

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

In the Matter of:

ORDER R7-2024-0012

**COACHELLA VALLEY WATER
DISTRICT, RIVERSIDE COUNTY**

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

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and Coachella Valley Water District (individually, the Discharger or CVWD) (collectively, the Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves all the violations alleged herein by imposing administrative civil liability against the Discharger in the amount of \$236,792.10.

II. Background

2. The Discharger operates Wastewater Reclamation Plant Number 10 (WRP 10). CVWD is authorized to discharge treated municipal wastewater pursuant to Waste Discharge Requirements contained in Order R7-2018-0001 (Facility WDRs), adopted by the Regional Water Board on March 8, 2018. Under the terms of the WDRs, CVWD can discharge up to 18 million gallons per day of secondary treated municipal wastewater to evaporation/percolation ponds. The WDRs also specify that the wastewater collection system is regulated under State Water Resources Control Board (State Water Board) General Order 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. (SSS WDRs).¹
3. The Prosecution Team alleges that on September 22, 2020, the Discharger violated the Facility WDRs' and/or the SSS WDRs' requirements to properly convey, store, and treat domestic wastewater when a Sanitary Sewer Overflow occurred from the Discharger's collection system, releasing approximately

¹ The State Water Board updated the SSS WDRs through Order 2022-0103-DWQ (effective June 5, 2023), superseding and replacing Order 2006-0003-DWQ.

156,639 gallons of untreated wastewater from a manhole located south of Sherly Avenue, along Cook Street. The Discharger was able to recover approximately 28,000 gallons with a vacuum truck, resulting in a net spill volume of 128,639 gallons. The untreated wastewater spilled into the dry Whitewater River Stormwater Channel. See Attachment A, attached hereto and incorporated herein by reference, which sets forth the Prosecution Team's allegations regarding the alleged violations and its assessment of the specific factors supporting the monetary penalty agreed to in this settlement agreement. CVWD agrees to pay this monetary penalty but does not admit to or agree with aspects of the allegations and analysis in Attachment A.

4. CVWD discharged wastewater that contains pollutants which can degrade water quality and impact beneficial uses of surface and groundwater within the Coachella Hydrologic Subunit.
5. The Facility WDRs Prohibition A.3 provides "WRP 10 shall be operated and maintained to prevent untreated sewage or partially or fully treated effluent from surfacing or overflowing." Discharge Prohibition A.4 prohibits the "discharge of wastewater to from the Facility to any surface waters or surface drainage course." Discharge Prohibition A.5 prohibits the "surfacing or ponding of wastewater outside of the designated disposal locations."
6. The SSS WDRs Prohibition C.1 states that "[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."
7. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The WDRs are not an NPDES permit.
8. Pursuant to Water Code section 13385 subdivision (a), any person who violates Water Code section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385 subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) per gallon discharged but not cleaned up over 1,000 gallons.
9. The Prosecution Team asserts the violation alleged herein and in Attachment A violated Discharge Prohibitions A.3, A.4, and A.5 of the Facility WDRs, Prohibition C.1. of the SSS WDRs, as well as Section 301 of the Clean Water Act, and Water Code section 13376. Pursuant to Water Code section 13385, subdivision (c), the alleged violation is subject to both a per day liability of up to

\$10,000 per day of violation, and a per gallon liability for gallons discharged and not cleaned up over 1,000 gallons.

10. Pursuant to Water Code section 13385, subdivision (e) in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
11. The *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy) was adopted on April 4, 2017. The Enforcement Policy's effective date is October 5, 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability. The details of these violations, including the factors required to be considered by Water Code section 13385 and 13327, are set forth in full in the accompanying Attachment A, which is incorporated herein by reference.
12. The Parties have engaged in settlement negotiations and have agreed to the imposition of an Administrative Civil Liability (ACL) of **two hundred thirty-six thousand seven hundred ninety-two dollars and ten cents (\$236,792.10)** in liability against the Discharger pursuant to Water Code section 13385 and Government Code section 11415.60.
13. The Prosecution Team has agreed to reduce the total liability as shown in Attachment A from \$289,412.59 to **\$236,792.10** in light of the risk inherent in proceeding to hearing, as allowed by the Enforcement Policy.
14. Based on the information in the record, the Prosecution Team has determined that the above resolution of the alleged violations is fair and reasonable, and fulfills the enforcement objectives of Water Code sections 13000 et seq., and the Enforcement Policy, and satisfies the objectives and requirements of the federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties incorporate the following Recitals and stipulate to the following:

15. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.

16. Administrative Civil Liability:

- a. The Discharger hereby agrees to the imposition of an administrative civil liability (ACL) in the amount of **two hundred thirty-six thousand seven hundred ninety-two dollars and ten cents (\$236,792.10)** to resolve the violations specifically alleged in Attachment A to this Order.

17. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding regulations.

18. Party contacts for communications related to this Stipulated Order:

For the Regional Water Board:

Jose Cortez
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Phone: (760) 776-8693
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Counsel:

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State Water Resources Control Board
801 K Street, 23rd Floor
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For the Discharger:

Dan Charlton, Assistant General Manager Operations & Maintenance
Coachella Valley Water District
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(760) 398-2651

Counsel:

Shawn Hagerty, Partner
Best, Best & Krieger
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(619) 525-1327

19. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel relating to the matters forth herein.
20. **Public Notice:** The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
21. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
22. **No Waiver of Right to Enforce:** The failure of the Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. If the Discharger fails to comply with this Stipulated Order, the Regional Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.
23. **Effect of the Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Regional Water Board or

any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.

24. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
25. **Modification:** The Parties shall not modify this Stipulated Order 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 or its delegate.
26. **Integration:** This Stipulated Order constitutes the entire written agreement between the Parties.
27. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control Board or a court vacates it in whole or in part, 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, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors or 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 Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein 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.
28. **Waiver of Hearing:** The Discharger has been informed of the rights provided in Water Code section 13323, subdivision (b), and if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption. However, if the settlement is not adopted and if the matter proceeds to the Regional Water

Board or State Water Board for hearing, the Discharger does not waive its right to a hearing before an order is imposed.

29. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Regional Water Board or its delegate, the Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California superior court and/or any California appellate-level court.
30. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order, except that this covenant is not intended to, and does not, limit the Discharger's rights to sue over other Regional Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the Discharger's rights to defend against any additional enforcement or other actions taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any State agency, or the State of California or its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.
31. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
32. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.
33. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
34. **No Admission of Liability:** In settling this matter, CVWD does not admit to any of the allegations stated herein or in Attachment A, nor admit to any of the violations of the Water Code, of any other federal, state, or local law or ordinances. By entering this Stipulated Order, CVWD does not waive any defenses or arguments related to any future enforcement action. Notwithstanding this paragraph, this enforcement matter may be considered in

the application of the “history of violations” factor in any future enforcement against CVWD.

35. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.

36. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counter parts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

37. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

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

By: Original signed by _____
Cassandra Owens
Assistant Executive Officer

05/21/2024
Date

Coachella Valley Water District

By: Original signed by _____
Jim Barrett
General Manager

05/23/2024
Date

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Colorado River Basin Regional Water Board. The Colorado River Basin 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, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Colorado River Basin Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

I, Paula Rasmussen, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order issued by the Colorado River Basin Regional Water Board.

Original signed by

 Paula Rasmussen
 Executive Officer
 Colorado River Basin Regional Water Quality Control Board

9/10/24

 Date

Attachment A: Penalty Methodology