

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

In the Matter of:

**CITY OF CALEXICO,
WATER POLLUTION CONTROL
PLANT,
IMPERIAL COUNTY**

ORDER R7-2023-0006 (Proposed)

**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 the City of Calexico (individually, the Discharger or City) (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 California 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 \$81,000.

II. Background

2. The Discharger owns and operates the City of Calexico Water Pollution Control Plant (Facility), which serves the City of Calexico in Imperial County. The Facility is a municipal wastewater treatment plant with a capacity of 5.5 million gallons per day (MGD). The Facility discharges treated wastewater from Discharge Point 001 to New River, a water of the United States.
3. According to U.S. Census data, the median income from 2015-2019 was \$43,592, which is less than 80% of the California median household income of \$75,235. Therefore, the City is a “community with financial hardship,” as that term is defined by the State Water Resources Control Board’s Policy on Supplemental Environmental Projects (SEP Policy, at p. 10.)
4. On May 8, 2014, the Regional Water Board issued National Pollutant Discharge Elimination System (NPDES) Permit No. CA7000009 (Permit) to the City for the Facility through Order R7-2014-0004, which became effective on June 1, 2014 and regulated the Facility until May 31, 2019. On May 15, 2019, the Permit was reissued through Order R7-2019-0004, which became effective on June 1, 2019 and currently regulates the Facility. The Permit contains waste discharge requirements for the Facility, including effluent limitations measured at monitoring location EFF-001 for discharges from Discharge Point 001.

5. On February 13, 2019, the Regional Water Board issued Conditional Settlement Offer No. R7-2019-0021 (Initial EPL), which alleged \$6,000 in mandatory minimum penalties (MMPs) arising from five violations of the Permit's effluent limitations. In March 2019, the Regional Water Board received from the Discharger two signed Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) forms, one dated March 6, 2019 and signed by City Manager David Dale, and another dated March 12, 2019 and signed by Public Works Manager Lilliana Falomir, which waived the Discharger's right to a hearing and agreed to pay the \$6,000 in MMPs alleged by the Initial EPL. On or about March 8, 2019, the Discharger submitted a check for \$6,000 to the State Water Resources Control Board's Accounting Branch. The signed Acceptance and Waiver form was posted for 30-day public comment on March 13, 2019. On November 6, 2019, the Regional Water Board issued Revised Conditional Settlement Offer No. R7-2019-0021 (Revised EPL), which alleged \$45,000 in MMPs arising from 20 violations of the Permit's effluent limitations. Due to an administrative oversight, the Initial EPL was adopted by the Executive Order on March 9, 2022, after the Revised EPL was issued. Therefore, the Revised EPL alleged \$6,000 in MMPs for Violation Nos. 1055651 and 987074, which were resolved by adoption of the Initial EPL. In addition, the Revised EPL was modified to reflect that \$3,000 in MMPs were incurred for Violation No. 974971 pursuant to Water Code section 13385, subdivision (h). Since issuance of the Revised EPL, the Prosecution Team alleges Discharger has accrued an additional \$42,000 in MMPs, arising from 14 additional violations of the Permit's effluent limitations.
6. The Prosecution Team alleges that since July 16, 2014, the Discharger has violated the Permit's effluent limitations for cyanide one time, e. coli six times, fecal coliform seven times, biochemical oxygen seven times, and enterococci nine times, totaling 30 violations of the Permit's effluent limitations. See Attachment A, attached hereto and incorporated herein by reference.
7. Water Code section 13385, subdivisions (h) and (i), require assessment of mandatory minimum penalties (MMPs) for certain discharge violations:
 - a. Water Code section 13385, subdivision (h)(1), states the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.
 - b. Water Code section 13385, subdivision (h)(2), states the following:

For the purpose of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified

in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

- c. Water Code section 13385, subdivision (i)(1), states the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (A) Violates a waste discharge requirement effluent limitation.
- (B) Fails to file a report pursuant to Section 13260.
- (C) Files an incomplete report pursuant to Section 13260.
- (D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

- d. Water Code section 13385, subdivision (i)(2), states the following:

For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

8. The violations alleged in Attachment A are subject to \$6,000 in MMPs under Water Code section 13385, subdivision (h), and \$75,000 in MMPs under Water Code section 13385, subdivision (i).
9. To resolve the violations alleged in Section II, paragraph 5 and Attachment A by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$81,000** against the Discharger.
10. The Parties have engaged in confidential settlement negotiations and agree to settle the alleged violations without administrative or civil litigation by presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
11. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public’s best interest.

III. Stipulations

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

12. **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.

13. **Administrative Civil Liability:**

- a. The Discharger hereby agrees to the imposition of an administrative civil liability (ACL) in the amount of **eighty-one thousand dollars (\$81,000)** to resolve the violations specifically alleged in Attachment A to this Order.
- b. **Supplemental Environmental Projects:** In accordance with the State Water Resources Control Board's Policy on Supplemental Environmental Projects, the Parties agree that eighty-one thousand dollars (\$81,000) of the ACL shall be suspended (SEP Amount) pending completion of two Supplemental Environmental Projects (SEPs) as set forth in the attached SEP 1 (Attachment B), and SEP 2 (Attachment C), both of which are incorporated herein by reference.

14. **SEP Descriptions:** The Discharger agrees to implement two SEPs: (a) the New River Improvement Project Calexico Reach – Supplemental Removal of Tamarisk (SEP 1, as detailed in Attachment B); and (b) the New River Improvement Project Calexico Reach – Lighting and Security for Stream Gage Station (SEP 2, as detailed in Attachment C). Twenty-seven thousand dollars (\$27,000) of the ACL shall be suspended pending completion of SEP 1, and fifty-four thousand dollars (\$54,000) of the ACL shall be suspended pending completion of SEP 2. The complete description, project milestones, budget, and reporting schedule for each SEP is contained in Attachment B and Attachment C.

15. **Compliance with SEP Policy:** The Policy on Supplemental Environmental Projects (May 2018) section VIII.B. provides, in part, the following:

Unless otherwise permitted by statute or approved by the Director of [the Office of Enforcement (OE)] based on a finding of compelling justification due to exceptional circumstances . . . no settlement shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the settling party. The total adjusted monetary assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs.

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment . . . in cases where the SEP is located in or benefits a [Disadvantaged Community (DAC)], an [Environmental Justice (EJ)] Community or a community that has a financial hardship, or where the SEP substantially furthers the human right to water.

Pursuant to the Director of OE's April 30, 2021 memorandum on approving disadvantaged community and environmental justice SEPs greater than 50 percent of the

total adjusted monetary assessment (SEP Memo), more than 50 percent to the total adjusted monetary assessment may be dedicated to the SEP because the SEP is located in and/or benefits a community with a financial hardship, a DAC, and an EJ community, as set forth in Section II, paragraph 3 above and in Attachments B and C. The Prosecution Team has provided written notification of the SEP to the Director of OE and has obtained approval for the SEP to exceed 50 percent of the total adjusted monetary assessment. Therefore, **eighty-one thousand dollars (\$81,000)** of the administrative civil liability is directed to the SEPs identified in Attachment B and Attachment C.

16. Representations and Agreements Regarding the SEPs:

- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that the SEP Amount suspended liability will be used to implement SEP 1 and SEP 2, as set forth in Attachment B and Attachment C, respectively. The Discharger understands that its promise to implement SEP 1 and SEP 2 in their entirety and in accordance with the implementation schedules and budgets set forth in Attachments B and C, represents a material condition of this settlement of liability between the Discharger and the Regional Water Board.
- b. The Discharger agrees to (1) spend the SEP Amount as described in this Stipulated Order; (2) have certified, written reports provided to the Regional Water Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) unless an extension is granted in accordance with Section III, paragraph 20, submit final completion reports for SEP 1 by April 01, 2026 and for SEP 2 by July 31, 2024, each of which will include a certification by a responsible official, signed under penalty of perjury, that the City followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act.
- c. The Discharger further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the SEPs at the Discharger's cost, and that the Discharger bears ultimate responsibility for meeting all deadlines and requirements specified in Attachments B and C.

17. SEP Oversight Costs: Regional Water Board staff will oversee implementation of the SEPs. The Regional Water Board's oversight tasks will include, without limitation, reviewing and evaluating progress reports, reviewing completion reports, communicating with the Discharger (if needed), and project inspections (if needed). Pursuant to Section VIII.G of the SEP Policy, in cases where the SEP directly benefits a DAC, an EJ Community, or a community with a financial hardship, or furthers the human right to water, as these SEPs do, the Regional Water Board may approve a SEP which includes oversight costs as part of the total value of the SEP. As set forth in Attachments B and C, the Discharger is a community with a financial hardship, a DAC, and an EJ Community. Therefore, oversight costs for SEP 1 and SEP 2 are included in the SEP Amount.

18. **Publicity Associated with the SEP:** Whenever the Discharger, or its agents or subcontractors, publicize one or more elements of the SEPs, it shall state in a **prominent manner** that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.
19. **Progress Reports and Inspection Authority:** The Discharger has agreed to submit progress reports in implementing the SEPs to the Regional Water Board as described in Attachments B and C. The Discharger agrees that Regional Water Board staff has permission to inspect either SEP at any time without notice until the Executive Officer has issued the “Satisfaction of Order,” as set forth in Section III, paragraph 21; provided however, that the gated, fenced area planned to enclose the trash screen, diversion structure, and stream gage areas described in Attachments B and C, are within high security areas per requirements of the U.S. Department of Homeland Security, El Centro Sector Border Patrol. As a result, Regional Water Board will need to gain access to such areas from the City. For high security areas, the Regional Water Board must request access to the area in advance of the inspection from the Contact set forth in Paragraph 4 of Attachments B and C, and the City must not unreasonably prohibit access to the area.
20. **Time Extension for SEP:** The Executive Officer of the Regional Water Board may extend the SEP deadlines contained in Attachments B and C of this Stipulated Order if the Discharger demonstrates delays from unforeseeable circumstances, provided that the Discharger continues to undertake all appropriate measures to meet their deadlines. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or his or her delegate must be in writing.
21. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger’s satisfaction of its obligations under this Stipulated Order, completion of both SEP 1 and SEP 2, and any audits, the Executive Officer will issue a “Satisfaction of Order.” The Satisfaction of Order shall terminate any further Discharger obligations under this Stipulated Order and dismisses the suspended liability or SEP Amount.
22. **Failure to Expend All Suspended Funds on the Approved SEP:** If the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on completion of SEP 1 by April 01, 2026 and SEP 2 by July 31, 2024 or any other date approved in accordance with Section III, Paragraph 20 (hereafter referred to as SEP Completion Dates), the Discharger shall pay the difference between each SEP Amount and the amount the Discharger can demonstrate was actually spent on each SEP (the Difference). The Executive Officer shall issue a “Notice of Violation” that will require the Discharger to pay the Difference to the “State Water Pollution Cleanup and Abatement Account” within 30 days of the Notice of Violation’s issuance date. No later than 30 days after the Regional Water Board or its delegate issues such Notice of Violation, the Discharger shall submit a check for the Difference to the *State Water Board’s Cleanup and Abatement Account*, referencing this Order number and mailed to the following:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

- a. The Discharger shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement (Vaneeta.Chintamaneni@waterboards.ca.gov) and the Regional Water Board (Kai.Dunn@waterboards.ca.gov).
 - b. Payment of the Difference shall satisfy the Discharger's obligations to implement the SEPs.
23. **Failure to Complete the SEP:** If SEP 1 and SEP 2 are not fully implemented by the SEP Completion Dates, or if there has been a material failure to satisfy a project milestone, a "Notice of Violation" will be issued. As a consequence, the Discharger shall be liable to pay the entire SEP Amount, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim project milestone that has an identifiable and stand-alone environmental benefit. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEPs prior to the Notice of Violation's issuance date. The amount of the suspended liability owed shall be determined via a written, stipulated agreement between the Parties or, if the Parties cannot reach an agreement on the amount owed, via a "Motion for Payment of Suspended Liability" before the Regional Water Board or its delegate. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability assessed, the Discharger shall pay the amount owed to the "State Water Pollution Cleanup and Abatement Account." The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 22. Payment of the assessed amount shall satisfy the Discharger's obligations to implement the SEPs.
24. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members, or its staff be held as parties to, or guarantors of, any contract entered into by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
25. **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.

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

For the Regional Water Board:

Kai Dunn
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Kai.Dunn@waterboards.ca.gov
(760) 776-8986

Maribel Pizano
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
Maribel.Pizano@waterboards.ca.gov
(760) 776-8941

Counsel:

Vaneeta Chintamaneni, Attorney III
State Water Resources Control Board
801 K Street, 23rd Floor
Sacramento, CA 95814
Vaneeta.Chintamaneni@waterboards.ca.gov
(916) 341-5279

For the Discharger:

Ms. Liliana Falomir, City of Calexico Public Works Department Manager
608 Heber Ave.
Calexico, CA 92231
(760) 768-2160
falomirl@calexico.ca.gov

Counsel:

Rebecca Andrews
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655 West Broadway, 15th Floor
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Anya Kwan
Best, Best & Krieger
300 S. Grand Ave., 25th Floor
Los Angeles, CA 950071
Anya.Kwan@bbklaw.com
(213)-542-3867

27. **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.
28. **Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the Discharger's full satisfaction of the obligations to implement the SEPs in accordance with the terms of this Stipulated Order.
29. **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.
30. **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.
31. **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.
32. **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.

33. **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.
34. **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.
35. **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 the following 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.
36. **Waiver of Hearing:** The Discharger has been informed of the rights Water Code section 13323, subdivision (b), provides 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 Resources Control Board for hearing, the Discharger does not waive its right to a hearing before an order is imposed.
37. **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 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.

38. **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 or the SEPs, 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.
39. **No Admission of Liability:** In settling this matter, the Settling Respondent does not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulated Order or its attachments, or admit to any violations of the Water Code, the Clean Water Act, any Regional Water Board order, or any other federal, State, or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e), and the Enforcement Policy.
40. **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.
41. **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.
42. **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.
43. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
44. **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.

45. **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

2/13/2023

Date

City of Calexico

By: *Original Signed By*

Mr. Diego Favila
Acting City Manager

2/1/2023

Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD 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. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
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.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Colorado River Basin Region.

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

Date

Attachment A: Mandatory Minimum Penalties

Attachment B: SEP 1

Attachment C: SEP 2

Attachment A

MANDATORY PENALTY ADMINISTRATIVE CIVIL LIABILITY
 Calexico City Calexico City WWTP
 WDID No. 7A130101011 NPDES No. CA7000009
 EXHIBIT "A"

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Penalty
1	974971	07/16/2014	Cyanide, Free Available	Group 2	Monthly Average	4.3	5.8	ug/L	35%	01/17/2014	S	N/A	\$ 3,000
2	1056278	01/31/2019	Biochemical Oxygen	Group 1	Monthly Average	30	31.1	mg/L	4%	08/04/2018	N/A	1	\$ 0
3	1057217	02/28/2019	Biochemical Oxygen	Group 1	Monthly Average	30	35.1	mg/L	17%	09/01/2018	N/A	2	\$ 0
4	1061769	06/12/2019	E.coli	Other	Daily Maximum	400	2419.2	MPN/100	N/A	12/14/2018	N/A	3	\$ 0
5	1061772	06/19/2019	E.coli	Other	Daily Maximum	400	2419.2	MPN/100	N/A	12/21/2018	C	4	\$ 3,000
6	1061773	06/30/2019	Fecal Coliform	Other	10% for 30 days	400	1600	MPN/100	N/A	01/01/2019	C	5	\$ 3,000
7	1061775	06/30/2019	Fecal Coliform	Other	Geometric Mean of	200	460	MPN/100	N/A	01/01/2019	C	6	\$ 3,000
8	1061894	06/30/2019	E.coli	Other	Geometric Mean of	126	306	MPN/100	N/A	01/01/2019	C	7	\$ 3,000
9	1061895	06/30/2019	Enterococci	Other	Geometric Mean of	33	220	MPN/100	N/A	01/01/2019	C	8	\$ 3,000
10	1063019	07/02/2019	Enterococci	Other	Daily Maximum	100	176	MPN/100	N/A	01/03/2019	C	9	\$ 3,000
11	1063021	07/31/2019	Fecal Coliform	Other	10% for 30 days	400	1600	MPN/100	N/A	02/01/2019	C	10	\$ 3,000
12	1063020	07/31/2019	Fecal Coliform	Other	Geometric Mean of	200	207.3	MPN/100	N/A	02/01/2019	C	9	\$ 3,000
13	1064695	08/27/2019	E.coli	Other	Daily Maximum	400	2419	MPN/100	N/A	02/28/2019	C	11	\$ 3,000
14	1064696	08/28/2019	E.coli	Other	Daily Maximum	400	2419	MPN/100	N/A	03/01/2019	C	11	\$ 3,000
15	1064694	08/31/2019	Fecal Coliform	Other	10% for 30 days	400	1600	MPN/100	N/A	03/04/2019	C	12	\$ 3,000
16	1064697	08/31/2019	Enterococci	Other	Geometric Mean of	33	76.57	MPN/100	N/A	03/04/2019	C	13	\$ 3,000
17	1067457	10/23/2019	E.coli	Other	Instantaneous	400	1600	MPN/100	N/A	04/26/2019	C	14	\$ 3,000
18	1067459	10/31/2019	Fecal Coliform	Other	10% for 30 days	400	1600	MPN/100	N/A	05/04/2019	C	15	\$ 3,000
19	1070562	12/18/2019	Enterococci	Other	Instantaneous	100	920	MPN/100	N/A	06/21/2019	C	14	\$ 3,000
20	1071385	01/08/2020	Enterococci	Other	Instantaneous	100	350	MPN/100	N/A	07/12/2019	C	10	\$ 3,000
21	1071386	01/30/2020	Biochemical Oxygen	Group 1	Weekly Average	45	50.4	mg/L	12%	08/03/2019	C	9	\$ 3,000
22	1071384	01/31/2020	Biochemical Oxygen	Group 1	Monthly Average	30	36.5	mg/L	22%	08/04/2019	C	10	\$ 3,000
23	1072134	02/06/2020	Biochemical Oxygen	Group 1	Weekly Average	45	61.8	mg/L	37%	08/10/2019	C	11	\$ 3,000
24	1072136	02/13/2020	Biochemical Oxygen	Group 1	Weekly Average	45	47.5	mg/L	6%	08/17/2019	C	12	\$ 3,000
25	1072135	02/29/2020	Biochemical Oxygen	Group 1	Monthly Average	30	43.6	mg/L	45%	09/02/2019	S	N/A	\$ 3,000
26	1073238	03/11/2020	Enterococci	Other	Instantaneous	100	130	MPN/100	N/A	09/13/2019	C	10	\$ 3,000
27	1075190	04/28/2020	Enterococci	Other	Instantaneous	100	140	MPN/100	N/A	10/31/2019	C	10	\$ 3,000
28	1076306	05/31/2020	Enterococci	Other	Monthly Average	33	37.4	MPN/100	N/A	12/03/2019	C	10	\$ 3,000
29	1079896	08/31/2020	Enterococci	Other	Instantaneous	100	540	MPN/100	N/A	03/04/2020	C	4	\$ 3,000
30	1079897	08/31/2020	Fecal Coliform	Other	10% for 30 days	400	1600	MPN/100	N/A	03/04/2020	C	5	\$ 3,000

\$ 81,000

Attachment A - Mandatory Minimum Penalties

- 1 - Violation occurs on sample date or last date of averaging period.
- 2 - For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more
- For Group II pollutants, a violation is serious when the limit is exceeded by 20% or more
- 3 - When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a

Violation period ending the last day of August 2020

Group I Violations Assessed MMP: 5
Group II Violations Assessed MMP: 1

Other Effluent Violations Assessed MMP: 21
Violations Exempt from MMP: 0

Total Violations Assessed MMP: 27

Mandatory Minimum Penalty = (2 Serious Violations + 25 Non-Serious Violations) x \$3,000 = \$81,000

Attachment B

Supplemental Environmental Project 1

New River Improvement Project Calexico Reach – Supplemental Removal of Tamarisk

1. Name of Project: New River Improvement Project Calexico Reach – Supplemental Removal of Tamarisk

2. Project Amount:

The project cost is estimated as \$27,000. This is based on an informal estimate for tamarisk removal at \$19,430/mile. The actual project cost may be higher or lower when the City of Calexico (City) receives formal bids in accordance with statutorily required procurement processes set forth in the Work Plan in Paragraph 11. \$27,000 of this total project cost will be offset against the \$81,000 ACL.

3. Project Lead:

City

4. Contact:

Ms. Liliana Falomir, City of Calexico Public Works Department Manager
608 Heber Ave.,
Calexico CA 92231
(760) 768-2160
falomirl@calexico.ca.gov

5. Project Description:

The New River Improvement Project (NRIP) Calexico Reach covers approximately 87.90 acres of Jurisdictional Waters. Tamarisks (also known as salt cedars) are prevalent in the area, particularly along the banks of the New River and its riparian corridor. Tamarisk outcompetes native plants (e.g., desert shrub) and uses significant amounts of water, as each plant can use more than 20 gallons per day. Tamarisk provides few benefits to native wildlife. Tamarisk grows very densely, widens the floodplain, increases sediment deposition, monopolizes moisture, prevents native plants from growing and wildlife from accessing key water sources, and increases the frequency and intensity of fire. In short, they are a very undesirable nuisance and threat to the beneficial uses of the New River. The City proposes to target high-density tamarisk areas for tamarisk removal and seeding with native plants.

6. Compliance with SEP Criteria:

The project is environmentally beneficial. Removal of tamarisks would do the following:

- Because tamarisks use significantly more water than native vegetation (up to 20 gallons per tamarisk/day vs. < 1 gallon per shrub/day), there would be an increase of instream water available downstream for other uses (e.g., for the Salton Sea) and for native plants;
- Improve wildlife's accessibility to water resources;
- Increase moisture available for native plants;
- Reduce fire risk in the project area, as tamarisk readily catches and spreads fire; and
- Reduce sediment deposition.

The project serves to enhance environmental restoration and protection and prevent pollution.

7. Does the project further one or more of the Regional Water Board's priorities for SEPs?

Yes, the project furthers Regional Board priorities of the Salton Sea watershed, the New River, and benefits a community with a financial hardship, as described in detail below.

8. Above and Beyond Discharger's Obligations:

The City voluntarily agrees to undertake the SEP, and the City is not required to undertake this project.

9. No Benefit to Water Board Members, Staff, Family:

This SEP provides no direct fiscal benefit to the California Regional Water Quality Control Board, Colorado River Basin Region's (Regional Water Board) functions, its members, its staff, or family of members or staff.

10. Nexus to the Nature or Location of Violations:

This SEP is part of a settlement of alleged unauthorized discharges to the New River, the same location of the SEP. Thus, the SEP has a direct nexus to the location of the violation alleged.

11. Brief work plan containing tasks, deliverables, milestones, and schedule.

<i>Task</i>	<i>Start</i>	<i>Complete</i>
<i>1. Evaluate New River banks and floodplain to identify and target high- yielding tamarisk areas. Contractor to document evaluation and prepare and submit to City report with recommendations, including monitoring program.</i>	<i>5/01/2023</i>	<i>06/02/2023</i>
<i>2. Evaluate recommendations, comment as appropriate, and identify areas for tamarisk removal.</i>	<i>6/05/2023</i>	<i>6/16/2023</i>
<i>3. Prepare and issue Request for Proposals or Bids to remove tamarisk from selected areas.</i>	<i>6/19/2023</i>	<i>6/23/2023</i>
<i>4. Review proposals / bids, rank them, and award contract to highest ranked bidder.</i>	<i>7/24/2023</i>	<i>9/22/2023</i>
<i>5. Prepare and issue Notice to Proceed.</i>	<i>9/25/2023</i>	<i>10/06/2023</i>
<i>6. Begin and complete tamarisk removal and haul offsite for proper disposal. During removal process, City contractor will track removal of tamarisk (in miles removed) and tamarisk removed and disposed of (in cubic yards).</i>	<i>10/09/2023</i>	<i>11/10/2023</i>
<i>7. Commence monitoring and reporting program, which will consist of the following: (1) quarterly monitoring of identified areas where tamarisk removed; (2) identification of tamarisk regrowth in removal areas; and (3) removal of tamarisk regrowth from removal areas.</i>	<i>11/13/2023</i>	<i>3/3/2026</i>
<i>8. Prepare final SEP completion report for submittal to Regional Water Board</i>	<i>3/04/2026</i>	<i>4/01/2026</i>

12. Performance Standard:

The following performance standards must be achieved for the SEP to be deemed complete: (1) identification of areas for tamarisk removal, with supporting photographs; (2) removal of at least 85% of tamarisk in identified areas, with photographs after removal activities, during initial removal process; (3) removal of at least 85% of tamarisk in identified areas, with photographs of quarterly monitoring, upon completion of monitoring and reporting program, as described above; and (4) submission of a completion report by no later than April 01, 2026, or as otherwise approved by the Executive Officer under Paragraph 20 of the Stipulated Order.

13. Reports to the Regional Water Board.

Progress Reports:

The City will submit a progress report including, at a minimum, updated photographs of tamarisk removal, a summary of budget expenditures to date, and a summary of the remaining work to be completed.

Due Date: Quarterly, until the SEP is complete. Reports are due two weeks from the end of each quarter (i.e., Quarter 1 due April 14th, Quarter 2 due July 14th, etc.).

Completion Report:

The completion report will document that the project has been completed, will include a summary of all completed tasks, and will have an accounting of all expenditures. The accounting will clearly show whether the final cost of the successfully completed SEP was less than, equal to, or more than the liability suspended amount of \$27,000. The following statement will be included above the signature line of the report: *“I certify under penalty of perjury that the foregoing is true and correct.”*

Due Date: Within one month after the project is complete, as defined by the “Performance Standard” above, but no later than April 01, 2026.

All reports shall be submitted to the Regional Water Board contact, Kai Dunn, via email at kai.dunn@waterboards.ca.gov.

14. California Environmental Quality Act (CEQA) Compliance:

This SEP would take place on City property. No landowner agreement is required for this SEP. The City adopted a Mitigated Negative Declaration for the NRIP in April 2020. Once the Regional Water Board approves the proposed SEP, the City can start quickly commence implementation of the SEP.

15. Extensions:

The SEP Completion Date is the due date of the completion report, April 01, 2026, unless the Executive Officer approves an extension. If an extension of this SEP Completion Date is granted, it shall apply to all deadlines for this SEP, including deadlines for reports to the Regional Water Board (section 13 above). If an extension is necessary, the City shall submit a written request for such extension to the Executive Officer as required by Stipulated Order section III, paragraph 20.

16. Is Project located within, or does it benefit, an Environmental Justice community, a Disadvantaged Community, or a community that has a financial hardship? If yes, describe.

The City is a community that has a financial hardship. According to U.S. Census data, the median income from 2016-2020 was \$42,732 which is less than 80% of the California median household income (\$67,925.6, based on a California median income of \$84,907). (See <https://www.census.gov/quickfacts/calexicocitycalifornia>.) Based on this data, as well as an evaluation of CalEnviroScreen 4.0, the SEP is also located in and/or benefits a DAC and EJ Community.

Attachment C

Supplemental Environmental Project 2

New River Improvement Project Calexico Reach – Lighting and Security for Stream Gage Station

1. Name of Project: New River Improvement Project Calexico Reach – Lighting and Security for Stream Gage Station

2. Project Amount:

The project cost is estimated as \$54,087. This is based on an informal estimate for four 20' poles with 40W lamps, two cameras, enclosures, pan / tilt positioners, mounting hardware, and associated control mechanisms, taxes, and shipping. The actual cost may be higher or lower when the City of Calexico (City) receives formal bids in accordance with statutorily required procurement processes as set forth in the Work Plan in Paragraph 10. \$54,000 of this total project cost will be offset against the \$81,000 ACL.

3. Project Lead:

City

4. Contact:

Ms. Liliana Falomir, City of Calexico Public Works Department Manager
608 Heber Ave.,
Calexico CA 92231
(760) 768-2160
falomirl@calexico.ca.gov

5. Project Description:

The United States Geological Survey (USGS) needs to relocate its Stream Gage Station (Station) for the New River at the International Boundary from its current location, which is approximately 300 feet downstream from the intersection of the New River and 2nd Street in Calexico, to a point approximately 250 feet upstream of the New River Improvement Project Calexico Reach (NRIP CR) proposed location for the Trash Screen and Diversion Structure. USGS will cover the costs of relocating the Station, while the SEP will cover the costs of installing lighting and video cameras to monitor the Station in real time to ensure it functions properly.

The Station will provide vital information to regulated entities and regulatory agencies, including but not limited to USGS, the Colorado River Basin Regional Water Quality Control Board (Regional Water Board), the US International Boundary & Water Commission (US IBWC), and the Surface Water Ambient Monitoring Program (SWAMP), to evaluate water quality and compliance with water quality standards. Specifically, the Station will provide hydrological data regarding New River flows from Mexico, including real time flow, daily average flow, etc. to USGS, and it will provide water quality data to USGS, the Regional Water Board, US IBWC, and SWAMP to evaluate water quality, analyze compliance with the Regional Water Board's Basin Plan, and to examine pollutant loads from Mexico and compliance with existing treaties with Mexico.

The video cameras will monitor the Station in real time to ensure it functions properly and will serve as a security measure to ensure that there is no tampering with or damage to the system. The lighting will enable the video cameras to monitor the Station in the dark and ensure it functions properly. The lights also serve as a safety measure in case personnel needs to access the Station in the dark.

6. Compliance with SEP Criteria:

The project will serve to promote environmental compliance, ensuring that the Station's data is accurate and decreasing the risk of manipulated data. The Station will provide vital hydrological and water quality data to regulated entities and regulatory agencies regarding New River flows from Mexico, which will be used by USGS, the Regional Water Board, US IBWC, and SWAMP, as discussed in detail above. The SEP is located along the New River, which was the location of the unauthorized discharge.

7. Above and Beyond Discharger's Obligations:

The City voluntarily agrees to undertake the SEP, and the City is not required to undertake this project.

8. No Benefit to Water Board Members, Staff, Family:

This SEP provides no direct fiscal benefit to the Regional Water Board's functions, its members, its staff, or family of members or staff.

9. Nexus to the Nature or Location of Violations:

This SEP is part of a settlement of alleged unauthorized discharges to the New River, the same location of the SEP. Thus, the SEP has a direct nexus to the location of the violation alleged.

10. Brief work plan containing tasks, deliverables, milestones, and schedule.

<i>Task</i>	<i>Start</i>	<i>Complete</i>
<i>1. Prepare and issue Purchase Order for solar powered lights, harsh environment videocameras and accessories for installation</i>	<i>5/01/2023</i>	<i>5/31/2023</i>
<i>2. Prepare and publish Invitation to Bid documents for NRIP Calexico Reach that include installation of lighting and video equipment for USGS Station</i>	<i>5/01/2023</i>	<i>6/30/2023</i>
<i>3. Review and rank proposals. Draft and award SEP contract to highest responsible bidder. Award Contract</i>	<i>07/05/2023</i>	<i>08/04/2023</i>
<i>4. Prepare and Issue Notice to Proceed</i>	<i>08/07/2023</i>	<i>08/25/2023</i>
<i>5. Install solar powered lights and video equipment and contract with cable/internet provider to provide internet service to video equipment</i>	<i>08/28/2023</i>	<i>5/31/2024</i>
<i>6. Prepare and submit to Regional Water Board SEP 2 Completion Report</i>	<i>6/03/2024</i>	<i>7/31/2024</i>

11. Does the project further one or more of the Regional Water Board's priorities for SEPs that address problems specific to the following?

Yes, the project furthers Regional Water Board priorities of the Salton Sea watershed, the New River, and benefits a community with a financial hardship, as described in detail below.

12. Performance Standard:

The following performance standards must be achieved for the SEP to be deemed complete: (1) installation of solar powered lights and video equipment; and (2) submission of a completion report by no later than July 31, 2024, or as otherwise approved by the Executive Officer under Paragraph 20 of the Stipulated Order.

13. Reports to the Regional Water Board.Progress Reports:

The City will submit a progress report including, at a minimum, updated photographs of the project, a summary of budget expenditures to date, and a summary of the remaining work to be completed.

Due Date: Quarterly, until the SEP is complete. Reports are due two weeks from the end of each quarter (i.e., Quarter 1 due April 14th, Quarter 2 due July 14th, etc.).

Completion Report:

The completion report will document that the project has been completed, will include a summary of all completed tasks, and will have an accounting of all expenditures. The accounting will clearly show whether the final cost of the successfully completed SEP was less than, equal to, or more than the liability suspended amount of \$54,000. The following statement will be included above the signature line of the report: *“I certify under penalty of perjury that the foregoing is true and correct.”*

Due Date: Within one month after the project is complete, as defined by the “Performance Standard” above, but no later than July 31, 2024.

All reports shall be submitted to the Regional Water Board contact, Kai Dunn, via email at kai.dunn@waterboards.ca.gov.

14. California Environmental Quality Act (CEQA) Compliance:

This SEP would take place on City property. No landowner agreement is required for this SEP. The City adopted a Mitigated Negative Declaration for the NRIP in April 2020. Once the Regional Water Board approves the proposed SEP, the City can quickly commence implementation of the SEP.

15. Extensions:

The SEP Completion Date is the due date of the completion report, July 31, 2024, unless the Executive Officer approves an extension. If an extension of this SEP Completion Date is granted, it shall apply to all deadlines for this SEP, including deadlines for reports to the Regional Water Board (section 13 above). If an extension is necessary, the City shall submit a written request for such extension to the Executive Officer as required by Stipulated Order section III, paragraph 20.

16. Is Project located within, or does it benefit, an Environmental Justice community, a Disadvantaged Community, or a community that has a financial hardship? If yes, describe.

The City is a community that has a financial hardship. According to U.S. Census data, the median income from 2016-2020 was \$42,732 which is less than 80% of the California median household income (\$67,925.6, based on a California median income of \$84,907). (See <https://www.census.gov/quickfacts/calexicocitycalifornia>.) Based on this data, as well as an evaluation of CalEnviroScreen 4.0, the SEP is also located in and/or benefits a DAC and EJ Community.