

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

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

Section I: Introduction

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

Section II: Recitals

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 Previous WDRs, listed in Table No. 1 below, were rescinded except for enforcement purposes.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

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

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

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

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

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

Regulatory Requirements to Develop Approved Pretreatment Program

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

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

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

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

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

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

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

Regulatory Requirements resulting in Mandatory Minimum Penalties

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

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

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

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

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

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

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

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

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

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

///
 ///

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

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

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

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

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

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

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

21. Specifically, the Discharger allegedly violated Task 2.C of Ordered Paragraph 3 in CDO R7-2008-0008 by failing to develop and adopt local limits by February 15, 2009. At this time, because the other tasks outlined above are related to the completion of Task 2.C, this Stipulation assesses penalties only for the alleged violation of Task 2.C. There are 1474 days of violation that may have allegedly occurred for the period beginning February 15, 2009, and ending the date the Complaint was issued, February 28, 2013. These 1474 days of alleged violation are subject to administrative civil liability pursuant to CWC section 13350, subdivision (a)(1).
22. As stated above, the alleged violation of CDO R7-2008-0008 with respect to implementation of the Pretreatment Program by the Discharger has significant impacts on water quality. The effluent from the WWTP causes toxicity. The Discharger was allowed interim effluent limits based in part on its commitment to comply with the Pretreatment Program requirements as set forth in the CDO. Because the Discharger has not implemented its Pretreatment Program, however, the threat and actual impact to water quality continues.
23. The Discharger denies and disputes all of the allegations in the Complaint and Paragraphs 1 through 22 above, and alleges that it has not violated the federal Clean Water Act, CDO R7-2008-0008, any applicable waste discharge requirement, any provision of its permit, or any federal, state, or local law.
24. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.
25. To resolve by consent and without further administrative proceedings all of the alleged violations of the CWC set forth in the Complaint and summarized in part in this Stipulation, the Discharger agrees to pay the sum of \$378,000 in settlement of alleged MMPs and \$622,000 in settlement of discretionary penalties for a total cash settlement payment of \$1,000,000. The Prosecution Staff finds that the settlement amount represents an adjustment in the discretionary penalty portion proposed in the Complaint of \$1,356,778, which was comprised of the Discharger's calculated economic benefit derived plus 10% of \$1,293,778 for its alleged noncompliance with certain permit requirements, and staff costs of \$63,000. The adjustment reflects the Prosecution Staff's reconsideration of the economic benefit derived, which is based on new factual information provided by the Discharger subsequent to issuance of the Complaint and its evaluation of the litigation risks.

Section III: Jurisdiction

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

Section IV: Stipulations

27. The Parties incorporate Paragraphs 1 through 26 by this reference, as if set forth fully herein, and stipulate to the following.
28. **Administrative Civil Liability:** The Discharger hereby agrees to pay the sum of ONE MILLION DOLLARS (\$1,000,000) in full and final settlement of the Complaint. Within thirty (30) days of issuance of this Stipulated Order by the Regional Water Board, the Discharger agrees to remit by check ONE MILLION DOLLARS (\$1,000,000) payable to the *SWRCB State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The Discharger shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch, 1001 I Street, 18th Floor, Sacramento, California 95814, and shall send a copy to Anna Kathryn Benedict, Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, California 95814.
29. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and Order and/or compliance with the terms of this Stipulation and Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.
30. **Party Contacts for Communications related to this Stipulation and/or the Order:**

a. For the Regional Water Board:

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

b. For the Discharger:

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

31. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
32. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in the Complaint, or which could have been asserted against the Discharger as of September 19, 2013, based on the specific facts alleged in the Complaint or this Stipulation and Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability set forth in paragraph 28.
33. **No Third Party Beneficiaries:** This Stipulation and Order are not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.
34. **Public Notice:** Pursuant to the State Water Board Enforcement Policy, it is the policy of the State Water Board that a 30-day public comment period shall be posted on the Regional Water Board's website prior to the settlement or imposition of any administrative civil liability. On February 28, 2013, the Assistant Executive Officer issued the Complaint and provided notice to the public on that date that the violations alleged in the Complaint could be resolved by settlement, including, but not limited to performance of a Supplemental Environmental Project. During the 30-day period following the public notice, no comments were submitted to the Regional Water Board regarding the Complaint and/or potential settlement of the Complaint. However, due to the need to reschedule the public hearing from May 16, 2013, to September 19, 2013, a Revised Public Notice was issued to indicate the change in hearing date. Hearing procedure deadlines were also revised accordingly, and additional contact information was provided along with other clarifying changes being made. Another 30-day public comment period has also been provided through a second Public Notice to give the public the opportunity to comment on the terms of this Stipulation and Order. Finally, the Regional Water Board will provide notice that it will consider this matter at a public hearing at least 10 days prior to the date of the hearing. Thus, the terms of this Stipulation and Order have been properly noticed.
35. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
36. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
37. **Integration:** This Stipulation and Order constitute the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulation and Order, except as may be expressly agreed in writing between the Parties.

38. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.
39. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter including, but not limited to:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
40. **Effect on Future Enforcement Actions:** In settling this matter, the Discharger recognizes that in the event of any future enforcement actions by the Regional Water Board or the State Water Resources Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with CWC sections 13327 and 13385, subdivision (e), and the State Water Resources Control Board's Water Quality Enforcement Policy. The Discharger reserves the right to take the position in any such actions that, as an order approving a settlement of disputed claims, this Stipulation and Order does not constitute a prior history of violations within the meaning of CWC sections 13327 and 13385, subdivision (e).
41. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC Section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
42. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
43. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in

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

44. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulation and Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding Covered Matters under this Stipulation and Order shall be construed to relieve any Party from any obligations imposed by those Covered Matters.
45. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
46. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approvals required by this Stipulation and Order.
47. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
48. **Effective Date:** This Stipulation is effective and binding on the Parties upon the adoption of this Order by the Regional Water Board, which expressly incorporates all of the terms of this Stipulation.
49. **Severability:** This Stipulation and Order are severable. Therefore, should any provision be found invalid, the remainder shall remain in full force and effect.
50. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

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

IT IS SO STIPULATED.

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

Date: 8/06/2013

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

CITY OF BRAWLEY

Date: 08/05/2013

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

APPROVED AS TO FORM:

Date: 08/05/2013

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

ORDER OF THE REGIONAL WATER BOARD:

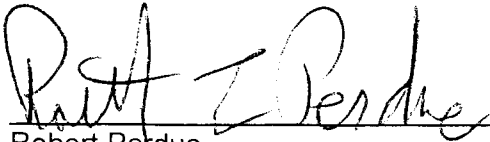
AFTER HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, IT IS HEREBY ORDERED:

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

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

9/19/13

Date



Robert Perdue
Executive Officer