

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0005
IN THE MATTER OF
MCCABE UNION SCHOOL DISTRICT, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT,
El Centro – Imperial County

This Order to assess Administrative Civil Liability (ACL) pursuant to California Water Code (CWC) Section 13385 is issued to McCabe Union School District (hereinafter Discharger) based on violations of Waste Discharge Requirements (WDRs) Order No. R7-2007-0035, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104281.

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

1. The McCabe Union School District (hereinafter, Discharger), located at 701 West McCabe Road, El Centro, CA 92243 owns a municipal WWTP that provides sewage services to the District and is operated by a contract operator. According to WDRs No. R7-2007-0035, the WWTP has a designed capacity of 0.015 million gallons per day (MGD).
2. The WWTP consists of two package treatment systems that operate in series. The first system includes flow equalization, an aeration tank, and secondary clarification. The second package system was installed during the term of the previous permit and includes dual media filtration and ultraviolet (UV) disinfection. Solids are returned and wasted as required to maintain process operations.
3. The final effluent is discharged into the Wildcat Drain which flows approximately three (3) miles to Rice Drain No. 3 and then seven (7) miles before entering the New River, which is a tributary to the Salton Sea. The Drains, New River, and Salton Sea are waters of the United States.
4. 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. Pursuant to CWC section 13385(h)(2) “a serious violation is defined as a waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and Group II pollutants.”
5. CWC Section 13385(i)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the permittee violates a waste discharge requirement effluent limitation in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations within that time period.

6. CWC Section 13385(i)(2) states 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."
7. CWC Section 13385(k)(1) states, "In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state or the regional board finds all of the following: (A) The compliance project is designed to correct the violations within five years. (B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision of the policy that is inconsistent with this section. (C) The publicly owned treatment works has prepared a financing plan to complete the compliance project. "
8. CWC Section 13385(k)(2), in relevant part, defines a "publicly owned treatment works serving a small community" as serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board."
9. The California Legislature adopted Senate Bill 2165 in 2000 which amended CWC Section 13385 by adding subdivision (k). The purpose of this amendment was to allow flexibility in a reasonable and limited set of circumstances to allow a regional board to elect to require a discharger that qualified as serving a small community with a financial hardship to spend an equivalent amount towards the completion of a compliance project. The purpose of subdivision (k) is to allow dischargers who are determined to serve a small community with a financial hardship the opportunity to redirect money that would otherwise go to the Cleanup and Abatement Account to capital improvements on their facility to assist the discharger with coming into compliance and maintaining future compliance with waste discharge requirements.
10. CWC Section 13385(a) states, in relevant part, that "[a]ny 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."
11. CWC Section 13385(c) states, in relevant part, that "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 of ten thousand dollars (\$10,000) for each day in which the violation occurs.

Effluent Limit Violations of WDRs Board Order No. R7-2007-0035

12. WDRs Board Order No. R7-2007-0035 established interim and final effluent limitations for copper, nickel, pentachlorophenol and zinc. In accordance with Special Provision VI.C.2.a, "The Discharger shall submit to the Regional Water Board a Copper, Nickel, Pentachlorophenol, and Zinc Infeasibility Report within 30 days of the effective date of this Order. If the Regional Water Board has not received the Copper, Nickel, Pentachlorophenol, and Zinc Infeasibility Report by October 19, 2007, the final effluent limitations for copper, nickel, pentachlorophenol, and zinc, specified in Effluent Limitations, IV.A.1.a. of this Order are effective."

13. On January 22, 2008 and July 10, 2008, Regional Board staff requested that the Discharger submit the Infeasibility Report in accordance with the requirements of the WDRs Order. The Discharger was notified of the consequences of failure to submit the report
14. On July 24, 2008, Regional Board staff met with representatives from McCabe Union School District. Regional Board staff determined that McCabe Union School District failed to prepare and submit the Infeasibility Report in accordance with the requirements of the WDRs Order; therefore the final effluent limitations for copper, nickel, pentachlorophenol and zinc became effective on October 19, 2007.
15. WDRs Board Order No. R7-2007-0035 includes the following final effluent limitations necessary for the protection of state waters and states, in relevant part, the following:
- a. Effluent Limitation IV.A.1.a:
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:

Parameter	Units	Final Effluent Limitations	
		Average Monthly	Maximum Daily
Copper, Total Recoverable ²	µg/L	2.9	5.8
	lbs/day ¹	0.00036	0.00073
Nickel, Total Recoverable ²	µg/L	6.8	14
	lbs/day ¹	0.00085	0.0018
Zinc, Total Recoverable ²	µg/L	47	95
	lbs/day ¹	0.0059	0.012

¹ The mass-based effluent limitations are based on a design capacity of 0.015 MGD.

² The effluent limitations for copper, nickel and zinc are applicable on May 18, 2010 provided the Discharger submits an Infeasibility Report for copper, nickel and zinc to the Regional Water Board by October 19, 2007.

16. Monitoring reports submitted by the Discharger show that the effluent discharged from the WWTP has been in serious and chronic violation of its effluent limitations above beginning October 19, 2007.
17. Subsequent to the issuance of ACL Complaint No. R7-2009-0027, it was discovered that three copper violations, violation identification numbers 777078, 777063, and 777040, are not effluent limit violations because there was an error in calculating the average monthly limit for copper mass discharge rate. As a result, a mandatory minimum penalty for these three violation identification numbers should not be assessed. Revised Attachment "B" of this Order, attached hereto and incorporated by reference, summarizes the effluent limit violations of WDRs of Board Order No. R7-2007-0035 for copper, nickel, and zinc.
18. This Order No. R7-2010-0005 assesses mandatory minimum penalties for violations that occurred between October 19, 2007 and November 19, 2008 when Cease and Desist

Order (CDO) No. R7-2008-0067 was adopted by the Regional Board. The CDO exempts the Discharger from MMPs for violations of effluent limitations of copper, nickel, and zinc occurring after November 19, 2008 if the Discharger is in compliance with the CDO.

19. The Regional Board must assess mandatory minimum penalties pursuant to CWC Section 13385(h) and (i) for the copper, nickel, and zinc violations shown in Attachment "B" of this Order. The total mandatory minimum penalty for the copper, nickel, and zinc violations is one hundred forty four thousand dollars (\$144,000).
20. On February 17, 2009, Regional Board received a letter from the Discharger, dated February 11, 2009. In the letter, the Discharger requested the dismissal of all priority pollutant violations for copper, zinc and nickel because the USEPA approved the use of "freshwater life criteria" in lieu of the original "saltwater life criteria" originally imposed in WDRs Board Order No. R7-2007-0035.
21. On March 19, 2009, as a result of the reclassification from saltwater life criteria to freshwater life criteria, the Regional Board adopted Special Board Order No. R7-2009-0011 (new permit) amending the effluent limits in WDRs Board Order No. R7-2007-0035. New modified effluent limits for copper and zinc were established by the new permit based on freshwater life criteria and the previous effluent limit for nickel was deleted from the new permit because of the modification from saltwater to freshwater life criteria. Amending Board Order No. R7-2007-0035 and adopting the new permit Special Board Order No. R7-2009-0011 caused a *de facto* correction of the underlying effluent limit violations.
22. The Discharger is evaluating in a project the feasibility of eliminating its discharge to surface waters, Wildcat Drain, and instead, discharging to land, which may include, but is not limited to, discharging into evaporation and/or percolation ponds (the Project). The Discharger has explained that the Project would eliminate the need to be covered by an NPDES permit and thus, it would no longer be subject to the imposition of mandatory minimum penalties, such as those being assessed in this ACL Order. As such, the Project goes beyond what is required by Water Code section 13385(k) and the State Water Resource Control Board's Water Quality Enforcement Policy as the Project proposes to eliminate potential effluent limit violations within five years rather than merely correcting the violations within five years. The Discharger has estimated the overall cost for the Project is about \$600,000, and has begun the process of applying to the State Allocation Board Office of Public School Construction for the funds to complete the Project. However, due to this high cost and the current state-wide budget problems experienced by many entities throughout the state, including school districts, the District is conducting the Project in several phases to ensure it has the necessary funding to successfully complete each phase. The first two phases are described in the Findings that follow.
23. On July 30, 2009, the Discharger spent fifty-eight thousand four hundred eighty-nine dollars (\$58,489) on the first phase of the Project (Phase 1), which consisted of capital improvements on the Discharger's existing package plant. Phase 1 entailed sandblasting and resurfacing the WWTP to prevent corrosion of the plant in an attempt to control copper, nickel, and zinc in effluent discharged from the plant, which were discharged in violation of the effluent limitations specified in the Discharger's then-applicable NPDES

permit (Board Order No. R7-2007-0035) and which formed the basis of the mandatory minimum penalties assessed in this ACL Order. Although the Discharger's NPDES permit was revised on March 19, 2009, by Special Board Order No. R7-2009-0011 to make less stringent certain metals effluent limitations as a result of the USEPA's approval of the Discharger's request to change the designation of the receiving waters from "salt waters" to "fresh waters," it would have been difficult, if not impossible, to determine whether the Discharger would be in consistent compliance with these newly revised metals effluent limitations. Thus, the Discharger funded Phase 1 of the Project with monies obtained from its "Extreme Hardship Deferred Maintenance" fund from the State of California, which assists with funding for purposes of deferred maintenance of school facilities for those school districts determined to have an extreme hardship within the meaning of the California Education Code.

24. Because the Regional Board amended Board Order No. R7-2007-0035 and adopted the new permit, Special Board Order No. R7-2009-0011, on March 19, 2009, Phase 1 of the Project goes beyond what is required by statute as it enhances compliance and ensures that discharges from the existing package plant remain in compliance with the new permit, Special Board Order No. R7-2009-0011, until the second phase of the Project is completed, which is described below.
25. The Discharger proposes for the second phase of the Project to conduct engineering and soils investigations and to prepare an engineering report describing the findings of those investigations (Phase 2). The Discharger has explained that these investigations are needed to determine the feasibility of discharging to land, which may include discharging to evaporation and/or percolation ponds. The Discharger has estimated the cost of Phase 2 to be at least \$85,511. Again, the Discharger has indicated that funding for Phase 2 of the Project will come from monies obtained from its "Extreme Hardship Deferred Maintenance" fund.
26. On November 2, 2009, the State Water Resources Control Board (State Water Board) determined that the Discharger qualified as a small community with a financial hardship within the meaning of the CWC. Because of this determination, the CWC would allow the Discharger to propose the Project as a compliance project in lieu of paying all or a portion of the mandatory minimum penalties assessed pursuant to CWC Section 13385, subdivisions (h) and (i). Consequently, the Discharger has indicated its intent to conduct the Project as a Compliance Project.

Violations of the Monitoring and Reporting Program for WDRs Board Order No. R7-2007-0035

27. WDRs Board Order No. R7-2007-0035 includes the following effluent limitations necessary for the protection of state waters and states, in relevant part, the following:
 - a. Effluent Limitation IV.A.1.d.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 milliliters, nor shall any sample exceed the maximum allowable bacterial density of 400 MPN per 100 milliliters."
 - b. Effluent Limitation IV.A.1.d.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 milliliters, nor shall any sample exceed the maximum allowable bacterial density of 100 MPN per 100 milliliters.”

c. Effluent Limitation IV.A.1.d.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 milliliters, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters.”

28. Provision B of WDRs Board Order No. R7-2007-0035 states, “[t]he Discharger shall comply with the MRP requirements and future revisions thereto, in Attachment E of this Order.”
29. WDRs Board Order No. R7-2007-0035, Attachment E, Section 1.C, General Monitoring Provision 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’, as promulgated by the United States Environmental Protection Agency.”
30. From at least July 2008 to December 2008, the Discharger used an uncertified laboratory to perform *E. coli* and Enterococci analyses. Attachment “A”, a part of this ACL Complaint by reference, shows the monitoring data in question.
31. The data from Imperial Valley Environmental Laboratory indicated that effluent limit violations for the bacteria constituents occurred, which would make these violations subject to mandatory minimum penalties. However, because the Discharger submitted effluent monitoring data for bacteria from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board was unable to determine whether the Discharger is in compliance with the effluent limitations and discharge specifications of Board Order No. R7-2007-0035 for bacteria constituents.
32. On February 13, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0032, requiring the Discharger to correct the monitoring violations of Board Order No. R7-2007-0035 in accordance with a series of tasks stated in the time schedule. The TSO was issued following the discovery in Findings No. 30 and 31, above.
33. More specifically, TSO No. R7-2009-0032 provides in substantive relevant part for the Discharger to comply with the following:

- a. 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 Board Order No. R7-2007-0035.
 - b. The Discharger must be in full compliance with WDRs Board Order No. R7-2007-0035, Monitoring and Reporting Programs by July 1, 2009.
34. The TSO No. R7-2009-0032 also states on page 4 that:
- “If, in the opinion of the Regional Board’s Executive Officer, the Discharger fails to comply with this Time Schedule Order, the Regional Board’s Executive Officer may issue a Complaint against the Discharger under Article 2.5, Chapter 5, Division 7 of the CWC, for up to \$10,000 in administrative civil liability penalties for each day in which the violation occurs.”
35. This Order No. R7-2010-0005 assesses mandatory minimum penalties for violations that occurred between October 19, 2007, and November 19, 2008, when Cease and Desist Order (CDO) No. R7-2008-0067 was adopted by the Regional Board. The CDO exempts the Discharger from MMPs for violations of effluent limitations of copper, nickel, and zinc occurring after November 19, 2008, if the Discharger is in compliance with the CDO.
36. As stated above, the data indicating effluent limitation violations for the bacteria parameters cannot be used to assess MMPs because it is unclear whether the data is reliable for regulatory purposes. While the Discharger may not be subject to mandatory minimum penalties for alleged violations of the bacteria limitations, the Discharger is still liable for the violations of the MRP pursuant to CWC Section 13385(c). The maximum liability available to the Regional Board for the bacteria MRP violations under Section 13385(c) is \$500,000 (\$10,000 per day for fifty violations starting from July 2, 2008 until December 29, 2008).
37. If the Regional Board assesses civil liability under CWC Section 13385(c), CWC Section 13385(e) requires the Regional Board, in determining the amount of any liability, to consider the nature, circumstances, extent and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, results 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 act that constitutes the violation.
38. The factors 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

^{*} On March 13, 2009, the Regional Board received the Discharger’s technical Report.

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 Water Board needs to have confidence that the data that is being self-reported by the Discharger is accurate and reliable. Because the analysis of the bacteria constituents was conducted by a laboratory that did not possess the requisite certification for all constituents within Field of Testing 107, 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 violations.

- b. Susceptibility of discharge to cleanup and abatement, and degree of toxicity discharge:
The discharge is not susceptible to cleanup and/or abatement as it is a non-discharge violation.
- c. Discharger's ability to pay:
On September 3, 2009, the Discharger submitted information to the State Water Resources Control Board regarding its status as having a "financial hardship" under the criteria used by the Office of Public School Construction and the State Allocation Board. The Discharger was determined to possess a financial hardship for purposes of school construction funding and qualified for funding from the State's extreme hardship deferred maintenance fund. Despite this determination as having a financial hardship for purposes of school construction, the Discharger's overall funding shows the 2009-2010 unrestricted budgeted cash flow in excess of \$6.4 million dollars.
- d. Effect on Discharger's ability to continue in business:
The proposed discretionary penalty largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed. Based on the information on the Discharger's funding for 2009-2010 unrestricted budgeted cash flow, the proposed penalty should not affect the Discharger's ability to continue operating as a public agency.
- e. Voluntary cleanup efforts undertaken:
There was no cleanup and abatement necessary as the violations were non-discharge violations.
- f. Prior history of violations:
The Regional Board adopted Order No. R7-2005-0002 in response to ACL Complaint No. R7-2003-0106 ordering the discharger to pay \$15,000 in mandatory minimum penalties. In lieu of paying the penalties, the Discharger completed a compliance project in the amount of \$15,000 to install a secondary filter and UV system.
- g. Degree of culpability:
As the permittee, the Discharger is responsible for complying with all aspects of Board Order No. R7-2007-0035. The provisions of Board Order No. R7-2007-0035 and its corresponding Monitoring and Reporting Program 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,

which are representative of the discharge. The Discharger failed to do so for the period from July to December 2008, as evidenced by the monitoring results it submitted.

- h. Economic benefit or savings resulting from the violations:
See Attachment "D" for the analysis of economic benefit or savings resulting from the violations of the monitoring and reporting program.
 - i. Other matters that justice may require:
Staff time to investigate this matter and prepare the ACL complaint and supporting information is estimated to be 60 hours. Based on an average cost to the State of \$125 per hour, the total cost is \$7,500.
39. The Regional Board 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 waived 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 October 19, 2009, the Discharger waived its right to a hearing within 90 days on this matter (see Attachment "C").
40. On January 21, 2010 and March 18, 2010, the Regional Board considered this matter and all comments pertaining to this matter at its public meetings held on January 21, 2010, and March 18, 2010, in La Quinta, California.
41. Issuance of this ACL Order 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.
42. 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 a total of one hundred forty five thousand dollars (\$145,000) in ACL penalties for the violations set forth in Attachments "A" and "B," which are broken down as follows: \$144,000 in mandatory minimum penalties and \$1,000 in discretionary penalties.

\$144,000 in Mandatory Minimum Penalties:

In lieu of the Discharger remitting a cash payment of \$144,000, the Prosecution Team and the Discharger (the Parties) resolve by consent the following:

1. The Discharger will be credited with the monies spent on capital improvements to the existing package plant, Phase 1 of the Compliance Project, in the amount of \$58,489 as an offset to the mandatory minimum penalties of \$144,000. This phase of the Compliance Project ensures that discharges from the existing package plant remain in consistent compliance with the new permit, Special Board Order No. R7-2009-0011.
2. The Discharger has committed to spend the remaining portion of the mandatory minimum penalty assessed, \$85,511, on Phase 2 of the Compliance Project. The Discharger will determine in this phase of the Compliance Project whether it is feasible to eliminate all discharges to surface waters, a goal that goes beyond merely ensuring compliance with NPDES permit effluent limitation requirements. Accordingly, the Discharger is authorized to spend the \$85,511 on Phase 2 of the Compliance Project in lieu of paying the remaining portion of the mandatory minimum penalties.
3. The authorized amount of \$85,511 shall be applied by the Discharger to perform the Phase 2 work of conducting engineering and soils investigations and preparing an engineering report, which describes the findings of those investigations. The engineering report shall be submitted to the Regional Board by December 31, 2012. Any modification of these deadlines based on insufficient funds in the Discharger's "Extreme Hardship Deferred Maintenance" fund is subject to the approval of the Executive Officer. The Discharger must request a modification of the deadlines in writing and provide evidence of insufficient funds.
4. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of California registered professionals (i.e., civil engineer, engineering geologist, geologist, etc.) competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain a statement of qualifications of the responsible licensed professional(s) as well as the professional's signature and/or stamp of the seal.
5. The Discharger shall provide quarterly monitoring reports to the Regional Board due by the 15th of March, June, September, December on the status and progress of the engineering and soils investigations. The quarterly reports should also account for the money spent to complete Phase 2 of the Compliance Project. Once the \$85,511 has been spent, the Discharger must submit a final report declaring such completion and detail the fund expenditures and goals achieved. The Discharger may choose to combine the final quarterly monitoring report (4th Quarter 2012 report) detailing fund expenditures with the engineering report and submit them together by December 31, 2012.

6. If a phase of the Compliance Project has been completed to the satisfaction of the Regional Board or its Executive Officer by any of the deadlines specified herein, or as modified by the Executive Officer pursuant to Ordered paragraph 3 above, then the suspended amount pertaining to that phase is permanently suspended, and the Executive Officer shall inform the Discharger of this determination in writing. If a phase of the Compliance Project has not been completed to the satisfaction of the Regional Board or its Executive Officer, however, the suspended amount pertaining to that phase of the Compliance Project shall become immediately due and payable to the State Water Pollution Cleanup and Abatement Account, and the Executive Officer shall inform the Discharger of this determination in writing as well.

\$1,000 in Discretionary Penalties:

The Discharger shall pay \$1,000 in full within thirty (30) days of the date of this Order. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed 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

6. If a phase of the Compliance Project has been completed to the satisfaction of the Regional Board or its Executive Officer by any of the deadlines specified herein, or as modified by the Executive Officer pursuant to Ordered paragraph 3 above, then the suspended amount pertaining to that phase is permanently suspended, and the Executive Officer shall inform the Discharger of this determination in writing. If a phase of the Compliance Project has not been completed to the satisfaction of the Regional Board or its Executive Officer, however, the suspended amount pertaining to that phase of the Compliance Project shall become immediately due and payable to the State Water Pollution Cleanup and Abatement Account, and the Executive Officer shall inform the Discharger of this determination in writing as well.

\$1,000 in Discretionary Penalties:

The Discharger shall pay \$1,000 in full within thirty (30) days of the date of this Order. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed 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 Board Order No. R7-2007-0035 from July to December 2008

	Violation Type	Violation Date	Violation Description
1	<i>E. Coli</i>	07/02/2008	Used uncertified laboratory
2	Enterococci	07/02/2008	Used uncertified laboratory
3	<i>E. Coli</i>	07/07/2008	Used uncertified laboratory
4	Enterococci	07/07/2008	Used uncertified laboratory
5	<i>E. Coli</i>	07/16/2008	Used uncertified laboratory
6	<i>Enterococci</i>	07/16/2008	Used uncertified laboratory
7	<i>E. Coli</i>	07/21/2008	Used uncertified laboratory
8	<i>Enterococci</i>	07/21/2008	Used uncertified laboratory
7	<i>E. Coli</i>	07/28/2008	Used uncertified laboratory
8	<i>Enterococci</i>	07/28/2008	Used uncertified laboratory
9	<i>E. Coli</i>	08/04/2008	Used uncertified laboratory
10	<i>Enterococci</i>	08/04/2008	Used uncertified laboratory
11	<i>E. Coli</i>	08/11/2008	Used uncertified laboratory
12	<i>Enterococci</i>	08/11/2008	Used uncertified laboratory
13	<i>E. Coli</i>	08/18/2008	Used uncertified laboratory
14	<i>Enterococci</i>	08/18/2008	Used uncertified laboratory
15	<i>E. Coli</i>	0825/2008	Used uncertified laboratory
16	<i>Enterococci</i>	08/25/2008	Used uncertified laboratory
17	<i>E. Coli</i>	08/27/2008	Used uncertified laboratory
18	<i>Enterococci</i>	08/27/2008	Used uncertified laboratory
19	<i>E. Coli</i>	09/02/2008	Used uncertified laboratory
20	<i>Enterococci</i>	09/02/2008	Used uncertified laboratory
21	<i>E. Coli</i>	09/08/2008	Used uncertified laboratory
22	<i>Enterococci</i>	09/08/2008	Used uncertified laboratory
23	<i>E. Coli</i>	09/15/2008	Used uncertified laboratory
24	<i>Enterococci</i>	09/15/2008	Used uncertified laboratory
25	<i>E. Coli</i>	09/22/2008	Used uncertified laboratory
26	<i>Enterococci</i>	09/22/2008	Used uncertified laboratory
27	<i>E. Coli</i>	09/29/2008	Used uncertified laboratory
28	<i>Enterococci</i>	09/29/2008	Used uncertified laboratory
29	<i>E. Coli</i>	10/01/2008	Used uncertified laboratory
30	<i>Enterococci</i>	10/01/2008	Used uncertified laboratory
31	<i>E. Coli</i>	10/06/2008	Used uncertified laboratory
32	<i>Enterococci</i>	10/06/2008	Used uncertified laboratory
33	<i>E. Coli</i>	10/13/2008	Used uncertified laboratory
34	<i>Enterococci</i>	10/13/2008	Used uncertified laboratory
35	<i>E. Coli</i>	10/20/2008	Used uncertified laboratory
36	<i>Enterococci</i>	10/20/2008	Used uncertified laboratory
37	<i>E. Coli</i>	10/27/2008	Used uncertified laboratory
38	<i>Enterococci</i>	10/27/2008	Used uncertified laboratory
39	<i>E. Coli</i>	11/03/2008	Used uncertified laboratory

	Violation Type	Violation Date	Violation Description
40	<i>Enterococci</i>	11/03/2008	Used uncertified laboratory
41	<i>E. Coli</i>	11/10/2008	Used uncertified laboratory
42	<i>Enterococci</i>	11/10/2008	Used uncertified laboratory
43	<i>E. Coli</i>	11/17/2008	Used uncertified laboratory
44	<i>Enterococci</i>	11/17/2008	Used uncertified laboratory
45	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
46	<i>Enterococci</i>	11/24/2008	Used uncertified laboratory
47	<i>E. Coli</i>	12/01/2008	Used uncertified laboratory
48	<i>Enterococci</i>	12/01/2008	Used uncertified laboratory
49	<i>E. Coli</i>	12/08/2008	Used uncertified laboratory
50	<i>Enterococci</i>	12/08/2008	Used uncertified laboratory
49	<i>E. Coli</i>	12/15/2008	Used uncertified laboratory
50	<i>Enterococci</i>	12/15/2008	Used uncertified laboratory
49	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory
50	<i>Enterococci</i>	12/22/2008	Used uncertified laboratory
49	<i>E. Coli</i>	12/29/2008	Used uncertified laboratory
50	<i>Enterococci</i>	12/29/2008	Used uncertified laboratory

ATTACHMENT "B"
Summary of Board Order No. R7-2007-0035 Violations

	Assessed Violation No.¹	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
1	777083	10/31/2007	Incomplete report: Failed to analyze effluent copper and nickel samples in accordance with minimum detection levels in the Board Order	No	0
2	777084	11/30/2007	Incomplete report: Failed to analyze effluent copper and nickel samples in accordance with minimum detection levels in the Board Order	No	0
3	777004	12/10/2007	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 16 µg/L	Yes	\$3,000
4	777017	12/10/2007	Exceeded daily maximum limit of 95 µg/L for Zinc Reported Value = 170.0 µg/L	Yes	\$3,000
5	777010	12/31/2007	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 16.0 µg/L	Yes	\$3,000
6	777012	12/31/2007	Exceeded average monthly limit of 0.00036 lbs/day for Copper Mass Discharge Rate Reported Value = 0.00045 lbs/day	Yes	\$3,000
7	777016	12/31/2007	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 11.0 µg/L	Yes	\$3,000
8	777018	12/31/2007	Exceeded average monthly limit of 47 µg/L for Zinc Reported Value = 170.0 µg/L	Yes	\$3,000
9	777075	01/14/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 13.0 µg/L	Yes	\$3,000
10	777081	01/23/2008	Exceeded daily maximum limit of 100 MPN/100 mL for Enterococci bacterial density Reported Value = 200.5 MPN/100 mL	No	0 ²
11	777077	01/31/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 13.0 µg/L	Yes	\$3,000
12	777079	01/31/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 11.0 µg/L	Yes	\$3,000
13	777080	01/31/2008	Exceeded average monthly limit of 47 µg/L for Zinc Reported Value = 77.0 µg/L	Yes	\$3,000
14	777058	02/04/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 11.0 µg/L	Yes	\$3,000
15	777062	02/29/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 11.0 µg/L	Yes	\$3,000
16	777065	02/29/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 12.0 µg/L	Yes	\$3,000

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

² Violation dismissed because the laboratory not certified to analyze wastewater bacteria samples.

	Assessed Violation No.¹	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
17	777066	02/29/2008	Exceeded average monthly limit of 47 µg/L for Zinc Reported Value = 65.0 µg/L	Yes	\$3,000
18	777051	03/05/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 12.0 µg/L	Yes	\$3,000
19	777056	03/19/2008	Exceeded daily maximum limit of 100 MPN/100 mL for Enterococci bacterial density Reported Value = 200.5 MPN/100 mL	No	0 ²
20	777052	03/31/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 12.0 µg/L	Yes	\$3,000
21	777053	03/31/2008	Exceeded average monthly limit of 0.00036 lbs/day for Copper Mass Discharge Rate Reported Value = 0.00041 lbs/day	No	\$3,000
22	777054	03/31/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 10.0 µg/L	Yes	\$3,000
23	777055	03/31/2008	Exceeded average monthly limit of 47 µg/L for Zinc Reported Value = 80.0 µg/L	Yes	\$3,000
24	777037	04/01/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 15.0 µg/L	Yes	\$3,000
25	777039	04/30/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 15.0 µg/L	Yes	\$3,000
26	777042	04/30/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 12.0 µg/L	Yes	\$3,000
27	777043	04/30/2008	Exceeded average monthly limit of 47 µg/L for Zinc Reported Value = 59.0 µg/L	Yes	\$3,000
28	777045	04/30/2008	Exceeded daily maximum limit of 400 MPN/100 mL for E.Coli and 100 MPN/100 mL for Enterococci bacterial density Reported Values = 16,000 and 200 MPN/100 mL, respectively	No	0 ²
29	777047	04/30/2008	Exceeded average monthly limit of 400 MPN/100 mL for Fecal Coliform bacterial density Reported Value = 16,000 MPN/100 mL	No	\$3,000
30	777019	05/05/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 38.0 µg/L	Yes	\$3,000
31	777020	05/05/2008	Exceeded daily maximum limit of 0.00073 lbs/day for Copper Mass Discharge Rate Reported Value = 0.0015 lbs/day	Yes	\$3,000
32	777024	05/05/2008	Exceeded daily maximum limit of 14 µg/L for Nickel Reported Value = 35.0 µg/L	Yes	\$3,000
33	777029	05/05/2008	Exceeded daily maximum limit of 95 µg/L for Zinc Reported Value = 770.0 µg/L	Yes	\$3,000

	Assessed Violation No.¹	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
34	777030	05/05/2008	Exceeded daily maximum limit of 0.012 lbs/day for Zinc Mass Discharge Rate Reported Value = 0.025 lbs/day	Yes	\$3,000
35	777034	05/14/2008	Exceeded daily maximum limit of 400 MPN/100 mL for E.Coli and 100 MPN/100 mL for Enterococci bacterial density Reported Values = 1,600 MPN/100 mL	No	0 ²
36	777021	05/31/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 38.0 µg/L	Yes	\$3,000
37	777023	05/31/2008	Exceeded average monthly limit of 0.00036 lbs/day for Copper Mass Discharge Rate Reported Value = 0.0012 lbs/day	Yes	\$3,000
38	777027	05/31/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 35.0 µg/L	Yes	\$3,000
39	777028	05/31/2008	Exceeded average monthly limit of 0.00085 lbs/day for Nickel Mass Discharge Rate Reported Value = 0.0011 lbs/day	Yes	\$3,000
40	777032	05/31/2008	Exceeded average monthly limit of 47 µg/L for Zinc Reported Value = 770.0 µg/L	Yes	\$3,000
41	777033	05/31/2008	Exceeded average monthly limit of 0.0059 lbs/day for Zinc Mass Discharge Rate Reported Value = 0.025 lbs/day	Yes	\$3,000
42	784789	06/04/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 12.0 µg/L	Yes	\$3,000
43	784790	06/30/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 12.0 µg/L	Yes	\$3,000
44	784791	06/30/2008	Exceeded average monthly limit of 0.00036 lbs/day for Copper Mass Discharge Rate Reported Value = 0.0036 lbs/day	Yes	\$3,000
45	785074	07/07/2008	Exceeded daily maximum limit of 400 MPN/100mL for E.Coli Reported Value = 1,600 MPN/100mL	No	0 ²
46	785067	07/16/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 14.0 µg/L	Yes	\$3,000
47	785071	07/31/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 14.0 µg/L	No	\$3,000
48	785076	07/31/2008	Exceeded average monthly limit of 400 MPN/100 mL for Fecal Coliform bacterial density Reported Value = 1,000 MPN/100 mL	No	\$3,000
49	784793	08/11/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 16.0 µg/L	Yes	\$3,000
50	785051	08/31/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 16.0 µg/L	Yes	\$3,000
51	792668	09/08/2008	Exceeded daily maximum limit of 5.8 µg/L for Copper Reported Value = 14.0 µg/L	Yes	\$3,000

	Assessed Violation No.¹	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
52	792669	09/30/2008	Exceeded average monthly limit of 2.9 µg/L for Copper Reported Value = 14.0 µg/L	Yes	\$3,000
53	792671	09/30/2008	Exceeded average monthly limit of 0.00036 lbs/day for Copper Mass Discharge Rate Reported Value = 0.00043 lbs/day	Yes	\$3,000
54	792672	09/30/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 11.0 µg/L	Yes	\$3,000
55	760283	10/31/2008	Exceeded average monthly limit of 6.8 µg/L for Nickel Reported Value = 12.0 µg/L	Yes	\$3,000

Total: \$144,000

ATTACHMENT "C"

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PAGE 02/02

**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 **McCabe Union School District** (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R7-2009-0027 (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. (Check here if the Discharger will waive the hearing requirement and will pay the fine)
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **one hundred seventy thousand five hundred dollars (\$170,500)** by check, which contains a reference to "ACLC No. R7-2009-0027" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by September 30, 2009 or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. 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. (Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time) I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code Section 13323 has elapsed.
 6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

RECEIVED

OCT 20 2009

REGIONAL

Amanda Brooke - Superintendent
 (Print Name and Title)

Amanda L. Brooke
 (Signature)

Oct. 19, 2009
 (Date)