



Desert Recreation District  
Order No. R7-2018-0027

Clean Water Act, Section 301; CWC section 13376; the Colorado River Basin Water Board's Water Quality Control Plan (Basin Plan) and of the Colorado River Basin Water Board's Order 97-700.

6. On September 15, 2017, in response to the Investigative Order, the District submitted a technical report about the unauthorized discharge. In the technical report, the District stated that a valve on the First Tee golf course had been left open by staff working for the contract operator, which caused Pond 3 to overtop with recycled water. The overflow from Pond 3 caused severe erosion in the Channel's northerly embankment, which caused the collapse of the 24-inch and the 30- inch gravity sewer pipes operated by the Coachella Valley Water District. In the technical report, the Discharger initially estimated the total volume discharged to consist of 2.419 million gallons of raw sewage and 2.8 million gallons of recycled water. The District later corrected the estimate of recycled water discharged to 1.502 million gallons, which accounts for the recycled water that had been drawn from Pond 3 and used for irrigation prior to the discharge.
7. The Colorado River Basin Water Board's Order 97-700 prohibits recycled water from being used in a manner that causes pollution or nuisance and prohibits the discharge of recycled water in excess of the system design capacity. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
8. As shown in Attachment A, incorporated herein by reference, the Colorado River Basin Water Board alleges that the Discharger violated Order 97-700, CWC 13376 and Section 301 of the Clean Water Act by discharging into the Channel.
9. Water Code section 13385 provides that any person who violates Section 301 of the federal Clean Water Act or California Water Code section 13376 may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs and, 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 gallon, an additional liability not to exceed ten dollars multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
10. The State Water Board adopted Resolution 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327.
11. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Colorado River Basin Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Enforcement Policy, as described in Attachment A. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all its enforcement objectives, that no further action is warranted

concerning the specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

## B. STIPULATIONS

1. **Jurisdiction:** The Parties agree that the Colorado River Basin Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **five hundred seventy-one thousand three hundred and two dollars (\$571,302)** in the form of a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall indicate Order R7-2018-0027 and shall be sent to the following address:

State Water Resources Control Board  
Division of Administrative Services, ATTN: ACL Payment  
P.O. Box 1888  
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Doug Wylie  
[Doug.Wylie@waterboards.ca.gov](mailto:Doug.Wylie@waterboards.ca.gov)

3. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged above may subject it to further enforcement, including additional administrative civil liability.
4. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Colorado River Basin Water Board against the Discharger.
5. **Party Contacts for Communications related to this Stipulation and Order:**

**For the Regional Water Board:**  
Doug Wylie, Senior WRCE  
Colorado River Basin Regional Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
760-776-8960  
[Doug.wylie@waterboards.ca.gov](mailto:Doug.wylie@waterboards.ca.gov)

**For the Discharger:**  
Kevin Kalman, General Manager  
Desert Recreation District  
45-305 Oasis, Indio, CA 92201

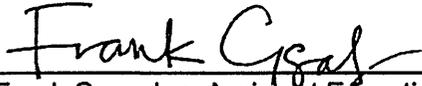
6. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
7. **Matters Covered by this Stipulation:** Upon adoption by the Colorado River Basin Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged above or which could have been asserted by the Colorado River Basin Water Board based on the specific facts alleged against the Discharger. The provisions of this Stipulation are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Stipulation 2 herein.
8. **Public Notice:** The Discharger and the Colorado River Basin Water Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Colorado River Basin Water Board, or its delegee. In the event objections are raised during the public review and comment period, the Colorado River Basin Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.
9. **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.
10. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
11. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.
12. **If the 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 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 discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
  - A. Objections related to prejudice or bias of any of the 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/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Attachment A 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.

13. **Waiver of Hearing:** Except as provided under Stipulation 12 above, the Discharger 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.
14. **Waiver of Right to Petition:** Except as provided under Stipulation 12 above, the Discharger hereby waives its right to petition the Colorado River Basin Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
15. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
16. **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.
17. **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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
18. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Colorado River Basin Water Board or its delegee, which incorporates the terms of this Stipulation.
19. **Incorporated Attachments:** Attachment A is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

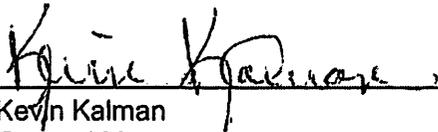
IT IS SO STIPULATED<sup>1</sup>:



Frank Gonzalez, Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
Prosecution Team

8-9-18

Date



Kevin Kalman  
General Manager  
Desert Recreation District

August 9, 2018

Date

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<sup>1</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

**Attachment A**  
**Penalty Methodology**  
ACL Complaint R7-2017-0027  
Desert Recreation District (District or Discharger)

The State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (CWC) sections 13327 and 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy<sup>1</sup> 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).

**Violation 1: Discharge of raw sewage and recycled water from June 3, 2017 to June 4, 2017**

**Step 1 – Potential for Harm for Discharge Violations**

This step considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation. A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement. Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of 6 is assigned to Step 1.

**Factor 1: Harm or Potential Harm to Beneficial Uses**

This factor evaluates direct or indirect harm, or potential for harm to beneficial uses that may result from exposure to the pollutants or contaminants in the unauthorized discharge, in accordance with the nature, circumstances, extent, and gravity of the violation. A score between 0 (minor) and 5 (major) is assigned.

The unauthorized discharge of almost four million gallons of raw sewage and recycled water occurred in the Whitewater River Stormwater Channel (Channel), which is in the Coachella Valley, within Riverside County, California. The eastern valley is largely agricultural, utilizing ground water and water from the Colorado River delivered by the Coachella Canal via the All-American Canal, for crop irrigation. The Channel is an engineered extension of the Whitewater River that functions as a conveyance channel for urban and storm water runoff. The Channel is approximately 25 miles in length, extending from the City of Palm Springs to Washington Street in the City of La Quinta, then becoming the Coachella Valley Stormwater Channel. The bottom of the Channel is natural, although the walls of the Channel are concrete-lined in some areas, to facilitate flow and reduce erosion.

The Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board) adopted the Water Quality Control Plan for the Colorado River Basin (Basin Plan) pursuant to Water Code section 13243 on November 17, 1993, and amended it on March 7, 2017. Chapter 2 of the Basin Plan lists the designated beneficial uses for Washes, including those that are tributary to the Salton Sea. Those beneficial uses include:

- Freshwater Replenishment
- Ground Water Recharge

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<sup>1</sup> The violations alleged herein occurred prior to the State Water Board's amendments to the Enforcement Policy, which became effective on October 5, 2017. The 2010 version of the Enforcement Policy was in effect on the dates of the violation at issue and, therefore, is the applicable policy. Amendments in the 2017 Enforcement Policy that are mere clarifications may be used immediately to assist the Water Boards in interpreting the 2010 Enforcement Policy.

- Non-Water Contact Recreation
- Wildlife Habitat
- Warm Freshwater Habitat

The Basin Plan delineates Freshwater Replenishment, Ground Water Recharge, Non-Water Contact Recreation, and Wildlife Habitat as intermittent beneficial uses because they occur only seasonally due to limiting environmental conditions or because they are dependent on sufficient flow. The Basin Plan states that Warm Freshwater Habitat beneficial uses may exist, but should be analyzed on a case-by-case basis. The discharge of roughly 2.4 million gallons of raw sewage and 1.5 million gallons of non-potable recycled water created sufficient flow to trigger the occurrence of the above listed beneficial uses. Furthermore, environmental conditions during the discharge in June of 2017 were conducive to the existence of Non-Water Contact Recreation beneficial uses regardless of flow in the Channel.

The Channel and its tributary drains provide habitat for a variety of wildlife including migratory songbirds, waterfowl, coyotes, raccoons, and rodents. During a Water Boards inspection of the Channel on January 16, 2018, Water Boards staff observed no evidence of harm to plants or wildlife resulting from the discharge, which supports that the discharge attenuated without chronic or acute effects. The volume of raw sewage and recycled water discharged to the Channel is reasonably expected to have impacted wildlife and warm freshwater habitat.

In addition to impacts to wildlife habitat, the discharge had the potential to impact non-contact recreation uses. The Palm Desert High School is adjacent to the Channel and there are residential areas both north and south of the unfenced Channel area. In addition, a portion of the Channel is used as a private golf course (Monterey Country Club) with turf areas throughout the Channel. While warning signs are posted at various locations along the Channel to prevent people from entering it and being exposed to various hazards, including but not limited to flash floods, unstable footing along the sidewalks, and exposure to contaminants from past and current discharges, people may still recreate in and around the Channel.

In the days following the discharge, the Coachella Valley Water District tilled the soil in the area to minimize the odor and restore the aesthetics of the Channel. The Coachella Valley Water District used barricades and signs within the Channel to warn the public of the discharge, but did not recover any of the discharge. There were no reported incidents of members of the public coming into contact with the discharge. While people may recreate in the Channel, due to the mitigation actions immediately undertaken by the Coachella Valley Water District, the impacts to Non-Water Contact Recreation uses were below-moderate.

Impacts to freshwater replenishment in the Channel were below-moderate. There are a limited number of annual storm events during which significant flows are measured in the Channel. According to a September 7, 2017 technical memorandum provided to the Coachella Valley Water District by Todd Groundwater, measurable flows of greater than one cubic foot per second are observed downstream of the Channel an average of only 6 days per year. Given the mitigation actions of the Coachella Valley Water District following the discharge, and the frequency of storm events, it is unlikely that the discharge had impacts on freshwater replenishment.

The discharge posed a less than moderate threat to groundwater recharge. The estimated depth to groundwater in the Channel is 160 feet or more. This allows the significant vertical soil column to provide natural filtering of the infiltrated discharge before it reaches groundwater. The potential for adsorption of the discharge in the underlying soil also lessens the threat of impact. When considering the estimated areal extent of the discharge at the surface, the estimated volume of available pore space in the soil

column between the surface and 160 feet (assuming a porosity of 25%) is over 44,000,000 gallons. This means that the entire discharge has the capacity to occupy less than one percent of the total available pore space between the surface and 160 feet. As a result, it is reasonable to assert that much of the discharge is likely retained in the pore space of the underlying unsaturated soils above the water table, where it is being further attenuated by natural processes.

Significant microbial action is also likely to be consuming various residual contaminants in the discharge as it migrates vertically downward through the soil column. The stratification and the likely existence of fine-grained interbeds which serve to further retard the vertical migration of the discharge and allow it to further attenuate through natural processes before it reaches groundwater. Information obtained from the State Water Board's GeoTracker database indicates that there are approximately five water supply wells located within a mile of the discharge location, and that most of these are listed as either inactive or abandoned. In addition, according to the September 7, 2017 technical memorandum provided to the Coachella Valley Water District by Todd Groundwater, the nearest water supply wells to the discharge site are "screened below and partially protected by the regional clay aquitard," making impact on these water supply wells further unlikely.

The Enforcement Policy defines a "below moderate" potential for harm as one which poses "less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor)." Based on the circumstances described above, impacts to beneficial uses were observed during the discharge, and may reasonably be expected to occur again in isolated circumstances in the future, but harm to beneficial uses is minor. Therefore, the potential impacts to the beneficial uses of the Channel were determined to be below moderate, and a score of 2 is assigned to Factor 1.

#### Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge

This factor evaluates the degree of toxicity of the discharge by evaluating the physical, chemical, biological, and/or thermal nature of the discharge. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. A score between 0 (negligible risk) and 4 (significant risk) is assigned based on a determination of the risk or threat of the discharged material on potential receptors. Potential receptors are those identified considering human, environmental, and ecosystem health exposure pathways.

Raw sewage contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that have the potential to seriously adversely impact human and environmental receptors. The recycled water delivered to the Desert Recreation District contained chlorine residuals of 9.9 mg/L for June 3, 2017. Chlorine residual concentration at this level, which is more than double the concentration in the drinking water standards (MCL) of 4 mg/L, poses a threat to both human and environmental receptors.

In this case, a score of 3 is assigned because the chemical and/or physical characteristics of the discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection).

The high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors due to high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease, etc. that are found in sewage. The degree of toxicity in recycled water, which contains varying levels of chlorine residual, also poses a threat to ecological receptors. The characteristics of the discharge, which

consisted of both recycled water and raw sewage posed an above-moderate risk or threat to potential receptors.

**Factor 3: Susceptibility to Cleanup or Abatement**

A score of 0 is assigned if 50% or more of the discharge is susceptible to cleanup or abatement. Since the recycled water and raw sewage discharged to a dry desert storm channel, the flow percolated rapidly into the sandy channel bottom. No flow was recovered and a score of 1 is assigned because less than 50% of the discharged was susceptible to cleanup.

**Final Score – “Potential for Harm”**

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a final score of 6 was calculated (2 + 3 + 1). The total score is then used in Step 2 below.

**Step 2 – Assessment for Discharge Violations**

The Enforcement Policy provides that the initial liability amount shall be determined on a per day and a per gallon basis per Water Code section 13385, subdivision (c), using the score from Step 1 in conjunction with the Extent of Deviation from the Requirement of the violation (see Enforcement Policy, Tables 1 and 2).

**Deviation from the Requirement**

Section 301 of the Federal Water Pollution Control Act (33 U.S.C. § 1311) (Clean Water Act) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Furthermore, the California Regional Water Quality Control Board, Colorado River Basin Region Order No. 97-700 General Waste Discharge Requirements for Discharge of Recycled Water for Golf Course and Landscape Irrigation states that the use of recycled water shall not cause pollution or nuisance as defined in Section 13050 of Division 7 of the California Water Code (Order No. 97-700, Specification section B.1).

The Enforcement Policy defines a **Major** deviation as, “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The raw sewage and recycled water discharge was a major deviation from requirements because it rendered the prohibitions on discharging untreated wastewater to waters of the United States and the requirements of Order No. 97-700 regarding pollution and nuisance ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred.

**Per Gallon Assessments for Discharge Violations**

When there is a discharge, the Colorado River Basin Water Board must determine the initial liability amount on a per gallon basis using the score from Step 1 and the Deviation from Requirement score. The score from Step 1 is 6 and the Deviation from Requirement score is **Major**.

Table 1 of the Enforcement Policy (p. 14) is used to determine a “Per Gallon Factor” based on the Step 1 and the Deviation from Requirement scores. Here, the Per Gallon Factor is **0.22**. This value is then multiplied by the volume of discharge and the per gallon civil liability, as described below.

Approximately, 2,419,000 gallons of raw sewage and 1,502,333 gallons of recycled water was discharged from 8:50 pm, June 3, 2017 to 4:00 pm, June 4, 2017. The maximum civil liability allowed under Water Code section 13385 is \$10 per gallon for discharges. The 2017 Enforcement Policy provides that for

discharges in excess of 2,000,000, the Water Boards may elect to use a maximum of \$1.00 per gallon.<sup>2</sup> Given the high volume of the discharge, the Prosecution Team has exercised its discretion to apply \$1.00 per gallon.

Water Code section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged but not cleaned up, over 1,000 gallons for each spill event. As shown in the table below, there was one spill event from 8:50 p.m., June 3, 2017 to 4:00 p.m., June 4, 2017 with an estimated volume of 3,921,333 gallons. The Per Gallon Assessment is calculated as (factor from Table 1) x (spill volume - 1,000 gallons) x (\$1.00 per gallon).

#### Per Day Assessments for Discharge Violations

When there is a discharge, the Colorado River Basin Water Board must determine the initial liability amount on a per day basis using the Step 1 (6) and the Deviation from Requirement (**Major**) scores described above. Table 2 of the Enforcement Policy is used to determine a "Per Day Factor for Discharges." The "Per Day Factor" is **0.22**, as determined from Table 2 in the Enforcement Policy. The Per Day Assessment is calculated as (factor from Table 2) x (number of days) x \$10,000 per day.

#### Violation – Per Gallon and Per Day Assessment for Discharge

The initial liability amount for the discharge violation is as follows:

Per Gallon Liability:

a)  $0.22 \times (3,921,333 \text{ gallons discharged} - 1,000 \text{ gallons}) \times \$1.00 \text{ per gallon} = \$862,473$

Per Day Liability:

b)  $0.22 \times (2 \text{ days}) \times \$10,000 = \$4,400$

Total Initial Liability (a + b) = **\$866,873**

#### Step 3 – Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply because the violation is a discharge.

#### Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's history of violations.

#### Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent or knowing behavior.

The 24-inch and 30-inch gravity sewer pipes operated by the Coachella Valley Water District were located along the top of the north bank of the Channel next to the Coachella Valley golf course, which is operated

<sup>2</sup> A party against whom an enforcement action is taken can consent to the application of substantive amendments in the 2017 Enforcement Policy to violations that are governed by the 2010 Enforcement Policy. (See Civ. Code, § 3515.)

by the Desert Recreation District. On June 3, 2017, non-potable water overtopped an irrigation pond at the golf course and cut a path to the Channel, which undermined and broke the concrete pond edge and eroded a cut in the earthen bank of the Channel, undermining and collapsing the two Coachella Valley Water District-operated gravity sewers.

The valve providing non-potable water supply to the pond was left open by the contract operator after its staff had left the site for the day, which caused the pond to overtop. In February of 2015, the Discharger upgraded its irrigation system to make it automated utilizing a system of electrically operated valves, sensors, and pressure transducers. However, on the day the unauthorized discharge occurred, data logs indicate that the automation computer was offline and the valves controlling the flow of recycled water to the irrigation ponds were being operated manually. In addition, a special valve designed to restrict the maximum flow of recycled water to only 500 gallons-per-minute had been adjusted to allow more than 3,000 gallons-per-minute to flow into Pond 3. By disabling the automation system, and over-riding the flow restrictor valve, and failing to properly supervise the manual refill process, the District's contractor failed to exercise the due standard of care necessary to prevent the unauthorized discharge. The Colorado River Basin Water Board finds that the District, as holder of the recycled water permit, is responsible for the actions or inactions of its contract operator and assigns a multiplier value of 1.3 for the culpability factor. Nothing in this finding is intended to preclude the District from recovering damages from the contract operator in a separate claim.

#### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger is assigned a neutral multiplier value of 1 because it acted reasonably in regard to cleanup and cooperation. The Coachella Valley Water District was the primary responder to the incident and is the more appropriate responder given its expertise and resources.

#### History of Violations

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used where there is a history of repeat violations, and is to be increased as necessary. In this case, a neutral multiplier of 1 is assigned because the Discharger has no known prior history of violations.

#### **Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 2.

#### **Violation 1 – Total Base Liability Amount**

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

Total Base Liability = \$866,873 x 1.3 x 1 x 1 = \$1,126,935

Steps 6 through 10 are applied to the Total Base Liability Amount

**STEP 6 – Ability to Pay and Continue in Business**

The District was created in 1950 pursuant to California Public Resources Code Section 5780 et seq. The District operates over 30 recreational facilities throughout the Coachella Valley. The District is funded by various sources including program revenues, property taxes, special assessment, and other revenue sources. According to the District's Financial Statements for the Fiscal Year Ended June 30, 2014, the District collected total revenues of \$10,860,230. In addition, the District had a total net position of \$17,740,505, of which \$7,835,344 is unrestricted. The Colorado River Basin Water Board has determined that District has the ability to pay the penalty and has determined that the combined Total Base Liability Amount is appropriate and warranted with respect to this additional consideration. Accordingly, the Total Base Liability is not adjusted.

**STEP 7 – Other Factors as Justice May Require**

If the Colorado River Basin Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under this provision if express findings are made to justify that adjustment. In this case, a consideration of environmental justice issues indicates that the amount would have a disproportionate impact on disadvantaged groups.

The District provides subsidized services to an economically disadvantaged area. A portion of such subsidies comes from taxes allocated to the District. Average household income in Indio where the District is located was under \$69,000 in 2015. In nearby Coachella, average household income was slightly over \$50,000. Moneys in the District's capital reserve is earmarked to fund special projects such as the Pawley Pool, Oasis Community Park and the North Shore Community Park (located in the unincorporated area of Mecca, which has an average household income well below that of Coachella). Imposition of civil liability in the amount of \$1,126,935 will cause one or more of these projects to be cancelled or severely delayed. In consideration of these circumstances the Prosecution Team has elected to adjust the Total Base Liability amount by half, resulting in an adjusted Total Base Liability amount of \$563,467 (Total Base Liability (\$1,126,935) x 0.5).

**Costs of Investigation and Enforcement**

The costs of investigation and enforcement are included in the liability amount. The Colorado River Basin Water Board has incurred \$7,835 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents 27 hours of staff time at a per hour rate based on staff salaries. It is appropriate to increase the Total Base Liability amount by \$7,835. This increase is in consideration of the costs of investigation and enforcement relative to the adjusted Total Base Liability amount. It is warranted given the totality of the circumstances and is intended to serve as a sufficient general and specific deterrent against future violations. This adjustment results in a proposed civil administrative liability amount of \$571,302 (Adjusted Total Base Liability (\$563,467) + Costs of Investigation and Enforcement (\$7,835).

**STEP 8 – Economic Benefit**

The economic benefit is the cost savings or monetary gain derived from delaying or avoiding actions that would have prevented or mitigated the violations and environmental damage from occurring. In this case, the District delayed costs associated with addressing engineering and operating issues that should have been implemented earlier to avoid the discharge event.

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)<sup>3</sup> penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.7.0. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The BEN model is the appropriate tool for estimating the economic benefit of failing to address engineering and operational concerns that ultimately resulted in the catastrophic failure of Pond 3 that severed two Coachella Valley Water District sewer mains. In the July 27, 2017 Technical Report, the Discharger's consultant proposed four corrective actions that should be implemented to prevent a similar scenario in the future:

1. Repair the liner in Pond 3. Pond 3 will then be landscaped and utilized as a detention pond, and grades surrounding the ponds will be adjusted so that any overflow from Ponds 1 and 2 will flow into and be retained in Pond 3, where the water can be recovered for use on the golf course.
2. Replace all valves and controls with contemporary equipment where necessary.
3. Relocate the reclaimed water supply line to Pond 3 to feed into Pond 1. The new water supply line will be sized to allow no more than 70 gpm of water to be delivered to Pond 1 when supply valve is fully open.
4. Install sensors and a monitoring system that will detect when valves are open and flowing water, and will detect when Ponds 1 and 2 are full, and when water is entering Pond 3.

Although the District indicated that the final plans for the proposal above would be submitted to the Colorado River Basin Water Board prior to implementation, no plans or cost estimates have been received to date. Therefore, staff at the State Water Board, Office of Enforcement have estimated potential costs associated with each proposed action. The total implementation cost for the four actions listed above was estimated to be \$35,000. Because it is understood that the District still intends to implement these corrective actions, they are considered delayed. For conservative purposes, the delay period is assumed to be two years, which is believed to be the last period when significant improvements were made to the facility's irrigation system based on review of annual financial reports. For the purposes of computing the economic benefit using BEN, the penalty payment date is assumed to be the tentative date of administrative hearing, September 20, 2018. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$959.

### **STEP 9 – Maximum and Minimum Liability Amounts**

- a) Minimum Liability Amount: Economic Benefit + 10%

Discussion: The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Colorado River Basin Water Board Prosecution Team's estimate of the District's economic benefit obtained from the violations cited in this Complaint is \$959. Thus, the minimum administrative civil liability amount is \$1,054 (Economic Benefit (\$959) x 1.1).

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<sup>3</sup> US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

b) Total Maximum Liability Amount: **\$39,223,330**

The proposed liability falls within these maximum and minimum liability amounts.

**STEP 10 – Final Liability Amount**

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount proposed for the alleged violation is **\$571,302**.

**REGIONAL BOARD MEETING**

State of California  
California Regional Water Quality Control Board  
Colorado River Basin Region

**BOARD MEETING AGENDA**  
Thursday, September 20, 2018, 1:00 p.m.  
California Regional Water Quality Control Board  
Colorado River Basin Region Board Room  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

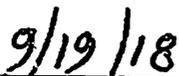
**ERRATA SHEET**

**ITEM NO. 5 – Tentative Order R7-2018-0027, Consideration of Settlement Agreement and Stipulations for Entry of Order, In the Matter of Desert Recreation District**

Minor, non-substantive changes are made on pages 1-2, 6 of the Stipulation and on the Proposed Order to streamline legal citation format and correct typos; as shown in the attached redline. The phrase "acting through its Executive Officer" is also deleted from Paragraph 2 of the Proposed Order, as the Regional Water Board is approving the Settlement Agreement directly and not through a delegee.

*Desert Recreation District and the Prosecution Team both agree to these changes and that they shall be incorporated into the conformed copy of the Settlement Agreement and Stipulations For Adoption of Order R7-2018-0027.*

  
\_\_\_\_\_  
Frank Gonzalez, Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
Prosecution Team

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Kevin Kaiman, General Manager  
Desert Recreation District

\_\_\_\_\_  
Date

**REGIONAL BOARD MEETING**

State of California  
California Regional Water Quality Control Board  
Colorado River Basin Region

**BOARD MEETING AGENDA**  
Thursday, September 20, 2018, 1:00 p.m.  
California Regional Water Quality Control Board  
Colorado River Basin Region Board Room  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260

**ERRATA SHEET**

**ITEM NO. 5 – Tentative Order R7-2018-0027, Consideration of Settlement Agreement and Stipulations for Entry of Order, In the Matter of Desert Recreation District**

Minor, non-substantive changes are made on pages 1-2, 6 of the Stipulation and on the Proposed Order to streamline legal citation format and correct typos, as shown in the attached redline. The phrase “acting through its Executive Officer” is also deleted from Paragraph 2 of the Proposed Order, as the Regional Water Board is approving the Settlement Agreement directly and not through a delegee.

*Desert Recreation District and the Prosecution Team both agree to these changes and that they shall be incorporated into the conformed copy of the Settlement Agreement and Stipulations For Adoption of Order R7-2018-0027.*

\_\_\_\_\_  
Frank Gonzalez, Assistant Executive Officer  
Colorado River Basin Regional Water Quality Control Board  
Prosecution Team

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kevin Kalman, General Manager  
Desert Recreation District

\_\_\_\_\_  
September 20, 2018

\_\_\_\_\_  
Date



Desert Recreation District  
Order No. R7-2018-0027

Order R7-2017-0027 to the District on August 10, 2017, alleging violations of ~~the~~ Clean Water Act, ~~s~~Section 301; ~~C~~Water Code section 13376; the Colorado River Basin Water Board's Water Quality Control Plan (Basin Plan); and ~~of~~ the Colorado River Basin Water Board's Order 97-700.

6. On September 15, 2017, in response to the Investigative Order, the District submitted a technical report about the unauthorized discharge. In the technical report, the District stated that a valve on the First Tee golf course had been left open by staff working for the contract operator, which caused Pond 3 to overtop with recycled water. The overflow from Pond 3 caused severe erosion in the Channel's northerly embankment, which caused the collapse of the 24-inch and the 30- inch gravity sewer pipes operated by the Coachella Valley Water District. In the technical report, the Discharger initially estimated the total volume discharged to consist of 2.419 million gallons of raw sewage and 2.8 million gallons of recycled water. The District later corrected the estimate of recycled water discharged to 1.502 million gallons, which accounts for the recycled water that had been drawn from Pond 3 and used for irrigation prior to the discharge.
7. The Colorado River Basin Water Board's Order 97-700 prohibits recycled water from being used in a manner that causes pollution or nuisance and prohibits the discharge of recycled water in excess of the system design capacity. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and ~~C~~Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
8. As shown in Attachment A, incorporated herein by reference, the Colorado River Basin Water Board alleges that the Discharger violated Order 97-700, ~~C~~Water Code section 13376, and ~~s~~Section 301 of the Clean Water Act by discharging into the Channel.
9. Water Code section 13385 provides that any person who violates ~~s~~Section 301 of the federal Clean Water Act or ~~California~~-Water Code section 13376 may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs and, 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 gallon, an additional liability not to exceed ten dollars multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
10. The State Water ~~Resources Control~~ Board (~~State Water Board~~) adopted Resolution 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses factors that are required to be considered when imposing ~~a~~ civil liability as outlined in Water Code section 13385, subdivision (~~c~~), and section 13327.
11. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Colorado River Basin Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Enforcement Policy, as described in Attachment A. The Prosecution Staff believes that the resolution of the alleged violation is fair and

Desert Recreation District  
Order No. R7-2018-0027

Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Attachment A 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.

13. **Waiver of Hearing:** Except as provided under Stipulation 12 above, the Discharger 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.
14. **Waiver of Right to Petition:** Except as provided under Stipulation 12 above, the Discharger hereby waives its right to petition the Colorado River Basin Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
15. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
16. **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.
17. **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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
18. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Colorado River Basin Water Board or its delegee, which incorporates the terms of this Stipulation.
19. **Incorporated Attachments:** Attachment A is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

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PROPOSED ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, FINDS THAT:

1. In adopting this Order, the Colorado River Basin Regional Water Quality Control Board (~~Colorado River Basin Water Board~~ ~~or its Delegee~~) has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Colorado River Basin ~~Regional Water Quality Control Board~~. The Colorado River Basin ~~Regional Water Quality Control Board~~, ~~acting through its Executive Officer~~, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of ~~Title 14~~ of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE ~~CALIFORNIA~~ WATER CODE AND SECTION 11415.60 OF THE ~~CALIFORNIA~~ GOVERNMENT CODE, THE COLORADO RIVER BASIN ~~REGIONAL WATER QUALITY CONTROL BOARD~~ HEREBY ADOPTS THIS ORDER.

I, Paula Rasmussen, ~~Acting~~ Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region on September 20, 2018.

\_\_\_\_\_  
Paula Rasmussen, ~~Acting~~ Executive Officer  
Colorado River Basin Regional Water Quality Control Board

\_\_\_\_\_  
Date

**ORDER**

**HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, FINDS THAT:**

1. In adopting this Order, the Colorado River Basin Regional Water Quality Control Board (Colorado River Basin Water Board) has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought 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 section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2) of title 14 of the California Code of Regulations.

**PURSUANT TO SECTION 13385 OF THE WATER CODE AND SECTION 11415.60 OF THE GOVERNMENT CODE, THE COLORADO RIVER BASIN WATER BOARD HEREBY ADOPTS THIS ORDER.**

I, Paula Rasmussen, Acting Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region on September 20, 2018.



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