 11 31. The influent and effluent piping was installed by April 24, 2024. (DeGough Decl. ¶ 20, Ex. A at 96.) 13 32. By August 7, 2024, the installation of Variable Frequency Drives was in progress. 14 (DeGough Decl. ¶ 21, Ex. A at 106.) 15 33. As of November 4, 2024, the Variable Frequency Drives are operational, and the 16 chlorination and bacterial testing of the GAC vessels and related piping has been completed. 17 The GAC installation project was 95% complete with vessel loading and activation of 18 the GAC system scheduled to follow. (DeGough Decl. ¶ 22, Ex. A at 117.) 19 34. Defendant Shirley had very little involvement or responsibility in responding to 20 Wasco State Prison's TCP levels. (Shirley Decl. ¶¶ 5-7.) 21 35. Defendant Shirley had no authority to authorize a project the size of the TCP 22 removal plant. (Shirley Decl. ¶ 6.) 23 36. When Defendant Shirley became the Acting Warden in November 2020, CDCR 24 and Wasco State Prison had already determined that the best approach to bringing the water into 25 compliance with the MCL would be to install the GAC system. (Shirley Decl. ¶ 6.) 26 37. Defendant Shirley deferred to the expertise of Wasco State Prison's plant 27 operations staff and CDCR staff on matters regarding TCP compliance. The staff working on the 28 /// 1 GAC project regularly reported the progress of the project to Defendant Shirley. (Shirley Decl. ¶ 2 7.) 3 38. While she was acting Warden and Warden, Defendant Shirley and her staff 4 transmitted quarterly water tests to the State Water Resources Board, posted quarterly notices 5 required by regulation regarding the TCP levels, and provided annual consumer confidence 6 reports regarding the quality of Wasco State Prison's water. (Shirley Decl. ¶ 8.) 7 39. While Defendant DeGough was listed as the point of contact on the quarterly 8 water notices to Wasco State Prison inmates, the notices are templates provided by the State 9 Water Resources Board and the TCP levels are based on an independent laboratory's findings. 10 (DeGough Decl. ¶¶ 7-8.) 11 40. Defendant Cronjager's responsibilities as Associate Warden included, but were not 12 limited to, supervising the overall operations of Wasco State Prison's physical plant. (Cronjager 13 Decl. ¶ 2.) 14 41. However, Defendant Cronjager is not a water expert, and it was not part of his job 15 duties or responsibilities to investigate or second guess independent laboratory findings or the 16 State Water Resources Board's information concerning Wasco State Prison's TCP levels. 17 Further, he was not personally involved in the day-to-day activities of plant operations staff he 18 supervised. Rather, Defendant Cronjager relied on their expertise to work with CDCR's Facility 19 Planning, Construction and Management division to come up with a plan to treat the water to 20 bring it into compliance with state regulation. (Cronjager Decl. ¶ 5.) 21 42. Plaintiff testified at his deposition that in early 2024, he began buying bottled 22 water from the canteen. (Pl. Dep. at 25:23-25, 26:1-21, 35:2-9; 59:13-22.) 23 43. Plaintiff tries to buy 24 water bottles per month to avoid drinking Wasco State 24 Prison's water. (Pl. Dep. at 51:1-3; 52:2-11.) 25 44. Plaintiff

testified that he has only drunk Wasco State Prison's water twice since he 26 began buying bottled water from the canteen. (Pl. Dep. at 54:4-15.) 27 /// 28 /// 1 C. Analysis of Defendants' Motion 2 As previously stated, Plaintiff contends that Defendants were deliberately indifferent to 3 his safety because he was exposed to contaminated water resulting in harm. 4 Defendants argue that the undisputed facts show that Defendants did not violate Plaintiff's 5 Eighth Amendment rights when Plaintiff consumed water at Wasco State Prison that was safe to 6 drink, but contained concentrations of 1, 2, 3, TCP above the regulatory maximum contaminant 7 level. Defendants also argue they are entitled to qualified immunity. 8 "While conditions of confinement may be, and often are, restrictive and harsh, they 'must 9 not involve the wanton and unnecessary infliction of pain.' " *Morgan v. Morgensen*, 465 F.3d 10 1041, 1045 (9th Cir. 2006) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). The Eighth 11 Amendment, which protects prisoners from inhumane conditions of confinement, *Farmer v. 12 Brennan*, 511 U.S. 825, 833 (1994), is violated when prison officials act with deliberate 13 indifference to a substantial risk of harm to an inmate's health or safety. *Farmer*, 511 U.S. at 828; 14 *Thomas v. Ponder*, 611 F.3d 1144, 1151-1152 (9th Cir. 2010); *Richardson v. Runnels*, 594 F.3d 15 666, 672 (9th Cir. 2010). 16 Two requirements must be met to show an Eighth Amendment violation. *Farmer*, 511 17 U.S. at 834. First the deprivation must be, objectively, sufficiently serious. *Id.* Second, prison 18 officials must have a sufficiently culpable state of mind, which for conditions of confinement 19 claims is one of deliberate indifference. *Id.* Prison officials act with deliberate indifference when 20 they know of and disregard an excessive risk to inmate health or safety. *Id.* at 837. 21 Deliberate indifference is a high legal standard." *Toguchi v. Chung*, 391 F.3d 1051, 1060 22 (9th Cir. 2004). "Under this standard, the prison official must not only 'be aware of the facts from 23 which the inference could be drawn that a substantial risk of serious harm exists,' but that person 24 'must also draw the inference.' " *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837)). " 'If a prison 25 official should have been aware of the risk, but was not, then the official has not violated the 26 Eighth Amendment, no matter how severe the risk.' " *Toguchi*, 391 F.3d at 1057. The exposure 27 to toxic substances can support a claim under section 1983. See *Wallis v. Baldwin*, 70 F.3d 1074, 28 1076-1077 (9th Cir 1995)(exposure to asbestos). 1 The interpretation of medical test results and the evaluation of such results in the context 2 of exposure to unreasonably high arsenic levels require medical and/or toxicological expertise. 3 Fed. R. Evid. 701, 702. The issue is not whether there is arsenic in drinking water, but at what 4 contaminant level the water becomes unsafe to drink, whether a named defendant was aware of a 5 substantial risk to inmate health due to the contaminant level, and whether the prisoner's medical 6 issues were caused by arsenic exposure. See *Nguyen v. Biter*, No. 1:11-cv-00809-AWI-SKO 7 (PC), 2015 WL 5232163 (E.D. Cal. Sept. 8, 2015) (in prisoner civil rights action alleging KVSP 8 drinking water contained arsenic, defendants granted summary judgment on objective prong of 9 Eighth Amendment claim because, although there was arsenic in the local drinking water, 10 prisoner provided no scientific evidence that the arsenic was present in sufficient amounts to 11 cause the skin and other conditions he complained

of, and there was no medical evidence that his 12 conditions were specific to arsenic exposure). In order to survive a motion for summary 13 judgment, Plaintiff is required to show that his medical conditions were caused by arsenic 14 exposure. 15 1. Objective Element-Substantial Risk of Serious Harm 16 Prison officials cannot ignore a condition of confinement “that is sure or very likely to 17 cause serious illness.” *Helling v. McKinney*, 509 U.S. at 33. The inquiry requires establishing that 18 a serious harm existed, and there was a substantial risk of suffering that harm. The minute 19 possibility that something may cause serious harm, such as disease, in the abstract does not 20 establish a substantial risk unless the risk of developing the disease is substantial. *Lopez v. 21 McGrath*, No. C 04-4782, 2007 WL 1577893, at *13 (N.D. Cal. May 31, 2007) (discussing 22 whether risk of developing MRSA was a substantial risk). Plaintiff must prove that he was 23 exposed to an unreasonably high level of arsenic. *Helling*, 509 U.S. at 35. 24 Defendants have presented evidence that Wasco State Prison’s water did not present an 25 objectively serious risk of harm. Wasco State Prison’s water contained concentrations of TCP 26 between .000 ug/L and .016 ug/L. (UF 10.) Simply because Wasco State Prison’s water exceeded 27 the state’s new regulatory MCL does not create a genuine issue of disputed fact. Violations of 28 environmental regulatory standards are not tantamount to a constitutional violation. *Reed v. 1 Harrington*, No. 1:11-CV-01883, 2013 WL 1627622, at *3 (E.D. Cal. Apr. 15, 2013); *Robinson v. 2 Gonzalez*, No. CV 11-5639, 2012 WL 405006, at *11 (C.D. Cal. Feb. 7, 2012). That is 3 particularly true where, as here, the water was still safe to drink. 4 Defendants’ expert witness, Dr. Durrani, a medical toxicologist opines that there is no 5 evidence showing that the levels of TCP in Wasco State Prison’s water caused Plaintiff’s alleged 6 medical conditions. (DUF 15, 17, 20-26.) Dr. Durrani opined that Wasco State Prison’s water 7 did not have high enough TCP concentrations to cause harm because the water was safe to drink. 8 (Durrani Decl. ¶ 29.) 9 Notices reporting the independent laboratory’s findings were posted throughout the 10 institution for each quarter that the TCP levels in Wasco State Prison’s water exceeded the MCL. 11 (UF 11.) Quarterly notices also informed inmates and staff that the amount of TCP in Wasco 12 State Prison’s water did not present an emergency. (DeGough Decl. ¶ 6, Ex. A at 7-186; 13 Cronjager Decl. ¶ 4.) In addition, the notices informed inmates and staff that they did not need to 14 use an alternative water source, and the prison was not ordered to provide an alternative source of 15 water while the GAC system was under construction and the TCP exceeded the MCL. 16 (DeGough Decl. ¶¶ 6, 23-25, Ex. A at 7-186; Cronjager Decl. ¶¶ 4, 6-7; Shirley Decl. ¶ 9.) 17 With respect to Plaintiff’s medical conditions, Plaintiff testified at his deposition that no 18 doctor has ever diagnosed his conditions as being caused by his consumption of Wasco State 19 Prison’s water. (Pl. Dep. at 37:2-12.) Moreover, Dr. Durrani attested that Plaintiff did not 20 become ill from ingesting the arsenic concentrations in Wasco State Prison’s drinking water and 21 he will not suffer any future health issues. (Durrani Decl. ¶¶ 20-29.) 22 Furthermore, Plaintiff has failed to demonstrate that the risk of arsenic exposure was “so 23 grave that it violate[d] contemporary standards of decency to expose anyone unwilling to such 24 risk.” *Helling*, 509 U.S. at 36. The

risk cannot be one that “today’s society chooses to tolerate.” 25 Id. Prior to enacting the MCL, the State Water Resources Board estimated a total of 103 water 26 systems with 1,303,731 service connections statewide would be affected by the MCL. Kern 27 County Taxpayers Ass’n v. Cal. State Water Res. Control Bd., No. 34-2017-80002769, 2019 Cal. 28 Super. LEXIS 15602, at *13 (Sac. Sup. Ct. Mar. 4, 2019.) When the regulation went into effect 1 in 2018, many free individuals throughout California also had water that was out of compliance 2 with the new MCL. Id. 3 In light of the evidence submitted by Defendants, the burden shifts to Plaintiff to 4 demonstrate a genuine issue of material fact for trial. However, Plaintiff has offered no evidence 5 in opposition to Defendants’ evidence, as he did not respond to their motion for summary 6 judgment. Accordingly, Plaintiff has not and cannot establish the objective element of his 7 deliberate indifference claim and Defendants are entitled to summary judgment. 8

2. Subjective Element—Knowledge of Substantial Risk of Serious Harm 9 “Deliberate indifference is a high legal standard,” Toguchi v. Chung, 391 F.3d 1051, 1060 10 (9th Cir. 2004), and requires a “sufficiently culpable state of mind,” Hearn v. Terhune, 431 F.3d 11 at 1040. Defendant is only liable if he knew of an excessive risk of harm and disregarded the 12 risk. Farmer, 511 U.S. at 838. A defendant must be “aware of facts from which the inference 13 could be drawn that a substantial risk of serious harm exists, and [the defendant] must [] draw the 14 inference.” Id. If the defendant did not know about the risk, he did not inflict the injury. Id. 15 It is undisputed that at the time Defendant Shirley became Acting Warden at Wasco State 16 Prison in November 2020, CDCR and Wasco were already engaged in installing a GAC system to 17 bring Wasco State Prison into regulatory compliance—a process that began in August 2018. (UF 18 36.) During that process, CDCR worked to ensure it used the proper system to bring Wasco State 19 Prison’s water into regulatory compliance. (UF 17-22, 24.) Ultimately, the plan to construct and 20 install the GAC system was approved. (UF 24-28.) In addition, because the levels of TCP in 21 Wasco State Prison’s water were not dangerous, there was no need to provide an alternative 22 source of drinking water. (DeGough Decl. ¶¶ 6, 23-25, Ex. A at 7-186; Cronjager Decl. ¶¶ 4, 6-7; 23 Shirley Decl. ¶ 9.) 24 It is further undisputed that as an Associate Warden, Defendant Cronjager supervised the 25 overall plant operations of Wasco State Prison’s physical plant until he retired from CDCR in

26 December 2021. (UF 3, 40.) Defendant Cronjager is not a water expert and thus it was not within

27 his duties and responsibilities to investigate or second guess the independent laboratory’s findings 28 on TCP levels. (UF 41.) Nor was it within his duties and responsibilities to investigate or second 1 guess the State Water Resources Board’s information concerning the risks of TCP exposure. (Id.) 2 Instead, Defendant Cronjager responded to the noncompliant TCP levels by supervising plant 3 operations, including the GAC system installation. (UF 40-41.) Further, Defendant Cronjager 4 retired from CDCR over a year before Plaintiff arrived at Wasco State Prison and thus had no 5 duty to ensure that Wasco State Prison’s water did not present an

immediate danger to Plaintiff 6 during his incarceration at Wasco State Prison. (UF 3; Cronjager Decl. ¶ 8.) 7 Defendant DeGough's role as the Plant Manager in responding to the TCP levels in the 8 water was limited to preparing and submitting the GAC system project to the State Water 9 Resources Board and Facility Asset Management Branch. (UF 4, 20-23.) At that point, the GAC 10 system's approval and installation were outside of his role and responsibility. (UF 23.) And while 11 Defendant DeGough was listed as the point of contact on the quarterly notices, he did not choose 12 what information to include in the notices. (UF 39.) Rather, the notices are templates provided by 13 the State Water Resources Board—including the risks associated with TCP—and the TCP levels 14 are based on independent laboratory findings. (Id.) Thus, Defendant DeGough reasonably 15 responded to the noncompliant TCP levels by preparing and submitting the GAC system project 16 and by accurately reporting the independent laboratory findings and risks associated with TCP. 17 In sum, the undisputed evidence presented demonstrates that Wasco State Prison officials 18 did not ignore the issue but rather investigated and made reasonable attempts to resolve the issue. 19 Moreover, the evidence supports the finding that none of the Defendants were aware of any 20 serious risk of harm. Farmer, 511 U.S. at 838. Indeed, Defendants were informed by the State 21 Water Resources Board that the water was not dangerous. (Shirley Decl. 9-10; DeGough Decl. 22 23-25; Cronjager Decl. 6-8.) The quarterly notices that were posted indicated the levels of TCP 23 in Wasco's water did not present an emergency and there was no need to use an alternative water 24 source. (DF 10-11; DeGough Decl. ¶ 6, Ex. A at 7-186; Cronjager Decl. ¶ 4. Ultimately, 25 Defendants were never informed that the water was dangerous or that they should provide an 26 alternative source of water to prevent Wasco State Prison's inmates and staff from being harmed. 27 (DeGough Decl. ¶¶ 6, 23-25, Ex. A at 7-186; Cronjager Decl. ¶¶ 4, 6-7; Shirley Decl. ¶ 9.) 28 1 | Accordingly, Defendants' motion for summary judgment should be granted.* 2 IV.

3 ORDER AND RECOMMENDATIONS

4 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court shall randomly 5 | assign a District Judge to this action. 6 Further, it is HEREBY RECOMMENDED that: 7 1. Defendants' motion for summary judgment be granted; and 8 2. Judgement be entered in favor of Defendants. 9 These Findings and Recommendations will be submitted to the United States District 10 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within fourteen 11 | (14) days after being served with these Findings and Recommendations, the parties may file 12 | written objections with the Court, limited to 15 pages in length, including exhibits. The 13 | document should be captioned "Objections to Magistrate Judge's Findings and 14 | Recommendations." The parties are advised that failure to file objections within the specified 15 | time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 16 | (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 17

18 IT IS SO ORDERED. DAM Le

19 | Dated: _May 28, 2025 __ OO

STANLEY A. BOONE

20 United States Magistrate Judge 21 22 23 24 25 26 27 4 Because the Court finds Defendants are
entitled to judgment on the merits of Plaintiffs claim, the Court need not 28 | and does not address
the issue of qualified immunity. 14

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