

California Regional Water Quality Control Board, Colorado River Basin
Prosecution Team Evidence
on the matter of
Administrative Civil Liability Complaint R7-2014-0041
Exhibit 3

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

CLEANUP AND ABATEMENT ORDER NO. R7-2004-0079
ISSUED TO
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT, AND
WASTEWATER COLLECTION AND DISPOSAL SYSTEMS
Brawley – Imperial County

The California Regional Water Quality Control Board, Colorado River Basin Region, (hereinafter referred to as the Regional Board) finds that:

1. The City of Brawley, 400 Main Street, Brawley, California, 92227 (hereinafter referred to as the discharger) owns and operates the Municipal Wastewater Treatment Plant (WWTP), located at 5015 Best Road, Brawley, CA 92227. The WWTP has a designed capacity of 5.9 million gallons-per-day (MGD).
2. The discharger owns and operates a wastewater collection system that consists of separate storm and combined sewer systems that provide conveyance of raw wastewater to the WWTP.
3. The facility provides treatment through a lagoon system. The treatment system consists of headworks, three primary clarifiers, five lagoons, a UV disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since the steel egg-shaped digesters were removed in 2002 due to excessive corrosion of the system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons one and two operate in series with lagoons three, four and five. Equivalent to secondary treated wastewater from the aerated lagoons is disinfected with UV disinfection.
4. Discharge from the facility is into the New River in the SW ¼ Section 15, T13S, R14E, SBB&M. The New River is a tributary to the Salton Sea.
5. The WWTP presently discharges an average daily flow of 3.4 MGD of equivalent to secondary disinfected wastewater to the New River.
6. On June 28, 2000, the Regional Board adopted Board Order No. 00-087, which specified Effluent Limitations, Prohibitions, Specifications, and Provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
7. The Water Quality Control Plan for the Colorado River Basin, as amended to date, designates the beneficial uses of ground and surface waters in the Region.
8. The designated beneficial uses of waters in the New River are:
 - a. Fresh Water Replenishment of Salton Sea (FRSH)
 - b. Industrial Service Supply (IND)¹
 - c. Water Contact Recreation (REC I)²
 - d. Non-Contact Water Recreation (REC II)
 - e. Warm Water Habitat (WARM)
 - f. Wildlife Habitat (WILD)
 - g. Preservation of Rare, Threatened, or Endangered Species (RARE)³

¹ Potential use

² Although some fishing occurs in the downstream reaches, the presently contaminated water in the river makes it unfit for any recreational use. An advisory has been issued by the Imperial County Health Department warning against the consumption of any fish caught from the river and the river has been posted with advisories against any body contact with the water.

9. Effluent Limitation No. A.4 of Board Order No. 00-087 states:

“The effluent shall not contain heavy metals, chemicals, pesticides or other constituents in concentration toxic to aquatic life.”

10. Effluent Limitations No. A.5 of Board Order No. 00-087 states:

“There shall be no acute toxicity in the treatment plant effluent nor chronic toxicity in the receiving water...”

11. The discharger has been in chronic violation of the Effluent Limitations of the Waste Discharge Requirements of Board Order No. 00-087. The discharger has chronically failed the effluent acute bioassay tests over the last few years.
12. Corrective actions by the discharger are necessary in order for the discharge from the wastewater treatment plant to comply with the requirements of Board Order No. 00-087.
13. The discharger completed Toxicity Identification Evaluations (TIEs) in 2001 and 2002. Ammonia was found to be the primary toxicant in the 2001 evaluation and was the source of all observed toxicity in the 2002 evaluation.
14. On November 20, 2001, the City of Brawley adopted Wastewater Pretreatment Ordinance No. 2001-08, to prevent the introduction of pollutants that will either pass through or interfere with the city’s treatment facilities and to enable the City of Brawley to comply with the city’s National Pollutant Discharge Elimination System (NPDES) permit, Board Order No. 00-087.
15. At the Regional Board’s request, the City of Brawley prepared a Toxicity Reduction Evaluation (TRE) and submitted a copy of the evaluation to the Regional Board on January 9, 2003.
16. The TRE addressed optimization of the existing treatment system for ammonia reduction and to perform a comprehensive survey of the collection system and industrial or commercial businesses to determine the impact these businesses may have on the city’s treatment facilities.
17. The City of Brawley's Pretreatment Program staff identified discharges to the city’s collection system that were in noncompliance with the city’s pretreatment ordinance.
18. The city’s steps towards optimization of the existing system have resulted in an overall improvement in effluent quality, although, on average, effluent ammonia concentrations remain high. Discharges from the city’s treatment facility continue to fail the effluent bioassay tests.
19. The City of Brawley requested assistance from the Border Environment Cooperation Commission (BECC) to evaluate and recommend solutions to reduce the concentration of ammonia in the discharge from the treatment facility and to provide a recommendation for solids handling.

³Rare, endangered, or threatened wildlife exists in or utilizes some of these waterway(s). If the RARE beneficial use may be affected by a water quality control decision, responsibility for substantiation of the existence of rare, endangered, or threatened species on a case-by-case basis is upon the California Department of Fish and Game on its own initiative and/or at the request of the Regional Board; and such substantiation must be provided within a reasonable time frame as approved by the Regional Board.

20. The City of Brawley has contracted with Nolte Associates, Inc. (Nolte) for the research, design and construction of improvements to the wastewater treatment facility. On April 21, 2004, the Regional Board received a copy of a letter dated April 20, 2004, from the City of Brawley mailed to the Border Environment Cooperation Commission in which the City of Brawley stated that it concurs with the recommended treatment alternative prepared by Nolte.
21. On June 23, 2004, the Regional Board received an outline of the schedule of events, including the design and construction of improvements to the wastewater treatment facility, as summarized below:

<u>Description of Tasks</u>	<u>Time Period</u>
a. Adjust Pretreatment Ordinance discharge limits	July 2004 - December 2004
b. Prepare CEQA documentation, if necessary	July 2004 - December 2004
c. Conduct Toxicity Identification Evaluation (TIE)	July 2004 - December 2004
d. Review/Discuss TIE results and necessary mitigation	January 2005 - February 2005
e. Design treatment facility upgrades	February 2005 - May 2005
f. Acquire necessary permits	February 2005 - May 2005
g. Construction	June 2005 - December 2005

22. Section 13304 of the California Water Code states:

"(a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.... Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

23. Pursuant to Water Code Section 13304, Cleanup and Abatement Order No. R7-2004-0079 is being issued to set forth actions that the discharger shall take to abate the effects of waste by correcting or preventing discharges of waste in violation of Board Order No. 00-087.

24. Section 13267(b) of the California Water Code provides that:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

25. The monitoring and reporting requirements in Ordering Paragraph 2, below, are necessary to assure compliance with this Cleanup and Abatement Order. The evidence supporting this requirement is discussed in Findings 1-20, above. Additional information may be available in the Regional Board's files. Section 13383 of the California Water Code also authorizes the Regional Board to establish monitoring requirements for publicly owned treatment works or other treatment works treating domestic sewage.
26. This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA: Public Resources Code Section 21000, et. Seq.), pursuant to Section 15321, Article 19, Division 3, Title 14, California Code of Regulations and California Water Code Section 13389.

IT IS HEREBY ORDERED THAT, pursuant to California Water Code Sections 13267 and 13304, and regulations adopted thereunder, the discharger shall take the following actions:

1. The Discharger shall complete the milestones listed below in the following table and submit the required documentation to the Regional Board by the designated completion date:

<u>Milestone</u>	<u>Milestone Description</u>	<u>Milestone Submittal</u>	<u>Completion Date</u>
1.A	Complete Toxicity Identification Evaluation (TIE)	Submit a Copy of the Toxicity Identification Evaluation to the Regional Board	January 31, 2005
1.B	Complete Design of the Wastewater Treatment Plant Upgrades	Submit a Copy of Final Design Drawings and Specification to the Regional Board	June 30, 2005
1.C	Complete Construction of the Wastewater Treatment Plant Upgrades	Submit Summary and Verification of Construction Completion	January 31, 2006
1.D	Complete Operational Startup of New Wastewater Treatment Plant Upgrades	Submit Operation and Maintenance Program for Wastewater Treatment Plant Upgrades	February 1, 2007

2. The discharger shall submit quarterly reports, due by the 15th of January, April, July, and October of each year, on the status of the project and the tasks listed above.
3. The Regional Board's Executive Officer may extend any of the due dates in paragraph 1, above, by up to sixty (60) days, if in the opinion of the Regional Board's Executive Officer the discharger is unable to comply with the above listed completion dates and/or milestones due to delays beyond the reasonable control of the discharger.
4. If in the opinion of the Regional Board's Executive Officer, the discharger fails to comply with the provisions of this Order, in a timely manner, the discharger may be subject to further enforcement action. Such actions may include, but not be limited to, the assessment of administrative civil liability pursuant to Sections 13268, 13323 and 13350 of the California Water Code, and referral for any injunctive relief and civil or criminal liability.

5. Any person affected by this action of the Regional Board may petition the State Board to review the action in accordance with Title 23, CCR Sections 2050-2068. The State Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided on request. Information on such law and regulations may also be found on the Internet at:

http://www.swrcb.ca.gov/water_laws/cawtrcde/wqpetition_instr.html.

This Order is effective upon the date of signature.

Date: _____

Philip A. Gruenberg
Executive Officer