

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

In the Matter of:	)	
	)	
Imperial Irrigation District	)	Order R7-2013-0014 (Proposed)
Grass Carp Hatchery	)	
	)	Settlement Agreement and Stipulation for
Complaint R7-2012-0053 for	)	Entry of Order
<u>Administrative Civil Liability</u>	)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and Imperial Irrigation District (IID, or the "Discharger") (collectively "Parties") and is presented to the California Regional Water Quality Control Board, Colorado River Basin Region ("Regional Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint R7-2012-0053, dated October 24, 2012 (the "Complaint").

Section II: Recitals

1. The Discharger owns and operates the Grass Carp Hatchery (the "Hatchery"), which is located at 485 E. Villa Road, El Centro, CA 92243. Process water flows by gravity from the IID's Dogwood Canal into a holding pit and is subsequently pumped into two holding ponds. Water circulates through nine small earthen ponds, seven fiberglass pools, and ten fiberglass tanks used for raising grass carp fry. Water from the ponds flows by gravity into a holding pit via a filtering device to trap grass carp fry and eggs prior to discharge. Wastewater is discharged from the Hatchery to the Central Main Drain No. 5 (Drain), which is a tributary to the Alamo River. The Alamo River is a tributary of the Salton Sea. The Drain, the Alamo River, and the Salton Sea are waters of the United States. The Hatchery is subject to the requirements set forth in Waste Discharge Requirements (WDRs) Board Order R7-2010-0023, National Pollutant Discharge Elimination System Permit (NPDES) CA7000004.

2. The Complaint, as issued, recommends imposing mandatory minimum penalties ("MMPs") in the amount of \$12,000 for violations of the effluent limitations for total suspended solids (TSS) set forth in Order R7-2010-0023 that occurred seven (7) times between March 31, 2012 and July 31, 2012 ("Alleged ACL Violations").

3. Subsequent to the issuance of the Complaint, the Prosecution Team determined that the Discharger had self-reported two additional effluent limit violations on October 31, 2012 that were not otherwise included in the Complaint ("Alleged Additional

Violations"). The Prosecution Team has reviewed these violations and recommends imposition of an additional \$6,000 in MMPs for these two additional alleged violations. The Alleged ACL Violations addressed by this Stipulation are included in Table 1, Attachment "A", which is attached hereto and incorporated herein by reference.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the Alleged ACL Violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the Alleged ACL Violations except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

5. To resolve by consent and without further administrative proceedings the Alleged ACL Violations, the Parties have agreed to the imposition of \$18,000 in mandatory minimum penalties against the Discharger. The Discharger shall pay a total of \$1,500 to the State Water Resources Control Board Cleanup and Abatement Account, consisting of \$1,500 in mandatory minimum penalties. The remaining \$16,500 in mandatory minimum penalties shall be suspended upon completion of two Supplemental Environmental Project (SEPs) as set forth in this Stipulation and Order.

Section III: Stipulations

6. The Parties incorporate Paragraphs 1 through 5, by this reference, as if set forth fully herein, and stipulate to the following.

7. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of MMPs totaling \$18,000 as set forth in Paragraph 5 of Section II herein. Further, the Parties agree that \$16,500 in MMPs shall be suspended ("Suspended Liability") pending completion of the SEPs, as set forth in Paragraphs 8 through 19 of Section III herein and Attachment "B" attached hereto and incorporated by reference.

8. **SEP Descriptions:** The Parties agree that this resolution includes the performance of the SEPs as provided for as follows:

a. **Project LEARN SEP:** The goal of this project is to support the Calexico New River Committee Inc.'s (CNRC) ongoing project LEARN (Leading, Educating, and Advocating Residents on the New River Improvement Project Strategic Plan). The Discharger shall issue to CNRC \$6,500, which can be used to implement the project LEARN. Detailed plans for achieve the goal are provided in Attachment "B" included herein as part of this SEP description.

b. **New River Wetlands Project SEP:** The goals of the SEP are to support the continuation of the New River Wetlands Project and to implement wetland operation and maintenance activities. The Discharger shall issue Desert Wildlife Unlimited, Inc., \$10,000, which shall be used to implement wetland operation and

maintenance activities at the New River Wetlands Project wetland sites (i.e. Imperial, Brawley, and Shank Road wetlands). Activities include maintenance and operation of wetland pump, ponds, and maintenance of roads and facility grounds. Detailed plans for achieving the goal are provided in Attachment "B" included herein as part of this SEP description.

9. **SEP Completion Date:** The SEPs shall be concluded by December 31, 2013 ("SEPs Completion Date"). A final report shall be provided to the Regional Water Board and the State Water Resources Control Board's Division of Financial Assistance by February 15, 2014, as described in Paragraph 14.

10. **Agreement of Discharger to Fund, Report and Guarantee Implementation of the SEPs:** The Discharger represents that: (1) it will fund the SEPs in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEPs; (3) it will attach a cover letter to each certification or written report that clearly identifies the Discharger, WDID number, and ACL Order R7-2013-0014; and (4) it will guarantee implementation of the SEPs identified in Attachment "B" by remaining liable for the Suspended Liability until the SEPs are completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEPs.

11. **Representation of the Discharger:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents that it will utilize the Suspended Liability to implement the Project LEARN and the New River Wetlands Project SEPs in accordance with this Stipulation and Order and Attachment "B". The Discharger understands that its promise to implement the SEPs, in its entirety is a material condition of this settlement of liability between the Discharger and the Regional Water Board. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the New River Wetlands Project SEP.

12. **Oversight of SEPs:** Discharger agrees to contract with Barrett's Biological Surveys to oversee the implementation of the SEP. The Discharger is solely responsible for paying for all oversight costs incurred by Barrett's Biological Surveys to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to fund the SEP. Oversight tasks to be performed by Barrett's Biological Surveys include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final completion report, verifying completion of the project with a site inspection, auditing appropriate expenditure of funds, and providing updates to Regional Water Board staff.

13. **SEP Progress Reports:** The Discharger shall provide quarterly reports of the progress of implementing the SEPs to Doug Wylie, Senior Water Resource Control

Engineer, and the State Water Resources Control Board's Division of Financial Assistance, commencing 90 days after this Stipulation becomes final and continuing through submittal of the final reports described below in Paragraph 14. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

14. Certification of Completion of the SEP and Final Report: On or before the applicable SEPs Completion Date, the Discharger shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury under the laws of the State of California, to the Designated Regional Water Board Representative and the State Water Resources Control Board's Division of Financial Assistance, by a responsible official representing the Discharger. The submission of the Certification of Completion shall contain the following statement:

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

The Certification of Completion shall include following:

- a. Certification that the SEPs has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEPs and the costs incurred by the Discharger.
- b. Certification documenting the expenditures by the Discharger during the completion period for the SEPs. Expenditures may include external payments to outside vendors or contractors performing the SEPs. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board for oversight. The Discharger shall provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify SEPs expenditures.
- c. Certification, under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in the implementation of the SEPs including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the Discharger shall provide the

Regional Water Board with the following documents from the lead agency prior to commencing SEPs implementation:

- i. Categorical or statutory exemptions relied upon by the Discharger.
- ii. Negative Declaration if there are no potentially "significant" impacts;
- iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
- iv. Environmental Impact Report (EIR).

15. **Third Party Financial Audit:** In addition to the certification, upon completion of the SEPs and at the written request of the Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Regional Water Board staff, or its designated representative, providing such party's professional opinion that the Discharger have expended money in the amounts claimed by the Discharger. The audit report shall be provided to the Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party financial audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

16. **Regional Water Board Acceptance of Completed SEPs:** Upon the Discharger's satisfaction of its SEPs obligations under this Stipulation and completion of the SEPs and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent stay of the Suspended Liability.

17. **Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEPs:** In the event that Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire Suspended Liability has been spent to complete the components of the SEPs for which the Discharger is financially responsible, the Discharger shall pay the difference between the Suspended Liability and the amount the Discharger can demonstrate was actually spent on the SEPs, as an administrative civil liability. The Discharger shall pay the additional administrative liability within 30 days of its receipt of notice of the Regional Water Board's determination that the Discharger has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEPs components.

18. **Failure to Complete the SEPs:** If the SEPs are not fully implemented by the SEPs Completion Date (as defined in Paragraph 9) required by this Stipulation, the Designated Regional Water Board Representative shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof, or the Discharger may be compelled to complete the SEPs.

19. **Publicity:** Should the Discharger, or its agents or subcontractors publicize one or more elements of the SEPs, they shall state in a **prominent manner** that the project is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.

20. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and the Order and/or compliance with the terms of this Stipulation and the Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

21. **Party Contacts for Communications related to this Stipulation and/or the Order:**

For the Regional Water Board:

Doug Wylie, Senior Water Resource Control
Engineer
Colorado River Basin Regional Water Board
73-720 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
dwylie@waterboards.ca.gov
(760) 776-8960

For the Discharger:

Paul G. Peschel
Manager, General Services
Imperial Irrigation District
P.O. Box 937
Imperial, CA 92251

22. **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.

23. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the Alleged ACL Violations ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 6 and the Discharger's full satisfaction of the SEP obligations described herein.

24. **Public Notice:** Pursuant to the State Water Board Enforcement Policy, it is the policy of the State Water Board that a 30 day public comment period shall be posted on the Regional Water Board's website prior to the settlement or imposition of any administrative civil liability. Only one noticed need be posted for each civil liability. On October 24, 2012, the Assistant Executive Officer issued the Complaint and provided notice to the public that the violations alleged in the Complaint could be resolved by settlement, including, but not limited to performance of a SEP. During the 30-day period following the public notice, no persons submitted comments to the Regional Water Board regarding the Complaint and/or potential settlement of the Complaint. In addition

the Regional Water Board will provide notice that it will consider this matter at a public hearing at least 10 days prior to the date of the hearing. Thus, the terms of this Stipulation and Order have been properly noticed.

25. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

26. 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.

27. 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.

28. If Order Does Not Take Effect: In the event that this Order does not take effect because it is not approved by the Regional Water Board, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

29. Waiver of Hearing: The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

30. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

31. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.

32. **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 the Alleged ACL Violations.

33. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.

34. **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.

35. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.

36. **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.

IT IS SO STIPULATED.

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

Date: 12/13/2012

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

Imperial Irrigation District

Date: 12/12/12

By: Paul G. Peschel
Paul G. Peschel
Manager, General Services

Order of the Regional Water Board:

IT IS HEREBY ORDERED:

37. This Order incorporates the terms of the foregoing Stipulation, set forth in Paragraphs 1 through 35 above, by this reference, as if set forth fully herein.

38. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on January 17, 2013.

Robert Perdue
Executive Officer

Date: _____

ATTACHMENT "A"

Summary of Violations of Board Order R7-2010-0023 subject to Mandatory Minimum Penalties

Assessed Violation No.¹	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
924721	03/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 66.75 mg/L at Discharge Point #002	No	0 ²
924722	03/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 62 mg/L at Discharge Point #001	No	0 ²
926481	04/30/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 82.5 mg/L at Discharge Point #001	No	0 ²
926482	04/30/2012	Exceeded Monthly Average of 60 mg/L for Total Suspended Solids; Reported as 76.75 mg/L at Discharge Point #002	No	3,000
928819	05/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 61.30 mg/L at Discharge Point #002	No	3,000
928820	05/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 84.3 mg/L at Discharge Point #001	Yes	3,000
931758	07/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 74.25 mg/L at Discharge Point #001	No	3,000
939804	10/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 93.4 mg/L at Discharge Point #002	Yes	3,000
938805	10/31/2012	Exceeded Monthly Average Effluent Limit of 60mg/L for Total Suspended Solids; Reported as 74.00 mg/L at Discharge Point #001	No	3,000

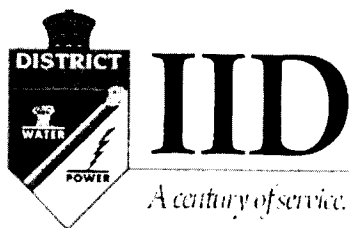
Total Mandatory Minimum Penalty:

\$18,000

¹ California Integrated Water Quality System (CIWQS)

² This is a supporting violation

ATTACHMENT "B"



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WD

December 5, 2012

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

Dear Mr. Angel:

Subject: Administrative Civil Liability Complaint No. R7-2012-0053; Imperial Irrigation District, Grass Carp Hatchery, WDID 7A130128015

The Imperial Irrigation District (IID) respectfully submits the following written response to the above-referenced Administrative Civil Liability Complaint (Complaint).

The IID will not contest the proposed Complaint or \$18,000 dollar civil liability and chooses to waive the right to a hearing before the Regional Water Board. However, the IID proposes a settlement plan to pay the requisite \$1,500 dollars to the "State Water Pollution Cleanup and Abatement Account", and the remaining \$16,500 to two Supplemental Environmental Projects (SEP) associated with the Calexico New River Committee and Citizen's Congressional Task Force on the New River to be completed by December 31, 2013.

SEP No.1

The IID proposes \$6,500 in funding to be issued to the Calexico New River Committee, Inc. (CNRC). This SEP will be used to support CNRC's ongoing Project LEARN (Leading, Educating, and Advocating Residents on the New River Improvement Project Strategic Plan). The overall goal of Project LEARN is to provide an aggressive community education and empowerment campaign utilizing the culturally sensitive recommendations called for in the NRIP Strategic Plan. Activities include: education of Imperial Valley community groups and organizations about the NRIP Strategic Plan, development and production of associated educational materials, operation and maintenance of a website as well as dissemination of information through media and newsletters with the same educational purpose.

SEP No.2

The IID proposes to expend \$10,000 dollars of internal resources to implement and/or to support Desert Wildlife Unlimited (DWU) implementation of wetland operation and maintenance activities directly associated with the New River Task Force wetland sites (i.e. Imperial, Brawley, and Shank Road wetlands). Activities include (as funds allow):

- **Maintenance and operation of wetland pump**, including routine maintenance, repair, replacement, and electricity costs as needed.
 - Brawley wetland site only



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- **Maintenance and operation of wetland ponds**, including bank repair/improvement, interior pond repair/improvement, and water level adjustment as needed.
 - Brawley, Imperial, and Shank wetland sites
- **Maintenance of roads and facility grounds**, including routine grading, road repair/improvement, facility clean-up, and vandalism repair as needed.
 - Brawley, Imperial, and Shank wetland sites.

We appreciate your consideration of this matter. Should you have any questions regarding this proposal, please contact Steve Charlton at 760-339-9143.

Sincerely,

PAUL G. PESCHEL
Manager, General Services

SLC
ACLC R7-2012-0053 SEP proposal3.doc