

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION

(PROPOSED) SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY ORDER R7-2017-0007  
IN THE MATTER OF  
NILAND SANITARY DISTRICT  
WASTEWATER TREATMENT PLANT  
NILAND, IMPERIAL COUNTY

**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Executive Officer of the Colorado River Basin Regional Water Quality Control Board (“Colorado River Basin Water Board”), on behalf of the Prosecution Team (“Prosecution Team”) and Niland Sanitary District (“Settling Respondent”) (collectively “Parties”) and is presented by the Parties to the Colorado River Basin Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation is based on violations of Waste Discharge Requirements (WDRs) Orders R7-2003-0049, R7-2008-0020, and R7-2014-0001 (National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104451); and violations of Cease and Desist Order R7-2012-0024, for which the Colorado River Basin Water Board is authorized to assess administrative civil liability.

**Section II: Recitals**

1. The Settling Respondent owns and operates a wastewater collection, treatment, and disposal system in Niland, California; and provides sewerage service to Niland, a small unincorporated community with a financial hardship as defined by California Water Code (CWC) Section 13385(k)(2). The wastewater treatment plant (WWTP) has a purported treatment capacity of 0.50 million gallons-per-day (MGD). Effluent from the WWTP system is discharged to Imperial Irrigation District’s “R” Drain and ultimately to the Salton Sea. Imperial Irrigation District’s “R” Drain and the Salton Sea are waters of the United States.
2. The Settling Respondent is alleged to have violated effluent limitations and monitoring and reporting requirements of Waste Discharge Requirements (WDRs) Orders R7-2003-0049, R7-2008-0020 and R7-2014-0001 (NPDES Permit No. CA0104451); and is alleged to have violated Cease and Desist Order (CDO) R7-2012-0024 for which the Colorado River Basin Water Board may impose civil liability pursuant to CWC sections 13385 and 13350 respectively.

**Relevant Waste Discharge Requirements Orders (NPDES Permit No. CA0104451)**

3. The Colorado River Basin Water Board adopted WDRs Order R7-2003-0049 (NPDES Permit No. CA0104451) on June 25, 2003, to regulate discharges of treated wastewater from the WWTP. This Order includes effluent limitations, receiving water limitations, specifications, and provisions necessary to protect the beneficial uses of surface and ground waters within the Colorado River Basin Region.
4. WDRs Order R7-2003-0049 (page 6-7, section IV.A.2, A.4, and A.8) contains the following effluent discharge limitations with which the Discharger is required to maintain compliance at Discharge Point 001:

Stipulated Order No. R7-2017-0007  
 Niland Sanitary District  
 Wastewater Treatment Plant

a. Effluent Limitation A.2:

“The 30-day average percent removal of pollutant parameter BOD<sub>5</sub> and suspended solids shall not be less than 65 percent.”

b. Effluent Limitation A.4.:

“Wastewater effluent discharged to “R” Drain shall not have an Escherichia coli (E. coli) concentration in excess of a log mean of Most Probable Number (MPN) of 126 MPN per 100 milliliters nor shall any sample exceed 400 MPN per 100 milliliters.”

c. Effluent Limitation A.8.:

“Wastewater discharged to “R” Drain shall not exceed these effluent limits. These limits are calculated based on monitoring results and using the California Toxic Rule and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and the Estuaries of California for water quality based effluent limit:”

Constituents	Unit	Date Effluent Limit Becomes Effective	Effluent Limitations	
			Average Monthly Effluent Limit <sup>1</sup>	Maximum Daily Effluent Limit <sup>1</sup>
Copper (interim)	µg/L	July 5, 2003	29.0	29.0
Copper (final)	µg/L	June 25, 2008	2.39	4.80

<sup>1</sup> Compliance with the Average Monthly Effluent Limit and Maximum Daily Effluent Limit shall be determined as described in Section 2.4.5 Compliance Determination (Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California).

5. WDRs Order R7-2003-0049 (page 12, Provisions E.5 and E.10) states:

a. Provision E.5:

“The discharger shall comply with Monitoring and Reporting Program R7-2003-0049 and future revisions thereto, as specified by the Colorado River Basin Water Board’s Executive Officer.”

b. Provision E.10:

“Unless otherwise approved by the Colorado River Basin 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.”

6. On November 19, 2008, the Colorado River Basin Water Board adopted WDRs Order R7-2008-0020 (NPDES Permit No. CA0104451) for the Discharger to regulate discharges of treated wastewater from the WWTP. WDRs Order R7-2008-0020 rescinded WDRs Order R7-2003-0049, except for enforcement purposes.

7. WDRs Order R7-2008-0020 (pages 13 and 14, section IV.A.1.a and A.1.d.i) contains the following effluent discharge limitations:

a. Effluent Limitation 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 ... Monitoring and Reporting Program (MRP):”

Constituents	Unit	Effluent Limitations	
		Average Monthly Effluent Limit	Maximum Daily Effluent Limit
Copper, Total Recoverable	µg/L	19	52
	lbs/day <sup>1</sup>	0.077	0.22
Thallium, Total Recoverable	µg/L	6.3	13
	lbs/day <sup>1</sup>	0.026	0.052

<sup>1</sup>The mass-based effluent limitations are based on a design capacity of 0.50 MGD.

b. Effluent Limitation A.1.d.i, ii, and iii:

“**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, nor shall any sample exceed the maximum allowable bacterial density of 400.”

“**ii. Enterococci.** The geometric mean bacterial density (based on a minimum of no less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 33, nor shall any sample exceed the maximum allowable bacterial density of 100.”

“**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, nor shall any sample exceed the maximum allowable bacterial density of 400.”

8. WDRs Order R7-2008-0020 (page 18, Provision B) states:

“The Discharger shall comply with the [Monitoring and Reporting Program], and future revisions thereto....”

9. WDRs Order R7-2008-0020 Monitoring and Reporting Program (Attachment E, page E-2, General Monitoring Provision C) states:

“Unless otherwise approved by the Colorado River Basin Water Board’s Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Laboratories analyzing monitoring samples shall be certified by the Department of Health Services, in accordance with the provision of Water Code section 13176, and must include quality assurance/quality control data with their reports. All analyses shall be conducted in accordance with the latest edition of ‘Guidelines Establishing Test Procedures for Analysis of Pollutants,’ promulgated by the USEPA.”

10. On May 8, 2014, the Colorado River Basin Water Board adopted WDRs Order R7-2014-0001 (NPDES Permit No. CA0104451) for the Discharger, which became effective on June 1, 2014, to regulate discharges of treated wastewater from the WWTP. WDRs Order R7-2014-0001 rescinded WDRs Order R7-2008-0020, except for enforcement purposes.
11. WDRs Order R7-2014-0001 (page 6-7, section IV.A.1.a and A.1.d.ii) contains the following effluent discharge limitations:

a. Effluent Limitation 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 Monitoring and Reporting Program”

Constituents	Unit	Effluent Limitations	
		Instantaneous Minimum	Instantaneous Maximum
pH	Standard Units	6.0	9.0

b. Effluent Limitation A.1.d.ii:

“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 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.”

12. WDRs Order R7-2003-0049 (page 12, Provision E.3), WDRs Order R7-2008-0020 (page 16, Provision A.2.b) and WDRs Order R7-2014-0001 (page 8 and 9, Provision A.2.b) warn:

“The Discharger shall comply with all conditions of this Order. Noncompliance constitutes a violation of the Federal Clean Water Act and Porter-Cologne Water Quality Control Act, and is grounds for enforcement action ....”

**Cease and Desist Order R7-2009-0007**

13. On January 22, 2009, the Colorado River Basin Water Board adopted Cease and Desist Order (CDO) R7-2009-0007 based on the Discharger’s violation history of effluent limits for copper. The CDO required the Discharger to cease and desist from discharging wastes in violation of WDRs Order R7-2008-0020 and to implement corrective actions in accordance with specified tasks and time schedules<sup>1</sup>.
14. In pertinent part, these tasks required the Discharger to prepare and implement a Pollution Prevention Plan pursuant to CWC section 13263.3, to achieve full compliance with WDRs Order R7-2008-0020 by December 31, 2010 (Ordered Item 1, Milestone 4), unless the

<sup>1</sup> CDO R7-2009-0007 established interim limits for copper, pursuant to CWC section 13385(j)(3)(C), to provide the Discharger an exemption from being assessed additional Mandatory Minimum Penalties (MMPs) for violation of its copper NPDES Permit limits while it completed its WWTP improvements.

Discharger opted to submit an engineering report by June 30, 2009 that described alternative methods of treatment and disposal to phase out the discharge of waters of the United States.

15. On November 12, 2009, the Discharger, in a letter to the Colorado River Basin Water Board requested an extension of the CDO compliance schedule to delay the first milestone deadline to December 31, 2011, to allow time to pursue and acquire funding to pay.
16. In the Discharger's quarterly report for January 2011 dated January 13, 2011, the Discharger reported that the Imperial County Economic Development Department had secured a grant for \$35,000 to prepare a Pollution Prevention Plan or an Engineering Report describing alternate methods of treatment and disposal to phase out the discharge of effluent to receiving waters. However, the grant was not awarded.
17. On March 1, 2012, the Discharger, in a letter to the Colorado River Basin Water Board requested that the schedule for the completion date be extended to August 30, 2016. Prior to any extension being granted, the CDO expired without the final milestone being met. Upon its expiration the interim limits set forth in the CDO were no longer in effect.

**Cease and Desist Order R7-2012-0024**

18. As set forth above, the Discharger was unable to secure funding for a project that would phase out the discharge of effluent to receiving waters. Therefore, the Colorado River Basin Water Board adopted CDO R7-2012-0024 on September 20, 2012, which established a new compliance deadline of December 31, 2015, the maximum extension allowed under Water Code section 13385(j)(3)(C)(ii).
19. CDO R7-2012-0024 superseded CDO R7-2009-0007, except for enforcement purposes. CDO R7-2012-0024 established the following milestones and deadlines for the Discharger to achieve compliance with its NPDES Permit<sup>2</sup>:

"[Ordered Item 4] The Discharger must complete the specific milestones by the completion date set forth in the following time schedule and submit quarterly progress reports pursuant to CWC section 13301:

<b>Milestone</b>	<b>Milestone Description</b>	<b>Milestone Submittal</b>	<b>Completion Date</b>
1	Complete WWTP Preliminary Engineering Report	Submit a copy of Preliminary Engineering Report to the [Colorado River Basin Water Board]	December 31, 2012
2	Obtain and secure additional funding for design, bidding, and construction costs	Submit a copy of Funding Agency Approval Letter to [Colorado River Basin Water Board]	June 28, 2013

<sup>2</sup> CDO R7-2012-0024 also established more lenient interim effluent limits for copper to afford the Discharger coverage against MMPs.

<b>Milestone</b>	<b>Milestone Description</b>	<b>Milestone Submittal</b>	<b>Completion Date</b>
3	Provide financial assurance for Operation and Maintenance of the WWTP	Provide proof of an acceptable mechanism and/or combination of mechanisms that demonstrate financial responsibility for Operation and Maintenance of WWTP	June 28, 2013
4	Complete Design of WWTP Improvement	Submit a copy of final design, drawings, specifications, and contract documents to [Colorado River Basin Water Board]	February 28, 2014
5	Complete Bidding and Award of WWTP Improvements	Submit a copy of bidding documents to [Colorado River Basin Water Board]	July 31, 2014
6	Complete construction of the WWTP Improvements	Submit a summary and verification of construction completion to [Colorado River Basin Water Board]	December 31, 2015
7	Achieve full compliance with WDRs Order R7-2008-0020 (NPDES Permit CA0104451)	Submit a written certification that WWTP is in compliance with WDRs Order R7-2008-0020 (NPDES Permit CA0104451)	December 31, 2015

**Alleged Violations of WDRs**

20. Self-monitoring reports submitted by the Discharger for the period of May 1, 2006, through November 3, 2008, show that it violated WDRs Order R7-2003-0049 Effluent Limitation A.2 for BOD and Effluent Limitation A.8 for Copper of as follows:

- a. The BOD percent removal requirement on 3 different occasions; and
- b. The Copper limit on 19 different occasions.

21. Self-monitoring reports submitted by the Discharger for the period starting on November 19, 2008, through May 31, 2014, show that it violated WDRs Order R7-2008-0020 Effluent Limitation A.1.a for Copper, Thallium, and pH; and WDRs Order R7-2008-0020 Effluent Limitation A.1.d.ii for Enterococci of as follows:

- The Copper limit on 20 different occasions;
- The Thallium limit on 8 different occasions;
- The pH limit on 36 different occasions; and
- The Enterococci limit on 9 different occasions

22. Self-monitoring reports submitted by the Discharger for the period starting on July 24, 2014 through December 16, 2014, show the Discharger violated WDRs Order R7-2014-0001

Effluent Limitation A.1.a for pH on one (1) occasion and Effluent Limitation A.1.d.ii for fecal coliforms on three (3) occasions.

23. Exhibit A, incorporated herein and made part of this Complaint by reference, shows each of the effluent violations of WDRs Orders R7-2003-0049, R7-2008-0020, and R7-2014-0001 cited in Paragraph 20 through 22, above. It also provides additional details about the violations that are subject to MMPs.
24. Beginning July 1, 2008, and continuing through November 18, 2008, the Discharger used an uncertified laboratory to perform E. coli analyses on twenty-four (24) occasions, in violation of WDRs Order R7-2003-0049, Provision E.10.
25. Beginning November 19, 2008, and continuing through January 26, 2009, the Discharger used an uncertified laboratory to perform E. coli analyses on eleven (11) different occasions, in violation of WDRs Order R7-2008-0020, Provision B, and Monitoring and Reporting Requirements, General Monitoring Provision C.
26. Because the Discharger submitted effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of E. coli on thirty-five (35) occasions, the Colorado River Basin Water Board was unable to determine whether the Discharger complied with the E. coli effluent limitations of WDRs Orders R7-2003-0049 and R7-2008-0020.
27. A summary of each violation of WDRs Orders R7-2003-0049 and R7-2008-0020, in which the Discharger used an uncertified laboratory to perform E. coli analyses on thirty-five (35) occasions, is contained in Exhibit B, which is incorporated herein and made a part of this Complaint by reference.
28. On February 13, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) R7-2009-0033, requiring the Discharger to correct the violations of WDRs Order R7-2008-0020 associated with its failure to use a certified laboratory to analyze E. coli data. The Discharger complied with the TSO.

**Alleged Violations of CDO R7-2012-0024 (Milestone No.4)**

29. The Discharger also violated Cease and Desist Order R7-2012-0024 because it failed to complete design of the WWTP improvements (Ordered Item 4, Milestone 4) by February 28, 2014 as required by the CDO. There are nine-hundred and fifteen (915) days of violation for the period beginning February 28, 2014 and ending on August 31, 2016, the latter date being when the Prosecution Team and the Discharger started having substantive settlement discussions.

**Water Code Sections which Provide for Assessment of Administrative Civil Liability:**

30. Regarding violation of NPDES permits, CWC section 13385(c) states:

“Civil liability may be imposed administratively by the state board or a regional water 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.

Stipulated Order No. R7-2017-0007  
Niland Sanitary District  
Wastewater Treatment Plant

“(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.”

31. CWC section 13385(h)(1) requires the Colorado River Basin Water Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each “serious violation.”

32. 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.”

33. CWC section 13385(i)(1), also requires the Colorado River Basin Water Board to assess an MMP 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 (hereafter “chronic violation”):

- i. Violates a waste discharge requirement effluent limitation;
- ii. Fails to file a report pursuant to Section 13260;
- iii. Files an incomplete report pursuant to Section 13260; or
- iv. 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.

34. CWC section 13385(i)(2) states:

“For the purpose of this section [13385], a ‘period of six consecutive months’ mean the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.”

35. Regarding enforcement orders, CWC section 13350(a) states:

“A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional water board or a state board...shall be liable civilly, and remedies may be proposed , in accordance with subdivision (d) or (e).

36. CWC section 13350(e)(1) states:

“The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs.

37. CWC section 13350(e)(1)(B) states:



“When there is no discharge, but an order issued by the regional board is violated . . . civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs [unless the regional board makes express findings for a lower amount based on the specific factors required in CWC section 13327].”

**Factors Considered in Determining Administrative Civil Liability:**

38. Pursuant to CWC sections 13327 and/or 13385(e), in determining the amount of any civil liability, the Colorado River Basin Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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, resulting from the violations, and other matters that justice may require<sup>3</sup>. In addition, with respect to violations based on CWC section 13385(e), 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.

39. On November 17, 2009, the State Water Board adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC sections 13327 and/or 13385(e). The entire Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

40. The required factors, above, have been considered for the violations alleged herein using the penalty assessment methodology of the Enforcement Policy, as explained in detail in Exhibit C (Niland SD ACLC Methodology), which is incorporated herein and made part of this Order by reference.

**Mandatory Minimum Penalties (MMPs) for Alleged Violations of NPDES Permit**

41. As shown in Exhibit A, the Discharger is subject to MMPs for the following violations:

---

<sup>3</sup> As of the Stipulation's original posting date, the Prosecution Team has incurred \$24,000 in investigation and enforcement costs. This is based on staff time of 160 hours, at a rate of \$150 per hour. If this matter proceeds to a hearing, the Prosecution Team reserves its right to seek an increase in the civil liability amount in consideration of the investigation and enforcement costs.

Parameter	WDRs Violated	Referenced Finding and Exhibit	Total Number of Violations	Number of MMP Violations
BOD	R7-2003-0049, Effluent Limitation A.2	Finding 20, Exhibit A	3	1
Copper	R7-2003-0049, Effluent Limitation A.8	Finding 20, Exhibit A	19	18
	R7-2008-0020, Effluent Limitation A.1.a	Finding 21, Exhibit A	20	2
Thallium	R7-2008-0020, Effluent Limitation A.1.a	Finding 21, Exhibit A	8	7
pH	R7-2008-0020, Effluent Limitation A.1.a	Finding 21, Exhibit A	36	35
	R7-2014-0001, Effluent Limitation A.1.a	Finding 22, Exhibit A	1	1
Enterococci	R7-2008-0020, Effluent Limitation A.1.d.ii	Finding 21, Exhibit A	9	7
Fecal Coliforms	R7-2014-0001, Effluent Limitation A.1.d.ii	Finding 22, Exhibit A	3	3
Total Number of Violations			99	74

The mandatory minimum penalty for these violations is two hundred and twenty-two thousand dollars (\$222,000), pursuant to Water Code section 13385 et seq.

**Discretionary Liability for Violations of WDRs Orders R7-2003-0009 and R7-2008-0020 (Uncertified Laboratory)**

42. The Discharger submitted effluent monitoring data for E. coli from a laboratory that did not possess certification for analysis of E. coli on thirty-five (35) occasions in violation of WDRs Orders R7-2003-0049 and R7-2008-0020, as cited above and shown by Exhibit B. These violations are subject to discretionary penalties (non-MMP effluent violations) under CWC section 13385. As explained in Exhibit C, the maximum liability available to the Colorado River Basin Water Board for these violations is three hundred fifty thousand dollars (\$350,000), pursuant to Water Code section 13385 et seq.

**Discretionary Liability for Violation of CDO R7-2012-0024**

43. The Discharger failed to complete design of the WWTP improvements by February 28, 2014, as required Cease and Desist Order R7-2012-0024 (Ordered Item 4, Milestone 4). There are nine hundred and fifteen (915) days of violation, from February 28, 2014 to August 31, 2016. As detailed in Exhibit C, the maximum liability available to the Colorado River Basin Water Board for these violations is four million five hundred and seventy-five thousand dollars (\$4,575,000).

**Settlement Negotiations:**

44. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative civil litigation and by presenting this Stipulation to the Colorado River Basin Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and that this Stipulation is in the best interest of the public.
45. The Settling Respondent has proposed to abandon its NPDES discharge and in its place use evaporation ponds for disposal of secondary treated wastewater (hereafter "WWTP Project"). This proposed project will cost approximately \$5.8 million dollars, which is being entirely funded by the North American Development Bank/Border Environment Cooperating Commission, US Environmental Protection Agency, and US Department of Agriculture. As of the date of the issuance of this Stipulation, the Preliminary Engineering Report and environmental documentation have been completed. The Settling Respondent is also obtaining financial assistance (loans) from Imperial County.
46. To resolve by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$477,900 against the Settling Respondent. This Stipulation amount includes \$222,000 in MMPs and \$255,900 in discretionary penalties. Consistent with the Enforcement Policy, 100 percent of the MMPs (\$222,000) can be dedicated towards a Compliance Project (CP) and up to 50 percent of the discretionary penalties can be dedicated toward an Enhanced Compliance Action (ECA). The Parties have agreed that \$125,000 in discretionary penalties shall be suspended upon completion of an ECA and \$222,000 in MMPs shall be suspended upon completion of a CP, both as described below and in Exhibit D, attached hereto and made part of this Order by reference.

**Section III: Stipulations**

The Parties incorporate Paragraphs 1 through 46, by this reference, as if set forth fully herein, and stipulate to the entry of this Order as set forth below, and recommend that the Colorado River Basin Water Board issue this Stipulated Order to effectuate the settlement:

- 47. Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$477,900 as set forth in Paragraph 46 of Section II herein. The Parties agree that \$222,000 of this administrative civil liability shall be suspended pending completion of a CP as set forth in Paragraph 48 and Exhibit D. Further, the Parties agree that \$125,000 of this administrative civil liability shall be suspended pending completion of an ECA as set forth below in Paragraph 49 and Exhibit D. Within 30 days of the effective date of this Stipulation, Settling Respondent agrees to remit **ONE HUNDRED THIRTY THOUSAND AND NINE HUNDRED DOLLARS (\$130,900)** by check, payable to the "Waste Discharge Permit Fund." The check shall reference the Order number listed on page one of this Stipulation. The Settling Respondent shall send the original signed check to the following address:

State Water Resources Control Board  
Division of Administrative Services  
Accounting Branch, 18th Floor

Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

Also, notification of payment shall be sent to:

- a. Office of Enforcement (via email to [AnnaKathryn.Benedict@waterboards.ca.gov](mailto:AnnaKathryn.Benedict@waterboards.ca.gov)); and
- b. Colorado River Basin Water Board (via email to [Maribel.Jernegan@waterboards.ca.gov](mailto:Maribel.Jernegan@waterboards.ca.gov)).

48. **Compliance Project:** The CP described herein allows the Settling Respondent to make capital improvements on its WWTP to bring the Settling Respondent into consistent compliance with Board orders, which is the main objective of the CP. The Parties agree that \$222,000 of the Mandatory Minimum Penalty shall be suspended pending completion of the CP described in this paragraph and Exhibit D. The suspended portion shall be referred to as the Mandatory Minimum Penalty Amount.

**a. Compliance Project Definitions:**

- i. "Milestone Requirement" - a requirement with an established time schedule for meeting/ascertaining certain identified measurement of completed work. Upon the timely and successful completion of each Milestone Requirement, an amount of liability will be permanently suspended or excused as set forth in the CP description below and Exhibit D. The amount of the penalty that is suspended shall not exceed the cost necessary to complete the CP.
- ii. "Compliance Project Completion Date" – The date in which the Compliance Project will be completed in its entirety.

**b. Description:** A detailed description of the CP including identification of project goals, costs, milestones, and completion dates are provided below and in the Settling Respondent's ECA/CP Proposal included herein as Exhibit D. The Parties agree that this Stipulation includes performance of the following Milestone Requirements:

- i. **Laboratory Rehabilitation Work:** The Settling Respondent proposes to retrofit and rehabilitate the WWTP Laboratory by replacing various laboratory equipment components that are beyond their useful life and/or no longer functional. An onsite laboratory for analyses of baseline wastewater parameters (e.g., Suspended Solids, Dissolved Oxygen, pH, etc.) will be an integral part of the WWTP Project and will assist the Settling Respondent to comply with Colorado River Basin Water Board Monitoring and Reporting requirements. The laboratory will also assist the Settling Respondent to properly operate and maintain its WWTP and reduce the Settling Respondent's WWTP operational costs. The rehabilitation work will be entirely funded by the Settling Respondent. The projected cost for this CP is \$222,000.

**c. Waterbody, Beneficial Use and/or Pollutant Addressed by CP:** This CP will assist the Settling Respondent to properly monitor, operate, and maintain its WWTP and ensure compliance with Board orders, which results in protection of areal surface and groundwater quality water.

**49. Enhanced Compliance Action:** The ECA described herein allows the Settling Respondent to make capital or operational improvements beyond those required by law and are separate from projects designed to merely bring the Settling Respondent into compliance. The Parties agree that \$125,000 of the discretionary administrative civil liability shall be suspended pending completion of the ECA described in this paragraph and Exhibit D. The suspended portion shall be referred to as the ECA Amount.

**a. ECA Definitions:**

- i. "Milestone Requirement" – a requirement with an established time schedule for meeting/ascertaining certain identified measurement of completed work. Upon the timely and successful completion of each Milestone Requirement, an amount of liability will be permanently suspended or excused as set forth in the ECA description below and Exhibit D. The amount of liability suspended for any portion of the ECA cannot exceed the projected costs of performing that portion of the ECA.
- ii. "ECA Completion Date" – The date in which the ECA will be completed in its entirety.

**b. Description:** A detailed description of the ECA including identification of project goals, costs, milestones, and completion dates are provided below and in the Settling Respondent's ECA/CP Proposal included herein as Exhibit D. The objective of this task is to increase the institutional capacity of the Settling Respondent so that: (1) Settling Respondent is able to carry out the work of and stay on schedule with its proposed WWTP Project and CP; (2) Settling Respondent and its WWTF personnel receive training on public utilities management and WWTF operation and maintenance to increase the quality of level of services they provide to their customers; and (3) Settling Respondent increases its customer's knowledge about the District's wastewater services, including the WWTP Project and projected sewer rate increases. The Parties agree that this Stipulation includes performance of the following Milestone Requirements:

- i. **Project Manager/Coordinator Position:** The Settling Respondent proposes to hire someone for a two-year term that is skilled and experienced in project management. The minimum amount of money the Settling Respondent proposes to spend on this task is \$85,000.
- ii. **Training Implementation:** The individual hired shall assist the Settling Respondent in coordinating District staff and District board member training. The estimated cost is \$25,000.
- iii. **Community Awareness/Outreach Program:** The individual hired shall assist in coordinating procurement related activities with the funding agencies and delivering public awareness services. The estimated cost is \$15,000.

**c. Waterbody, Beneficial Use and/or Pollutant Addressed by ECA:** This ECA will assist the Settling Respondent to eliminate the discharge of wastewater to the "R" Drain, which in turn eliminates the water quality threat that the discharge from the

Settling Respondent WWTP pose to the beneficial uses of the “R” Drain and the Salton Sea. By increasing its institutional capacity to properly run the District and operate and maintain its WWTP, the Settling Respondent also increases its ability to stay in compliance with Board requirements.

50. **Representations and Agreements:** Settling Respondent understands that its promise to implement the CP and ECA outlined in Paragraphs 48 and 49 above, and in Exhibit D, is a material condition of this Stipulation. Settling Respondent represents the following: (1) that the Settling Respondent shall utilize the Mandatory Minimum Penalty Amount and ECA Amount to fund and implement the CP and ECA in accordance with the Milestone Requirements and Budget set forth in Exhibit D; (2) Settling Respondent shall provide written reports certified under penalty of perjury to the Colorado River Basin Water Board consistent with the terms of this Stipulation detailing the implementation of the CP and ECA; and (3) it will guarantee implementation of the CP and ECA by remaining liable for the Mandatory Minimum Penalty Amount and the ECA Amount in accordance with Paragraphs 56 and 57. Settling Respondent agrees that the Colorado River Basin Water Board has the right to require an independent audit, to be paid for by the Settling Respondent, of the funds expended by Settling Respondent to implement the CP and ECA.
51. **Publicity:** Whenever Settling Respondent or its agents or subcontractors publicizes one or more elements of the CP and ECA, they shall state in a **prominent manner** that the project is being, or has been, undertaken as part of the settlement of an enforcement action by the Colorado River Basin Water Board against the Settling Respondent.
52. **Progress Reports and Inspections:** Settling Respondent shall permit inspection of the CP and ECA by Colorado River Basin Water Board staff or its third party oversight staff at any time without notice. Settling Respondent shall provide quarterly reports on the CP and ECA implementation pursuant to the following schedule:

a. **Compliance Project**

<b>Quarterly Progress Reports</b>	<b>Due Date</b>
First Progress Report	July 1, 2017
Second Progress Report	October 1, 2017
Third Progress Report	January 1, 2018
Fourth Progress Report	April 1, 2018
Fifth Progress Report	July 1, 2018
Sixth Progress Report	October 1, 2018

b. **Enhance Compliance Action**

<b>Quarterly Progress Reports</b>	<b>Due Date</b>
First Progress Report	July 1, 2017
Second Progress Report	October 1, 2017
Third Progress Report	January 1, 2018
Fourth Progress Report	April 1, 2018
Fifth Progress Report	July 1, 2018
Sixth Progress Report	October 1, 2018
Seventh Progress Report	January 1, 2019

Eighth Progress Report	April 1, 2019
------------------------	---------------

**53. Certification of Completion:** Within 30 days after December 31, 2018 (“Compliance Project Completion Date”) and 30 days after June 30, 2019 (“ECA Completion Date”), Settling Respondent shall submit a certified statement of completion of the CP and ECA (“Certification of Completion”), respectively. The Certification of Completion shall both be submitted under penalty of perjury to the Colorado River Basin Water Board contact in Paragraph 47 of Section III herein and signed by a responsible official representing the Settling Respondent. Both Certification of Completion shall include the following:

- i. Certification documenting the expenditures by the Settling Respondent during the completion period for the CP and ECA. In making such certification, the officials may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental an information technology contractors or consultants. Settling Respondent shall provide any additional information requested by Colorado River Basin Water Board staff or its third party oversight staff that is reasonably necessary to verify CP and ECA expenditures.
- ii. Certification that the CP and ECA, including each Milestone Requirement, have been completed in accordance with the terms of this Stipulation including Exhibit D. Documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Colorado River Basin Water Board to evaluate the completion of the CP and ECA, and the costs incurred by Settling Respondent.
- iii. Certification that Settling Respondent followed all applicable environmental laws and regulations in the implementation of the CP and ECA, including but not limited to the California Environmental Quality Act (CEQA), the Clean Water Act, and the Porter-Cologne Act. Settling Respondent agrees that the Colorado River Basin Water Board has the right to require an independent audit, to be paid for by Settling Respondent, of the funds expended by Settling Respondent to implement the CP and ECA.

**54. Third Party Audit:** If Colorado River Basin Water Board staff obtains information that causes it to reasonably believe that Settling Respondent has not expended money in the amounts claimed by Settling Respondent, or has not adequately completed any of the work in the CP and ECA, Colorado River Basin Water Board staff may require, and Settling Respondent shall submit, at its sole costs, a report prepared by an independent third party acceptable to Colorado River Basin Water Board staff providing such party’s professional opinion that Settling Respondent has expended money in the amounts claimed by Settling Respondent. In the event of such an audit, Settling Respondent agrees that they will provide the third-party auditor with access to all documents, excluding confidential and/or privileged documents, which the auditor requests. Such information shall be provided to Colorado River Basin Water Board staff within three months of the completion of Settling Respondent’s CP and ECA obligations.

**55. Colorado River Basin Water Board Acceptance of Completed CP and ECA:** Upon Settling Respondent’s satisfaction of its obligations under this Stipulation, the completion of

the CP and ECA and any audits, Colorado River Basin Water Board staff will issue a "Satisfaction of Order". The issuance of the Satisfaction of Order shall terminate any further obligations of Settling Respondent under this Stipulation.

- 56. Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved CP and ECA:** In the event that Settling Respondent is not able to demonstrate to the reasonable satisfaction of Colorado River Basin Water Board staff that it has spent the entire CP and ECA Amount for the completed CP and ECA, Settling Respondent shall pay the difference between the CP Amount and ECA Amount, and the amount Settling Respondent can demonstrate was actually spent on the CP and ECA, as an administrative civil liability. Payment of the ECA difference shall be made within 30 days to the "Waste Discharge Permit Fund" in accordance with the procedures set forth in Paragraph 47 of Section III herein. Payment of the CP difference shall be made within 30 days to the "State Water Pollution Cleanup and Abatement Account" in accordance with the procedures set forth in Paragraph 47 of Section III herein..
- 57. Failure to Complete the CP and ECA:** If the CP and ECA are not fully implemented by the CP Completion Date and ECA Completion Date required by this Stipulation or there has been a material failure to satisfy a Milestone Requirement set forth in Exhibit D, Colorado River Basin Water Board staff shall issue a "Notice of Violation." As a consequence, Settling Respondent shall be liable to pay the entire suspended Administrative Civil Liability or some portion thereof less the value of the completion of any Milestone Requirement. Unless otherwise ordered, Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the Colorado River Basin Water Board for expenditures made on the CP and ECA prior to the date of the Notice of Violation by the Colorado River Basin Water Board. The amount of the suspended liability owed shall be determined by the Colorado River Basin Water Board's Executive Officer or the Executive Officer's delegate. Upon notification of the amount assessed for failure to fully implement the CP and ECA, the amount assessed shall be paid within 30 days. Payment related to the ECA shall be made to the "Waste Discharge Permit Fund" and payment related to the CP shall be made to the "State Water Pollution Cleanup and Abatement Account" in accordance with the procedures set forth in Paragraph 47 of Section III herein. In addition, Settling Respondent shall be liable for the Colorado River Basin Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy Settling Respondent's obligations to implement the CP and ECA.
- 58. Water Board is not Liable:** Neither the State Water Resources Control Board and/or the Colorado River Basin Water Board (collectively "Water Board") members nor the Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.
- 59. Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws.



**60. Party Contacts for Communications related to Stipulation Order:**

**For the Colorado River Basin Water Board:**

Kai Dunn  
73720 Fred Waring Drive, Ste. 100  
Palm Desert, CA 92260  
Tel.: (760) 776-8986  
Email: [Kai.Dunn@waterboards.ca.gov](mailto:Kai.Dunn@waterboards.ca.gov)

Maribel Jernegan  
73720 Fred Waring Drive, Ste. 100  
Palm Desert, CA 92260  
Tel.: (760) 776-8941  
Email: [Maribel.Jernegan@waterboards.ca.gov](mailto:Maribel.Jernegan@waterboards.ca.gov)

Jose Angel  
73720 Fred Waring Drive, Ste. 100  
Palm Desert, CA 92260  
Tel.: (760) 776-8932  
Email: [Jose.Angel@waterboards.ca.gov](mailto:Jose.Angel@waterboards.ca.gov)

**For the Settling Respondent:**

Debbie Salas  
125 Alcott Road  
Niland, CA 92257  
Tel.: (909) 634-7183  
Email: [debbiesalas85@yahoo.com](mailto:debbiesalas85@yahoo.com)

Dennis Morita  
3205 South Dogwood Road, Ste. B  
El Centro, CA 92243  
Tel.: (760) 353-3232  
Email: [dmorita@morita-law.com](mailto:dmorita@morita-law.com)

61. **Bankruptcy:** Should the Settling Respondent enter into bankruptcy proceedings before all payments are paid in full, the Settling Respondent agrees to not seek to discharge any of these penalties in bankruptcy proceedings.
62. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney's fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
63. **Matters Addressed by Stipulation:** Upon adoption by the Colorado River Basin 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 Stipulation. The provision of this Paragraph is expressly conditioned on the full payment of the administrative civil liability by the deadlines specified herein and the Settling Respondent's full satisfaction of the obligations described herein.

64. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Colorado River Basin Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Colorado River Basin Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Colorado River Basin Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.
65. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Colorado River Basin 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.
66. **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 Settling Respondent is represented by counsel in this matter.
67. **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 Colorado River Basin Water Board. If circumstances beyond the reasonable control of the Settling Respondent prevent completion of the CP or the ECA by their respective completion dates in Paragraph 53, the Colorado River Basin Water Board Executive Officer may, in writing, extend the due date. The CP Completion Date shall not be extended to a date later than December 31, 2019. Settling Respondent shall send its written request for a CP or ECA extension with necessary justification to the Colorado River Basin Water Board contact in Paragraph 47 no later than October 31, 2018.
68. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Colorado River Basin Water Board, or its delegee, 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 Colorado River Basin 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 discussion 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 Colorado River Basin Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Colorado River Basin 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 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.

69. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Colorado River Basin Water Board prior to the adoption of the Order.

70. **Waiver of Right to Petition or Appeal:** The Settling Respondent hereby waives its right to petition the Colorado River Basin 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.

71. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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 the alleged violations addressed by this Stipulation and Order, the CP or the ECA.

72. **Necessity for Written Approvals:** All approvals and decisions of the Colorado River Basin Water Board under the terms of this Stipulation shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Colorado River Basin Water Board regarding submission or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Stipulation.

73. **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.

74. **Effective Date:** The obligations under this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Colorado River Basin Water Board which incorporates the terms of this Stipulation.

75. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

76. **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.

Stipulated Order No. R7-2017-0007  
Niland Sanitary District  
Wastewater Treatment Plant

**IT IS SO STIPULATED.**

**California Regional Water Quality Control Board Prosecution Team,  
Colorado River Basin**

By: Jose L. Angel  
**Jose Angel**  
**Executive Officer**

Date: 3/6/2017

**Niland Sanitary District,  
Niland Sanitary District Wastewater Treatment Plant**

By: Debbie Salas  
**Debbie Salas**  
**NSD Board of Directors, President**

Date: 3-7-17

**Order of the Colorado River Basin Water Board**

77. This Order incorporates the foregoing Stipulation.

78. In accepting the foregoing Stipulation, the Colorado River Basin Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385. The Colorado River Basin Water Board's consideration of these factors is based upon information obtained by the Colorado River Basin Water Board staff in investigating the allegations or otherwise provided to the Colorado River Basin Water Board.

79. This is an action to enforce the laws and regulations administered by the Colorado River Basin Water Board. The Colorado River Basin Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321 (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the CP and ECA prior to implementation. Mere submittal of plans is exempt

Stipulated Order No. R7-2017-0007  
Niland Sanitary District  
Wastewater Treatment Plant

from CEQA as submittal will not cause a direct or indirect physical change in the environment.

80. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under the Order.

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

I, Frank Gonzalez, Assistant 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 on March 9, 2017.



Frank Gonzalez  
Assistant Executive Officer

Date: 3-9-17

Attachments:

- Exhibit A: Mandatory Minimum Penalties
- Exhibit B: Uncertified Laboratory
- Exhibit C: Methodology
- Exhibit D: ECA and CP Proposal