

EXHIBIT 11

5/31/07

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

On May 14, 2007, the special master filed a supplemental report and recommendations on defendants' plan to prevent suicides in administrative segregation. The report contains a series of recommendations for court orders requiring action by defendants. On May 29, 2007, defendants filed a response and objections to the special master's report and recommendations.

In the report, the special master finds that "the reliance on inmate day labor may be a major obstacle to more rapid completion" of small management yards which are necessary for outdoor exercise for inmates in administrative segregation. (Report, filed May 14, 2007, at 3.) Defendants request that this finding be amended to indicate that, for several reasons, the use of inmate day labor may expedite completion of the yards. (Defendants' Response to Special Master's Report, filed May 29, 2006, at 2.) At this stage of the proceedings, the court is not

1 prepared to make any specific findings concerning the use of inmate labor for these projects,
2 including whether the use of such labor would help or hurt the timely completion of the small
3 management yards. Defendants' request for an amended finding will be denied without
4 prejudice. Defendants may present additional information and evidence to the special master
5 concerning the use of inmate labor in the construction of small management yards and the special
6 master may, as appropriate, tender additional findings to the court concerning the use of such
7 labor in one of his subsequent semi-annual monitoring reports.

8 The special master's first recommendation is as follows:

9 Within 90 days defendants should be required to submit a plan that
10 will satisfy their need for sufficient small management yards to
11 meet Title 15 exercise requirements for inmates in administrative
12 segregation. This plan should call for the funding and completion
13 of construction of the remaining yards by the end of fiscal year
2008/2009. The plan should also include provisions for better
utilization of the existing small management yards and
coordination with available staff to maximize yard usage.

14 (Report, at 10.) Defendants object to that part of this recommendation that would require them to
15 complete construction of all required small management yards for administrative segregation use
16 by the end of fiscal year 2008/2009. Defendants contend that the "organizational resources"
17 required to meet this task "are also being called upon to meet the constitutional needs of inmates
18 for proper medical, mental health, and dental treatment spaces and to meet the statutory mandates
19 of AB 900" and that the "organizational resources must now be evaluated in light of those
20 multiple and often competing demands before any further commitments can be made."

21 (Defendants' Response, at 3.)

22 At present, defendants have only 719 of the 1,480 small management yards
23 required to give necessary out of cell exercise time to inmates in administrative segregation.

24 (Report, at 3.) Eighty-six additional yards are under construction, and defendants are presently
25 seeking legislative authority to fund 179 additional yards in fiscal year 2007/08. (Defendants'
26 Response, at 3.) If that funding were approved, defendants then planned to seek funding for an

1 additional 179 yards for fiscal year 2008/09. (Id.). They do not plan to complete building all the
2 necessary yards until 2012. (Report, at 3.) As the special master found, 2012 is "simply too
3 late." Defendants' objection will be overruled.

4 The only other recommendation to which the defendants interpose an objection is
5 the recommendation that they perform within sixty days an assessment of the space needs for
6 providing confidential mental health interviews. Defendants seek ninety days to complete this
7 assessment. The special master reports that defendants have not conducted the assessments
8 promised in their October 2006 plan for determining the resources needed to provide sufficient
9 space for confidential mental health interviews. (Report, at 8.) Beyond making the request for
10 more time, defendants tender no reason why the assessment cannot be completed on the schedule
11 recommended by the special master. Defendants' objection will be overruled.

12 In accordance with the above, IT IS HEREBY ORDERED that:

13 1. Defendants' request to amend the factual finding of the special master
14 concerning the use of inmate day labor in the construction of small management yards is denied
15 without prejudice.

16 2. Defendants' objections to the special master's May 14, 2007 report are
17 overruled.

18 3. The special master's May 14, 2007 report and the recommendations contained
19 therein are adopted in full.

20 4. Within ninety days from the date of this order defendants shall submit a plan
21 that will satisfy their need for sufficient small management yards to meet Title 15 exercise
22 requirements for inmates in administrative segregation. This plan shall call for the funding and
23 completion of the remaining yards by the end of fiscal year 2008/2009. The plan shall also
24 include provisions for better utilization of the existing small management yards and coordination
25 with available staff to maximize yard usage.

26 5. Within sixty days from the date of this order, defendants shall accomplish the

1 following:

- 2 a. develop a plan to require each institution to train
3 staff on accurate logging of 30-minute welfare
4 checks and to track and self-monitor compliance
5 with the performance of these checks;
- 6 b. provide budgetary figures for the construction of
7 the physical features of the non-stand alone intake
8 cells;
- 9 c. submit a report on each institution's capability to
10 provide televisions and/or radios to inmates in
11 administrative segregation;
- 12 d. submit a status report on the implementation of
13 the suicide history tracking system and a plan to
14 train staff in its use and improve access to suicidal
15 history data at all relevant times;
- 16 e. provide a specific assessment of their space
17 needs for providing confidential mental health
18 interviews; and
- 19 f. produce evidence that required CPR refresher
20 training was accomplished by submitting
21 documentation of the required proof of practice.

22 6. Defendants shall include the following in the report on enhanced outpatient
23 programs in administrative segregation required by this court's March 9, 2007 order:

- 24 a. their plan for modification of the present
25 requirement that allows ICC reviews for inmates in
26 administrative segregation. Defendants should
consider conducting ICC reviews every 45 days for
those inmates awaiting disposition of referrals to
local district attorneys and possibly for all mental
health caseload inmates who have been held in
administrative segregation over 90 days.
Defendants should also consider transferring
inmates in administrative segregation to more
appropriate placements pending processing of their
DA referrals; and

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b. a breakdown of the numbers of administrative segregation inmates currently awaiting transfer to the sensitive needs yards.

DATED: May 31, 2007.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 12

6/28/07

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

On May 23, 2007 the court issued an order regarding access to inpatient psychiatric beds in state hospitals run by the California Department of Mental Health ("DMH"). The court ordered defendants to file a plan to provide to DMH clinicians identified in the order pay at parity with that provided to the California Department of Corrections and Rehabilitation ("CDCR") clinicians in accordance with the pay scales approved by the court in its December 15, 2006 order. The court also directed defendants to consider and report to the court on the feasibility of other options for forthwith remedying the limitation on admission of Coleman class members to Atascadero State Hospital, to file a report identifying job titles and number of state members required to provide care to Coleman patients housed at DMH hospitals, and to file a first monthly report concerning referrals, pending referrals, rejections and transfers of inmates between levels of mental health care. On June 14, 2007, defendants filed their response to the

1 court's order, and on June 20, 2007, plaintiffs filed their response to defendants' plans.

2 Defendants propose a pay scale for all DMH staff working at non-CDCR
3 institutions in classifications that provide services to Coleman class members that is at 95% of
4 parity with the pay scale ordered for clinicians serving inmates in CDCR institutions. Plaintiffs
5 acknowledge this "is a start" and ask that it be implemented forthwith. That will be the order of
6 the court.

7 While defendants have made some response to the court's order, that response
8 suffers greatly as a result of defendants' failure to comprehend the urgent need present in the
9 plaintiff class for access to intermediate care beds. Indeed, it appears likely the department's
10 response implies that it is unaware of the crisis.

11 Defendants' response to the court's request for a report identifying job titles and
12 number of staff members necessary to serve Coleman class members at DMH facilities was to
13 inform the court that DMH "utilizes a comprehensive staffing system which requires the
14 formulation of staffing needs based upon overall population, not based upon the census of
15 specific patients nor upon the census of specific units." (Defendants' Redacted Response to
16 Court Order of May 23, 2007 re: Pay Parity Plan, filed June 14, 2007, at 9.)¹ That may be the
17 structure under which DMH staff their facilities, but it misses the mark with respect to providing
18 necessary services to members of the Coleman class.

19 In December 2006, defendants submitted to this court for approval a long-range
20 bed plan. The plan included provision for 256 beds at Atascadero State Hospital (ASH),
21 comprised of 25 acute care beds and 231 intermediate care beds. (See Special Master's Report
22 and Recommendation on Defendants' December 2006 Mental Health Bed Plan, filed February 7,
23 2007, at 6.) As of May 25, 2007, there were only 73 Coleman class members at ASH. As of

24 _____
25 ¹ Defendants do provide the staffing ratios for the composition of the treatment teams
26 required by the consent judgment entered into between the State of California and the United
States Department of Justice without specifically indicating whether the ratios are applicable to
CDCR related programs.

1 June 8, 2007, that number had dropped to 67. (Declaration of Amy Whelan in Support of
2 Plaintiffs' Response to Defendants' Plan Regarding Pay Parity for DMH Staff Pursuant to this
3 Court's May 23, 2007 Order and Request for Additional Orders, filed June 20, 2007, at ¶ 3.)
4 Defendants are providing to class members only twenty-six percent of the beds at ASH called for
5 by their plan. That is unacceptable.²

6 Accordingly, defendants are directed to file within thirty days a plan for making
7 available up to 125 intermediate care beds for Coleman class members referred to ASH for
8 treatment. The plan shall include staffing, with a breakdown by name and function of attending
9 clinicians, and a date certain for its implementation which shall be no later than sixty days from
10 the date of this order. In addition, defendants will be directed to file by November 30, 2007 a
11 plan for making available the full complement of 231 intermediate care beds for Coleman class
12 members referred to ASH for treatment.

13 Defendants have provided the information required by paragraph 5 of the May 23,
14 2007 order. They shall continue to provide this information to the special master on a monthly
15 basis until further order of court.

16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Defendants shall forthwith implement the pay scales for DMH clinicians set
18 forth in their June 14, 2007 response to this court's May 23, 2007 order.³

19 2. Within thirty days from the date of this order, defendants shall file with the
20 court a plan for making available up to 125 intermediate care beds for Coleman class members
21 referred to ASH for treatment. The plan shall include staffing, with a breakdown by name and
22 function of attending clinicians, and a date certain for its implementation which shall be no later
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24 ² Indeed, from other sources the court has learned that at least some CDCR clinicians
25 have stopped referring patients to DMH because of its refusal to accept referrals.

26 ³ The court wishes to be clear. Its mandate is limited to the Coleman class. Any salary
addition to anyone else is unaffected by this order.

1 than sixty days from the date of this order.

2 3. On or before November 30, 2007, defendants shall file with the special master
3 a plan for making available the full complement of 231 intermediate care beds for Coleman class
4 members referred to ASH for treatment. The special master shall review the plan and report to
5 the court with any appropriate recommendations in his twentieth round monitoring report. The
6 court will not entertain a request to limit the total number of intermediate care beds required by
7 this order absent a recommendation from the special master that fewer beds are required.

8 4. Defendants shall continue to provide the special master with monthly reports
9 on the information required by paragraph 5 of this court's May 23, 2007 order.

10 5. The department shall, in its report, inform the court of the name and job
11 description of the person having immediate responsibility for insuring compliance with the
12 court's order.

13 DATED: June 28, 2007.

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16 LAWRENCE K. KARLTON
17 SENIOR JUDGE
18 UNITED STATES DISTRICT COURT
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EXHIBIT 13

8/2/07

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

By order filed June 28, 2007, defendants were directed to file within thirty days a plan for making available up to 125 intermediate care beds for Coleman class members referred to Atascadero State Hospital (ASH), said plan to include staffing and a date certain for its implementation not later than sixty days from the date of the June 28, 2007 order. Defendants were directed to include with their report the name and job description of the person having immediate responsibility for insuring compliance with the court's order.

On July 27, 2007, defendants timely filed their plan.¹ The plan provides that the census of Coleman class members in intermediate care beds at ASH "can" be raised from the current population of 58 to 125 class members by December 14, 2007, based on a rate of

¹ Defendants have also provided the name and job descriptions of the people who are responsible for insuring compliance with the June 28, 2007 order.

1 admission of four inmates per week. (Ex. 1 to Defendants' Response to Court Order Re: Plan to
2 Activate 125 Beds at Atascadero State Hospital, filed July 27, 2007, at ¶ 1c.)

3 Defendants' plan appears to take seriously the finding in this court's June 28,
4 2007 order that the declining Coleman population at ASH was unacceptable. (Order, filed June
5 28, 2007, at 2-3.) The plan does contain a number of caveats. Given the urgent need for
6 intermediate care beds for Coleman class members, the court will require defendants to provide
7 an interim report to the court on the status of ASH admissions for Coleman class members under
8 the plan. The report, which shall be filed on or before October 12, 2007, shall include the
9 following:

- 10 • the total number of Coleman class members in need of intermediate
11 inpatient care reviewed for admission to ASH during the eight-week
12 period from August 6, 2007 through September 28, 2007;
- 13 • the number of Coleman class members admitted to ASH during that eight-
14 week period;
- 15 • the total Coleman population at ASH as of September 28, 2007; and
- 16 • if any Coleman class members were denied admission to ASH during the
17 period from August 6, 2007 through September 28, 2007, the reason(s) for
18 such denial.

19 IT IS SO ORDERED.

20 DATED: August 2, 2007.

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22 LAWRENCE K. KARLTON
23 SENIOR JUDGE
24 UNITED STATES DISTRICT COURT
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EXHIBIT 14

8/23/07

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

On February 7, 2006, the special master filed a report and recommendations on defendants' December 2006 mental health bed plan. Therein, the special master made two recommendations for orders by this court. One of those recommendations was that the court set a hearing on defendants' proposal that the California Department of Corrections and Rehabilitation (CDCR) assume responsibility for the operation of all inpatient acute and intermediate care beds, including those operated by the California Department of Mental Health (DMH).

By order filed March 27, 2007, the court deferred that recommendation pending defendants' submission to the special master of a detailed report on how this proposal would be accomplished and, if further study showed it to be not feasible, what alternative(s) would be pursued.

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On April 12, 2007, the special master filed a report on defendants' establishment of interim inpatient intermediate DMH beds and the need for approval of some basic components of defendants' revised December 2006 Bed Plan. Pursuant to that report, by order filed April 17, 2007, defendants were directed to file a supplemental report superseding the report required by the March 27, 2007 order and addressing two issues: CDCR's relationship with DMH, and CDCR's plan for consolidated care centers. On August 17, 2007, defendants filed the supplemental report required by the April 17, 2007 order.

Good cause appearing, IT IS HEREBY ORDERED that defendants' August 17, 2007 supplemental report is referred to the special master for review. Within thirty days from the date of this order, the special master shall make such recommendations as are appropriate based on that review, including but not limited to whether this court should set a hearing on approval of some or all of the as-yet unapproved parts of defendants' long-range bed plan.

DATED: August 23, 2007.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 15

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

On September 24, 2007, the special master filed a report and recommendations on defendants' August 2007 supplemental bed plan (hereafter September 24, 2007 Report and Recommendations). This report and its recommendations focus on defendants' "long-range plans for meeting future bed needs in all of its residential, crisis and inpatient programs through Fiscal Year 2011/12." September 24, 2007 Report and Recommendations, at 3. On September 26, 2007, plaintiffs filed a response to the report and recommendations. Defendants filed their response on October 9, 2007.

The special master recommends that the court approved the revised August 2007 bed plan, and that defendants be required to submit additional planning documents within 120 days. These include:

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- 1 • Timeframes for meeting and procuring for all California Department of
2 Corrections and Rehabilitation (CDCR)-operated inpatient programs
3 applicable State licensure and accreditation by the Joint Commission on
4 Accreditation of Healthcare Organizations;
- 5 • A plan for the recruitment and compensation of hospital administrators to
6 develop and run CDCR's overall inpatient treatment program and the
7 specific institutional inpatient programs in its consolidated care centers;
- 8 • Preparation of a memorandum of understanding on California Department
9 of Mental Health's (DMH) mentoring and direct service obligations under
10 the revised plan for integration in an inter-agency agreement;
- 11 • A plan identifying anticipated clinical and custody staffing needs and a
12 program for providing the personnel required to recruit, vet, hire and
13 retain adequate staffing;
- 14 • A development proposal for adequate mental health treatment and
15 counseling space at California Medical Facility and Salinas Valley State
16 Prison; and
- 17 • An analysis justifying the reduction and/or elimination of mental health
18 crisis beds in the revised August 2007 plan in the 29 CDCR institutions
19 that are not scheduled to deliver consolidated care.

20 See September 24, 2007 Report and Recommendations, at 16.

21 In their response, plaintiffs raise two issues not squarely addressed in the
22 September 24, 2007 Report and Recommendations, and they seek modification of the timeframe
23 for one of the recommended plans. Noting that the plan apparently leaves a shortage of female
24 enhanced outpatient (EOP) and enhanced outpatient-administrative segregation unit (EOP-ASU)
25 beds, and that defendants have represented only that these shortages will be addressed in future
26 planning, plaintiffs seek an order requiring defendants to provide a long-range bed plan that
meets these needs. Good cause appearing, the special master will be directed to report to the
court in his twentieth round monitoring report on the status of defendants' efforts to provide
sufficient EOP and EOP-ASU beds for female class members.

Plaintiffs also seek an order from the court "mandating ongoing and close
supervision of the CCC construction plans and programmatic design plans as they are
developed" to ensure compliance with the Americans' with Disabilities Act (ADA) and "other

1 applicable laws.” Plaintiffs’ Response, at 2. It is of course true that defendants must comply
2 with all federal laws that apply to the operation of their prison system. The question of whether
3 this court can enforce compliance with the ADA and other applicable provisions of federal law
4 in the context of the development of a remedy in this § 1983 action is complex and not
5 appropriately resolved as presently tendered by plaintiffs. This request will be overruled without
6 prejudice. Plaintiffs’ third request is that the time frame for submission of a
7 development proposal for adequate mental health treatment and counseling space at California
8 Medical Facility (CMF) and Salinas Valley State Prison (SVSP) be expedited so that these
9 spaces are completed by January 31, 2008. In their response to the September 24, 2007 Report
10 and Recommendations, defendants assert that these treatment and counseling spaces were not
11 part of the August 17, 2007 bed plan, but that they will prepare the recommended plans.
12 Defendants intend to submit a plan for SVSP within 120 days, and they ask that the proposal for
13 CMF be due within 150 days.

14 The court is mindful of the urgency of the matters at bar. It is also important that
15 the court set deadlines that can in fact be met and, if necessary, enforced. For that reason,
16 plaintiffs’ request for an order requiring defendants to complete these treatment spaces by
17 January 31, 2008, which is just over 100 days from now, will be denied. The court will grant
18 defendants the additional time they request to submit the plan for CMF. The court anticipates
19 and expects that defendants will take all steps necessary to timely submit adequate plans to the
20 special master.

21 Defendants raise several objections to the September 24, 2007 Report and
22 Recommendations. Most of defendants’ objections are to the 120 day time frame for submission
23 of plans recommended by the special master. These objections are grounded in the fact that they
24 have not finalized the timetable for construction of the consolidated care centers at the heart of
25 their long range bed plan. The special master notes that “defendants’ revised plan cites the
26 expectation or hope that coordination with the Plata receiver’s construction plans may expedite

1 all or portions of the planned construction of the consolidated care centers.” September 24, 2007
2 Report and Recommendations, at 12. The court recognizes the uncertainties that attend
3 defendants’ ongoing efforts to coordinate construction of the consolidated care centers with
4 construction plans in the Plata case, and assumes that the absence of a finalized timetable for
5 construction of the consolidated care centers is due in large part to these uncertainties. To that
6 end, for purposes of developing the plans recommended by the special master defendants will be
7 directed to assume they will be proceeding with construction separately from the construction in
8 Plata. With one exception, they will be given a period of six months in which to submit the
9 plans for which they seek additional time.

10 With respect to the special master’s first recommendation, defendants raise two
11 additional objections. First, they seek a period of thirty days in which to “research and
12 determine” whether the Joint Commission on Accreditation of Healthcare Organizations
13 (JCAHO) provides accreditation for intermediate care beds in a non-hospital prison setting.
14 Defendants also object to the recommendation that they seek JCAHO accreditation for the
15 intermediate care programs to be operated by the CDCR on the ground that two such programs
16 operated by DMH at CMF and SVSP are not JCAHO accredited and defendants intend to model
17 the CDCR-run programs “upon the DMH model.” Defendants’ Response, at 2.

18 Good cause appearing, defendants will be given the requested period of thirty
19 days in which to complete their research concerning JCAHO accreditation. Defendants’ second
20 objection is overruled.

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. The special master’s September 24, 2007 report is accepted in full and his
23 recommendations adopted as modified herein.

24 2. Defendants’ August 2007 supplemental bed plan is approved.

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1 3. The special master shall report to the court in his twentieth round monitoring
2 report on the status of defendants' efforts to meet fully the projected needs for female enhanced
3 outpatient and enhanced outpatient-administrative segregation unit beds.

4 4. Plaintiffs' request for an order mandating ongoing and close supervision of the
5 consolidated care center construction plans and programmatic design plans for compliance with
6 the Americans with Disabilities Act and other federal laws is denied without prejudice.

7 5. Plaintiffs' request for an expedited time frame for planning for and completion
8 of adequate mental health treatment and counseling space at California Medical Facility and
9 Salinas Valley State Prison is denied.

10 6. Defendants are granted a period of thirty days from the date of this order to
11 determine whether the Joint Commission on Accreditation of Healthcare Organizations provides
12 accreditation for intermediate care beds in a non-hospital prison setting. Assuming that it does,
13 within six months thereafter defendants shall submit to the special master a plan with timeframes
14 for meeting and procuring for all California Department of Corrections and Rehabilitation-
15 operated inpatient programs applicable State licensure and accreditation by the Joint
16 Commission on Accreditation of Healthcare Organizations.

17 7. Within six months from the date of this order, defendants shall submit to the
18 special master the following plans:

- 19 • A plan for the recruitment and compensation of hospital administrators to
20 develop and run California Department of Corrections and
21 Rehabilitation's overall inpatient treatment program and the specific
22 institutional inpatient programs in its consolidated care centers;
- 23 • Preparation of a memorandum of understanding on California Department
24 of Mental Health's mentoring and direct service obligations under the
25 revised plan for integration in an inter-agency agreement;
- 26 • A plan identifying anticipated clinical and custody staffing needs and a
 program for providing the personnel required to recruit, vet, hire and
 retain adequate staffing; and
- An analysis justifying the reduction and/or elimination of mental health
 crisis beds in the revised August 2007 plan in the 29 California

1 Department of Corrections and Rehabilitation institutions that are not
2 scheduled to deliver consolidated care.

3 8. Within 120 days from the date of this order defendants shall submit to the
4 special master a development proposal for adequate mental health treatment and counseling
5 space at Salinas Valley State Prison.

6 9. Within 150 days from the date of this order defendants shall submit to the
7 special master a development proposal for adequate mental health treatment and counseling
8 space at California Medical Facility.

9 DATED: October 17, 2007.

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12 LAWRENCE K. KARLTON
13 SENIOR JUDGE
14 UNITED STATES DISTRICT COURT
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EXHIBIT 16

1/15/08

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

On November 13, 2007, plaintiffs filed a "Notice of Defendants' Non-Compliance with June 1, 2007 Order [Docket 2255] and Request for Further Remedial Relief." Pursuant to court order, defendants have filed a response to the notice, and plaintiffs have filed a reply to defendants' response.

The matter before the court arises from ongoing efforts to reduce the rising number of suicides in administrative segregation units in California's prisons. On October 2, 2006, pursuant to court order, defendants filed a Plan to Address Suicide Trends in Administrative Segregation Units, and on December 1, 2006, they filed amendments thereto.¹ On December 18, 2006, the special master filed a report and recommendations on the plan. On

¹ Hereafter these documents are together referred to as the plan.

1 February 12, 2007, the court adopted the special master's December 18, 2006 recommendations,
2 provisionally approved the plan, and directed the special master to report to the court on the
3 status of defendants' compliance therewith.

4 Part of defendants' plan includes construction of small management yards for out-
5 of-cell time for inmates housed in administrative segregation. In the plan, defendants indicated
6 that "[a] recent review reflects the Department's total Small Management Yard need at 1,342
7 yards, with 921 being constructed and/or funded as of Fiscal Year 2006/2007. This leaves 441
8 Small Management Yards that need to be funded and constructed in future years." Plan, at 9.²
9 On May 14, 2007, the special master filed a supplemental report and recommendations on the
10 plan. In the supplemental report, the special master reported that, subsequent to the filing of the
11 plan, defendants had represented to him a total need of 1,480 small management yards, 719 of
12 which were completed. Supplemental Report, at 3. Defendants had also reported that 86
13 additional yards were under construction, another 107 had been designed and construction funds
14 allocated, design funding had been requested for an additional 179 yards, no funding had been
15 requested for the remaining yards, and the balance of yards would not be completed until 2012.
16 Id. The special master found the five year timeline "simply too late" and recommended instead
17 submission by defendants of a plan that would call for funding and completion of all remaining
18 yards by the end of fiscal year 2008/2009. Defendants objected to that part of the
19 recommendation that required them to complete construction of all required small management
20 yards for administrative segregation use by the end of fiscal year 2008/2009.³

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22 ² The quoted sentences are one indication of something less than precision in defendants'
representations concerning their needs, as 921 plus 441 equals 1,362.

23 ³ In their objections, defendants also asked that "the Supplemental Report be amended to
24 find that there are 86 small management yards currently under construction." Defendants'
25 Responses and Objections to Special Master Keating's Supplemental Report on Defendants'
26 Plan to Prevent Suicides in Administrative Segregation, filed May 29, 2007, at 3. Defendants
noted that they were seeking legislative authority to design 179 small management yards in fiscal
year 2007/2008 and that, if that funding were granted, they would seek construction funds for
those yards in 2008/2009. Id. Defendants then suggested that left 262 small management yards

1 By order filed June 1, 2007, this court overruled defendants' objection to the
2 recommended timeline, adopted the special master's May 14, 2007 recommendation and ordered
3 defendants to

4 [w]ithin 90 days . . . submit a plan that will satisfy their need for
5 sufficient small management yards to meet Title 15 exercise
6 requirements for inmates in administrative segregation. This plan
7 shall call for the funding and completion of the remaining yards by
8 the end of fiscal year 2008/2009. The plan shall also include
9 provisions for better utilization of the existing small management
10 yards and coordination with available staff to maximize yard
11 usage.

12 Order filed June 1, 2007, at 3.

13 On August 29, 2007, defendants filed a request for an extension of time to comply
14 with the foregoing requirement of the June 1, 2007 order. Plaintiffs opposed the request,
15 contending that it did not refer to all of the small exercise yards required by the findings
16 underlying the June 1, 2007 order. By order filed September 14, 2007, the court granted
17 defendants' request for extension of time. In that order, the court reiterated the findings that a
18 total of 1,480 small management yards were required and that at present only 719 such yards
19 exist. Order filed September 14, 2007, at 1. The order specifically provided that 761 yards
20 remained to be designed and/or built and that, of those, 86 were under construction and
21 defendants were seeking legislative authority to fund 179 additional yards in 2007/2008. *Id.* at
22 1-2. The order also specifically provided that there remained "a total of 496 yards for which no
23 planning had apparently begun." *Id.* at 2.

24 In granting the request for extension of time, the court noted a declaration
25 submitted by defendants that referred to a plan for an additional 262 yards. It was this reference
26 that formed the basis for plaintiffs' opposition to defendants' request for extension of time.
27 However, the court declined to presume that this reference constituted clear evidence that

28 to be designed and constructed. *Id.* Defendants made no reference to the other 107 yards
29 referred to by the special master as having been designed and had construction funds allocated.

1 defendants did not intend to submit planning for all of the remaining 496 yards; to the contrary,
2 the court specifically “presume[d] and anticipate[d] that defendants intend[ed] to comply in full
3 with the June 1, 2007 order and to submit planning for all 496 small exercise yards for which
4 planning is still required.” Id.

5 Defendants did not seek any modification of or other relief from the court’s order
6 to plan for a total of 1,480 small management yards. Instead, on October 29, 2007, defendants
7 filed a plan in which they reference “a number of discrepancies” that had been identified
8 subsequent to the filing of their request for extension of time and “that require updated
9 information.” Ex. A to Defendants’ Response to Court Order Re. Small Management Yard Plan
10 (hereafter Plan), at 2. Those “discrepancies” included defendants’ determination that the 1,480
11 small management yards identified by defendants as necessary “included yards for Psychiatric
12 Services Units (PSU), Security Housing Units (SHU) and Grade B condemned inmates,” and
13 therefore extended “beyond the court order for Administrative Segregation inmates only.” Id. In
14 the plan, defendants represent that only 1,162 small management yards are needed for
15 administrative segregation inmates. Id. Defendants also represent that even this decreased
16 number of yards cannot be completed by June 30, 2009 for a number of reasons enumerated
17 therein, including the absence of a “viable mechanism for funding the SMY project in the current
18 budget year,” state law requirements for certain approvals prior to expenditure of capital outlay
19 funds, timelines for review and approval of preliminary plans by the Joint Legislative Budget
20 Committee, state law requirements for formal bidding, and timelines for procurement of
21 supplies. Id. at 2-3.

22 In the notice of non-compliance, plaintiffs challenge defendants’ failure to plan
23 for the full number of 1,480 small management yards required by two orders of this court and
24 their failure to meet the timelines required by this court’s June 1, 2007 order. Plaintiffs also
25 contend that defendants’ interim plan to provide more access to small management yards is
26 inadequate. By order filed November 19, 2007, defendants were directed to respond to

1 plaintiffs' notice of non-compliance. The order specifically directed defendants to include an
2 explanation of why PSUs, SHUs, and units for Grade B condemned inmates are not properly
3 considered administrative segregation units for purposes of the court's June 1, 2007 order. On
4 December 4, 2007, defendants filed a response.

5 Defendants assert that their new numbers are based on their efforts "to interpret
6 the term administrative segregation unit in a manner consistent with the Court's own reports and
7 orders," and that those efforts resulted in the removal of PSU, SHU, and Grade B yards from the
8 planning responsive to the court's orders. Defendants' Response to Plaintiffs' Notice of
9 Noncompliance Re: Small Management Yard Plan, filed December 4, 2007, at 4. Defendants
10 further assert that they "have undertaken the tracking of, and anticipate requesting statewide
11 future funding for" PSU, SHU, and Grade B small management yards in the California
12 Department of Corrections and Rehabilitation's (CDCR) five year infrastructure plan. *Id.*
13 Defendants further assert that their plan "must comply with established processes for funding,"
14 and that they continue to explore interim measures to enable increased access to existing small
15 management yards. *Id.* at 6.

16 The court has carefully reviewed the relevant reports from the special master.
17 The special master's Report on Suicides Completed in Calendar Year 2004, filed on May 9, 2006
18 (hereafter 2004 Suicide Report), includes a category for suicides in "[s]ingle-cell housing in
19 administrative segregation or a SHU (1)." Nineteen of the twenty-six inmate suicides completed
20 that year fell into this category. The category does differentiate between administrative
21 segregation and SHU, and only one of the nineteen suicides was in a SHU. In his December 18,
22 2006 Report and Recommendations on Defendants' Plan to Prevent Suicides in Administrative
23 Segregation, the special master specifically noted the findings from the 2004 Suicide Report that
24 18 of 26 inmate suicides in calendar year 2004 took place in administrative segregation. Special
25 Master's Report and Recommendations on Defendants' Plan to Prevent Suicides in
26 Administrative Segregation, filed December 18, 2006, at 1. The May 14, 2007 Supplemental

1 Report reiterated this statistic. Supplemental Report, at 1. The distinction defendants now draw
2 between administrative segregation units on the one hand and PSU, SHU, and Grade B yards on
3 the other appears, therefore, to be congruent with the purpose underlying the special master's
4 reports: reducing the number of suicides in administrative segregation. Thus, although
5 defendants' plan does not comply with the requirements of the court's June 1, 2007 and
6 September 14, 2007 orders in that it provides for fewer yards than required by the court's orders,
7 the court finds good cause to modify the number of small management yards required by those
8 orders in light of the additional information provided by defendants in response to plaintiffs'
9 notice of non-compliance.⁴

10 As noted above, defendants rest their inability to comply with the timeline set
11 forth in the court's June 1, 2007 order on various state law requirements. The court has
12 overruled defendants' prior objections to the special master's recommendation that the yards be
13 completed by the end of FY 2008/2009. Defendants have neither sought nor obtained relief from
14 the court's order in that regard, nor have they shown good cause for such relief in their response
15 to plaintiffs' notice of non-compliance. They now have fewer yards to complete. They will be
16 required to do so by the end of FY 2008/2009, and they shall take all steps necessary to ensure
17 compliance with this order, including but not limited to applying to this court for any necessary
18 waivers of state law.

19 Plaintiffs also urge the court to reject that part of defendants' plan designed to
20 address the shortfall of small management yards with interim measures. In their response,
21 defendants represent that the shortfall of correctional officers has been reduced in the past six
22

23 ⁴ In their reply, plaintiffs take issue with defendants' representation that they "anticipate
24 requesting statewide funding for" small management yards for PSU, SHU and Grade B units in
25 the CDCR's five-year infrastructure plan. Specifically, plaintiffs contend that no planning for
26 such yards appears in the five-year infrastructure plan. For the reasons set forth *supra*, this
court's orders are grounded in findings by the special master addressed to administrative
segregation units. At present, the record before the court does not support issuance of specific
orders with respect to small management yards in PSUs, SHUs, or Grade B yards.

1 months and that “the CDCR Division of Adult Institutions is exploring the availability of
2 sensitive needs yard housing for that portion of administrative segregation inmates who are
3 endorsed and awaiting transfer to a sensitive needs yard.” Defendants’ Response, at 7.
4 Defendants plan to report to the court in thirty days “on the outcome of their review of available
5 sensitive need yards for CCCMS inmates within administrative segregation units and their
6 review of submitting a request for additional staffing allocations to enable third watch small
7 management yard usage by inmates within administrative segregation housing.” For now, that
8 will be sufficient.

9 The court is deeply troubled by defendants’ failure to timely provide either the
10 special master or the court with the information now provided about the number of yards
11 required for administrative segregation. The special master is under a continuing duty to
12 “provide expert advice to defendants to ensure that their decisions regarding the provision of
13 mental health care to class members conforms to the requirements of the federal constitution and
14 to advise the court regarding assessment of defendants’ compliance with their constitutional
15 obligations.” Order of Reference filed December 11, 1995, at 2. The special master must be
16 able to rely on the accuracy of information provided to him by defendants, and defendants have a
17 continuing obligation to inform the special master immediately if they discover any material
18 changes in such information. Defendants’ failure to timely provide the special master with
19 accurate information concerning their need for small management yards in administrative
20 segregation has resulted in a significant waste of the resources of the special master and the
21 court. This will not be tolerated.

22 Defendants also have an obligation to comply with all orders of this court unless
23 and until such orders are modified by the court. They may not proceed in derogation of those
24 orders. The Local Rules of this Court provide procedures which enable parties to seek
25 reconsideration and modification of court orders in light of changed circumstances. See Local
26 Rule 78-230(k). For reasons not apparent from the record, defendants did not seek such relief.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. This court's June 1, 2007 and September 14, 2007 orders are modified to
3 require the completion of a total of 1,162 small management yards in administrative segregation
4 by the end of Fiscal Year 2008/2009.

5 2. Defendants' October 29, 2007 plan for small management yards in
6 administrative segregation is disapproved to the extent that it calls for completion of such yards
7 by January 2010. Defendants shall take all steps necessary to complete the construction of all
8 remaining yards called for by their plan by the end of Fiscal Year 2008/2009.

9 3. Within thirty days from the date of this order, defendants shall report to the
10 court on the outcome of their review of available sensitive need yards for CCCMS inmates
11 within administrative segregation units and their review of submitting a request for additional
12 staffing allocations to enable third watch small management yard usage by inmates within
13 administrative segregation housing.

14 DATED: January 15, 2008.

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17 LAWRENCE K. KARLTON
18 SENIOR JUDGE
19 UNITED STATES DISTRICT COURT
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EXHIBIT 17

2/26/08

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

No. CIV S-90-0520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

On November 13, 2007, the parties in the above-captioned case, together with parties in Plata v. Schwarzenegger, No. C01-1351 TEH (N.D. Cal.), Perez v. Tilton, No. C05-05241 JSW (N.D. Cal.), and Armstrong v. Schwarzenegger, No. C94-2307 (CW) (N.D. Cal.) were granted until November 26, 2007 to show cause why an agreement reached by the Plata Receiver, the Coleman Special Master, and the court representatives in Perez and Armstrong should not be adopted as an order of the court. On November 26, 2007, all parties filed responses to the order to show cause. By order filed November 30, 2007, the receiver in Plata was granted fifteen days to file and serve a response to the parties' responses. On December 17, 2007, the receiver filed a response. The courts have concurrently issued a joint order approving the agreement. This order is issued to address one area of concern specific to the Coleman class.

////

1 In their response to the order to show cause, the Coleman plaintiffs raise serious
2 concerns about whether efforts to coordinate medical and mental health construction projects
3 will result in delays in compliance with existing orders of this court concerning medium and
4 long-range mental health construction projects and bed plans. In particular, plaintiffs direct the
5 court's attention to the 50-bed mental health crisis bed unit at California Men's Colony. By
6 order filed March 27, 2007 order, defendants were directed to "complete and occupy" that unit
7 "as soon as possible." Order filed March 27, 2007, at 2.

8 In an order filed October 18, 2007, this court recognized the uncertainties that
9 attend the ongoing efforts to coordinate defendants' long-range planning efforts in this case with
10 the construction plans moving forward in the Plata case and directed defendants to assume, for
11 planning purposes, that they would be proceeding with construction separately from the
12 construction going forward in Plata. See Order filed October 18, 2007, at 4. The answer to
13 plaintiffs' concerns about any possible uncertainty concerning the 50-bed mental health crisis
14 bed unit at California Men's Colony is similar. Approval of the construction agreement does not
15 relieve defendants of their obligation to comply with this court's March 27, 2007 order regarding
16 that unit. Defendants in this case remain bound by that order unless and until it is modified by
17 this court for good cause shown. This court recognizes the complexities of the task at hand, but
18 cautions that defendants must not lose sight of the immediate needs of members of the plaintiff
19 class even as they work to plan long-range solutions to the problems that continue to plague the
20 delivery of constitutionally adequate mental health care to all class members.

21 IT IS SO ORDERED.

22 DATED: February 26, 2008.

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25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 18

4/15/08

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

2:90-cv-00520 LKK JFM P

**AMENDED ORDER
GRANTING DEFENDANTS'
EX PARTE MOTION TO
AMEND BED PLAN RE:
CALIFORNIA MEN'S
COLONY**

Upon good cause appearing, Defendants' ex parte motion to amend their December 2006 mental health bed plan, as supplemented by the bed plan of August 2007, to indicate that the 50-bed mental health crisis bed facility at California Men's Colony will be built without any consolidated care center at that campus is hereby granted.

Dated: April 15, 2008



LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 19

4/16/08

1 **EDMUND G. BROWN JR.**
 Attorney General of the State of California
 2 **DAVID S. CHANEY**
 Chief Assistant Attorney General
 3 **FRANCES T. GRUNDER**
 Senior Assistant Attorney General
 4 **ROCHELLE C. EAST**
 Supervising Deputy Attorney General
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9 Attorneys for Defendants

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IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,	Plaintiffs,
v.	
ARNOLD SCHWARZENEGGER, et al.,	Defendants.

2:90-cv-00520 LKK JFM P

**STIPULATION TO A 90-DAY
 EXTENSION OF TIME RE:
 APRIL 17, 2007 FILING ON
 BED PLAN, WITH
 [PROPOSED] ORDER**

I.

INTRODUCTION

By this stipulation, the parties agree to a 90-day extension of time for Defendants' submission of their response to paragraphs 6 and 7 of this Court's October 17, 2007 order for further information concerning the submitted bed plan.

II.

PROCEDURAL BACKGROUND

On October 17, 2007, this Court ordered Defendants to submit to the Special Master the following plans within six months:

Stipulation Re: EOT Bed Plan

1 a. A plan for the recruitment and compensation of hospital administrators to develop
2 and run the California Department of Corrections and Rehabilitation's (CDCR) overall inpatient
3 treatment program and the specific institutional inpatient programs in its consolidated care
4 centers.

5 b. Preparation of a memorandum of understanding on the Department of
6 Mental Health's mentoring and direct service obligations under the revised plan for integration in
7 an inter-agency agreement.

8 c. A plan identifying anticipated clinical and custody staffing needs and a program for
9 providing the personnel required to recruit, vet, hire and retain adequate staffing.

10 d. An analysis justifying the reduction and/or elimination of mental health crisis beds
11 in the revised August 2007 plan in the 29 CDCR institutions that are not scheduled to deliver
12 consolidated care.

13 (*Coleman Order*, 10/17/07, pp. 3-4, ¶ 7.)

14 In the same order, this Court directed Defendants to state, within 30 days, whether the
15 Joint Commission for Accreditation of Hospital Organizations (JCAHO) would accredit an
16 intermediate care facility in a non-hospital prison setting. If so, Defendants were provided six
17 months to submit to the Special Master a plan with time frames for meeting and procuring for all
18 CDCR-operated inpatient programs applicable State licensure and JCAHO accreditation.

19 (*Coleman Order*, 10/17/07, p. 3, ¶ 6.)

20 The *Plata* Receiver has now been vested with a leadership role over the construction of
21 mental health beds. (*Coordinated Courts Order*, 2/26/08.)

22 The Receiver will meet with the *Coleman* parties on April 24, 2008 to discuss the
23 construction of 5,000 mental health beds under his aegis.

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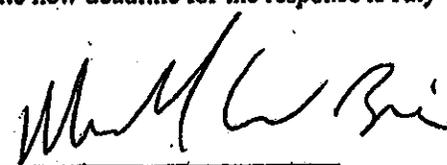
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**III.
STIPULATION**

In light of the foregoing statement, the parties, by and through their counsels, stipulate to a 90-day extension for the submission of Defendants' response to paragraphs 6 and 7 of the October 17, 2007 court order. Under this stipulation, the new deadline for the response is July 16, 2008.

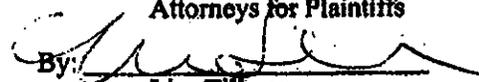
SO STIPULATED.

Dated: April 16, 2008

By: 

Michael Bien
Rosen, Bien & Galvan
Attorneys for Plaintiffs

Dated: April 16, 2008

By: 

Lisa Tillman
Office of the Attorney General
Attorneys for Defendants

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

CASE NO.: 2:90-cv-00520 LKK JFM P

**[PROPOSED] ORDER APPROVING
STIPULATION FOR A 60-DAY
EXTENSION OF TIME RE:
SUBMISSION OF INFORMATION
DELINEATING AUGUST 2007
MENTAL HEALTH BED PLAN**

Upon good cause appearing, the parties' stipulation for an extension of time to July 16, 2008 for Defendants to respond to each of the items listed in numbered paragraphs 6 and 7 of this Court's October 17, 2007 order is hereby granted.

Dated: _____

[Proposed] Order

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Coleman, et al. v. Schwarzenegger, et al.**

No.: **2:90-cv-00520 LKK JFM P**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On April 16, 2008, I served the attached **Stipulation to a 90-Day Extension of Time re April 17, 2007 Filing on Bed Plan with [Proposed] Order** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

Fred D. Heather
Kirkpatrick & Lockhart Preston Gates Ellis, LLP
55 Second Street, Suite 1700
San Francisco, CA 94105

Raymond Edward Loughrey
Kirkpatrick & Lockhart Preston Gates Ellis, LLP
55 Second Street, Suite 1700
San Francisco, CA 94105

William E. Mitchell
Riverside County District Attorney's Office
4075 Main Street
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 16, 2008, at Sacramento, California.

E. Torres

Declarant



Signature

EXHIBIT 20



Date: May 22, 2008
To: Assembly and Senate Correctional Budget Consultants
From: Nancy Paulus, Paul Golaszewski, and Dan Carson
Subject: LAO Recommendations on Receiver's Construction Proposal

This memo provides our analysis of the \$7 billion prison health care construction program sought by the federal court-appointed Receiver over state prison medical care. Below we provide a summary of the proposal followed by our analysis of its major provisions.

Summary of Recommendations

Based on our analysis, we recommend that the Legislature authorize only the first phases of the construction program at a reduced level of \$2.2 billion. Of this amount, about \$1.8 billion in additional lease-revenue bonds would be authorized, while the remaining \$445 million would be financed with bonds and a General Fund appropriation already authorized last year by the Legislature for prison medical facilities. This memo concludes with a discussion of a legal issue relating to the federal Prison Litigation Reformation Act (PLRA) and the new projects contemplated by the Receiver.

Proposed Prison Health Care Construction Program

The Receiver is proposing a health care construction program totaling \$7 billion, including \$6 billion to build new medical prisons and \$1 billion to renovate existing facilities.

New Medical Prisons. The Receiver, who was appointed by the federal court in the *Plata* case to oversee medical services for prison inmates, is proposing to use \$6 billion in lease-revenue bond financing to build seven new stand-alone medical prisons on the grounds of existing prisons or other state-owned property. Each facility would house approximately 1,500 inmates and would include medical, mental health, and dental treatment space. The Receiver indicates that these facilities are necessary in order to accommodate the needs of 10,000 inmates his office has identified as requiring long-term care (one-half of whom have primarily medical needs, while the other one-half have primarily mental health needs). Using funding available in his budget for the current year, the Receiver has already contracted with a project management firm for the initial design and planning of these expansion projects.

Existing Medical Facilities. In addition, the Receiver is also proposing to use \$900 million in lease-revenue bond financing and \$100 million that would be appro-

To: Correctional Budget Consultants 2

May 22, 2008

priated from the General Fund to renovate and upgrade the existing medical space at prisons statewide. The Receiver indicates that the improvement program would only include medical facilities, not dental or mental health facilities. The Receiver has already initiated several health facility improvement projects using other available funding sources.

Pending Legislation. The administration presented the Receiver's request for legislation to carry out the \$7 billion program, and the Legislature has placed this request into urgency legislation, SB 1665 (Machado), now pending in the Senate. This bill (as amended May 12, 2008) (1) authorizes the proposed lease-revenue bonds, (2) appropriates the funds for both the new facilities and the improvements at existing prisons, and (3) contains various provisions relating to state construction regulations and procedures as well as legislative oversight. (We are advised that the measure will soon be amended to strengthen the oversight provisions.) The bill also requires the Receiver to implement a three-phase approach to developing the seven stand-alone prison medical facilities. Specifically, under the terms of the bill, the Receiver would evaluate the need for constructing additional projects before seeking approval from the Public Works Board (PWB) for the second and third phases.

LAO Concerns With the Construction Program

Summary of the LAO's Findings. In our 2007-08 *Analysis of the Budget Bill* (please see page D-82), we noted that the Legislature and the Receiver have differing roles that must sometimes be reconciled. The Receiver and the federal courts have independent authority to bring inmate health care up to federal constitutional standards. However, the Legislature continues to bear the responsibility under the State Constitution to appropriate state funds. Accordingly, we have recommended that, to the extent it is practical, the Legislature apply its standard processes to carefully review each spending request submitted to it on behalf of the Receiver. Specifically, if the Legislature believes that a particular expenditure proposal is overbudgeted, we believe it should act to modify the request.

Our analysis indicates that the proposals submitted to the Legislature have some merit, in that they would clearly address the concerns of the federal court in the *Plata* court. The concept proposed by the Receiver of building consolidated facilities that attempt to address the needs of different types of chronically ill patients could improve the health care of prison inmates and move toward the restoration of state authority over correctional medical operations.

However, our analysis has led us to conclude that the proposed construction program is overbudgeted and lacks the key operational and fiscal details (such as information on staffing and operating costs and the security of the facilities, among other items) that are necessary to fully justify the immediate approval of the entire package of construction projects. There are unresolved questions as to whether all of the new

To: Correctional Budget Consultants

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May 22, 2008

beds that are proposed are warranted. In addition, the construction package provides much more funding than is justified for various nonconstruction costs and contingencies. Also, the program is more costly than it needs to be because it does not take advantage of \$1.1 billion in funding already made available by the Legislature for such projects last year. In addition, the proposed legislation does not specify the funding and locations for new medical facilities. We summarize these concerns in Figure 1 and discuss them in more detail below.

Figure 1

**Receiver's Health Care Construction Proposal
Summary of LAO Concerns**

- Appropriate amount of space for staffing undetermined.
- Need for 10,000 new beds uncertain.
- Certain cost estimates for new facilities appear high.
- Operating costs of new facilities undetermined.
- Existing available funding not utilized.
- Inmate classification system and security issues unresolved.
- Funding and locations for new medical facilities not specified in legislation.

Appropriate Amount of Space for Staffing Undetermined. One key question regarding the Receiver's plan is whether the more than 6.5 million square feet of space in the proposed seven new facilities is justified. Based on our review of written materials provided to us by the Receiver's office and our further conversations with them about these documents, we found that the planning done for these projects is at such an early conceptual stage that the Legislature cannot determine whether the seven individual projects, or the projects as a whole, are appropriately sized.

For example, the written materials provided to us do not indicate the number of clinical, custody, and support staff proposed for the new stand-alone facilities. Nor do the documents indicate how staffing levels in the facilities would tie to the proposed square footage. In response to our request for this kind of information, the Receiver indicates that staffing plans and the space to accommodate staff are still in the process of being developed, as are the details on how medical, mental health, custody, and support services will be provided.

The absence of this basic information for a capital outlay proposal raises a serious concern that facilities could be built that are too large or too small for the staff necessary to provide health care services to the approximately 1,500 inmates proposed to be housed in each facility. This is an important fiscal consideration, given the significant cost on a per-square foot basis (about \$900 per-square foot, by our estimate) of building seven new medical prisons.

To: Correctional Budget Consultants

4

May 22, 2008

Need for 10,000 New Beds Uncertain. The Receiver proposes that 5,000 beds at the stand-alone facilities be developed for chronically ill inmates with medical needs, while another 5,000 beds would be for inmates who primarily have mental health needs. However, our analysis indicates that the number of new prison beds proposed to be built in the Receiver's medical facilities has not been fully justified.

We are concerned about several related issues. The Receiver indicates that a ten-year time horizon was used to calculate these bed needs. However, the normal fluctuations that can occur in the inmate population, as well as the various proposals under consideration by the Legislature and the courts to reduce the inmate population, mean it is uncertain if the 10,000 beds the Receiver has proposed would actually be necessary ten years from now.

Notably, the prison population has dropped over the last year, and the most recently adopted prison inmate population projections, which have not been taken into account in the Receiver's planning assumptions, indicate that the inmate population will decline modestly over the next five years. The Receiver has partly justified his plans on the assumption of significant inmate population increases, but the most recent projections by the California Department of Corrections and Rehabilitation (CDCR) show actual numbers in 2012 will be 22,000 lower than what was projected when the Receiver developed his plan last year. While it is not clear to us that these new projections will prove to be accurate, this significant reduction in the projections means that the assumption that 10,000 beds will be needed should be reevaluated.

Additional factors could mean that the Receiver's estimates of bed need are overstated. Specifically:

- The administration's pending state budget-balancing proposal for placing inmates released from prison on parole without active supervision is estimated to reduce the prison inmate population by 8,000 inmates within a few years.
- A three-judge federal panel is currently considering a motion or settlement to reduce the inmate population as a means to improve health care.
- An initiative containing changes in state sentencing laws that could reduce the inmate population appears likely to qualify for the November 2008 ballot.
- The Legislature is considering legislation to allow the early release of elderly inmates most likely to require chronic care in the facilities proposed by the Receiver.

The number of new beds proposed specifically for seriously mentally ill inmates appears to exceed the orders of the federal court in another case, known as the *Coleman* case. A bed plan approved by the *Coleman* court ordered the development of

To: Correctional Budget Consultants

5

May 22, 2008

about 4,000 new beds at various levels of care, while the Receiver's plan identifies about 5,000 beds for such purposes. The Receiver's plan also does not appear to take into account a series of construction projects that the *Coleman* court has already authorized that would provide hundreds of additional beds for mentally ill inmates. We asked the Receiver's office to reconcile the number of beds for this purpose in its proposal with the *Coleman* court plans, but it did not do so in its written responses to our questions.

Senate Bill 1665 does propose to address these concerns by requiring a phased approach for building the new facilities. However, as it is now drafted, the measure appropriates all of the funding upfront and leaves it up to the Receiver to reassess the need for new projects prior to each phase and determine whether he would go forward. The Legislature would have no further formal role in such decisions.

Certain Cost Estimates for New Facilities Appear High. In addition to the so-called "hard costs" of construction materials for new buildings, all capital outlay projects also incur "soft costs" for such nonconstruction purposes as architectural and engineering fees, management fees, and inspection fees. Typically, capital outlay projects are also budgeted for certain contingencies in order to address unanticipated price increases in materials.

While these are normal for construction projects such as those proposed by the Receiver, our analysis indicates that the soft costs and contingencies built into his cost estimates for the new prison medical facilities are high—totaling about \$2.5 billion, or 70 percent of the \$3.6 billion in hard construction costs. (Standards used by industry experts and the Department of General Services would suggest using considerably lower percentages.) While we believe accounting for soft costs and contingencies in state capital outlay projects is generally appropriate, our analysis indicates that the Receiver's projects are significantly overbudgeted for these factors. We found a similar problem in the Receiver's estimates for the renovation of existing prison medical space. (We discuss existing facility modifications further below.)

Operating Costs of New Facilities Undetermined. The written materials submitted to us by the Receiver do not provide any estimate of the annual operating costs for the new stand-alone medical prisons. The Receiver has indicated to us that these facilities will be staff-intensive and may operate with staffing ratios similar to those used in juvenile institutions. However, the Receiver was unable to provide specific cost estimates for personnel and operating expenses and equipment.

The Receiver has asserted that concentrating chronically ill inmates in seven new facilities would be more efficient than attempting to provide an improved level of care for this same population in existing prisons. However, the Receiver's office was unable to provide us with any estimates comparing the costs, on a per patient basis, of operating the proposed seven new medical facilities compared to the cost, on a per pa-

To: Correctional Budget Consultants

6

May 22, 2008

tient basis, of providing them care in existing prisons. As a result, it is not clear how moving inmates from existing prisons to these new facilities might reduce overall state costs of the state's medical operations, especially given that most of these inmates, according to the Receiver's own consultants, have a relatively low medical acuity therefore needing less intense medical or mental health services. We are advised that 79 percent of the occupants of these new facilities would be inmates who are classified at lower levels for both medical care (referred to as specialized general population) and mental health care (enhanced outpatient program).

In sum, given the potential intensive staff ratios, we conclude that the state could incur unexpected and significant net increases in prison system operating costs in the future as these new facilities are activated. The Receiver has indicated that he plans to prepare such estimates and provide them to the Legislature "as soon as planning has reached the point where costs can accurately be calculated."

Cost Estimates Missing for Improvements to Existing Facilities. The documents submitted by the Receiver in support of the proposed program to make improvements at the existing 32 prisons contain specific cost estimates for such work at only five of the existing prisons. These five cost estimates range considerably—from just under \$11 million for the Correctional Medical Facility in Vacaville to almost \$72 million for the improvement program anticipated at the California Rehabilitation Center at Norco. The \$1 billion the Receiver has requested for this construction program thus is based mainly on a rough extrapolation that about \$30 million will be needed to complete similar work at each of the other prisons.

In our view, this is insufficient justification for a request of this magnitude. Based on the initial five estimates, it is not clear whether the proposed \$1 billion is an appropriate amount.

Existing Available Funding Not Utilized. Our analysis indicates that the Receiver's \$7 billion package does not take advantage of some significant sums of funding that are already available to finance the construction and renovation of new medical facilities.

Last year, the Legislature and Governor enacted Chapter 7, Statutes of 2007 (AB 900, Solorio), which authorized about \$7.4 billion in lease-revenue bond financing and a \$300 million appropriation from the General Fund for prison construction, including about \$1.2 billion for the construction of health facilities. Of the \$1.2 billion, CDCR has developed plans to spend approximately \$665 million on various mental health, dental, and health facility projects, leaving \$478 million in lease-revenue bond financing potentially available for the Receiver's construction projects. The Receiver's request for new lease-revenue bond authority could be reduced to the extent it overlaps with lease-revenue bond authority availability for similar projects under AB 900.

To: Correctional Budget Consultants

7

May 22, 2008

Some facility improvement projects, for various technical reasons, are not deemed suitable for lease-revenue bond financing. For this reason, the Receiver requested a \$100 million General Fund appropriation for these projects. However, Chapter 7 (AB 900) appropriated \$300 million from the General Fund for similar types of improvements within the prison system as a whole. We are advised that CDCR has spent only \$34 million of that \$300 million thus far, leaving a balance of \$266 million potentially available to move the Receiver's improvements forward, perhaps as joint projects that would address the needs of adjoining prisons. We are advised by the Receiver that he is agreeable if the Legislature wished to take such an approach and utilize funds which already have been appropriated.

Inmate Classification System and Security Issues Unresolved. Our analysis indicates that there are significant, unresolved issues relating to the security and inmate classification systems that would be used to ensure the safety of staff and inmates at the proposed new medical facilities. These concerns arise, in part, because the design concept outlined by the Receiver calls for nearly 70 percent of the inmates to be held in a dormitory setting (with others placed in cells) even though the facilities will hold a mix of inmates of all four main classification levels (I through IV). While the Receiver did not provide us a complete breakdown by classification level of the inmates that would be housed in the new facilities, written materials prepared by his consultants suggest that more than one-half of the inmates would come from the highest security classification levels, III and IV.

The Receiver contends that the facilities will be operated in a safe and secure manner. However, complete plans for providing security for the new facilities have not yet been developed. The Receiver has indicated that CDCR's current inmate classification system will not be used at the new stand-alone facilities. The Receiver has presented several reasonable justifications for this decision, including the likelihood that higher-level inmates who are sick might pose less of a security risk than otherwise. Given that such a large share of inmates will be from Level III and IV, though, and indications that many inmates in the facility would have relatively less severe health care problems, the implications of the new classification system and the proposal for heavy reliance on dorms are unclear.

The Receiver has retained his own experts on security in his facility planning, but it does not appear that CDCR has formally reviewed and commented on these issues. This is an important consideration for two reasons. First, the estimates of costs and square footage assumed for these projects appear to depend heavily on the assumption that they will largely be constructed as dormitories. Second, given that the department will eventually be responsible for managing the facilities once the Receivership ends, it is important that it be in concurrence with the security plans and classification systems developed for these facilities.

To: Correctional Budget Consultants 8

May 22, 2008

Funding and Locations for Specific Projects Not Identified. As amended on May 12, SB 1665 does not specify how many projects the Receiver could construct or where the new stand-alone medical facilities would be located (other than that they would be on the grounds of state-owned land). As a result, the Receiver could, after passage of the bill, decide to build any number of projects at any location, without legislative input. We would note that in testimony and materials related to the projects, the Receiver has identified the first three locations (Stockton, Ventura, and San Diego) and associated costs for all seven projects.

Additionally, the legislation does not separate the \$6 billion in lease-revenue financing proposed by the Receiver for the expansion program from the \$900 million in lease-revenue financing proposed for the improvement program. (It does, however, restrict the use of the proposed \$100 million from the General Fund to the program to improve medical facilities at existing prisons.)

Recommendations

Based on our analysis of the Receiver's construction package, we summarize our recommendations in Figure 2 and describe them in more detail below.

Figure 2

**Receiver's Health Care Construction Proposal
Summary of LAO Recommendations**

- ✓ Fund only the first three new prison medical facilities now.
- ✓ Require additional information that addresses the following questions before authorizing more new medical prisons:
 - Are the proposed new facilities appropriately sized?
 - What will the impacts of the facilities be on state prison operating costs?
 - Can the facilities be operated safely for staff and inmates?
 - Are 10,000 beds justified?
- ✓ Reduce funding level for new medical facilities.
- ✓ Reduce funding level for improvements at existing facilities.
- ✓ Offset costs of new facilities and renovations with funds already available.
- ✓ Specify funding and locations for new medical facilities in legislation.

Fund Only the First Three New Prison Medical Facilities Now. Although we have serious concerns about the completeness of the information available at this time to support the Receiver's requests for new prison medical facilities, we recognize that it is a high priority of his office to move forward expeditiously on these projects. Given

To: Correctional Budget Consultants

9

May 22, 2008

the lack of detailed information, we recommend that the Legislature authorize only the first phase of the Receiver's proposed new medical prison facilities, which consists of three medical prisons. This would allow the Receiver to move forward immediately on plans to address the needs of 4,200 inmates with medical or mental health needs while it develops the additional information necessary to justify its plans for the full set of projects. We therefore recommend that the Legislature amend SB 1665 to provide authorization only for the first three projects. (We discuss our cost calculations and how the projects would be financed later in this letter.)

Require Additional Information Before Authorizing More New Medical Prisons. Under our approach, the Receiver would seek authority from the Legislature for the construction of additional new medical prison facilities, perhaps in another year or two, if he could fill the significant gaps in information relating to the proposal could be filled. This information would also be important for the Legislature to receive before the Receiver presents projects to PWB for approval of their scope and cost. We recommend that SB 1665 be amended to require the Receiver and CDCR to provide the Legislature with the following additional information.

- ***Are the Proposed New Facilities Appropriately Sized?*** The Receiver would report to the Legislature regarding the number of clinical, custody, and support staff proposed for the new medical facilities, and how the proposed square footage ties out to the staffing and programs proposed for the new medical facilities.
- ***What Will the Impacts of the Facilities Be on State Prison Operating Costs?*** The Receiver would report to the Legislature regarding the annual operating costs, by fiscal year, for the new stand-alone medical prisons, including both personnel and operating expenses and equipment. The analysis would take into account both the additional costs for new facilities and any offsetting savings from shifting inmates out of the existing prisons where they now receive care. The report would assess how these costs would compare on a per patient basis with the cost of providing them care in existing prisons. The report would outline the types of services, and the intensity of services, that would be provided to the different groups of inmates held in such facilities, and how these service levels relate to the specific requirements of the *Plata* and *Coleman* courts to improve inmate health care to federal constitutional levels.
- ***Can the Facilities Be Operated Safely for Staff and Inmates?*** The Receiver would provide the Legislature and CDCR with a complete security and inmate classification plan for the new facilities, and a complete breakdown of the inmates projected to be in the facilities as they would be classified today by CDCR. The plan would demonstrate how this anticipated population, by classification level, would be housed by type of bed—mainly, in cells or in

To: Correctional Budget Consultants 10

May 22, 2008

dorms. In turn, CDCR would provide the Legislature with its independent assessment of those plans.

- **Are 10,000 Beds Justified?** The Receiver would provide a report to the Legislature reconciling its proposal for constructing 5,000 new mental health beds with the requirements of the *Coleman* court, including a plan that ensures that the new beds do not duplicate specific projects for expansion of mental health space that have already been authorized. The Receiver would also reconcile his proposal for 10,000 beds with more recent inmate population projections showing a decline in the overall CDCR population, and take into account the projected impact on the CDCR population of any new state budget actions, court decisions, and voter-approved initiatives.

Once the Legislature has received clear and well-documented answers to the above questions, it will be in a much better position to determine whether additional medical facility projects were warranted, and how all of the projects should be appropriately staffed and constructed.

Reduce Funding Level for New Medical Facilities. We recommend that the funding of \$2.5 billion requested for the first phase of new medical facilities be reduced by about \$460 million to a total of about \$2 billion. As noted earlier, the soft costs and contingencies budgeted for these facilities by the Receiver are significantly higher than those typically allowed for large public construction projects. With our proposed reduction, these projects would be budgeted with standardized soft costs and allowances for construction contingencies.

Specifically, our calculation used what we believe is a more realistic estimate of such costs as architectural and engineering fees. Also, we did not include in our estimates some categories of contingencies we believe are inappropriate, such as one relating to the bidding environment. Our estimates also take into account that the costs of construction will escalate over time. With these adjustments, we estimate soft costs and contingencies that would add 40 percent to the hard costs for the first three new medical facilities compared to the 70 percent increase in the Receiver's estimates.

Reduce Funding Level for Improvements at Existing Prisons. We recommend that the \$1 billion proposed in SB 1665 to fund renovation of clinic and medical administrative space at existing prisons be reduced to \$205 million. This level of funding would provide the resources sufficient to undertake all of the projects the Receiver has indicated are in the first phase of this effort without providing the excessive funding we found was also included for soft costs and contingencies. It would also provide funding for site evaluations of the remaining 27 sites. This information, in turn, would provide a much stronger basis for the Legislature to consider requests from the Receiver for additional funding in the next year or two to complete similar work at additional prisons.

To: Correctional Budget Consultants

11

May 22, 2008

Offset Costs of New Facilities and Renovations With Funds Already Available.

The initial funding level that we are recommending would provide \$2.2 billion (\$2 billion for new facilities and \$205 million for existing medical facilities), which would fund the first phase of the Receiver's construction projects. We further recommend that SB 1665 be amended so that the cost of these projects is offset to the fullest extent possible using the lease-revenue bond authority already available under AB 900. This would reduce the amount of *new* lease-revenue bond authority that would be required under the bill. (Similar offset language was proposed in Chapter 245, Statutes of 2007 [SB 99, Senate Committee on Budget and Fiscal Review], to finance a new San Quentin Central Health Facility now under construction.)

We estimate that at least \$478 million in bond authority from AB 900 is uncommitted and available for such purposes. If the Legislature leaves \$53 million in the fund uncommitted to cover potential increased costs for other projects, it would mean that only about a \$1.8 billion net increase in lease-revenue bond authority would be needed for the first phase, instead of the \$2.5 billion contemplated by the Receiver for the first phase. The offset could be even hundreds of millions of dollars greater if it were determined that some of the mental health projects planned in accordance with the *Coleman* case did not need to proceed because they would instead be built as part of the Receiver's consolidated projects for medical and mental health beds.

Similarly, we recommend deletion of the proposed \$100 million General Fund appropriation for projects at existing prison medical facilities for which lease-revenue bond financing is not possible. The Legislature should amend SB 1665 to state its intent that these projects be funded out of the \$300 million appropriation provided last year in AB 900 for these kinds of projects. As of January 2008, more than \$266 million of the original \$300 million AB 900 General Fund appropriation remained available for these purposes. Given our proposal above to move forward with only the first phase of these projects, we estimate that only about \$20 million of the AB 900 General Fund appropriation would be needed for this purpose.

The LAO's fiscal recommendations, and a comparison to the Receiver's proposals, are summarized in Figure 3.

To: Correctional Budget Consultants

12

May 22, 2008

Figure 3			
Comparison of Receiver's and LAO Proposals For Medical Construction Projects			
<i>(In Millions)</i>			
	Receiver All Phases	Receiver Phase 1	LAO Phase 1
New Facilities			
New lease revenue bonds	\$6,000	\$2,500	\$1,800
AB 900 lease revenue bonds	—	—	240
Subtotals	(\$6,000)	(\$2,500)	(\$2,040)
Existing Facilities			
New General Fund	\$100	\$22 ^a	—
New lease revenue bonds	900	207 ^a	—
AB 900 General Fund	—	—	\$20
AB 900 lease revenue bonds	—	—	185
Subtotals	(\$1,000)	(\$229)	(\$205)
Totals	\$7,000	\$2,729	\$2,245

^a LAO estimate, including funds for future project site evaluations.

Specify Funding and Location for New Medical Facilities in Legislation. We recommend that the May 12 version of SB 1665 be modified to schedule separate allocations of funding for the new medical facilities and the renovation projects. Also, funding for each of the three new facilities should be scheduled separately, and the measure should specify the general locations of those first three prison sites. These changes would ensure that these projects would be built as authorized by the Legislature.

Potential Legal Issues

Legal Issues Pertaining to Receiver's Request. One issue pertaining to the Receiver's construction proposals relates to the PLRA, a 1996 act of Congress that contains provisions relating to the appropriate remedies that federal courts can order in cases such as the *Plata* case to remedy unconstitutional prison conditions. The PLRA states, in particular: "Nothing in this section shall be construed to authorize the courts, in exercising their remedial options, to order the construction of prisons (italics added for emphasis) or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts."

However, in contrast to PLRA, the Receiver's \$6 billion for health care beds are, as he describes them in project documents and legislative testimony, stand-alone institutions containing both prison inmate housing and medical treatment facilities. Although some projects would be located on the grounds of existing state prisons, each proposed new facility would have its own separate security perimeter; its own sepa-

To: Correctional Budget Consultants 13

May 22, 2008

rate complement of custody, clinical, and support staff; and its own independent management.

We would first note that the court has not to date issued an order to construct new medical prisons. The Receiver's construction proposal is included in the draft strategic plan for remediating prison medical care that he submitted to the court last month. However, it is our understanding that the court has not yet formally approved the draft strategic plan and that there could be further revisions to the plan in the near future based on feedback provided by a court-appointed advisory working group. Second, in our discussions of this issue with the Receiver, he has noted that the PLRA would not prevent him from implementing other, potentially more costly, substitute remedies to improve prison medical conditions that did not involve construction of new prisons. Finally, we would note that the PLRA does not prohibit the Legislature from deciding on its own to respond to the Receiver's request by approving new prison construction, as proposed in SB 1665. Given these circumstances, it appears that it is possible for the Legislature to consider various alternative approaches to improving medical conditions in the state's prison system.

Please contact Nancy Paulus (319-8344) and Paul Golaszewski (319-8341) of our office if you need additional information relating to our analysis of this issue.