

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

In the matter of:)	
)	
CITY OF EL CENTRO)	Order No. R7-2011-0007
WASTEWATER TREATMENT)	
PLANT)	
)	
Complaint No. R7-2010-0012)	Settlement Agreement and Stipulation for
Administrative Civil Liability)	Entry of Order; Order (Proposed)
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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 Colorado Basin Regional Water Quality Control Board Prosecution Staff (“Prosecution Staff”) and the City of El Centro (“Settling Respondent”) (collectively “Parties”) and is presented to the Colorado Basin Regional Water Quality Control Board (“Regional Water Board”) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent owns and operates a municipal wastewater treatment plant (WWTP) located at 2255 La Brucherie Rd. El Centro, CA and provides sewerage service to the City of El Centro. The WWTP has a treatment capacity of eight (8) million gallons per day (MGD). Wastewater from the WWTP is discharged to the Central Main Drain, tributary to the Alamo River, and ultimately to the Salton Sea. The Central Main Drain, the Alamo River and Salton Sea are waters of the United States.
2. On March 30, 2004, the Regional water Board adopted waste discharge requirements (WDRs) Order No. R7-2004-0004 (NPDES Permit No. CA0104426) for the City of El Centro to regulate discharges of treated wastewater from the WWTP.
3. On September 3, 2010, the Prosecution Staff issued Administrative Civil Liability (ACL) Compliant No. R7-2010-0012 to the Settling Respondent. The Complaint alleges that the Settling Respondent violated WDRs Order No. R7-2004-0004 on sixty-one (61) occasions from July 1, 2008 through January 29, 2009, when it used an uncertified laboratory to perform E. coli analysis. The Complaint recommends imposing an administrative civil liability totaling \$37,453 for alleged violations of WDRs Order No. R7-2004-0004. That amount includes staff costs of \$6,000.

4. 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 Prosecution Staff 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.

5. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") set forth in the Complaint, the Parties have agreed to the imposition of \$19,000 against the Settling Respondent. This liability amount is at least 10 percent higher than the economic benefit derived from the violations, and is within the maximum and minimum liability amounts, as required by the State Water Resources Control Board's Water Quality Enforcement Policy. The adjustment in the liability from the amount proposed in the Complaint is the result of the Prosecution Staff's consideration of the litigation risks and the relative likelihood that the Regional Water Board would impose the liability proposed in the Complaint, given the history of liabilities imposed by the Regional Water Board in similar cases and considering the available evidence on the Settling Respondent's culpability and the environmental harm resulting from the Settling Respondent's conduct. Payment of \$19,000 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

Section III: Stipulations

The Parties stipulate to the following:

6. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$19,000 as set forth in Paragraph 5 of Section II herein.

7. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order 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.

8. **Party Contacts for Communications related to Stipulation/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 Settling Respondent:
Randy Hines, WWTP Supervisor
City of El Centro
Public Works Department
1275 Main Street
El Centro, CA 92243
rhines@cityofelcentro.org
(760) 337-4522

9. **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.

10. **Matters Addressed by 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, or which could have been asserted against the Settling Respondent as of September 3, 2010 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 full payment of the administrative civil liability by the deadline specified in Paragraph 5.

11. **Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondent does not admit to any of the findings of the Complaint, or that they have been or are in violation of the CWC, or any other federal, state, or local law or ordinance, provided, the Settling Respondent agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

12. **Public Notice:** Pursuant to the State Water Board Enforcement Policy, it is the policy of the State Water Board that a 30 day public comment period shall be posted on the Regional Water Board's website prior to the settlement or imposition of any administrative civil liability. Only one notice need be posted for each civil liability. On September 3, 2010, the Assistant Executive Officer issued the Complaint and provided notice to the public that the violations alleged in the Complaint could be resolved by settlement. During the 30-day period following the notice, no persons submitted comments to the Regional Water Board regarding the Complaint and/or potential settlement of the Complaint. In addition, the Regional Water Board will provide notice that it will consider this matter at a public hearing at least ten (10) days prior to the date of the hearing. Thus, the terms of this Stipulation and Order have been properly noticed.

13. **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.

14. **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. The Settling Respondent is represented by counsel in this matter.

15. **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 the Regional Water Board.

16. **If 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 their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their 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.

17. **Waiver of Hearing:** The Settling Respondent 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.

18. **Waiver of Right to Petition:** The Settling Respondent 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.

19. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State

Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

20. **Necessity For Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent 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 Settling Respondent of its obligation to obtain any final written approval required by this Order.

21. **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.

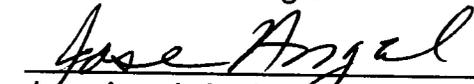
22. **Effective Date:** The obligations under Paragraph 5 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.

23. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

24. **Counterpart Signatures:** 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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Colorado River Basin Region

By: 
Jose Angel, Assistant Executive Officer

Date: 1/6/2011

City of El Centro
By: 
Ruben Duran, City Manager

Date: January 4, 2011

Order of the Regional Water Board

25. This Order incorporates the foregoing Stipulation.

26. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

27. 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, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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 January 20, 2011.

for Jose Angel, P.E.

Robert Perdue
Executive Officer

Date: 1/26/2011