

California Regional Water Quality Control Board, Colorado River Basin
Prosecution Team Evidence
on the matter of
Administrative Civil Liability Complaint R7-2014-0041
Exhibit 6

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2008-0043
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
IMPERIAL COUNTY

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Orders No. 00-087 and No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523, and Cleanup and Abatement Order (CAO) No. R7-2004-0079.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The City of Brawley (hereinafter Discharger), 400 Main Street, Brawley, California 92227 owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. According to a Report of Waste Discharge submitted by the Discharger dated January 14, 2005, the WWTP has a design capacity of 5.9 million gallons per day (MGD).
2. The WWTP consists of headworks, three primary clarifiers, five lagoons, an ultraviolet (UV) disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since digesters were removed in 2002 due to excessive corrosion of the digester system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons 1 and 2 operate in series with lagoons 3, 4, and 5.
3. The WWTP treats and disposes of an average daily flow of 3.4 MGD of wastewater. The effluent from the lagoons is UV-disinfected and then discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.

4. CWC Section 13385(a) states, in part, that:

"Any person who violates any of the following shall be liable civilly in accordance with this section:...(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,..."

5. CWC Section 13385(c) states:

"Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.

"(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) multiplied by the

number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

6. CWC Section 13385(h) (1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation.

7. CWC Section 13385(h) (2) states, in part, the following:

For the purpose of this section, a ‘serious violation’ means any waste discharge that violates the effluent limitations ... 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.”

8. CWC Section 13385(i) (1) also requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in a six-month period:

- 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.

9. CWC Section 13385(i) (2) states:

“For the purpose of this section [13385], 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.”

10. CWC Section 13385(l) (1) and (2) state:

“(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a ‘supplemental environmental project’ means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.”

11. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Policy). The Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. In accordance with Section IX of the Policy, among other requirements, SEPs proposed by the Discharger must "enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger." (Enforcement Policy pp. 42-43)

Violations of WDR Board Order No. 00-087

12. On June 28, 2000, the Regional Board adopted WDRs Board Order No. 00-087 (NPDES Permit No. CA0104523), which superseded WDRs Order No. 95-014 except for enforcement purposes, and specified effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters with the Colorado River Basin Region.

13. WDRs Board Order No. 00-087 contained effluent limitations and provisions necessary for the protection of state waters and states in relevant part:

"[Effluent Limitation No. A.5] The effluent shall not contain heavy metal, chemicals, pesticides or other constituents in concentration toxic to aquatic life.

"[Effluent Limitation No. A.6] There shall be no acute toxicity in the treatment plant effluent or chronic toxicity in the receiving water. Compliance with this objective will be determined by use of indicator organisms, analyses of species diversity, population density, growth abnormalities, or bioassays of appropriate duration or other appropriate methods specified by the Regional Board.

"[Provision E.6] The Discharger shall comply with all conditions of this Board Order. Noncompliance with this Board Order constitutes a violation of the Porter Cologne Water Quality Control Act and is grounds for enforcement.

"[Provision E.10] The Discharger is the responsible party for the waste discharge requirements and the monitoring and reporting program...Violations may result in enforcement actions including Regional Board Orders, court orders..."

14. Board Order No. 00-087, Section F, Pretreatment Program states, in part, that:

"a. The Discharger shall be responsible for the performance of all pretreatment requirements contained in CFR, Part 40, Section 403, and shall be subject to enforcement actions, penalties, and other remedies by the U.S. Environmental Protection Agency, or the Regional Board, as provided in the Federal Clean Water Act, as amended (33USC 1251 et. seq.) (Hereinafter "Act").

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"c. The Discharger shall implement and enforce its Pretreatment Program. The Discharger's pretreatment program is hereby made an enforceable condition of this Board Order....

- “d. The Discharger shall enforce the requirements promulgated under Sections 307(b), 307(c), 307(d) and 402(b) of the Act. The Discharger shall cause industrial users subject to Federal Categorical Standards to achieve compliance no later than the date specified in those requirements or, in the case of a new industrial user, upon commencement of the discharge.”
15. From the year 2000 onward, the Discharger has chronically exceeded the acute and chronic bioassay limits, as summarized in the monthly effluent bioassay reports. In 2002 the Discharger conducted several Toxicity Identification Evaluations (TIEs) that reported that the primary toxicant contributing to effluent toxicity is high ammonia concentrations.
 16. On November 20, 2001 the Discharger adopted Wastewater Pretreatment Ordinance No. 2001-08 to prevent the introduction of industrial pollutants that will enter or pass through or interfere with the city's treatment facilities and to enable the Discharger to comply with WDRs Order No. 00-087.
 17. The Discharger receives wastewater from more than 30 industrial dischargers. However, the most significant industrial user is National Beef Company (formerly known as Brawley Beef), which discharges up to 800,000 gallons per day (gpd) of partially treated wastewater that currently contains ammonia concentrations ranging from 30 mg/L to 140 mg/L, well above the ammonia concentration limit of 30 mg/L specified in the Wastewater Pretreatment Ordinance No. 2001-08 adopted in 2001 and amended in 2005.
 18. During the spring of 2002, and pursuant to the Pretreatment Ordinance, the Discharger conducted surveys and sampling of its sewage collection system to identify whether there were discharges into the system that violate the Discharger's Ordinance and/or contribute to the noncompliance with WDRs Order No. 00-087. The surveys conducted by the Discharger were inconclusive. The Discharger cited Brawley Beef Company (now National Beef Company) for discharging high levels of ammonia, issuing Notices of Violations (NOV) on 3/11/03, 2/23/04, 9/30/04, and 12/16/04. In the first NOV, it states: “Should your pretreatment operations not come into compliance within the time frame (6/1/03) provided, sewer service may be discontinued unless adequate treatment facility devices or other related appurtenances are installed and properly operated.” In another letter, the City mentions the \$3,000 MMPs that the Regional Board is required to assess for effluent violations.
 19. In a letter dated November 12, 2002, Regional Board staff directed the Discharger to conduct and submit the Toxicity Reduction Evaluation (TRE) by 1/10/03. According to the TRE in the section titled “Wastewater Optimization for Ammonia Reduction”, the wastewater treatment operators implemented the following changes to the five aerated lagoons:
 - Effluent baffles on cells A2, S1, S2, and S3 have been installed to reduce TSS and BOD at the effluent discharge.
 - A polypropylene fence with 4"x4" square holes has been installed along the north end of cells S2 and S3 to provide a habitat for nitrifying bacteria.
 - A2 has 90 HP of aeration to operate as a complete mix system.
 - Cells A2, S1, S2, and S3 were evaluated for short-circuiting. Results of the tests were deemed negative.
 - All cells are being monitored for ammonia concentration on a weekly basis.
 - The City is evaluating the best location for a return line.

20. Section 22.75 of the Discharger's Wastewater Pretreatment Ordinance No. 2001-8 authorizes the City Manager or his designee to impose fines up to \$5,000 per violation per day, but the Discharger never imposed any fines against the National Beef Company for violation of the pretreatment limits. The Discharger has yet to take any formal enforcement action against this user.
21. On April 15, 2003, the Discharger reported that it found discharges into its collection system that were in noncompliance with its Pretreatment Ordinance, including from the Brawley Beef Company plant and from a fertilizing spreading business.
22. Monthly monitoring reports submitted by the Discharger from October 2002 to the present show that the Discharger has issued only four (4) Notice of Violations (NOVs) in 2003 and 2004 for exceeding the ammonia concentration limit for Brawley Beef Company. Each time the Discharger requested a plan for satisfactory correction and prevention of the violations.
23. On February 9, 2004, the Regional Board Executive Officer issued ACLC No. R7-2004-0026 against the Discharger for chronic violations of the acute toxicity limit of WDRs Order No. 00-087. The ACLC proposed an MMP of \$33,000 for the violations. In lieu of paying the MMP, the Discharger proposed a Compliance Project (CP) to correct the violations. The Board approved the CP that included removal of sludge from the drying beds, removal and cleaning of A1 lagoon's accumulated sludge, and the complete use of all five lagoons at the WWTP.
24. On June 23, 2004, the Discharger submitted a proposal in the form of an outline with tasks and milestones to bring the discharge from its WWTP in compliance with Board Order No. 00-087. The proposal consisted of the design and construction of improvements to the WWTP as follows:

Description of Tasks - Time Period

- a. Adjust Pretreatment Ordinance discharge limits, July 2004 - December 2004
- b. Prepare CEQA documentation, if necessary, July 2004 - December 2004
- c. Conduct TIE, July 2004 - December 2004
- d. Review/discuss TIE results and necessary mitigation, January - 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

Violations of Cleanup and Abatement (CAO) Order No. R7-2004-0079

25. On June 30, 2004, the Regional Board Executive Officer issued Cleanup and Abatement Order (CAO) No. R7-2004-0079, requiring the Discharger to correct the toxicity violations and threatened violations of Board Order No. 00-087 in accordance with a series of tasks and time schedule. The CAO was issued after ten notices of noncompliance were sent to the Discharger on the following dates: 5/13/2003, 6/14/2003, 7/23/2003, 9/4/2003, 11/7/2003, 12/26/2003, 3/15/2004, 4/28/2004, 6/2/2004, and 6/22/2004.

26. The CAO No. R7-2004-0079 intended 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. More specifically, the CAO provides in substantive relevant part for the Discharger to comply with the following:

Milestone	Milestone Description	Milestone Submittal	Completion Date
1.A	Complete Toxicity Identification Evaluation (TIE)	Submit a Copy of the Toxicity Identification Evaluation to the Regional Board	January 31, 2005 (Actual: 1/27/05)
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 (Actual: 2/14/05)
1.C	Complete Construction of the Wastewater Treatment Plant Upgrades	Submit Summary and Verification of Construction Completion	January 31, 2006 (Actual: 7/7/06)
1.D	Complete Operational Startup of New Wastewater Treatment Plant Upgrades	Submit Operation and Maintenance Program for Wastewater Treatment Plant Upgrades	February 1, 2007 (Actual: 1/31/07)

27. CAO No. R7-2004-0079 also states on page 4 that:

“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 ACL pursuant to Sections 13268, 13323, and 13350 of the CWC, and referral for any injunctive relief and civil or criminal liability.”

28. The Discharger completed the construction of the WWTP upgrades (Milestone 1.C) on July 7, 2006, 157 days late in complying with the deadline imposed by the CAO. Each day the milestone was late constitutes a daily violation of the CAO No. R7-2004-0079.
29. Pursuant to CWC Section 13385(c), the maximum liability available for the Regional Board for assessment for milestone report 1.C that was submitted 157 days late by the Discharger is \$218,710,000, which is calculated as follows:

Month	Average monthly flow in million gallons/day (MGD)	Assessed liability amount in dollars/gallon	Maximum liability amount (MLA) in dollars(\$)
Feb. 2006	3.59	\$10	35,890,000*
Mar. 2006	4.02	\$10	40,190,000
Apr. 2006	3.00	\$10	29,990,000
May 2006	3.59	\$10	35,890,000
June 2006	3.72	\$10	37,190,000
July 2006	3.80	\$10	37,990,000
*MLA is calculated as follows: (3,590,000 – 1,000) x \$10 = \$35,890,000			
CWC Section 13385(c) (2):			217,140,000
CWC Section 13385(c)(1): 157 days x \$10,000 =			1,570,000
Maximum Liability Available (MLA) to Regional Board =			218,710,000

Violations of WDRs Board Order No. R7-2005-0021

30. On June 29, 2005, the Regional Board adopted WDRs Board Order No. R7-2005-0021 (NPDES Permit No. CA0104523), which rescinded Board Order No. 00-087 except for enforcement purposes. WDRs Order No. R7-2005-0021 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
31. WDRs Order No. R7-2005-0021 contains the following discharge limitations:

"[1.b. Final Effluent Limitations for Discharge Point 001]"

"Either beginning on February 1, 2007 or, if the commencement of discharges from the upgraded WWTP designed for nitrification and denitrification is completed prior to February 1, 2007 and as required by Provision VI.C.2.d the discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point M-001, with compliance measured at monitoring location M-001A as described in the attached Monitoring and Reporting Program (Attachment E).

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	1.1	12
	lbs/day ¹	54	590

"[2.a. Interim Effluent Limitations]"

"During the period beginning June 29, 2005 and ending on May 18, 2010, the discharge of effluent wastewater shall maintain compliance with the following limitations at Discharge Point 001, with compliance measured at Monitoring Location M-001A as described in the attached Monitoring and Reporting Program.

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Free Cyanide	µg/L	76	76
	lbs/day	3.7	3.7
Zinc ²	µg/L	62	95
	lbs/day	3.1	4.7

"[2.e. Final Effluent Limitations]"

"Wastewater effluent discharged to the New River shall not have an *Escherichia coli* (E. coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 MPN/100 mL (based on a minimum of not less than five samples for any 30-day period) nor shall any sample exceed 400 MPN/100 mL."

"Special Provisions Section VI.C.6., Pretreatment Program "b" states, in part, that:

- "i. In the event that there are industrial wastes subject to regulation under the NPDES Pretreatment Program being discharged to the WWTP....then...(3) The Discharger shall enforce the federal categorical pretreatment standards on all Categorical Industrial Users (CIUs).

¹ Based on a flow of 5.9 MGD

² Total Recoverable

(4) The Discharger shall notify the CIU of its discharge effluent limits. The limit must be as stringent as the pretreatment standards...

“iii. The Regional Board retains the right to take legal action against an industrial user and/or the Discharger where a user fails to meet the approved applicable pretreatment standards.”

32. On February 22, 2007, the Regional Board Assistant Executive Officer issued ACLC No. R7-2007-0026 against the Discharger for zinc, free cyanide, and E. coli violations of Order No. R7-2005-0021. The ACLC proposed an MMP of \$36,000 for the violations. In lieu of paying the MMP, the Discharger proposed a CP to correct the violations, but the Discharger does not qualify for a CP because it is not a “small community.” CWC Section 79084 defines "small community" as a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the State Water Resources Control Board.
33. March 22, 2007, the Discharger submitted to the Regional Board an outline with the Discharger’s proposed schedule of events, including the design and construction of improvements to the WWTP to bring discharges into compliance with Board Orders:

<u>Description of Tasks</u>	<u>Time Period</u>
a. Advertise Statement of Interest and Qualifications (SOQs)	February 26, 2007
b. Receive SOQ’s	March 20, 2007
c. City Counsel selects Consultant	April – May 2007
d. Negotiate Fee	June – July 2007
e. City Counsel Approves Fee	August – September 2007
f. Execute Consultant Contract	October – November 2007
g. Complete Preliminary Design	February 2008
h. Submit 30% design	August 2008
i. Submit 100% design	November 2008
j. Bid construction	January 2009
k. Construction contract award	April 2009
l. Construction complete and in compliance	May 2012

Summary

34. The Regional Board has the option of assessing liability to the Discharger using the MMPs pursuant to CWC Section 13385(h) and (i) for violations of the NPDES permit, or it may consider a wider array of factors pursuant to CWC Section 13385(c) for violations of the both the NPDES permit and the 2004 CAO.
35. The minimum liability the Regional Board must assess against the Discharger for each chronic violation of Board Order No. R7-2005-0021 shown in Attachment “A”, which is made a part of this ACL Complaint by reference, is two hundred ninety-one thousand dollars (\$291,000).

36. Pursuant to CWC Section 13385(c)(2), the maximum liability available to the Regional Board (MLA) for the violations cited in Attachment A and in Finding No. 29, above, is three billion eight hundred fifty-three million two hundred ninety thousand dollars (\$3,853,290,000), which is calculated as follows:

Violation	Reference Finding for Violation	No. of days in violation	Maximum Liability Available (MLA)
CAO R7-2004-0079 (late Milestone 1.C)	Finding No. 29	157	\$218,710,000
Effluent Limits	Attachment A	459	\$3,634,580,000
Maximum Liability Available to Regional Board =			\$3,853,290,000

37. CWC Section 13327 states:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, 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 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.”

38. The factors in Finding No. 37, above, are evaluated for the violations at issue as follows:

- a. Nature, circumstance, extent, and gravity of the violation or violations

Failure to timely complete milestone 1.C (Complete construction of the WWTP upgrades) and submit the milestone report (due January 31, 2006, submitted July 7, 2006) is a significant violation because the WWTP continues to violate its toxicity limits and still is in noncompliance with permit requirements.

The Discharger has chronic violations of each of its NPDES permits adopted by the Regional Board since 1995 as documented in the findings above. In addition, the Discharger has violated every enforcement order issued by the Regional Board in that time. The Discharger failed to enforce its pretreatment ordinance, discharged partially treated and toxic waste into the New River, a Clean Water Act Section 303(d)-listed impaired surface water body, creating additional stress on the Salton Sea. The violations (at least 93 violations in the last eight years) are severe and significant, and provided an unfair business advantage to the Discharger and the Brawley Beef Company. In effect, the violations of Board Orders have transferred their economic savings to the environment, causing an area under extreme conditions to suffer additional stress and hardship.

- b. Susceptibility of discharge to cleanup or abatement, and degree of toxicity of discharge

The discharge was susceptible to cleanup and/or abatement, but the Discharger failed to do so. The toxicity of the discharge from the Discharger's WWTP is toxic and contributing to the problems of the Salton Sea. On March 19, 2008, the Regional Board adopted Cease and Desist Order No. R7-2008-0008 directing the

Discharger to complete WWTP improvements and develop and implement a pretreatment program in accordance with a time schedule to correct the violations and bring the discharge from the WWTP into consistent compliance with the NPDES Permit.

c. Discharger's ability to pay

The Discharger has not demonstrated an inability to pay the proposed amount.

d. Effect on Discharger's ability to continue in business

The proposed fine should not affect the Discharger's ability to continue operating as a public agency since the fine largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed.

e. Prior history of violations

The Discharger has a long history of violations dating back over ten years. The Discharger has violated the last three NPDES Orders Nos. 95-014, 00-087, and R7-2005-021; TSO No. 99-054; CAO No. R7-2004-0079; ACLC No. R7-2004-0026; and numerous informal requests to comply with these orders.

f. Degree of culpability

The Discharger is the responsible party for compliance with CAO No. R7-2004-0079, WDRs Orders No. 00-087 and No. R7-2005-0021, and it is fully culpable for violating the terms and conditions of these orders.

g. Economic benefit or savings resulting from the violation:

The Discharger realized significant economic benefit or savings by delaying the construction of the WWTP improvements. The Discharger currently estimates spending over \$20 million that it should have been spent four years ago to upgrade the WWTP to meet the requirements of the CAO and the WDRs.

In addition, the Discharger realized an economic advantage for itself and the beef plant by not enforcing its pretreatment ordinance. By not hiring the professional staff to comply the toxicity requirements of the NPDES permits, the Discharger has saved significant amount of public funds that should have been devoted to permit compliance.

h. Other matters as justice may require:

Staff time to prepare a complaint and supporting information is estimated to be 150 hours. Based on an average cost to the State of \$125 per hour, the total cost is eighteen thousand seven hundred fifty dollars (\$18,750).

39. On September 25, 2007, Regional Board orally informed the Discharger that ACLC No. R7-2007-0026 had been rescinded. On April 3, 2008 the Regional Board Assistant Executive Officer issued ACL Complaint No. R7-2008-0012 that superseded ACLC No. R7-2007-0026, proposing that the Discharger pays three hundred fifty-four thousand seven hundred fifty dollars (\$354,750) in ACL (MMP) for the violations. This liability amount consists of an MMP of \$291,000, staff costs of \$18,750 (150 hours x \$125 per hour) and a \$45,000 penalty. The amount of the liability is based on a review of the factors cited in Finding No. 38, above, and the Enforcement Policy. The Assistant Executive Officer also indicated that he would consider offsetting a portion of this ACL amount by the monetary value of a SEP proposed by the Discharger in an amount not to exceed \$184,875.
40. The Regional Board has notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the Complaint was issued unless the Discharger waives its right to a hearing under CWC Section 13323(b). By letter dated May 7, 2008, the Discharger waived its right to a hearing on this matter (see Attachment "B").
41. On May 7, 2008, the Discharger proposed the implementation of three SEPs described in Attachment "B", which is made a part of this ACL Order by reference.
42. The Regional Board heard and considered all comments pertaining to this matter in a public meeting.
43. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, the Discharger is assessed \$354,750 in ACL violations. In lieu of paying an ACL in the amount of \$354,750, the Discharger shall pay a reduced penalty amount in accordance with CWC Section 13385(l) and shall implement the proposed SEPs described in Attachment "B" in accordance with the following:

1. The Discharger shall comply with the Enforcement Policy relating to implementation of SEPs.
2. The SEPs shall be implemented in accordance with the time schedule stipulated in Attachment "C", appended to and made a part of this Order by reference. The Regional Board Executive Officer may modify the stipulated completion date and approve an alternative completion date for the SEP if he determines that a delay is necessary for a timely return of the Discharger to full and sustained compliance with its WDR, and is beyond the reasonable control of the Discharger. Under no circumstances may the completion date extend beyond 5 years from the date of this Order.
3. The suspended portion of the proposed ACL penalty of \$354,750 that is hereby directed to be expended on the SEP cannot exceed \$184,875. The Discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$169,875. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed to the address shown in paragraph 7 below.

4. If the Discharger completes a phase of the SEPs to the satisfaction of the Executive Officer by the approved date, the corresponding portion of the ACL indicated in Attachment "C" for that phase shall be permanently suspended. Similarly, if the Discharger fails to complete any stipulated phase of the SEP to the satisfaction of the Executive Officer by the approved date, and the Executive Officer has not approved an extension in the completion date, the corresponding portion of the ACL shall become due and payable by the Discharger within 30 days of being so informed in writing by the Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. Completion of the SEP shall be certified in writing by the Executive Officer. No portion of the ACL shall be suspended without a written certification issued by the Executive Officer.
7. The Discharger shall submit all unsuspended ACL amounts, made payable to the "State Water Pollution Cleanup and Abatement Account", to the following address:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

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 Region, on June 25, 2008.


ROBERT PERDUE, Executive Officer

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

ATTACHMENT "A"

Summary of Violations of Board Order No. R7-2005-0021 Mandatory Minimum Penalties

Assessed Violation ¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation ²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
298495	Exceeded interim average monthly of 62 µg/L zinc. Reported value was 70 µg/L	8/31/2005	31	3.669	No	0	\$36,680,000	\$310,000
365867	Exceeded interim average daily of 76 µg/L free cyanide. Reported value was 104 µg/L	11/2/2005	1	3.239	Yes	3,000	\$32,380,000	10,000
365868	Exceeded interim average monthly of 76 µg/L free cyanide. Reported value was 104 µg/L	11/30/2005	30	3.529	Yes	3,000	\$35,280,000	\$300,000
408933	Exceeded interim average daily of 95 µg/L zinc. Reported value was 262 µg/L	2/1/2006	1	3.469	Yes	3,000	\$34,680,000	10,000
408935	Exceeded interim average monthly of 62 µg/L zinc. Reported value was 262 µg/L	2/28/2006	28	3.589	Yes	3,000	\$35,880,000	280,000
420572	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 2,200 MPN/100 mL	5/22/2006	1	3.739	No	3,000	\$37,380,000	10,000
420573	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 500 MPN/100 mL	5/23/2006	1	3.559	No	3,000	\$35,580,000	10,000
420574	Exceeded monthly maximum of 126 MPN/100 mL E. Coli. Reported value was 217 MPN/100 mL	5/31/2006	31	3.589	No	3,000	\$35,880,00070000	\$310,000
463170	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 2,400 MPN/100 mL	11/14/2006	1	3.789	No	3,000	\$37,880,000	\$10,000
463171	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 500 MPN/100 mL	11/20/2006	1	3.789	No	3,000	\$37,880,000	\$10,000
463172	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 500 MPN/100 mL	11/28/2006	1	3.819	No	3,000	\$38,180,000	\$10,000

¹ Data Source: California Integrated Water Quality System (CIWQS)

² Defined by CWC 13385(h)

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
463173	Exceeded monthly maximum of 126 MPN/100 mL E. Coli. Reported value was 362 MPN/100 mL	11/30/2006	30	3.849	No	3,000	\$38,480,000	\$300,000
490699	Exceeded daily maximum of 400 MPN/100 mL E. Coli. Reported value was 2200 MPN/100 mL	12/4/2006	1	3.849	No	3,000	\$38,480,000	\$10,000
586122	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1808 lbs/day	2/7/2007	1	3.989	Yes	3,000	\$39,880,000	\$10,000
586118	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 54.32 mg/L	2/7/2007	1	3.989	Yes	3,000	\$39,880,000	\$10,000
586119	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 55.44 mg/L	2/14/2007	1	3.839	Yes	3,000	\$38,380,000	\$10,000
586124	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,934 lbs/day	2/21/2007	1	4.059	Yes	3,000	\$40,580,000	\$10,000
586120	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 57.12 mg/L	2/21/2007	1	4.059	Yes	3,000	\$40,580,000	\$10,000
586121	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 36.40 mg/L	2/28/2007	1	3.959	Yes	3,000	\$39,580,000	\$10,000
586125	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,205 lbs/day	2/28/2007	1	3.959	Yes	3,000	\$39,580,000	\$10,000
586126	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 40.82 mg/L	2/28/2007	28	3.999	Yes	3,000	\$39,980,000	\$280,000
586127	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,681 lbs/day	2/28/2007	28	3.999	Yes	3,000	\$39,980,000	\$280,000
586107	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 14.56 mg/L	3/7/2007	1	4.109	No	3,000	\$41,080,000	\$10,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
586110	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 753 lbs/day	3/14/2007	1	4.029	No	3,000	\$40,280,000	\$10,000
586111	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 29.12 mg/L	3/21/2007	1	3.949	Yes	3,000	\$39,480,000	\$10,000
586112	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 959 lbs/day	3/21/2007	1	3.949	Yes	3,000	\$39,480,000	\$10,000
586113	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 18.62 mg/L	3/31/2007	31	3.919	Yes	3,000	\$39,180,000	\$310,000
586116	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 619 lbs/day	3/31/2007	31	3.919	Yes	3,000	\$39,180,000	\$310,000
586128	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 25.76 mg/L	4/4/2007	1	3.459	Yes	3,000	\$34,580,000	\$10,000
586132	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 743 lbs/day	4/4/2007	1	3.459	No	3,000	\$34,580,000	\$10,000
586129	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 29.68 mg/L	4/11/2007	1	3.989	Yes	3,000	\$39,880,000	\$10,000
586130	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 29.12 mg/L	4/25/2007	1	3.759	Yes	3,000	\$37,580,000	\$10,000
586134	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 913 lbs/day	4/25/2007	1	3.759	Yes	3,000	\$37,580,000	\$10,000
586131	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 22.26 mg/L	4/30/2007	30	3.709	Yes	3,000	\$37,080,000	\$300,000
586135	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 696 lbs/day	4/30/2007	30	3.709	Yes	3,000	\$37,080,000	\$300,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
580038	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.46 mg/L	5/2/2007	1	3.689	Yes	3,000	\$36,880,000	\$10,000
580040	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 965 lbs/day	5/2/2007	1	3.689	Yes	3,000	\$36,890,000	\$10,000
580041	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.8 mg/L	5/9/2007	1	3.759	Yes	3,000	\$37,580,000	\$10,000
580043	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.92 mg/L	5/16/1007	1	3.599	Yes	3,000	\$35,980,000	\$10,000
580044	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 958 lbs/day	5/16/2007	1	3.599	Yes	3,000	\$35,980,000	\$10,000
580045	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.92 mg/L	5/23/2007	1	3.519	Yes	3,000	\$35,180,000	\$10,000
580046	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 937 lbs/day	5/23/2007	1	3.519	Yes	3,000	\$35,180,000	\$10,000
580047	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	5/30/2007	1	3.539	Yes	3,000	\$35,380,000	\$10,000
580048	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 975 lbs/day	5/30/2007	1	3.539	Yes	3,000	\$35,380,000	\$10,000
580049	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 31.81 mg/L	5/31/2007	31	3.689	Yes	3,000	\$36,880,000	\$310,000
632742	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.8 mg/L	6/6/2007	1	3.679	Yes	3,000	\$36,780,000	\$10,000
632742	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.8 mg/L	6/6/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation ¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation ²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
632747	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.6 mg/L	6/13/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000
632749	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 38.08 mg/L	6/20/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
632750	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,181 lbs/day	6/20/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
632751	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 31.92 mg/L	6/27/2007	1	3.609	Yes	3,000	\$36,080,000	\$10,000
632752	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 961 lbs/day	6/27/2007	1	3.609	Yes	3,000	\$36,080,000	\$10,000
632753	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 33.60 mg/L	6/30/2007	30	3.749	Yes	3,000	\$37,480,000	\$300,000
632755	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,038 lbs/day	6/30/2007	30	3.749	Yes	3,000	\$37,480,000	\$300,000
699786	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,021 lbs/day	7/3/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000
699783	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	7/3/2007	1	3.799	Yes	3,000	\$37,980,000	\$10,000
699790	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,008 lbs/day	7/11/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
699788	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	7/11/2007	1	3.719	Yes	3,000	\$37,180,000	\$10,000
699792	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.60 mg/L	7/18/2007	1	3.599	Yes	3,000	\$35,980,000	\$10,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation ¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation ²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
699793	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,009 lbs/day	7/18/2007	1	3.599	Yes	3,000	\$35,980,000	\$10,000
699796	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 28.56 mg/L	7/25/2007	1	3.669	Yes	3,000	\$36,680,000	\$10,000
699795	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 874 lbs/day	7/25/2007	1	3.669	Yes	3,000	\$36,680,000	\$10,000
699798	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 978 lbs/day	7/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
699799	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 31.78 mg/L	7/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
699463	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	8/1/2007	1	3.739	Yes	3,000	\$37,380,000	\$10,000
699467	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,031 lbs/day	8/1/2007	1	3.739	Yes	3,000	\$37,380,000	\$10,000
699469	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 30.80 mg/L	8/8/2007	1	3.389	Yes	3,000	\$33,880,000	\$10,000
699472	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 871 lbs/day	8/8/2007	1	3.389	Yes	3,000	\$33,880,000	\$10,000
699483	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 986 lbs/day	8/15/2007	1	3.639	Yes	3,000	\$36,380,000	\$10,000
699482	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	8/15/2007	1	3.639	Yes	3,000	\$36,380,000	\$10,000
699485	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 27.44 mg/L	8/22/2007	1	3.589	Yes	3,000	\$35,880,000	\$10,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
699486	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 822 lbs/day	8/22/2007	1	3.589	Yes	3,000	\$35,880,000	\$10,000
699488	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,050 lbs/day	8/29/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
699487	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 33.04 mg/L	8/29/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
699492	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 952 lbs/day	8/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
699491	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 31.36 mg/L	8/31/2007	31	3.779	Yes	3,000	\$37,780,000	\$310,000
721103	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 794 lbs/day	9/5/2007	1	3.469	Yes	3,000	\$34,680,000	\$10,000
721099	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 27.44 mg/L	9/5/2007	1	3.469	Yes	3,000	\$34,680,000	\$10,000
721105	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 24.64 mg/L	9/12/2007	1	3.879	Yes	3,000	\$38,780,000	\$10,000
721106	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 797 lbs/day	9/12/2007	1	3.879	No	3,000	\$38,780,000	\$10,000
720119	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli Reported = 1,600 MPN/100 mL	9/17/2007	1	3.709	No	3,000	\$37,080,000	\$10,000
721109	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 980 lbs/day	9/19/2007	1	3.619	Yes	3,000	\$36,180,000	\$10,000
721107	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	9/19/2007	1	3.619	Yes	3,000	\$36,180,000	\$10,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

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720121	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli Reported = 900 MPN/100 mL	9/25/2007	30	3.799	No	3,000	\$37,980,000	\$300,000
720122	Exceeded 30-day geometric mean limit of 125 MPN/100 mL of E. coli Reported =229 MPN/100 mL	9/30/2007	30	3.789	No	3,000	\$37,880,000	\$300,000
721113	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 28 mg/L	9/30/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000
721115	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 630 lbs/day	9/30/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000
720109	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 592 lbs/day	10/3/2007	1	3.519	No	3,000	\$35,180,000	\$10,000
720019	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.16 mg/L	10/3/2007	1	3.519	Yes	3,000	\$35,180,000	\$10,000
720110	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 28 mg/L	10/10/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
720111	Exceeded Maximum Daily of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 592 lbs/day	10/10/2007	1	3.809	Yes	3,000	\$38,080,000	\$10,000
720112	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 16.24 mg/L	10/17/2007	1	3.639	No	3,000	\$36,380,000	\$10,000
720114	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 17.92 mg/L	10/24/2007	1	3.659	Yes	3,000	\$36,580,000	\$10,000
720116	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 32.48 mg/L	10/31/2007	1	3.789	No	3,000	\$37,880,000	\$10,000
720115	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli Reported = 900 MPN/100 mL	10/31/2007	1	3.789	Yes	3,000	\$37,880,000	\$10,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0043

Assessed Violation¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation²	Minimum Liability Assessed Dollars (\$)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per CWC Section 13385(c)(1) \$10,000/day
720117	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 20.27 mg/L	10/31/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000
720118	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 630 lbs/day	10/31/2007	30	3.789	Yes	3,000	\$37,880,000	\$300,000

Accrued Mandatory Minimum Penalties (MMP):	\$ 291,000	
CWC Section 13385(c)(1):		\$7,950,000
CWC Section 13385(c)(2):		\$3,626,630,000
Maximum Liability Available (MLA) to Regional Board:		\$3,634,580,000

ATTACHMENT "B"



CITY OF BRAWLEY

PUBLIC WORK / CITY ENGINEER
180 S. WESTERN AVENUE
BRAWLEY, CALIFORNIA
92227
PHONE: (760) 344-5800
FAX: (760) 344-5612

May 7, 2008

Jose Angel
Assistant Executive Director
State Water Resources Control Board
Colorado River Basin Region
73-720 Fred Waring Dr. Ste 100
Palm Desert, CA 92260

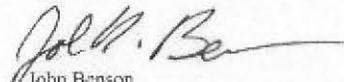
Dear Mr. Angel,

The City of Brawley received the Administrative Civil Liability Compliant No. R7 2008-0012 on April 3, 2008 and agrees with the terms and conditions set forth within the document. The City is hereby requesting to waive our right to the Regional Water Board hearing and propose the three Supplemental Environmental Projects (SEP). These projects will consist of undergrounding of approximately 1500 linear feet of an open storm water ditch, a public education project regarding water conservation and staff training in environmental issues and water resources.

A check for \$169,875.00 will be submitted for penalties as described in the ACLC after adoption of the order by the Regional Water Board meeting scheduled for May 21, 2008. The total cost for both the SEP and the penalties is \$354,750.00. The City will supplement the remainder cost of the K Street Drainage Improvement Project. The total cost of the penalties, SEP, Public Awareness, and Staff Training will equal an amount of \$537,605.00.

Should you have any concerns or require additional information regarding this letter or the Drainage Improvement Project, please contact the City Manager at (760) 351-3048 or myself at (760) 996-4040. Attached are the descriptions for each project.

Sincerely,


John Benson
City Mayor

Attachments: Council Agenda Report
SEP 1
SEP 2
SEP 3

cc: City Council
Karin Morgan, Interim City Manager
Ruben Mireles, Water and Wastewater Operations
Yazmin Arellano, Public Works Director
Dennis Martin, City Attorney

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MAY 08 2008

COUNCIL AGENDA REPORT
City of Brawley

Meeting Date	05/06/08
Agenda Item No.	
Approved for Agenda	
City Manager	
City Attorney	

FROM:

Prepared by: Yazmin Arellano, Public Works Director.

Presented by: Yazmin Arellano, Public Works Director. *YA*

SUBJECT: Authorize Supplemental Environmental Project.

CITY MANAGER RECOMMENDATION: Authorize Supplemental Environmental Project.

DISCUSSION:

The Regional Water Quality Control Board (Board) allowed the City of Brawley to submit a Supplemental Environmental Project (SEP) to satisfy some of the monetary assessment imposed in the City's Administrative Civil Liability (ACL) Complaint for the City's wastewater treatment plant. SEPs are projects that enhance the beneficial uses of the water of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger. The total amount granted to the City by the Board to be utilized in a SEP is \$184,000.00.

The City of Brawley annexed the County Water District area, now known as La Colonia, in the early 1980's. This area is bounded by Malan Street and River Drive north and south, and by Eastern Avenue and Best Avenue east and west. The City of Brawley Public Works Department has been dealing with a surface runoff problem in the proximity of K Street from S. 18th Street to Best Road. The surface runoff is collected at a storm drain catch basin at the end of K Street east of the S. 18th Street intersection and travels east in a pipeline through a combination of public and private property to an open ditch approximately 400 feet long, then again into a combination of pipeline and open ditch in public right of way, finally connecting to the Shallenberger storm drain on S. Best Avenue.

The City of Brawley Public Works Department would like to apply 85% of the total amount towards the construction of the previous mentioned project, 10% towards public education in water conservation, and the remaining 5% towards staff training in water resources.

The City of Brawley Public Works staff hereby requests authorization from the City Council to submit the K Street Storm Water Pipeline Project as a Supplemental Environmental Project to the Regional Water Quality Control Board.

FISCAL IMPACT: None at this time.

ATTACHMENTS: Pictures and Maps.

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REGION 7

Supplemental Environmental Project #1 For Region 7

Name of Organization	City of Brawley 383 Main Street Brawley, CA 92227
Contact Person	Ruben Mireles Water and Wastewater Plant Operations ruben.mireles@cityofbrawley.com Yazmin Arellano Public Works Director yazmin.arellano@cityofbrawley.com
Name of Project	K Street Drainage Improvement Project
Location of Project	K Street between South 18 th Street and Best Road
Categories of SEP	Pollution Prevention or Reduction
Project Description	Installation of approximate 1,500 linear feet of pipeline to create a storm drainage corridor to enhance the area along K Street from South 18 th Street to Best Road.
Cost of Project	Estimated at \$340,000.00 dollars
Attachments	Technical Memorandum Cost estimates Aerial Photograph of location

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REGION 7

**Supplemental Environmental Project
#2
For Region 7**

Name of Organization	City of Brawley 383 Main Street Brawley, CA 92227
Contact Person	Ruben Mireles Water and Wastewater Plant Operations ruben.mireles@cityofbrawley.com Yazmin Arellano Public Works Director yazmin.arellano@cityofbrawley.com
Name of Project	Water Conservation Public Awareness Project
Location of Project	City of Brawley
Categories of SEP	Public Awareness Project
Project Description	Water conservation and environmental education. Flyers and news letters will be sent to schools, residential and commercial businesses
Cost of Project	Estimated at \$18,487 dollars
Attachments	None at this time

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REGION 7

**Supplemental Environmental Project
3
For Region 7**

Name of Organization	City of Brawley 383 Main Street Brawley, CA 92227
Contact Person	Ruben Mireles Water and Wastewater Plant Operations ruben.mireles@cityofbrawley.com Yazmin Arellano Public Works Director yazmin.arellano@cityofbrawley.com
Name of Project	Environmental Staff Training
Location of Project	City of Brawley
Categories of SEP	Environmental Education Project
Project Description	Training Administrative Staff, Council Members and Operations Staff on environmental issues
Cost of Project	Estimated at \$9,243.00 dollars
Attachments	None at this time

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REGION 7

ATTACHMENT "C"

**STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Phase No.	Description of SEP	Completion Date	Estimated Cost of Project	Portion of ACL that May be Suspended	Due Date
1	Environmental Staff Training	December 31, 2010	\$9,243	\$4,642	Final report due on or before December 31, 2010
2	Water Conservation Public Awareness Project	December 31, 2010	\$18,847	\$9,466	Final report due on or before December 31, 2010
3	K Street Drainage Improvement Project	December 31, 2010	\$340,000	\$170,767	Final report due on or before December 31, 2010
TOTAL			\$368,090	\$184,875	

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

**MONITORING AND REPORTING PROGRAM
FOR
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2008-0043
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
IMPERIAL COUNTY**

Wastewater Treatment Plant / Discharge Location - Section 15, T13S, R14E, SBB&M

MONITORING

The Discharger shall implement the monitoring and reporting program specified in Regional Board Order No. R7-2005-0021. Treated wastewater samples shall be analyzed for constituents necessary to determine or demonstrate the status of the Discharger's return to and maintenance of compliance with its Waste Discharge Requirements related to the violations contained in Attachment "A". Monitoring data collected during the normal course of operation of the Municipal Wastewater Treatment Plant may be used to demonstrate compliance with this Monitoring and Reporting Program.

REPORTING

The Discharger shall prepare and submit the following reports:

PROJECT COMPLETION REPORTS (PCRs)

1. The Discharger shall prepare and submit PCRs no later than 30 calendar days following the completion of the SEP. At a minimum, the PCR shall contain the following information:
 - a. Detailed description of all completed works or tasks.
 - b. Monitoring data necessary to evaluate the Discharger's compliance with the Order and the Enforcement Policy.
 - c. Financial documents sufficient to determine the actual cost of all completed work and tasks.
2. The PCRs shall be certified under penalty of perjury to be true and correct and contain the required information. The PCRs shall contain the following statement:

"I declare under the penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

3. Monitoring data shall include:
 - a. The date, exact place, and time of sampling or measurement(s).
 - b. The individual(s) who performed the sampling or measurement(s).
 - c. The date(s) analyses were performed.
 - d. The individual(s) who performed the analyses.
 - e. The analytical techniques or method used.
 - f. The results of such analyses.

4. A duly authorized representative of the Discharger may sign the documents if:
 - a. The authorization is made by the person described above in writing.
 - b. The authorization specified an individual or person having responsibility for the overall operation of the regulated disposal system.
 - c. The written authorization is submitted to the Regional Board's Executive Officer.

5. The Discharger shall attach a cover letter to the PCRs with information contained therein to clearly identify Owner/Operator, WDID number, and ACL Order Number R7-2008-0043. Information contained in the cover letter shall clearly identify violations of the WDRs that the SEP is designed to correct. The PCRs shall be submitted to:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Ordered by: _____



ROBERT PERDUE
Executive Officer

June 25, 2008

Date

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2008-0064
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
IMPERIAL COUNTY

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The City of Brawley (hereinafter Discharger), 400 Main Street, Brawley, California 92227 owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. According to a Report of Waste Discharge submitted by the Discharger and dated January 14, 2005, the WWTP has a designed capacity of 5.9 million gallons per day (MGD).
2. The WWTP consists of headworks, three primary clarifiers, five lagoons, an ultraviolet (UV) disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since digesters were removed in 2002 due to excessive corrosion of the digester system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons 1 and 2 operate in series with lagoons 3, 4, and 5.
3. The WWTP treats and disposes of an average daily flow of 3.4 MGD of wastewater. The effluent from the lagoons is UV-disinfected and then discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. On June 29, 2005, the Regional Board adopted WDR Order No. R7-2005-0021 (NPDES Permit No. CA0104523) for the Discharger in order to regulate discharges of treated wastewater from the WWTP into the New River. WDR Order No. R7-2005-0021 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
5. CWC Section 13385(a) states, in part, the following:

"Any person who violates any of the following shall be liable civilly in accordance with this section :... (4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5,..."

6. CWC Section 13385(c) states:

"Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.

"(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) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

7. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.

8. CWC Section 13385(h)(2) states, in part, the following:

"For the purpose of this section [13385], a 'serious violation' means any waste discharge that violates the effluent limitations ... 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."

9. CWC Section 13385(i)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the Discharger does any of the following four or more times in a six-month period:

- 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.

10. CWC Section 13385(i)(2) states the following:

"For the purpose of this section [13385], 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."

11. CWC Section 13385(l) states:

"(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that

may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

“(2) For the purposes of this section, a ‘supplemental environmental project’ means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.”

12. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy, which was approved by the Office of Administrative Law and became effective on July 30, 2002, establishes criteria for Supplemental Environmental Projects (SEPs).

13. WDRs Order No. R7-2005-0021 contains the following discharge limitations:

“[1.b. Final Effluent Limitations for Discharge Point 001]

“Either beginning on February 1, 2007 or, if the commencement of discharges from the upgraded WWTP designed for nitrification and denitrification is completed prior to February 1, 2007 and as required by Provision VI.C.2.d the discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point M-001, with compliance measured at monitoring location M-001A as described in the attached Monitoring and Reporting Program (Attachment E).”

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	1.1	12
	lbs/day ¹	54	590

14. Monitoring reports submitted by the Discharger show that the wastewater discharged from the Discharger’s Wastewater Treatment Plant was in violation of its WDRs effluent limitations cited in Finding No. 13 above.

15. A summary of each violation of Board Order No. R7-2005-0021 is contained in Attachment “A,” which is incorporated in and made a part of this ACL Order by reference.

16. The total amount of the MMP for the violations cited in Attachment “A” is \$129,000.

17. On March 19, 2008, the Regional Board adopted Cease and Desist Order No. R7-2008-0008. The Order specified in Paragraph 5:

¹ Based on a flow of 5.9 MGD

"Pursuant to CWC Section 13385(j), the Discharger will be exempt from Mandatory Minimum Penalties (MMP) for violations of the new effluent limitation for Total Ammonia as Nitrogen if the Discharger is in compliance with Cease and Desist Order No. R7-2008-0008."

18. On June 25, 2008, the Regional Board adopted ACL Order No. R7-2008-0043. The ACL Order assessed MMPs of \$291,000 and other penalties of \$63,750 for a total ACL penalty of \$354,750 for violations that occurred prior to November 1, 2007. The ACL Order allowed the Discharger to propose a SEP consistent with the Water Quality Enforcement Policy in lieu of payment of up to \$184,875 of the ACL penalty. The Discharger proposed three SEPs, all of which were approved by the Regional Board. The SEPs, their estimated costs, and the amounts of the MMPs allowed to be suspended for each SEP were as follows:

<u>SEP</u>	<u>Estimated Project Cost</u>	<u>Suspended Amount</u>
(1) Environmental Staff Training	\$9,243	\$4,642
(2) Water Conservation Public Awareness Project	\$18,847	\$9,466
(3) K Street Drainage Improvement Project	\$340,000	\$170,767

19. This Order, No. R7-2008-0064, assesses MMPs for violations that occurred between November 1, 2007 and March 19, 2008, as shown in Attachment "A".
20. As shown in Attachment "A", the Discharger has violated waste discharge requirements. The Regional Board can assess liability pursuant to CWC Section 13385(c) for the violations. It must, however, assess the minimum civil liability prescribed under CWC Sections 13385(h)(1) and (i)(1) for the serious and chronic effluent violations.
21. The minimum civil liability the Regional Board must assess for the serious and chronic effluent violations shown in Attachment A is one hundred twenty-nine thousand dollars (\$129,000). The total maximum civil liability authorized by CWC Section 13385(c) for the violations shown in Attachment "A" is eleven billion, six hundred sixty-seven million, one hundred thousand dollars (\$11,667,100,000).
22. On August 15, 2008, the Regional Board Assistant Executive Officer issued ACLC No. R7-2008-0060, proposing that the Discharger pay three thousand dollars (\$3,000) for each of the serious and chronic violations identified in Attachment A. The total Administrative Civil Liability against the Discharger is one hundred twenty-nine thousand dollars (\$129,000). The Assistant Executive Officer also indicated that he would consider offsetting a portion of this ACL amount by the monetary value of a SEP proposed by the Discharger in an amount not to exceed \$72,000.
23. The Regional Board has notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the Complaint was issued unless the Discharger waives its right to a hearing under CWC Section 13323(b). By letter dated August 15, 2008, the Discharger waived its right to a hearing on this matter (see Attachment "B").

24. On August 29, 2008, the Discharger proposed the implementation of another phase of the existing K Street Drainage Improvement Project (Project) SEP. As explained in Finding No. 18, above, a SEP for this Project was previously approved by the Regional Board pursuant to Board Order No. R7-2008-0043. The currently proposed phase of the SEP is described in Attachment "B", which is made a part of this ACL Order by reference. The Discharger proposed to apply \$72,000 of the \$129,000 ACL penalty to the Project. Thus, the total ACL amount suspended from this Order and ACL Order No. R7-2008-0043 is \$242,767 (\$170,767 + \$72,000). The SEP will be completed by December 31, 2010.
25. The Regional Board heard and considered all comments pertaining to this matter in a public meeting.
26. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations
27. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality. Copies will also be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, the Discharger is assessed \$129,000 in ACL violations. In lieu of paying an ACL in the amount of \$129,000, the Discharger shall pay a reduced penalty amount in accordance with CWC Section 13385(l) and shall implement the proposed phase of the K Street Drainage Improvement Project SEP described in Attachment "B" (the SEP) in accordance with the following:

1. The Discharger shall comply with the Enforcement Policy relating to implementation of SEPs.
2. This phase of the SEP shall be implemented in accordance with the time schedule stipulated in Attachment "C", appended to and made a part of this Order by reference. The Regional Board Executive Officer may modify the stipulated completion date and approve an alternative completion date for this phase of the SEP if he determines that a delay is necessary for a timely return of the Discharger to full and sustained compliance with its WDR, and is beyond the reasonable control of the Discharger. Under no circumstances may the completion date extend beyond five (5) years from the date of this Order.

3. The suspended portion of the proposed ACL penalty of \$129,000 that is hereby directed to be expended on this phase of the SEP may not exceed \$72,000. The Discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$57,000. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed to the address shown in paragraph 7 below.
4. If the Discharger completes this phase of the SEP to the satisfaction of the Executive Officer by the approved date, the corresponding portion of the ACL indicated in Attachment "C" for this phase of the SEP shall be permanently suspended. Similarly, if the Discharger fails to complete this phase of the SEP to the satisfaction of the Executive Officer by the approved date, and the Executive Officer has not approved an extension in the completion date, the corresponding portion of the ACL shall become due and payable by the Discharger within 30 days of being so informed in writing by the Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. Completion of this phase of the SEP shall be certified in writing by the Executive Officer. No portion of the ACL shall be suspended without a written certification issued by the Executive Officer.
7. The Discharger shall submit all unsuspended ACL amounts, made payable to the "State Water Pollution Cleanup and Abatement Account", to the following address:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

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 Region, on September 17, 2008.


ROBERT PERDUE, Executive Officer

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0064

ATTACHMENT "A"
Summary of Violations of Board Order No. R7-2005-0021 Mandatory Minimum Penalties

Assessed Violation No. ¹	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd ²) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$) ³
775131	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.88 mg/L	11/7/2007	1	3,809,000	Y	3,000	38,100,000
775138	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 854 lbs/day	11/7/2007	1	3,809,000	Y	3,000	38,100,000
775139	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 15.12 mg/L	11/14/2007	1	4,309,000	N	3,000	43,100,000
775140	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.72 mg/L	11/19/2007	1	4,079,000	Y	3,000	40,800,000
775141	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 705 lbs/day	11/19/2007	1	4,079,000	N	3,000	40,800,000
775143	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	11/28/2007	1	4,069,000	Y	3,000	40,700,000
775144	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 627 lbs/day	11/28/2007	1	4,069,000	N	3,000	40,700,000
775145	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 20.30 mg/L	11/30/2007	30	4,069,000	Y	3,000	1,221,000,000
775146	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 682 lbs/day	11/30/2007	30	4,069,000	Y	3,000	1,221,000,000
775150	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	12/5/2007	1	4,239,000	Y	3,000	42,400,000

¹ Data Source: California Integrated Water Quality System (CIWQS).

² GDP = Gallon Per Day.

³ Maximum liability available (MLA) to Regional Board = [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)] + \$10,000 x Number of Days in Violation.

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0064

Assessed Violation No. ¹	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd ²) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$) ³
775154	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 693 lbs/day	12/5/2007	1	4,239,000	N	3,000	42,400,000
775155	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.16 mg/L	12/12/2007	1	3,709,000	Y	3,000	37,100,000
775156	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 624 lbs/day	12/12/2007	1	3,709,000	N	3,000	37,100,000
775157	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.88 mg/L	12/19/2007	1	4,249,000	N	3,000	42,500,000
775158	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 26.88 mg/L	12/26/2007	1	3,649,000	Y	3,000	36,500,000
775159	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 18.76 mg/L	12/31/2007	31	4,249,000	Y	3,000	1,317,500,000
775162	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 618 lbs/day	12/31/2007	31	4,249,000	Y	3,000	1,317,500,000
775163	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	1/2/2008	1	3,989,000	Y	3,000	39,900,000
775165	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 652 lbs/day	1/2/2008	1	3,989,000	Y	3,000	39,900,000
775166	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	1/9/2008	1	4,769,000	Y	3,000	47,700,000
775168	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 847 lbs/day	1/9/2008	1	4,769,000	Y	3,000	47,700,000
775169	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	1/16/2008	1	4,129,000	Y	3,000	41,300,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0064

Assessed Violation No. ¹	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd ²) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$) ³
775170	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 752 lbs/day	1/16/2008	1	4,129,000	N	3,000	41,300,000
775171	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	1/23/2008	1	4,039,000	Y	3,000	40,400,000
775172	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 736 lbs/day	1/23/2008	1	4,039,000	N	3,000	40,400,000
775173	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 20.72 mg/L	1/30/2008	1	4,549,000	Y	3,000	45,500,000
775174	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 854 lbs/day	1/30/2008	1	4,549,000	Y	3,000	45,500,000
775175	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 21.06 mg/L	1/31/2008	31	4,269,000	Y	3,000	1,323,700,000
775176	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 755 lbs/day	1/31/2008	31	4,269,000	Y	3,000	1,323,700,000
775178	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.28 mg/L	2/6/2008	1	3,949,000	Y	3,000	39,500,000
775181	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 701 lbs/day	2/6/2008	1	3,949,000	Y	3,000	39,500,000
775182	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60mg/L	2/13/2008	1	4,379,000	Y	3,000	43,800,000
775188	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 716 lb lbs/day	2/13/2008	1	4,379,000	N	3,000	43,800,000
775189	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	2/20/2008	1	4,699,000	Y	3,000	47,000,000

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order No. R7-2008-0064

Assessed Violation No.¹	Description of Violation	Date Occurred	Number of Days in Violation	Amount of Wastewater (gpd²) in excess of 1,000 gpd and not cleaned up	Serious Violation Defined by CWC 13385(h)	Minimum Liability Board Must Assess (\$)	Maximum Liability Available (MLA) to Board (\$)³
775191	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 768 lbs/day	2/20/2008	1	4,699,000	N	3,000	47,000,000
775192	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 19.60 mg/L	2/27/2008	1	3,999,000	Y	3,000	40,000,000
775193	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 654 lbs/day	2/27/2008	1	3,999,000	N	3,000	40,000,000
775194	Exceeded Average Monthly of 1.1 mg/L of Total Ammonia as Nitrogen. Reported value was 20.02 mg/L	2/29/2008	29	4,299,000	Y	3,000	1,247,000,000
775195	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 710 lbs/day	2/29/2008	29	4,299,000	Y	3,000	1,247,000,000
775240	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 18.48 mg/L	3/5/2008	1	3,979,000	Y	3,000	39,800,000
775248	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 613 lbs/day	3/5/2008	1	3,979,000	N	3,000	39,800,000
775249	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 21.84 mg/L	3/12/2008	1	3,929,000	Y	3,000	39,300,000
775250	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 716 lbs/day	3/12/2008	1	3,929,000	N	3,000	39,300,000
						\$129,000	\$11,667,100,000

ATTACHMENT "B"



CITY OF BRAWLEY

PUBLIC WORK / CITY ENGINEER
160 SOUTH WESTERN AVENUE
BRAWLEY, CALIFORNIA
92227
PHONE (760) 344-5000
FAX (760) 344-5612

COPY

August 29, 2008

Jose Angel
Assistant Executive Director
State Water Resources Control Board
Colorado River Basin Region
73-720 Fred Waring Dr. Ste 100
Palm Desert, CA 92260

SENT OUT

DATE 8/29/08

Dear Mr. Angel,

The City of Brawley received the Administrative Civil Liability Complaint (ACLC) No. R7 2008-0060 dated August 15, 2008 and the complaint is proposing an administrative liability of \$129,000 with \$72,000 of that penalty to be utilized as a Supplemental Environmental Project. The City of Brawley waives our right to a Regional Board hearing and hereby proposes to apply the \$72,000.00 to an existing Supplemental Environmental Project (SEP) granted with the previous ACLC No. R7- 2008- 022.

The City submitted and was granted three Supplemental Environmental Projects (SEP) with ACLC No. R7-2008-0022. These projects are listed below. The city hereby requests to apply the \$72,000.00 penalty to the K Street Drainage Improvement Project Listed as SEP #1.

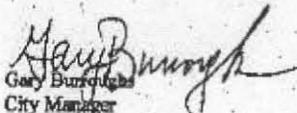
Supplemental Environmental Projects

1. K Street Drainage Improvement Project
2. Water Conservation Awareness Project
3. Environmental Awareness Staff Training

A check for \$57,000.00 will be submitted to your office within 30 days of the adoption date by the Board, scheduled for September 17, 2008.

Should you have any concerns or require additional information regarding this letter or the Wastewater Improvement Project, please contact Ruben Mirales at (760) 344-5800.

Sincerely,


Gary Burroughs
City Manager

cc: City Council
Yazmin Arcillano, Public Works Director
Ruben Mirales, Water and Wastewater Operations
Dennis Morita, City Attorney

ATTACHMENT "C"

**STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Phase No.	Description of SEP	Completion Date	Estimated Cost of Project	Portion of ACL that May be Suspended	Due Date
1	K Street Drainage Improvement Project	December 31, 2010	\$340,000	\$72,000	Final report due on or before December 31, 2010

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

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0017
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
Brawley — Imperial County**

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Board Order No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The City of Brawley (Discharger), 400 Main Street, Brawley, California 92227, owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. According to a Report of Waste Discharge submitted by the Discharger and dated January 14, 2005, the WWTP has a design capacity of 5.9 million gallons per day (MGD).
2. The WWTP consists of headworks, three primary clarifiers, five lagoons, an ultraviolet (UV) disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since digesters were removed in 2002 due to excessive corrosion of the digester system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons 1 and 2 operate in series with lagoons 3, 4, and 5.
3. The WWTP treats and disposes of an average daily flow of 3.4 MGD of wastewater. The effluent from the lagoons is UV-disinfected and discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. The Regional Board may establish monitoring and reporting requirements, known as the Monitoring and Reporting Program (MRP), as authorized by CWC Sections 13376 and 13383.
5. CWC Section 13385(a) states, in part, the following:

“Any person who violates any of the following shall be liable civilly in accordance with this section ... (1) Section 13375 or 13376; (3) Any requirements established pursuant to Section 13383.”
6. CWC Section 13385(c) states:

“Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.

“(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) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

7. On June 29, 2005, the Regional Board adopted WDRs Order No. R7-2005-0021 for the Discharger to regulate discharges of treated wastewater to the New River.
8. On June 25, 2008, the Regional Board adopted Special WDRs Board Order No. R7-2008-0027, which amended WDRs Board Order No. R7-2005-0021 to designate the Discharger's discharge location at the New River as a freshwater environment and establish interim and final effluent limits based on the California Toxics Rule (CTR) and State Implementation Policy freshwater criteria for the discharge.
9. In relevant part, WDRs Order No. R7-2008-0027 (Page 7, Section 4, Final Effluent Limitations for Discharge Point 001) contains the following amended final effluent limitations:
 - “e. **Bacteria:** The bacterial density in the wastewater effluent discharged to the New River shall not exceed the following values, as measured by the following bacterial indicators:
 - i. ***E. coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 MPN per 100 millimeters, nor shall any sample exceed the maximum allowable bacterial density of 400 MPN per 100 millimeters.
 - ii. **Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 33 MPN per 100 millimeters, nor shall any sample exceed the maximum allowable bacterial density of 100 MPN per 100 millimeters.
 - iii. **Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 200 MPN per 100 millimeters, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters.”
10. Further, Special WDRs Board Order No. R7-2008-0027 states that the Discharger shall comply with those portions of WDRs Board Order No. R7-2005-0021 that were not specifically amended by the Special WDRs Board Order. Provision VI.B of WDRs Board Order No. R7-2005-0021 states:

“The discharger shall comply with the [sic] Monitoring and Reporting Program and future revisions thereto as specified by the Regional Water Board's Executive Officer, found in Attachment E of this Order.”

11. Attachment E, General Monitoring Provisions I.C states:

“Unless otherwise approved by the Regional Water Board's Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services [now known as the California Department of Public Health, Environmental Laboratory Accreditation Program]. All analyses shall be

- conducted in accordance with the latest edition of 'Guidelines Establishing Test Procedures for Analysis of Pollutants', promulgated by the United States Environmental Protection Agency (USEPA)."
12. Since at least August 2008, the Discharger has used an uncertified laboratory to perform E. coli analyses. Since at least November 2008, the Discharger has used an uncertified laboratory to perform Enterococci analyses. Attachment "A", made a part of this ACL Order by reference shows the monitoring data in question.
 13. Because the Discharger submitted effluent self-monitoring data for E. coli and Enterococci from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations of Special WDRs Board Order No. R7-2008-0027 for E. coli and Enterococci, cited above in Finding No. 9.
 14. On February 23, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0035 pursuant to CWC Section 13308, requiring the Discharger to correct the monitoring violations of Board Order No. R7-2005-0021 in accordance with a series of tasks stated in the time schedule. The TSO was issued following the discovery in Findings Nos. 12 and 13, above.
 15. More specifically, TSO No. R7-2009-0035 provides in substantive relevant part for the Discharger to comply with the following:
 - a. The Discharger must be in full compliance with WDRs Board Order No. R7-2005-0021 and Special WDRs Board Order No. R7-2008-0027, Monitoring and Reporting Programs by July 1, 2009.
 - b. By March 14, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Special WDRs Board Order No. R7-2008-0027.
 16. As stated above, the data indicating potential effluent limitation violations for bacterial parameters cannot be used to assess compliance with the Effluent Limitations of Special WDRs Board Order No. R7-2008-0027 and similarly cannot be used to impose mandatory penalties for potential effluent violations for E. coli and Enterococci. While the Discharger may not be subject to mandatory minimum penalties for these potential E. coli and Enterococci effluent limit violations, the Discharger is still liable for violating the MRP for WDRs Board Order No. R7-2005-0021 pursuant to CWC Section 13385(a). The maximum statutory liability for the MRP violations under CWC Section 13385(c) is \$360,000 [\$10,000 per day for 36 violations from August 4, 2008 through December 29, 2008].
 17. The Regional Board may assess liability pursuant to CWC Section 13385(c). CWC Section 13385(e) requires the Regional Board, in determining the amount of liability, to consider the nature, circumstances, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts taken, 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

18. The factors in Finding No. 17, above, are evaluated for the violations as follows:

a. Nature, circumstance, extent, and gravity of the violations:

Using an uncertified laboratory for compliance monitoring for specified constituents is a violation of the Discharger's Monitoring and Reporting Program for its NPDES Permit. The nature of the NPDES program relies on the Discharger self-monitoring and self-reporting violations. In order to determine whether the Discharger is in compliance with its effluent limitations as set forth in its NPDES Permit, the Regional Board needs to have confidence that the data self-reported by the Discharger is accurate and reliable. Because the analysis of the bacteria constituents was conducted by an uncertified laboratory, the results from the bacteria analyses cannot be seen as reliable to determine compliance with effluent limitations. See Attachment "A" for a summary of the days of violation.

b. Susceptibility of discharge to cleanup and abatement, and degree of toxicity discharge:

The discharge is not susceptible to cleanup and/or abatement because it is a non-discharge violation.

c. Discharger's ability to pay:

The Discharger had the opportunity to provide financial data to the Regional Board regarding its ability to pay the proposed liability. There was no evidence presented that would indicate that the Discharger would be financially incapable of paying the assessed liability.

d. Effect on Discharger's ability to continue in business:

The proposed fine should not affect the Discharger's ability to continue operating as a public agency since the penalty largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed.

e. Voluntary cleanup efforts undertaken:

There was no cleanup and abatement necessary as these violations were non-discharge violations.

f. Prior history of violations:

On June 25, 2008, the Regional Water Board adopted ACL Order No. R7-2008-0043 imposing administrative civil liability in the amount of \$354,750 for violations of Cleanup and Abatement Order No. R7-2004-0079 and mandatory minimum penalties. On September 19, 2008, the Regional Water Board adopted ACL Order No. R7-2008-0064 in the amount of \$129,000 for mandatory minimum penalties.

g. Degree of culpability:

As the permittee, the Discharger is responsible for complying with all aspects of WDRs Board Order No. R7-2005-0021 and Special WDRs Board Order No. R7-2008-0027. The provisions of WDRs Board Order No. R7-2005-0021 and its corresponding Monitoring and Reporting Program (MRP) are clear and unambiguous regarding the requirement that all analyses be conducted at a laboratory certified for such analyses by the California Department of Public Health. It is the Discharger's responsibility to utilize certified laboratory contracts that can provide reliable results that are representative of the discharge. The Discharger failed to do so for the period from August 4, 2008 to December 29, 2008, as evidenced by the monitoring results it submitted.

h. Economic Benefit and Savings resulting from the violations:

The Discharger realized an estimated savings of several thousands of dollars by not using a certified lab. The Discharger was in violation of the MRP for WDRs Board Order Nos. R7-2005-0021 from at least August 4, 2008 to December 29, 2008. During this time period, the Discharger conducted sampling on 36 occasions on 28 different days. The Discharger should have transported its samples to a certified laboratory at least 28 times to comply with the MRP for WDRs Board Order No. R7-2005-0021, thus incurring travel expenses.

In addition to travel expenses, there are also associated staff costs with transporting samples. Because performing analyses on bacteria samples is time sensitive, it is likely that staff would transport samples to a certified laboratory rather than sending them through a courier service.

i. Other matters that justice may require:

Staff time to investigate this matter and prepare Administrative Civil Liability Complaint (ACLC) No. R7-2009-0078 and supporting information is estimated to be 40 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$6,000.

19. On December 22, 2009, the Assistant Executive Officer issued ACLC No. R7-2009-0078, which proposed that the Discharger be assessed administrative civil liability pursuant to CWC Section 13385(c) in the amount of sixteen thousand dollars (\$16,000) for the violations described above. The proposed administrative civil liability is based upon the consideration of the factors cited in CWC Section 13385(e), set forth in Finding 18 above, and the State Water Resources Control Board's Water Quality Enforcement Policy.
20. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy, which was approved by the Office of Administrative Law and became effective on July 30, 2002, establishes criteria for Supplemental Environmental Projects (SEPs).
21. On February 3, 2009, the State Water Board Policy on Supplemental Environmental Projects (SEPs) became effective. Pursuant to that policy, SEPs "enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger."
22. Regional Board staff notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the Complaint was issued unless the Discharger waives its right to a hearing under CWC Section 13323(b). By signing the Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint on January 15, 2010, the Discharger waived its right to a hearing on this matter. (See Attachment "B").

23. In a letter to Regional Board staff dated February 26, 2010, the Discharger proposed to apply \$8,000 of the \$16,000 ACLC penalty to an existing SEP (K Street Drainage Improvement Project) and to remit the balance of \$8,000 to the State Water Board Cleanup and Abatement Count. Said letter is attached hereto as "Attachment C" and made a part of this Order by reference.
24. The Regional Board heard and considered all comments pertaining to this matter in a public meeting held on March 18, 2010 in La Quinta, California.
25. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.
26. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality. Copies will also be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, that the Discharger is assessed \$16,000 in ACL penalties for the violations described in ACL Complaint No. R7-2009-0078 and the Complaint's corresponding Attachment A. In lieu of paying the full amount of \$16,000, the Discharger shall implement the proposed SEP described in Attachment "C" in accordance with the following:

1. The Discharger shall comply with the State Water Board Water Quality Enforcement Policy relating to implementation of a SEP.
2. The Discharger shall implement the SEP in accordance with the time schedule stipulated in Attachment "D", attached hereto and made a part of this Order by reference. The Regional Board's Executive Officer may modify the stipulated completion date and approve an alternative completion date for the SEP if he determines that a delay is necessary for a timely return of the Discharger to full and sustained compliance with its WDRs, and is beyond the reasonable control of the Discharger. Under no circumstances may the completion date extend beyond five (5) years from the date of this Order.
3. The portion of the proposed ACL penalty of \$16,000 that is hereby directed to be expended on the SEP (a total of \$8,000), as set forth in Attachment C, shall be deemed suspended based on the conditions set forth in Paragraph 4 below. The Discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$8,000. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed to the address shown in Paragraph 7 below. Failure to pay the remaining unsuspended portion of \$8,000 on a timely basis will cancel the provisions for suspended penalties to be expended on the SEP and that

suspended amount will become payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.

4. If the Discharger completes the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, the \$8,000 portion directed to be expended on the SEP shall be permanently suspended. Similarly, if the Discharger fails to complete the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, and the Regional Board's Executive Officer has not approved an extension of the completion date, the \$8,000 portion directed to be expended on the SEP shall become due and payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. The Regional Board's Executive Officer shall verify the completion of the SEP in writing. No portion of the ACL penalty shall be suspended without a written certification issued by the Executive Officer.
7. The Discharger shall submit all unsuspended ACL penalty amounts, made payable to the "State Water Pollution Cleanup and Abatement Account", to the following address:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

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 Region, on March 18, 2010.



ROBERT PERDUE, Executive Officer

ATTACHMENT "A"
Summary of Violations of Board Order No. R7-2008-0027 for City of Brawley

	Violation Type	Violation Date	Violation Description
1	<i>E. Coli</i>	08/04/2008	Used uncertified laboratory
2	<i>E. Coli</i>	08/11/2008	Used uncertified laboratory
3	<i>E. Coli</i>	08/13/2008	Used uncertified laboratory
4	<i>E. Coli</i>	08/25/2008	Used uncertified laboratory
5	<i>E. Coli</i>	08/26/2008	Used uncertified laboratory
6	<i>E. Coli</i>	09/08/2008	Used uncertified laboratory
7	<i>E. Coli</i>	09/15/2008	Used uncertified laboratory
8	<i>E. Coli</i>	09/22/2008	Used uncertified laboratory
9	<i>E. Coli</i>	09/24/2008	Used uncertified laboratory
10	<i>E. Coli</i>	09/29/2008	Used uncertified laboratory
11	<i>E. Coli</i>	10/08/2008	Used uncertified laboratory
12	<i>E. Coli</i>	10/13/2008	Used uncertified laboratory
13	<i>E. Coli</i>	10/15/2008	Used uncertified laboratory
14	<i>E. Coli</i>	10/21/2008	Used uncertified laboratory
15	<i>E. Coli</i>	10/22/2008	Used uncertified laboratory
16	<i>E. Coli</i>	11/06/2008	Used uncertified laboratory
17	<i>Enterococci</i>	11/06/2008	Used uncertified laboratory
18	<i>E. Coli</i>	11/10/2008	Used uncertified laboratory
19	<i>Enterococci</i>	11/10/2008	Used uncertified laboratory
20	<i>E. Coli</i>	11/12/2008	Used uncertified laboratory
21	<i>E. Coli</i>	11/17/2008	Used uncertified laboratory
22	<i>Enterococci</i>	11/17/2008	Used uncertified laboratory
23	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
24	<i>Enterococci</i>	11/24/2008	Used uncertified laboratory
25	<i>Enterococci</i>	11/26/2008	Used uncertified laboratory
26	<i>E. Coli</i>	12/03/2008	Used uncertified laboratory
27	<i>Enterococci</i>	12/03/2008	Used uncertified laboratory
28	<i>E. Coli</i>	12/08/2008	Used uncertified laboratory
29	<i>Enterococci</i>	12/10/2008	Used uncertified laboratory
30	<i>E. Coli</i>	12/15/2008	Used uncertified laboratory
31	<i>E. Coli</i>	12/17/2008	Used uncertified laboratory
32	<i>Enterococci</i>	12/17/2008	Used uncertified laboratory
33	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory
34	<i>Enterococci</i>	12/22/2008	Used uncertified laboratory
35	<i>E. Coli</i>	12/29/2008	Used uncertified laboratory
36	<i>Enterococci</i>	12/29/2008	Used uncertified laboratory

Attachment "B"

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this Waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of Brawley, owner/operator of the City's Municipal Wastewater Treatment Plant (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R7-2009-0078 (hereinafter the "Complaint");
2. I am informed that California Water Code Section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full)
 - a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
 - b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of sixteen thousand dollars (\$16,000) by check, which contains a reference to "ACLC No. R7-2009-0078" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by January 18, 2010 or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
 - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to the approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
 - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. (OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

RECEIVED

JAN 20 2010

REGION 7

RUBEN MIRELES

(Print Name and Title)



(Signature)

1/15/10

(Date)

ATTACHMENT "C"



CITY OF BRAWLEY

PUBLIC WORKS CITY ENGINEER
180 S. WESTERN AVENUE
BRAWLEY CALIFORNIA
92227
PHONE (760) 344-5800
FAX (760) 344-5612

February 26, 2010

Doug Wylie
Sr. Water Resources Control Engineer
State Water Resources Control Board
Colorado River Basin Region
73-720 Fred Waring Dr. Ste 100
Palm Desert, CA 92260

Dear Mr. Wylie:

The City of Brawley received Administrative Civil Liability Complaint No. R7- 2009-0078 dated December 22, 2009.

On February 11, 2010 the Public Works Department met with you and Mr. Angel to further discuss the above mentioned ACI. Compliant letter. During the discussion it was recommended by you that the City could add the cost of this enforcement action to an existing Supplemental Project or use it for staff training purposes.

The City at this time is requesting that the California Regional Water Quality Control Board, Region 7, allow the City to apply the \$8,000 penalty to the K Street Drainage Improvement Project. This project has been designed and is currently under right of way acquisition and will move forward, once the property is purchased. It is anticipated that the completion of the project will coincide with the completion of the Wastewater Treatment Plant Improvement Project which is scheduled to be completed by December 31, 2011.

The additional \$8,000.00 will be mailed to your office for the Clean Up and Abatement Account.

Should you require any additional information or clarification please contact me.

Sincerely,

Ruben Mireles
Operations Division Manager

cc: Jose Angel, Assistant Executive Director
Yazmin Arellano, Public Works Director
Gary Burroughs, City Manager
Dennis Morita, City Attorney

RECEIVED

MAR 01 2010

REGION 7

ATTACHMENT "D"

**STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Phase No.	<u>Description of SEP</u>	Completion Date	Estimated Cost of Project	Portion of ACL that May be Suspended	Due Date
1	K Street Drainage Improvement Project	December 31, 2011	\$340,000	\$8,000	Final report due on or before December 31, 2011

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

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0042
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
City of Brawley — Imperial County**

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Board Order No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The City of Brawley (Discharger), 400 Main Street, Brawley, California 92227, owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. According to a Report of Waste Discharge submitted by the Discharger and dated January 14, 2005, the WWTP has a design capacity of 5.9 million gallons per day (MGD).
2. The WWTP consists of headworks, three primary clarifiers, five lagoons, an ultraviolet (UV) disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since digesters were removed in 2002 due to excessive corrosion of the digester system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons 1 and 2 operate in series with lagoons 3, 4, and 5.
3. The WWTP treats and disposes of an average daily flow of 3.4 MGD of wastewater. The effluent from the lagoons is UV-disinfected and discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. On June 29, 2005, the Regional Board adopted WDRs Order No. R7-2005-0021 (NPDES Permit No. CA0104523) for the Discharger in order to regulate discharges of treated wastewater from the WWTP into the New River. WDRs Order No. R7-2005-0021 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
5. CWC Section 13385(a) states, in part, the following:

"Any person who violates any of the following shall be liable civilly in accordance with this section ... (1) Section 13375 or 13376; (3) Any requirements established pursuant to Section 13383."
6. CWC Section 13385(c) states:

"Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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.
- (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) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

7. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.

8. CWC Section 13385(h)(2) states, in part, the following:

"For the purpose of this section [13385], a 'serious violation' means any waste discharge that violates the effluent limitations ... 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."

9. WDRs Order No. R7-2005-0021 contains the following discharge limitations:

"[1.b. Final Effluent Limitations for Discharge Point 001]

"Either beginning on February 1, 2007 or, if the commencement of discharges from the upgraded WWTP designed for nitrification and denitrification is completed prior to February 1, 2007 and as required by Provision VI.C.2.d the discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point M-001, with compliance measured at monitoring location M-001A as described in the attached Monitoring and Reporting Program (Attachment E)."

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	1.1	12
	lbs/day ¹	54	590

- 10. Monitoring reports submitted by the Discharger show that the wastewater discharged from the Discharger's Wastewater Treatment Plant was in violation of its WDRs effluent limitations cited in Finding No. 9 above.
- 11. A summary of each violation of Board Order No. R7-2005-0021 is contained in Attachment "A," which is incorporated in and made a part of this ACL Order by reference.
- 12. On July 7, 2010, the Assistant Executive Officer issued ACL Complaint No. R7-2010-0030, which proposed that the Discharger be assessed administrative civil liability pursuant to CWC Section 13385(c) in the amount of twenty-four thousand dollars (\$24,000) for the violations described above. The proposed administrative civil liability is based on violation of the WDRs effluent limitations cited in Finding No. 9 above and the State Water Resources Control Board's Water Quality Enforcement Policy.

¹ Based on a flow of 5.9 MGD

13. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (2002 Enforcement Policy). The 2002 Enforcement Policy, which was approved by the Office of Administrative Law and became effective on July 30, 2002, establishes criteria for Supplemental Environmental Projects (SEPs) in Section IX of the Policy.
14. On February 3, 2009, the State Water Board adopted Resolution No. 2009-0013, which rescinded Section IX of the 2002 Enforcement Policy pertaining to SEPs and adopted a new, separate policy on SEPs (SEP Policy). The SEP Policy was approved by the Office of Administrative Law and became effective on September 15, 2009. Pursuant to the SEP Policy, SEPs "enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger."
15. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083, which rescinded Resolution No. 2002-0040 that adopted the 2002 Enforcement Policy, and adopted the current Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010.
16. Regional Board staff notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the ACL Complaint (ACLC) was issued, unless the Discharger waived its right to a hearing under CWC Section 13323(b). On August 2, 2010, the Discharger signed the Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint, thereby agreeing to waive its right to a hearing on this matter.
17. In a letter to Regional Board staff dated August 2, 2010, the Discharger proposed to apply \$19,500 of the \$24,000 ACLC penalty to an existing SEP (K Street Drainage Improvement Project) and to remit the balance of \$4,500 to the State Water Board Cleanup and Abatement Account. The Discharger's letter is attached hereto as "Attachment "B" and made a part of this Order by reference.
18. The Regional Board heard and considered all comments pertaining to this matter in a public meeting held on September 16, 2010, in La Quinta, California.
19. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.
20. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality. Copies will also be provided upon request.

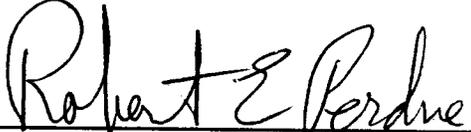
IT IS HEREBY ORDERED, pursuant to CWC Section 13385, that the Discharger is assessed twenty-four thousand dollars (\$24,000) in ACL for the violations set forth in Attachment "A". In lieu of paying the full amount of \$24,000, the Discharger shall implement the proposed SEP described in Attachment "B" in accordance with the following requirements:

1. The Discharger shall comply with the State Water Board SEP Policy. The Discharger shall comply with Monitoring and Reporting Program for Administrative Civil Liability Order R7-2010-0042, which the Executive Officer may amend. The Discharger shall also submit quarterly reports to the State Water Board's Division of Financial Assistance and to the Regional Water Board, on or before March 31, June 30, September 30 and December 31 of each year until completion of the SEP. Each report shall describe the actions the Discharger has taken toward timely and successful completion of the SEP.
2. The Discharger shall implement the SEP in accordance with the time schedule stipulated in Attachment "C", attached hereto and made a part of this Order by reference. The Regional Board's Executive Officer may modify the stipulated completion date and approve an alternative completion date for the SEP if he determines that the delay is beyond the reasonable control of the Discharger.
3. The \$19,500 portion of the proposed ACL penalty of \$24,000 that is hereby directed to be expended on the SEP, as set forth in Attachment "C", shall be deemed suspended based on the conditions set forth in Paragraph 4 below. The Discharger shall pay within thirty (30) days of the date of this Order the remaining unsuspended portion of \$4,500. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed to the address shown in Paragraph 7 below. Failure to pay the remaining unsuspended portion of \$4,500 on a timely basis will cancel the provisions for suspended penalties to be expended on the SEP and that suspended amount will become payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.
4. If the Discharger completes the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, the \$19,500 portion directed to be expended on the SEP shall be permanently suspended. Similarly, if the Discharger fails to complete the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, and the Regional Board's Executive Officer has not approved an extension of the completion date, the \$19,500 portion directed to be expended on the SEP shall become due and payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. The Regional Board's Executive Officer shall verify the completion of the SEP in writing. No portion of the ACL penalty shall be suspended without a written certification issued by the Executive Officer.

7. The Discharger shall submit all unsuspended ACL penalty amounts, made payable to the "State Water Pollution Cleanup and Abatement Account", to the following address:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

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 Region, on September 16, 2010.



ROBERT PERDUE
Executive Officer

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

City of Brawley
Brawley Wastewater Treatment Facility
ACL Order R7-2010-0042

ATTACHMENT "A"
Summary of Violations of Board Order No. R7-2005-0021 Mandatory Minimum Penalties

Assessed Violation ¹ No.	Description of Violation	Date Occurred	No. of days to be used for assessing max. liability	Amount of wastewater discharged (MGD) in excess of 1000 gal. and not cleaned up	Serious Violation ²	Minimum Liability Assessed (Dollars)	Maximum liability available (MLA) to Regional Board [(Total Flow) - (1,000 Gallons)] x (\$10.00 per Gallon)	MLA per Section 13385(c)(1) \$10,000/day
586123	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,775 lbs/day	2/14/2007	1	3,839	Yes	3,000	\$38,380,000	\$10,000
586109	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 22 mg/L	3/14/2007	1	4,029	Yes	3,000	\$40,280,000	\$10,000
586133	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 988 lbs/day	4/11/2007	1	3,989	Yes	3,000	\$39,880,000	\$10,000
580042	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 966 lbs/day	5/09/2007	1	3,759	Yes	3,000	\$37,580,000	\$10,000
580050	Exceeded Average Monthly of 54 lbs/day of Total Ammonia as Nitrogen. Reported value was 960 lbs/day	5/31/2007	31	3,689	Yes	3,000	\$36,880,000	\$310,000
632748	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 1,775 lbs/day	6/13/2007	1	3,799	Yes	3,000	\$37,980,000	\$10,000
721111	Exceeded Maximum Daily of 12 mg/L of Total Ammonia as Nitrogen. Reported value was 27.44 mg/L	9/26/2007	1	3,759	Yes	3,000	\$37,580,000	\$10,000
721112	Exceeded Maximum Daily of 590 lbs/day of Total Ammonia as Nitrogen. Reported value was 860 lbs/day	9/26/2007	1	3,759	Yes	3,000	\$37,580,000	\$10,000
						\$24,000	\$306,140,000	\$380,000

NBC_ACLC_PT-001989

¹ Data Source: California Integrated Water Quality System (CIWQS)
² Defined by CWC 13385(h)

ATTACHMENT "B"



CITY OF BRAWLEY

PUBLIC WORKS / CITY ENGINEER
180 E. WESTERN AVENUE
BRAWLEY, CALIFORNIA 92527
PHONE: (760) 344-6900
FAX: (760) 344-5612

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REGION 7

August 2, 2010

Jose Angel
Assistant Executive Director
State Water Resources Control Board
California River Basin Region
71-728 Fred Waring Dr. Ste 100
Palo Alto, CA 94368

Dear Mr. Angel:

The City of Brawley received the Administrative Civil Liability Complaint No. R7 2010-0030 on July 12, 2010 and agree with the terms and conditions set forth within the document.

The City requested and was granted our right to waive the Regional Water Board hearing and submitted three Supplemental Environmental Projects (SEP) in 2008. These projects were granted by your board and consist of the following:

- The under grounding of approximately 1000 linear feet of an open storm water canal
- A public awareness project regarding water conservation
- Staff training in environmental issues

The total cost for both the SEP and the penalties is \$154,758.00. The City will supplement the remainder cost of the S. Street Drainage Improvement Project. The total cost of the penalties, SEP, Public Awareness, and Staff Training will equal an amount of approximately \$337,685.00.

The City is showing Option 2 of the waiver first from the current issued ACLC No. R7 2010-0030 and is requesting that the amount of five hundred dollars (\$500.00) be applied to the existing Supplemental Environmental Project described above. The City will make payment of five thousand five hundred dollars (\$5,500.00) at the time that the Water Board adopts this order.

Should you have any concerns or require additional information regarding this letter or the Wastewater Improvement Project, I can be reached at (760) 344-5900 Ext. 11.

Sincerely,

Ruben Munoz
Operations Division Manager

City Engineer
Public Works, City Attorney
Water Works, Public Finance Director

ATTACHMENT "C"

**STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Phase No.	Description of SEP	Completion Date	Estimated Cost of Project	Portion of ACL that May be Suspended	Due Date
1	K Street Drainage Improvement Project	December 31, 2011	\$340,000	\$19,500	Final report due on or before December 31, 2011

Note: The estimated cost of the SEP is taken from a letter dated May 7, 2008 from John Benson, Brawley City Mayor, to Regional Board Assistant Executive Officer Jose Angel included in ACL Order No. R7-2008-0043 adopted June 25, 2008.

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

**MONITORING AND REPORTING PROGRAM
FOR
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0042
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
City of Brawley — Imperial County**

Wastewater Treatment Plant / Discharge Location - Section 15, T13S, R14E, SBB&M

MONITORING

The Discharger shall implement the monitoring and reporting program specified in Regional Board Order No. R7-2005-0021. Treated wastewater samples shall be analyzed for constituents necessary to determine or demonstrate the status of the Discharger's return to and maintenance of compliance with its Waste Discharge Requirements related to the violations contained in Attachment "A". Monitoring data collected during the normal course of operation of the Municipal Wastewater Treatment Plant may be used to demonstrate compliance with this Monitoring and Reporting Program.

REPORTING

The Discharger shall prepare and submit the following reports:

PROJECT COMPLETION REPORTS (PCRs)

1. The Discharger shall prepare and submit PCRs to the State Water Board's Division of Financial Assistance and to the Regional Water Board, no later than 30 calendar days following the completion of the SEP. At a minimum, the PCR shall contain the following information:
 - a. Detailed description of all completed works or tasks.
 - b. Monitoring data necessary to evaluate the Discharger's compliance with the Order and the Enforcement Policy.
 - c. Financial documents sufficient to determine the actual cost of all completed work and tasks.
2. The PCRs shall be certified under penalty of perjury to be true and correct and contain the required information. The PCRs shall contain the following statement:

"I declare under the penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

3. Monitoring data shall include:

- a. The date, exact place, and time of sampling or measurement(s).
- b. The individual(s) who performed the sampling or measurement(s).
- c. The date(s) analyses were performed.
- d. The individual(s) who performed the analyses.
- e. The analytical techniques or method used.
- f. The results of such analyses.

4. A duly authorized representative of the Discharger may sign the documents if:

- a. The authorization is made by the person described above in writing.
- b. The authorization specified an individual or person having responsibility for the overall operation of the regulated disposal system.
- c. The written authorization is submitted to the Regional Board's Executive Officer.

5. The Discharger shall attach a cover letter to the PCRs with information contained therein to clearly identify Owner/Operator, WDID number, and ACL Order Number R7-2010-0042. The PCRs shall be submitted to:

California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Ordered by: 
ROBERT PERDUE
Executive Officer

September 16, 2010
Date

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

In the matter of:)	
)	Order R7-2013-0068
City of Brawley)	
Municipal Wastewater Treatment Plant)	SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER; ORDER
Complaint R7-2013-0028 for Administrative Civil Liability)	
)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin Region (“Regional Water Board”), on behalf of the Regional Water Board Prosecution Staff (“Prosecution Staff”) and the City of Brawley (the “Discharger”) (collectively “Parties”) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint R7-2013-0028, dated February 28, 2013 (the “Complaint”).

Section II: Recitals

1. The Discharger owns and operates a Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. The WWTP services the City of Brawley. According to a Report of Waste Discharge submitted by the Discharger, dated December 28, 2009, the WWTP has a design capacity of 5.9 million gallons per day (mgd). The Discharger’s WWTP is a publicly owned treatment works (POTW), as defined in Title 40 of the Code of Federal Regulations (40 CFR) section 403.3, and discharges its effluent into the New River via Discharge Point 001, which is tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States. The Discharger is currently subject to the requirements set forth in Waste Discharge Requirements (WDRs) Board Order R7-2010-0022, National Pollutant Discharge Elimination System Permit (NPDES) No. CA0104523. Previous WDRs, listed in Table No. 1 below, were rescinded except for enforcement purposes.
2. From 1999 to approximately February 2012, the Discharger owned and operated various configurations of a WWTP whose main treatment system has been wastewater treatment ponds. During this time period, the Regional Water Board adopted four different waste discharge requirements (WDRs) for the WWTP. Table No. 1, below, identifies the Regional Water Board WDRs and describes the WWTP processes governed by the WDRs during this period:

WDRs Order No. (NPDES Permit No. CA0104523)	Effective Date	Description of WWTP	WWTP Design Capacity (mgd)
95-014	3/29/1995 to 6/27/2000	Two bar screens, an aerated grit chamber, two primary clarifiers, two aeration ponds with floating aerators, three stabilization ponds, two anaerobic digesters, and sludge drying beds	3.9
00-087	6/28/2000 to 6/28/2005	Two bar screens, an aerated grit chamber, two primary clarifiers ¹ , two aeration ponds with floating aerators, three stabilization ponds, two anaerobic digesters, and sludge drying bed.	3.9 (until expansion completed) 5.9 (after expansion completed)
R7-2005-0021	6/29/2005 to 5/19/2010	Two bar screens, an aerated grit chamber, five treatment lagoons, and Ultraviolet light disinfection system, sludge drying beds.	5.9
R7-2010-0022	5/20/2010 to present	Headworks, five treatment lagoons, and Ultraviolet light disinfection system, sludge drying beds (5/20/2010 to 2/2012).	5.9

1. According to Regional Water Board records, the Discharger stopped using the clarifiers in 2002.

3. Table No. 2, below, summarizes the Regional Water Board enforcement orders issued against the Discharger from 1999 to 2010. Attachment "A," hereto made a part of this Stipulation by reference, summarizes the Discharger noncompliance record with Regional Water Board WDRs and enforcement orders. As shown in Table No. 2 and Attachment "A," the Discharger has had chronic noncompliance problems with every set of WDRs the Regional Water Board has adopted since 1999 and has also violated Regional Water Board enforcement orders. The specific violations and other relevant factors leading to the enforcement orders are described below.

Year	Enforcement Order Number
1999	Time Schedule Order No. 99-054
2004	Cleanup and Abatement Order No. R7-2004-0079
2008	Cease and Desist Order No. R7-2008-0008 Special Board Order No. R7-2008-0069 amending CDO
2009	Time Schedule Order No. R7-2009-0035
2010	Special Board Order No. R7-2010-0003 amending CDO

*This Table does not include the eight Regional Water Board Administrative Civil Liability Orders issued in this time period.

Regulatory Requirements to Develop Approved Pretreatment Program

4. Brawley Beef Company, a slaughterhouse that began discharging its wastewater into the Discharger's sewage collection system in 2001 and that was later sold to National Beef Company in 2006, has been the main source of the ammonia and other compliance problems at the WWTP. Regional Water Board records of communications between Regional Water Board staff and the Discharger indicate that the Discharger has also been aware that institutional controls (i.e., a pretreatment program) were required to properly handle the wastes from this industrial discharger since on or about late 2001/early 2002.
5. Under federal regulations, certain Publicly Owned Treatment Works (POTWs) are required to establish formal pretreatment programs approved by the agency overseeing pretreatment implementation, referred to as the "Approval Authority" [40 CFR 403.8]. Any POTW with a total design flow greater than 5 million gallons per day (mgd) receiving pollutants from Industrial Users which Pass Through or Interfere With the operation of the POTW are required to establish a Pretreatment Program [40 CFR 403.8(a).] These programs must be approved by the appropriate Approval Authority [40 CFR 403.11]. Under an NPDES Memorandum of Agreement between the U.S. Environmental Protection Agency (USEPA) and the California State Water Resources Control Board (NPDES MOU), the Regional Water Boards are the Approval Authority for purposes of implementation of a Pretreatment Program. The Pretreatment Program is also needed to protect the integrity of the POTW and safety of POTW personnel and other personnel who work on the sewage collection system [40 CFR 403.5, *Prohibited discharges*, et seq.].
6. Consistent with Regional Water Board WDRs Order No. 00-087, Pretreatment Section F; Provisions No. VI.C.6.b of WDRs Order R7-2005-0021; Section 2233, Title 23, California Code of Regulations; 40 CFR parts 35 and 403 pretreatment requirements; and pretreatment standards under Section 307(b) of the Clean Water Act (33 U.S.C. Section 1317(b)); the Discharger was required to submit a Pretreatment Program for approval. The Pretreatment Program was to address compliance with all prescriptive requirements under 40 CFR.
7. On November 20, 2001, the Discharger adopted Wastewater Pretreatment Ordinance No. 2001-08 to prevent the introduction of pollutants that will either pass through or interfere with the City of Brawley's treatment facilities and to enable the City of Brawley to comply with its NPDES permit, WDRs Order No. 00-087. The pretreatment ordinance contained limitations for concentrations of ammonia in pretreated wastewater. However, this ordinance has never been approved by the Regional Water Board, as required by 40 CFR and the NPDES MOU, and the Ordinance's limits were not based on the local limits required to be established in accordance with federal regulations.
8. In June 2004 the Regional Water Board Executive Officer issued CAO No. R7-2004-0079 in response to the Discharger's continuing violations of its NPDES permit effluent limitations, for which the Discharger was assessed Mandatory Minimum Penalties (MMPs) pursuant to Administrative Civil Liability Orders adopted by the Regional Water Board. The CAO required the Discharger to address the cause of the ammonia toxicity violations and to complete WWTP upgrades by January 31, 2006, to bring the discharge from the WWTP into compliance with its NPDES permit.

9. In response to CAO No. R7-2004-0079, the Discharger hired a consultant to research, design, and construct improvements to the existing WWTP. These improvements included the reconfiguration of the existing treatment facility's flow distribution system and the installation of flow return pumps to optimize nitrification and denitrification of the wastewater flowing through the treatment system.
10. WDRs Order R7-2005-0021, page 10, Effluent Limitations No. IV.A.1.b, contains the following final effluent limitations with which the Discharger was required to maintain compliance:

"Either beginning on February 1, 2007 or, if the commencement of discharges from the upgraded WWTP designed for nitrification and denitrification is completed prior to February 1, 2007 and as required by Provision VI.C.2.d the discharge of treated wastewater shall maintain compliance with the following limitations at Discharge Point M-001 [sic], with compliance measured at monitoring location M-001A as described in the attached Monitoring and Reporting Program (Attachment E)."

Constituents	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	1.1	12
	lbs/day ¹	54	590

11. The Discharger did not complete the WWTP improvements described in Paragraph 9, above, however, until July 7, 2006. Moreover, the improvements failed to achieve their intended objectives. Consequently, because of this failure and the lack of an approved pretreatment program, the Discharger found itself in chronic violation of Effluent Limitations No. IV.A.1.b of WDRs Order No. R7-2005-0021 cited in Paragraph 10, above.
12. On March 19, 2008, and based on the foregoing, the Regional Water Board adopted Cease and Desist Order (CDO) R7-2008-0008 to require the Discharger to cease and desist from discharging wastes in violation of WDRs Order R7-2005-0021 and to implement corrective actions in accordance with specified tasks and time schedules. In pertinent part, these tasks required the Discharger to complete its additional proposed POTW upgrades, to achieve full compliance with WDRs Order R7-2005-0021 by December 31, 2010, to submit required design plans and specifications and a long-term revenue plan for operation and maintenance of proposed upgrades, and to prepare and submit a Pretreatment Program for Regional Water Board approval and implementation in accordance with the following tasks, milestones, and deadlines:

Task	Milestone Description	Milestone Submittal	Completion date
2.A	Develop proposed Pretreatment Program	Submit proposed Pretreatment Program	December 15, 2008
2.B	Complete Long-term revenue plan	Submit copy of revenue plan	December 15, 2008
2.C	Develop and adopt local limits and revised	Submit written certification that it has begun	February 15, 2009

	Pretreatment Ordinance	implementing Pretreatment Program	
2.D	Issue all pending CIU permits	Submit written certification of issuance of CIU permits	May 15, 2009
2.E	Achieve Full Compliance with approved Pretreatment Program	Submit written certification of issuance of CIU permits for full compliance	June 15, 2009

Regulatory Requirements resulting in Mandatory Minimum Penalties

13. On November 19, 2008, the Regional Water Board adopted Special Board Order R7-2008-0069, which amended CDO R7-2008-0008 by establishing interim effluent limits for ammonia in accordance with California Water Code (CWC) section 13385(j)(3)(C). These interim limits for ammonia were established because, among other requirements, CWC section 13385(j)(3)(C) requires for any time schedule that exceeds one year from the effective date of the enforcement order that the time schedule include interim requirements and the dates for their achievement. (CWC section 13385(j)(3)(C)(iii).) In addition, CWC section 13385(j)(3) provides in relevant part that the MMP provisions of CWC section 13385, subdivisions (h) and (i), do not apply to any violation of an effluent limitation where the waste discharge is in compliance with a CDO issued pursuant to CWC section 13301. Thus, exemption from the MMPs is contingent on the Discharger complying with the CDO. Accordingly, the Special Board Order provided an exemption for the Discharger from being assessed additional MMPs for violation of its ammonia NPDES Permit limits while it completed its new WWTP. In addition, the Regional Water Board allowed these higher interim effluent limits with the expectation that compliance with the Pretreatment Program requirements in accordance with the Time Schedule in the CDO would ultimately improve water quality. The interim effluent limits for Total Ammonia as Nitrogen added by Special Board Order R7-2008-0069 are shown below:

Constituents	Units	Interim Effluent Limitations	
		Average Monthly	Maximum Daily
Total Ammonia as Nitrogen	mg/L	120	120
	lbs/day ¹	5,900	5,900

14. On January 21, 2010, and at the request of the Discharger, the Regional Water Board also adopted Special Board Order R7-2010-0003. This Special Board Order further amended CDO R7-2008-0008 by extending the deadline to complete the new WWTP and to bring the discharge into compliance with Regional Water Board requirements from December 31, 2010, to June 30, 2012.

15. On May 20, 2010, the Regional Water Board adopted WDRs Order R7-2010-0022, the current set of WDRs for discharges from the City of Brawley WWTP. WDRs Order R7-2010-0022 rescinded WDRs Order R7-2005-0021 (as amended by Order R7-2008-0027) except for enforcement purposes, for specific effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region. In relevant part, WDRs Order R7-

2010-0022, pages 12-14, Effluent Limitations Nos. IV.A.1.a and A.1.d, contains the following effluent discharge limitations:

“The Discharger shall maintain compliance with the following effluent limitations at Discharge Point 001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E) except as modified by any applicable interim Effluent Limitations specified in Section IV.A.2 and Table 8, below:

Table 6. Summary of Final Effluent Limitations (Existing Facility)

Parameter	Units	Effluent Limitations		
		Average Monthly	Average Weekly	Maximum Daily
Biochemical Oxygen Demand (BOD)	mg/L	45	65	---
	lbs/day ¹	2,214	3,198	---
Cyanide ²	µg/L	3.0	---	9.2
	lbs/day ¹	0.15	---	0.45

¹ The mass-based effluent limitations are based on a design capacity of 5.9 MGD

² Expressed as free cyanide. Non-distillation analysis methods for available cyanide, such as UEPA OIA-1677 or ASTM D6888-04, shall be used to measure compliance with the free cyanide effluent limitation.

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d. Bacteria: The bacterial density in the wastewater effluent discharged to the New River shall not exceed the following values, as measured by the following bacterial indicators:

- i. *E. Coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126 per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 400 per 100 milliliters.
- ii. *Fecal Coliform.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 200 per 100 milliliters, nor shall more than ten percent of the total samples during any 30-day period exceed a MPN of 400 per 100 milliliters.
- iii. *Enterococci.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a MPN of 33 MPN per 100 milliliters, nor shall any sample exceed the maximum allowable bacterial density of a MPN of 100 per 100 milliliters.”

16. Because CDO R7-2008-0008 did not include interim effluent limits for ammonia from the date it was adopted on March 19, 2008, until November 17, 2008, when Special Board Order R7-2008-0069 was adopted to establish interim effluent limits for ammonia, CDO R7-2008-0008 did not satisfy CWC section 13385(j)(3)(C)'s requirement that a time schedule exceeding one year in length include interim requirements. As a result, all of the requirements specified in CWC section 13385(j)(3) to qualify for exemption from MMPs were not satisfied. Therefore, the Discharger was not exempt from MMPs if it

violated the NPDES permit limits for ammonia during this time period (3/19/2008 – 11/17/2008). Self-monitoring reports submitted by the Discharger show that the wastewater discharged from the WWTP exceeded the effluent limitations for ammonia as nitrogen set forth in WDRs Order R7-2005-0021 on sixty-seven (67) occasions during this time period. Attachment “B,” attached hereto and incorporated herein by this reference, identifies the alleged violations. The total amount of the MMPs for the alleged violations cited in Attachment “B” is \$216,000.

17. The self-monitoring reports submitted by the Discharger from May 10, 2010, to July 31, 2011, showed that the Discharger also allegedly violated the effluent limitations for cyanide, BOD, and bacteria referenced in Paragraph 15, above. A summary of each alleged violation of WDRs Order R7-2010-0022 is contained in Attachment “C,” which is attached hereto and incorporated herein by this reference. The total amount of the MMPs for the alleged violations cited in Attachment “C” is \$162,000. Thus, the total MMP alleged violations are \$378,000 (i.e., \$216,000 + \$162,000).
18. The Complaint alleges that the Discharger violated CDO R7-2008-0008, as amended by Special Board Orders R7-2008-0069 and R7-2010-0003, as described below.
19. Consistent with WDRs Order No. 00-087, Pretreatment Section F; Provision No. VI.C.6.b. of WDRs Order R7-2005-0021; Section 2233, Title 23, California Code of Regulations; 40 CFR Parts 35 and 403 pretreatment requirements; and pretreatment standards under Section 307 of the Clean Water Act; the Discharger was required by CDO R7-2008-0008 to prepare, submit for approval, and implement a Regional Water Board approved Pretreatment Program as follows:

Task	Milestone Description	Milestone Submittal	Completion date
2.A	Develop proposed Pretreatment Program	Submit proposed Pretreatment Program	December 15, 2008
2.B	Complete Long-term revenue plan	Submit copy of revenue plan	December 15, 2008
2.C	Develop and adopt local limits and revised Pretreatment Ordinance	Submit written certification that it has begun implementing Pretreatment Program	February 15, 2009
2.D	Issue all pending CIU permits	Submit written certification of issuance of CIU permits	May 15, 2009
2.E	Achieve Full Compliance with approved Pretreatment Program	Submit written certification of issuance of CIU permits for full compliance	June 15, 2009

20. The Discharger has allegedly violated all of the tasks specified above. However, the Discharger did submit a proposed Pretreatment Program to the Regional Water Board staff in January 2013, but it was submitted more than four (4) years after it was due. Further, Regional Water Board staff, with assistance from the U.S. EPA contractor assigned to help review the Pretreatment Program submission, Tetra Tech, Inc., reviewed the submission and found it to be technically deficient, and notified the Discharger accordingly on March 22, 2013, that it must be revised and resubmitted.

21. Specifically, the Discharger allegedly violated Task 2.C of Ordered Paragraph 3 in CDO R7-2008-0008 by failing to develop and adopt local limits by February 15, 2009. At this time, because the other tasks outlined above are related to the completion of Task 2.C, this Stipulation assesses penalties only for the alleged violation of Task 2.C. There are 1474 days of violation that may have allegedly occurred for the period beginning February 15, 2009, and ending the date the Complaint was issued, February 28, 2013. These 1474 days of alleged violation are subject to administrative civil liability pursuant to CWC section 13350, subdivision (a)(1).
22. As stated above, the alleged violation of CDO R7-2008-0008 with respect to implementation of the Pretreatment Program by the Discharger has significant impacts on water quality. The effluent from the WWTP causes toxicity. The Discharger was allowed interim effluent limits based in part on its commitment to comply with the Pretreatment Program requirements as set forth in the CDO. Because the Discharger has not implemented its Pretreatment Program, however, the threat and actual impact to water quality continues.
23. The Discharger denies and disputes all of the allegations in the Complaint and Paragraphs 1 through 22 above, and alleges that it has not violated the federal Clean Water Act, CDO R7-2008-0008, any applicable waste discharge requirement, any provision of its permit, or any federal, state, or local law.
24. 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.
25. To resolve by consent and without further administrative proceedings all of the alleged violations of the CWC set forth in the Complaint and summarized in part in this Stipulation, the Discharger agrees to pay the sum of \$378,000 in settlement of alleged MMPs and \$622,000 in settlement of discretionary penalties for a total cash settlement payment of \$1,000,000. The Prosecution Staff finds that the settlement amount represents an adjustment in the discretionary penalty portion proposed in the Complaint of \$1,356,778, which was comprised of the Discharger's calculated economic benefit derived plus 10% of \$1,293,778 for its alleged noncompliance with certain permit requirements, and staff costs of \$63,000. The adjustment reflects the Prosecution Staff's reconsideration of the economic benefit derived, which is based on new factual information provided by the Discharger subsequent to issuance of the Complaint and its evaluation of the litigation risks.

Section III: Jurisdiction

26. The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over the Parties to this Stipulated Order.

Section IV: Stipulations

27. The Parties incorporate Paragraphs 1 through 26 by this reference, as if set forth fully herein, and stipulate to the following.
28. **Administrative Civil Liability:** The Discharger hereby agrees to pay the sum of ONE MILLION DOLLARS (\$1,000,000) in full and final settlement of the Complaint. Within thirty (30) days of issuance of this Stipulated Order by the Regional Water Board, the Discharger agrees to remit by check ONE MILLION DOLLARS (\$1,000,000) payable to the *SWRCB State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The Discharger shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch, 1001 I Street, 18th Floor, Sacramento, California 95814, and shall send a copy to Anna Kathryn Benedict, Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, California 95814.
29. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and Order and/or compliance with the terms of this Stipulation and 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.
30. **Party Contacts for Communications related to this Stipulation and/or the Order:**

a. For the Regional Water Board:

Jose Angel, Assistant Executive Officer
Colorado River Basin Region, Regional Water Board
73-720 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
Jose.Angel@waterboards.ca.gov
(760) 776-8932

b. For the Discharger:

Daniel V. Hyde
Lewis Brisbois Bisgaard & Smith LLP
221 N. Figueroa Street, Suite 1200
Los Angeles, CA 90012
hyde@lbbslaw.com/
(213) 680-5103

31. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
32. **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 Discharger as of September 19, 2013, based on the specific facts alleged in the Complaint or this Stipulation and Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability set forth in paragraph 28.
33. **No Third Party Beneficiaries:** This Stipulation and Order are not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.
34. **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. On February 28, 2013, the Assistant Executive Officer issued the Complaint and provided notice to the public on that date that the violations alleged in the Complaint could be resolved by settlement, including, but not limited to performance of a Supplemental Environmental Project. During the 30-day period following the public notice, no comments were submitted to the Regional Water Board regarding the Complaint and/or potential settlement of the Complaint. However, due to the need to reschedule the public hearing from May 16, 2013, to September 19, 2013, a Revised Public Notice was issued to indicate the change in hearing date. Hearing procedure deadlines were also revised accordingly, and additional contact information was provided along with other clarifying changes being made. Another 30-day public comment period has also been provided through a second Public Notice to give the public the opportunity to comment on the terms of this Stipulation and Order. Finally, the Regional Water Board will provide notice that it will consider this matter at a public hearing at least 10 days prior to the date of the hearing. Thus, the terms of this Stipulation and Order have been properly noticed.
35. **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.
36. **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 Discharger is represented by counsel in this matter.
37. **Integration:** This Stipulation and Order constitute the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulation and Order, except as may be expressly agreed in writing between the Parties.

38. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.
39. **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.
40. **Effect on Future Enforcement Actions:** In settling this matter, the Discharger recognizes that in the event of any future enforcement actions by the Regional Water Board or the State Water Resources Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with CWC sections 13327 and 13385, subdivision (e), and the State Water Resources Control Board's Water Quality Enforcement Policy. The Discharger reserves the right to take the position in any such actions that, as an order approving a settlement of disputed claims, this Stipulation and Order does not constitute a prior history of violations within the meaning of CWC sections 13327 and 13385, subdivision (e).
41. **Waiver of Hearing:** The Discharger 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.
42. **Waiver of Right to Petition:** 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.
43. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in

carrying out activities pursuant to this Stipulation and Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out any activities pursuant to this Stipulation and Order.

44. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulation and Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding Covered Matters under this Stipulation and Order shall be construed to relieve any Party from any obligations imposed by those Covered Matters.
45. **Covenant Not to Sue:** The Discharger 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.
46. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger 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 Discharger of its obligation to obtain any final written approvals required by this Stipulation and Order.
47. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
48. **Effective Date:** This Stipulation is effective and binding on the Parties upon the adoption of this Order by the Regional Water Board, which expressly incorporates all of the terms of this Stipulation.
49. **Severability:** This Stipulation and Order are severable. Therefore, should any provision be found invalid, the remainder shall remain in full force and effect.
50. **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.

City of Brawley
Brawley Wastewater Treatment Plant
Order R7-2013-0068

IT IS SO STIPULATED.

CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD, COLORADO RIVER BASIN REGION,
PROSECUTION STAFF

Date: 8/06/2013

By: Jose L. Angel, P.E.
Jose L. Angel,
Assistant Executive Officer

CITY OF BRAWLEY

Date: 08/05/2013

By: Rosanna Bayon Moore
Rosanna Bayon Moore
City Manager – City of Brawley

APPROVED AS TO FORM:

Date: 08/05/2013

By: Daniel V. Hyde
Daniel V. Hyde
Attorney - City of Brawley

ORDER OF THE REGIONAL WATER BOARD:

AFTER HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, IT IS HEREBY ORDERED:

1. The Parties believe that settlement of this matter is in the best interest of the People of the State of California. Therefore, to settle the Complaint, the Discharger, City of Brawley, hereby agrees to comply with the terms and conditions of this Order.
2. This Order incorporates the terms of the foregoing Stipulation, set forth in Paragraphs 1 through 50 above by this reference, as if set forth fully herein, except that the payment remittance information in Paragraph 28 is hereby corrected to provide that of the total \$1,000,000 liability amount, \$378,000 shall be paid to the State Water Pollution Cleanup and Abatement Account and \$622,000 shall be paid to the Waste Discharge Permit Fund.
3. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385, subdivision (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.
4. 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 section 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
5. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of the obligations under this Order.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on September 19, 2013.

9/19/13

Date



Robert Perdue
Executive Officer