

**REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

In the matter of:)	
)	Order R7-2011-0049
The City of Imperial)	
Water Pollution Control Plant)	SETTLEMENT AGREEMENT AND
)	STIPULATION FOR ENTRY OF
Complaint R7-2011-0008 for)	ADMINISTRATIVE CIVIL LIABILITY ORDER
Administrative Civil Liability)	
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Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin Region (“Regional Water Board”), on behalf of the Regional Water Board Prosecution Team (“Prosecution Team”) and the City of Imperial (the “City”) (collectively, “Parties”), and is presented to the Regional Water Board, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The City owns and operates the City of Imperial Water Pollution Control Plant (WPCP) located at 701 East 14th Street, Imperial, California 92251, which provides sewerage services to the City of Imperial. The State Water Resources Control Board has determined that the City’s WPCP is a publicly owned treatment works (POTW) that serves a small community as defined by California Water Code (CWC) Section 13385(k)(2).
2. According to the Report of Waste Discharge (ROWD) submitted by the City and dated November 15, 2006, the WPCP has a designed capacity of 2.4 million gallons per day (MGD). The wastewater treatment plant consists of an influent pump station, grit chamber, two parallel oxidation ditches, two secondary clarifiers, an ultraviolet disinfection system, and sludge drying beds. In 2007, the facility upgraded the treatment plant with the addition of new headworks with bar screens, two aeration basins, and two clarifiers. Effluent from the WPCP is discharged from Discharge 001 to the Dolson Drain, which conveys the effluent to the Salton Sea via Lilac Drain, Rose Drain, and the Alamo River. Dolson Drain, Lilac Drain, Rose Drain, the Alamo River, and the Salton Sea are waters of the United States.
3. On June 29, 2005, the Regional Board adopted WDR Order R7-2005-0084 for the City to regulate discharges of treated wastewater from its WPCP. On September 19, 2007, the Regional Board amended WDR Order R7-2005-0084 by adopting WDR Order R7-2007-0066. On September 16, 2010, the Regional Board adopted WDR Order R7-2010-0020, which superseded WDR Orders R7-2005-0084 and R7-2007-0066 except for enforcement purposes.

4. On February 22, 2011, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint R7-2011-0008 ("Complaint") to the City. The Complaint is attached hereto as Attachment A and incorporated herein by this reference. The Complaint alleges that the City violated the effluent limits for selenium and Total Suspended Solids (TSS) set forth in R7-2005-0084 and the effluent limit for copper set forth in R7-2010-0020 as identified in Exhibit A to the Complaint. The Complaint further alleges that the City violated WDRs Board Order R7-2005-0084 on thirty-five (35) occasions from July 1, 2008 through January 23, 2009, when it used an uncertified laboratory to perform E. coli analysis. The Complaint recommends imposing an administrative civil liability totaling \$27,843.75 for the alleged violations of WDRs Order R7-2003-0054 and R7-2008-0010. That amount includes \$12,000 in mandatory minimum penalties and staff costs of \$6,000.
5. Subsequent to the issuance of the Complaint, the Prosecution Team learned that the City had violated Cease and Desist Order (CDO) R7-2011-0026. The Prosecution Team alleges that the City violated Milestone 1 of CDO R7-2011-0026 because the City failed to conduct bi-monthly monitoring to determine the source of increased copper that has resulted in exceedances of the effluent limit for copper and failed to submit a Final investigative Report detailing the results of that monitoring by September 15, 2011. Pursuant to CWC section 13350, the Regional Water Board may impose civil liability administratively in an amount that shall not exceed five thousand dollars (\$5,000) for each day a person violates a cease and desist order issued by the Regional Water Board.
6. Pursuant to CWC section 13327, in determining the amount of any civil liability, the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require. The required factors have been considered for the violations alleged in Paragraph 5 of this Stipulation using the methodology in the Water Quality Enforcement Policy, as explained in detail in Attachment B, attached hereto and incorporated herein by this reference.
7. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The liability imposed by this Order is consistent with a reasonable liability determination using the penalty methodology in the Water Quality Enforcement Policy. (See Attachment A and Attachment B). The Prosecution Team believes that the resolution of the violations alleged in the Complaint and Paragraph 5 of this Stipulation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

8. To resolve by consent and without further administrative proceedings the alleged violations of the California Water Code ("CWC") set forth in the Complaint, the Parties have agreed to the imposition of \$34,983.75 against the City. The City shall pay a total of \$11,491.88, of which \$7,921.88 shall be paid to the State Water Pollution Cleanup and Abatement Account and \$3,570 shall be paid to the Waste Discharge Permit Fund. The remaining \$23,491.87 in liability shall be dismissed upon completion of a Compliance Project (CP) and a Supplemental Environmental Project (SEP) as set forth in this Stipulation and Order. The City shall expend, at a minimum, \$12,000 to complete the CP in accordance with the terms of this Stipulation and Order. The City shall expend, at a minimum, \$11,491.87 to complete the SEP in accordance with the terms of this Stipulation and Order.
9. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
11. **Administrative Civil Liability:** The City shall pay \$7,921.88 in stipulated administrative civil liability by check made payable to the "State Water Pollution Cleanup and Abatement Account" and \$3,570 in stipulated administrative civil liability by check made payable to the "Waste Discharge Permit Fund" no later than 30 days following the Regional Water Board's adoption of this Order. The checks shall reference Order R7-2011-0049. The original signed checks shall be sent to the Party Contact for the Regional Water Board set forth in Paragraph 35, with copies to: Ann Carroll, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812. Further, the remaining \$23,491.87 in stipulated administrative civil liability shall be suspended ("Suspended Liability") pending completion of the CP and the SEP, as set forth herein and in Attachments C and D attached hereto and incorporated by this reference.
12. **CDO Amendment:** The Prosecution Team will support the City's request that the Regional Water Board adopt Special Board Order R7-2011-0057 to amend the completion date for Milestone 1 of the CDO to March 15, 2012 and the completion date for Milestone 2 of the CDO to May 15, 2012. The Parties understand that this Stipulation is conditioned on the adoption of Special Board Order R7-2011-0057 by the Regional Water Board.
13. **CP Description:** The CP shall consist of the investigation of the elevated levels of copper in the effluent at the City's WPCP by performing bi-monthly sampling for those three constituents and the development of a Pollution Prevention Plan that addresses those constituents for compliance with WDRs Board Order R7-2010-0020. The CP's implementation timeline and estimated costs are detailed in Attachment C to this Stipulation and Order.

14. **CP Completion Date:** The CP shall be completed no later than May 15, 2012 (the "CP Completion Date").
15. **CP Costs:** The total cost estimate for the CP is approximately \$12,260 as identified in Attachment C. The amount of liability to be dismissed upon completion of the CP is \$12,000 (CP Amount). No additional liability above and beyond the \$12,000 shall be dismissed for costs incurred to complete the CP.
16. **Representation of the City:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the City represents that it will utilize the CP Amount to implement the CP in accordance with this Stipulation and Order. The City understands that its promise to implement the CP, in its entirety and in accordance with this Stipulation is a material condition of this settlement of liability between the City and the Prosecution Team.
17. **Agreement of City to Implement CP:** The City represents that: 1) it will spend the CP Amount as described in this Stipulation; 2) it will provide certified, written reports to the Regional Water Board consistent with the terms of this Stipulation and Order detailing the implementation of the CP; and 3) it will guarantee implementation of the CP by remaining liable for \$12,000 of the suspended administrative liability until the CP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The City agrees that the Regional Water Board staff, or its designated representative, has the right to: (1) inspect the CP at any time without notice; (2) require an audit of the funds expended by the City to implement the CP; and (3) require implementation of the CP in accordance with the terms of this Stipulation and Order.
18. **Failure to Complete CP:** If the CP as described is determined to be infeasible, or the City fails to complete the CP by the deadlines this Stipulation and Order, the Regional Water Board shall issue a Notice of Violation (NOV). As a consequence, the City shall be liable to pay the Suspended Liability of \$12,000 to the State Water Pollution Cleanup and Abatement Account within 30 days of receipt of the NOV.
19. **Certification of Performance of CP:** On or before May 15, 2012, the City shall submit a certified statement of completion of the CP ("CP Certification of Completion"). The CP Certification of Completion shall be submitted under penalty of perjury under the laws of the State of California, to the Party Contact for the Regional Water Board set forth in Paragraph 35 and the State Water Resources Control Board's Division of Financial Assistance, by a responsible official representing the City. The Certification of Completion shall include following:

- a. A cover letter that clearly identifies the City, the City's WDID number, reference to Administrative Civil Liability Order R7-2011-0049, and includes the following statement: "I declare under penalty of perjury under the laws of the State of California that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."
 - b. Certification that the CP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by the City.
 - c. Certification documenting the expenditures by the City during the completion period for the CP. Expenditures may include external payments to outside vendors or contractors implementing the CP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board for oversight. The City shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.
20. **Third Party Financial Audit of CP:** At the written request of the Regional Water Board's Executive Officer or designee, the City, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the City has expended money in the amounts claimed by the City directly on the CP Project. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice to the City of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
21. **Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved CP:** In the event that City is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire CP Amount has been spent for the completed CP Project, as described, City shall pay the difference between \$12,000 and the amount City can demonstrate was actually spent on the described CP Project, as an administrative civil liability. The City shall pay the additional administrative liability within 30 days of its receipt of notice of the Regional Water Board staff's determination that the City has failed to demonstrate that the entire CP Amount has been spent to complete the CP.

22. **SEP Description (New River Wetlands Project SEP):** The goal of this project is to support the maintenance and operation of the New River Wetlands Project. The City shall issue Desert Wildlife Unlimited, Inc., \$11,491.87, which shall be used to maintain and operate the Imperial, Brawly, and Shank Road wetlands. The activities that shall be conducted by Desert Wildlife Unlimited, Inc., with the funds from the City are provided in the Letter Agreement to Execute a Supplemental Environmental Project to Support the Citizen's Congressional Task Force on the New River Wetland Activities between the City and Desert Wildlife Unlimited, Inc., included herein as part of this SEP description, and attached hereto as Attachment D to this Stipulation and Order. Desert Wildlife Unlimited, Inc. is considered to be a third party implementing a SEP ("Implementing Party") for purposes of this Stipulation.
23. **SEP Completion Dates:** The SEP shall be completed in its entirety no later than December 31, 2011 (the "SEP Completion Date"). A final report shall be provided to the Regional Water Board and the State Water Resources Control Board's Division of Financial Assistance by January 31, 2012, as described in Paragraph 28.
24. **Agreement of City to Fund, Report and Guarantee Implementation of the New River Wetlands Project SEP:** The City represents that: (1) it will fund the New River Wetlands Project SEP in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; (3) it will attach a cover letter to each certification or written report that clearly identifies the City, WDID number, and ACL Order R7-2011-0049; and (4) it will guarantee implementation of the New River Wetlands Project SEP identified in Attachment D to this Stipulation and Order, by remaining liable for \$11,491.87 of the suspended administrative civil liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The City agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the New River Wetlands Project SEP.
25. **Agreement of Desert Wildlife Unlimited, Inc. to Accept SEP Funds and Implement the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, Desert Wildlife Unlimited, Inc. represents that it will utilize the funds provided to it by the City to implement the New River Wetlands Project SEP in accordance with this Stipulation and Order and Attachment D by December 31, 2011. Desert Wildlife Unlimited, Inc. understands that its promise to implement the SEP, in its entirety and in accordance with this Stipulation is a material condition of this settlement of liability between the City and the Prosecution Team. Desert Wildlife Unlimited, Inc. agrees that the Regional Water Board staff, or its designated representative, has the right to: (1) inspect the SEP at any time without notice; (2) require an audit of the funds expended by Desert Wildlife Unlimited, Inc. to implement the SEP; and (3) require implementation of the SEP in accordance with the terms of this Stipulation and Order if Desert Wildlife Unlimited, Inc. has received funds for that purpose from the City. Desert Wildlife Unlimited, Inc. agrees to submit to the jurisdiction of the Regional Water Board to enforce the terms of this Stipulation and Order and the implementation of the SEP and agrees to provide all such information requested by the City to enable the City to fulfill its reporting and certification obligations to the Regional Water Board regarding the SEP, as set forth herein.

26. **Certification of Funding of the Desert Wildlife Unlimited, Inc. Project SEP:** The City shall provide evidence to the Regional Water Board of payment in full in the amount of \$11,491.87 to the Desert Wildlife Unlimited, Inc., in support of the SEP, no later than 30 days following the date the Regional Water Board's adoption of this Order. Failure to pay the full SEP amount by this date will result in the full SEP amount of \$11,491.87 being immediately due and payable to the State Water Resources Control Board for deposit as follows: \$7,921.87 by check made payable to the "State Water Pollution Cleanup and Abatement Account" and \$3,570 by check made payable to the "Waste Discharge Permit Fund"
27. **Oversight of SEP:** The City agrees to oversee implementation of the SEP. Additional oversight of the SEP will be provided by the Regional Water Board. The City is solely responsible for paying for all reasonable oversight costs incurred by the Regional Water Board to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the City and are not credited toward the City's obligation to fund the SEP. Reasonable oversight tasks to be performed by the Regional Water Board include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final completion report, verifying completion of the project with a site inspection and auditing appropriate expenditure of funds.
28. **Certification of Completion of SEP and Final Reports:** On or before the SEP Completion Date, the City shall submit a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury under the laws of the State of California, to the Party Contact for the Regional Water Board set forth in Paragraph 35 and the State Water Resources Control Board's Division of Financial Assistance, by a responsible official representing the City. The Certification of Completion shall include following:
 - a. A cover letter that clearly identifies the City, the City's WDID number, reference to Administrative Civil Liability Order R7-2011-0049, and includes the following statement: "I declare under penalty of perjury under the laws of the State of California that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."
 - b. Certification that the SEP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the City.
 - c. Certification documenting the expenditures by the City and the Implementing Party during the completion period for the SEP. The Implementing Party's expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional

Water Board for oversight. Desert Wildlife Unlimited, Inc. may submit a separate certification of expenditures on the City's behalf. The City (or the Implementing Party on the City's behalf) shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.

- d. Certification that the City and/or the Implementing Parties followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. Desert Wildlife Unlimited, Inc. may submit a separate certification of compliance on the City's behalf. To ensure compliance with CEQA where necessary, the City and/or the Implementing Party shall provide the Regional Water Board with the following documents from the lead agency prior to commencing SEP construction:
 - i. Categorical or statutory exemptions relied upon by the City and/or Implementing Party;
 - ii. Negative Declaration if there are no potentially "significant" impacts;
 - iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - iv. Environmental Impact Report (EIR).
29. **Third Party Financial Audit:** In addition to the certification, upon completion of the SEP and at the written request of the Regional Water Board staff, the City, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff, or its designated representative, providing such party's(ies') professional opinion that the City and/or the Implementing Parties have expended money in the amounts claimed by the City directly on the SEP. The audit report shall be provided to the Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the City of the need for an independent third party financial audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
30. **Regional Water Board Acceptance of Completed SEP:** Upon the City's satisfaction of its SEP obligations under this Stipulation and completion of the SEP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the City a letter recognizing satisfactory completion of its obligations under the SEP. This letter shall terminate any further SEP obligations of the City and result in the dismissal of \$11,491.87 of Suspended Liability imposed on the City by this Stipulation and Order.
31. **Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEP:** In the event that the City and/or the Implementing Parties are not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that \$11,491.87 of the Suspended Liability has been spent to complete the components of the SEP for which the City is financially responsible, the City shall pay the difference between \$11,491.87 and the amount the City can demonstrate was actually spent on the SEP, as an administrative civil liability. The City shall pay the additional administrative

liability within 30 days of its receipt of notice of the Regional Water Board's determination that the City has failed to demonstrate that the entire \$11,491.87 has been spent to complete the SEP components.

32. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date (as defined in Paragraph 23) required by this Stipulation, Regional Water Board staff shall issue a Notice of Violation. As a consequence, the City shall be liable to pay the entire \$11,491.87 or, some portion thereof, or the City and/or the Implementing Party may be compelled to complete the SEP.
33. **Publicity:** Should the City, the Implementing Party, or its agents or subcontractors publicize one or more elements of the SEP, it shall state in a **prominent manner** that the SEP is being partially funded by the City pursuant to Regional Water Board Order R7-2011-0049.
34. **Compliance with Applicable Laws:** The City understand that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.
35. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Doug Wylie,
Senior Water Resource Control Engineer
Colorado River Basin
Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
dwylie@waterboards.ca.gov
(760) 346-6585

For the City:

Marlene D. Best
City Manager
City of Imperial
420 South Imperial Avenue
Imperial, CA 92251
mbest@cityofimperial.org
(760) 355-4373

36. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
37. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint and this Stipulation based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the City's full payment of administrative civil liability by the deadline specified in Paragraph 11 herein.
38. **Public Notice:** The Parties understand that Federal law mandates that any settlement will not become final until after a 30-day public notice and comment period expires. (40 CFR 123.27.) The Parties agree that this Stipulation shall be publicly noticed on the Regional Water Board's website on or before October 18, 2011. In the event objections are raised during the public review and comment period, the Regional Water Board may,

under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

39. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
40. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
41. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.
42. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or its advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or its advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
43. **Waiver of Hearing:** The City has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
44. **Waiver of Right to Petition:** The City hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

45. **The City's Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
46. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the City in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the City of its obligation to obtain any final written approval required by this Order.
47. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
48. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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Effective Date: This Stipulation is effective and binding on the Parties upon the adoption of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
Colorado River Basin Prosecution Team**

Date: _____

By: _____

**Jose Angel,
Assistant Executive Officer**

City of Imperial

Date: _____

By: _____

**Marlene D. Best
City Manager**

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Order of the Regional Water Board:

49. This Order incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 48 above, by this reference, as if set forth fully herein.
50. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint, or otherwise provided to the Regional Water Board.
51. The terms of this Stipulation and Order have been properly noticed and the required public comment period has closed without comment.
52. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
53. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under this Order.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin on November 17, 2011.

Robert Perdue
Executive Officer

Date: _____

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R7-2011-0008

ATTACHMENT B

WATER QUALITY ENFORCEMENT POLICY METHODOLOGY

1. The Prosecution Team alleges that the City of Imperial (the City) violated Milestone 1 of Cease and Desist Order (CDO) R7-2011-0026 because the City failed to conduct bi-monthly monitoring to determine the source of increased copper that has resulted in exceedances of the effluent limit for copper and failed to submit a Final investigative Report detailing the results of that monitoring by September 15, 2011.
2. Pursuant to CWC section 13350, the Regional Water Board may impose civil liability administratively in an amount that shall not exceed five thousand dollars (\$5,000) for each day a person violates a cease and desist order issued by the Regional Water Board.

Enforcement Policy Methodology:

3. Pursuant to Water Code section 13327, the Regional Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstances, extent, and gravity of the violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.
4. On November 17, 2009, the State Water Resources Control Board adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code Section 13327. An analysis of the Enforcement Policy methodology for the violations alleged in Paragraph 5 of the Stipulation (and reiterated in Paragraph 1 of this Attachment) is set forth below:
5. **Step 1. Per Day Assessment for Non-Discharge Violations**

The per day factor is 0.3. This factor is determined by a matrix analysis using the potential for harm and the deviation from requirements.

- The potential for harm to the environment associated with the alleged violation is minor. Elevated levels of copper are toxic in aquatic environments and may adversely affect fish, invertebrates, plants, and amphibians. Acute toxic effects may include mortality of organisms; chronic toxicity can result in reductions in survival, reproduction, and growth. Since the adoption of Regional Water Board Order R7-2010-0020 the City has reported only two instances where the effluent from its Water Pollution Control Plant exceeded the final effluent limit set forth in Regional Water Board Order R7-2010-0020 (See Attachment A: Complaint R7-2011-0008).

- The deviation from requirements is major. The City disregarded the requirement to perform bi-monthly sampling, which rendered the City unable to submit a Final Investigative Report as required by Milestone 1 of the CDO.

Use of the Alternative Approach to Liability Calculations for Multiple Day Violations:

The Prosecution Team alleges that the City shall be in violation of Milestone 1 of the CDO for a period of 62 days (September 16, 2011 [day after Milestone 1 deadline] through November 17, 2011, [Board Meeting at which an Amended CDO shall be heard]).

The alternative approach for calculating liability for multiday violations is applicable because the alleged violation did not (1) cause daily detrimental impacts to the regulatory program; or (2) result in an economic benefit that can be measured on a daily basis. The requirement to perform bi-monthly monitoring and submit a report is not a daily requirement and did not result in a daily detriment to the environment. Furthermore, the City only received an economic benefit for the delayed costs of performing the required bi-monthly monitoring, or for the one time action of filing a Final Investigative Report, and not for the entire period of violation.

Based on the alternative approach, the per day assessment is based on eight (8) days of violation.

Applying the per day factor to the number of days of violation yields an initial liability of \$12,000 (number of days of violation x per day factor x maximum statutory liability per day of violation).

$$8 \times 0.3 \times \$5,000 = \$12,000$$

6. **Step 2. Adjustments to Determination of Initial Liability**

The City's culpability factor is 1.5. This value is based on the fact that the City requested that the Regional Water Board issue the CDO. Further, the City proposed that during the first six months of the CDO, it would conduct bi-monthly sampling/monitoring of its wastewater collection system in an attempt to identify the source of the elevated copper concentrations. (See Attachment B.1 attached hereto and incorporated by reference).

The City's cleanup and cooperation factor is 1. This value is based on the fact that the City agreed to begin the bi-monthly sampling/monitoring program during the week of September 19, 2011 and will complete the program by March 15, 2012.

The City's history of violations factor is 1.1 based on the fact that the Regional Water Board previously issued the following Administrative Civil Liability Order to the City: R7-2004-0082 for mandatory minimum penalties.

7. **Step 3. Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 2 to the Initial Liability Amount determined in Step 1.

(Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations Multiplier) = Total Base Liability

\$12,000 x 1.5 x 1 x 1.1 = **\$19,800**

8. **Step 4. Ability to Pay and Ability to Continue in Business**

The City's ability to pay factor is 0.3. The City will have difficulty paying the total base liability amount based on the following information:

- The State Water Resources Control Board (SWRCB) has determined that the City's Water Pollution Control Plan serves a small community with a financial hardship as defined by CWC section 13385(k)(2).
- The City of Imperial has historically been an economically disadvantaged area. In 2009, its population was approximately 13,900 with a median household income of approximately \$55,000—lower than the statewide average.
- The City's revenues are fixed and any additional revenue would required substantial rate increases on a relatively small and limited community.

Based on the information provided above, the total base liability amount is adjusted to \$5,940.

9. **Step 5. Other Factors as Justice May Require**

Costs of investigation and enforcement: Enforcement staff has incurred additional costs of investigation and enforcement in the amount of \$1,200. This is based on staff time of eight (8) hours, at a rate of \$150 per hour.

10. **Step 6. Economic Benefit**

The economic benefit estimated for the violation at issue is \$583. The economic benefit was determined as follows:

The City provided that the bi-monthly sampling required in Milestone 1 of the CDO shall be conducted for six (6) months at four sample sites throughout the collection system at a cost of \$5,760. The City estimated the cost for analysis of the data collected and the development of an action plan for long-term compliance with Regional Water Board Order R7-2010-0020 to be \$6,500. Using the United States Environmental Protection Agency's BEN Model, the economic benefit received by delaying the completion of the monitoring and submittal of the action plan to March 15, 2012 is \$583.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10 percent higher than the economic benefit amount, or \$641.30.

11. **Step 7. Maximum and Minimum Liability Amounts**

The maximum liability provided for by statute is \$310,000 and the minimum liability amount required by the Enforcement Policy is \$641.30 (economic benefit + 10%).

The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. Because the stipulated liability is \$7,140, the liability does not need to be adjusted to fall within the maximum and minimum liability amounts.

12. **Step 8. Final Liability Amount**

The stipulated administrative civil liability amount to be assessed for the violation of Milestone 1 of the CDO is **\$7,140**, which includes \$1,200 for staff costs.

ATTACHMENT B.1

LETTER FROM THE CITY OF IMPERIAL DATED FEBRUARY 25, 2011 REQUESTING A
CEASE AND DESIST ORDER

ATTACHMENT C

COMPLIANCE PROJECT

In lieu of paying the \$12,000 in mandatory minimum penalties assessed by Administrative Civil Liability Complaint R7-2011-0008, the City of Imperial (the City) proposes to conduct an investigation of the elevated levels of copper in the effluent at the City's Water Pollution Control Plant (WPCP) by performing bi-monthly sampling and to develop a Pollution Prevention Plan to achieve compliance with Waste Discharge Requirements Board Order R7-2010-0020.

Bi-monthly Sampling for Copper:

Bi-monthly sampling shall be performed at four sample sites throughout the City's collection system beginning September 2011 and concluding on or before March 15, 2012. The cost of performing the sampling is estimated to be \$5,760 (12 sample periods x 4 sample sites x \$120 per sample).

Pollution Prevention Plan:

California Water Code (CWC) section 13385(j)(3) requires the City to prepare and implement a pollution prevention plan pursuant to CWC section 13263.3. CWC section 13263.3(d)(1)(D) provides that the Regional Water Board may require the City to complete and implement a pollution prevention plan because the City is subject to a Cease and Desist Order.

Cease and Desist Order R7-2011-0026 as amended by Special Board Order R7-2011-0057, requires the City to prepare, submit, and implement a Pollution Prevention Plan for copper in order to effectively reduce the effluent concentrations by source control measures. Pursuant to CWC section 13263.3(d)(3), the City's Pollution Prevention Plan for copper shall include all of the following:

1. An estimate of all of the sources of copper contributing, or potentially contributing, to the loading of copper in the treatment plant influent;
2. An analysis of the methods that could be used to prevent the discharge of copper into the City's publicly owned treatment works (POTW), including application of local limits to industrial or commercial discharges regarding pollution prevention techniques, public education and outreach, or other innovative and alternative approaches to reduce discharges of copper to the POTW. The analysis also shall identify sources, or potential sources, not within the ability or authority of the POTW to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible;
3. An estimate of load reductions that may be attained through the methods identified in Paragraph No. 2 above;
4. A plan for monitoring the results of the pollution prevention program;
5. A description of the tasks, cost, and time required to investigate and implement various elements in the pollution prevention plan;

6. A statement of the POTW's pollution prevention goals and strategies, including priorities for short-term and long-term action, and a description of the POTW's intended pollution prevention activities for the immediate future;
7. A description of the POTW's existing pollution prevention programs;
8. An analysis, to the extent feasible, of any adverse environmental impacts, including cross media impacts or substitute chemicals, that may result from the implementation of the pollution prevention program; and
9. An analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

The City shall submit a copy of the Pollution Prevention Plan for copper to the Regional Water Board by May 15, 2012.

The cost to perform the required analyses and to develop the Pollution Prevention Plan is estimated to be \$6,500.

ATTACHMENT D

LETTER AGREEMENT TO EXECUTE A SUPPLEMENTAL ENVIRONMENTAL PROJECT TO
SUPPORT THE CITIZEN'S CONGRESSIONAL TASK FORCE ON THE NEW RIVER
WETLAND ACTIVITIES BETWEEN THE CITY AND DESERT WILDLIFE UNLIMITED, INC.