

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

ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R7-2008-0009
IN THE MATTER OF
IMPERIAL IRRIGATION DISTRICT, OWNER/OPERATOR
GRASS CARP HATCHERY
IMPERIAL COUNTY

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to Imperial Irrigation District, Owner and Operator of Grass Carp Hatchery (hereinafter Discharger) based on a finding of violations of Waste Discharge Requirements (WDRs) Board Order No. R7-2005-0016, National Pollutant Discharge Elimination System Permit (NPDES) No. CA7000004.

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

1. The Discharger owns and operates Grass Carp Hatchery (Hatchery), which is located at 485 E. Villa Road, El Centro, CA 92243. Process water flows by gravity from the Imperial Irrigation District'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.
2. 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.
3. CWC Section 13385(a) states, in part, that:

"Any person who violates any of the following shall be liable civilly in accordance with this section: ... (2) Any waste discharge requirements ... issued pursuant to this chapter.... (3) any [monitoring and reporting requirements]...."
4. CWC Section 13385(c) states:

"Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 of Chapter 5 in an amount not to exceed the sum of both of the following:

"(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

"(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."
5. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.

6. CWC Section 13385(h)(2) states, in part, that:

“For the purpose of this section, a ‘serious violation’ means any waste discharge that violates the effluent limitations ... for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations (CFR), by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the CFR, by 40 percent or more.”

7. CWC Section 13385(i)(1) also requires the Regional Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in a six-month period (hereinafter “chronic violation”):

- a. Violates a Waste Discharge Requirement effluent limitation.
- b. Fails to file a report pursuant to Section 13260
- c. Files an incomplete report pursuant to Section 13260.
- d. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the Waste Discharge Requirements do not contain pollutant specific effluent limitations for toxic pollutants.

8. CWC Section 13385(i)(2) states:

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

9. As indicated by Finding Nos. 5-8, above, and consistent with CWC Section 13385(a), a Regional Board can assess administrative civil liability (ACL) pursuant to Section 13385(c) for any violation of an NPDES permit and its monitoring program, but it must at least assess the MMP calculated pursuant to CWC Sections 13385(h) and (i) for serious and chronic violations, respectively.

10. On June 29, 2005, the Regional Board adopted WDRs Board Order No. R7-2005-0016 for the Discharger to regulate discharges of waste from the Hatchery facility.

11. WDRs Board Order No. R7-2005-0016 includes the following effluent discharge limitations:

“[IV.A.1.a. Final Effluent Limitations] The discharge of aquaculture pond water shall maintain compliance with the following limitations at Discharge Point 001:”

Constituent	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Total Suspended Solids (TSS)	mg/L	60	
	lbs/day ¹	1001	

“[IV.A.2.a. Interim Effluent Limitations] During the period beginning June 29, 2005 and ending on May 18, 2010, the discharge of aquaculture discharge water shall maintain compliance with the following limitations at Discharge Point 001 to Central Drain No. 5:”

¹ Based on a flow of 2.0 MGD

Constituent	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Lead	µg/L	16	16
	lbs/day ¹	0.27	0.27

12. Provision VI.A.1. of WDRs Board Order No. R7-2005-0016 states:

“Federal Standard Provisions. The Discharger shall comply with all Standard Provisions included in Attachment D of this Order.”

13. Federal Standard Provision No. I.A.4. in Attachment D of WDRs Board Order No. R7-2005-0016 states:

“[Proper Operation and Maintenance] The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 CFR § 122.41(e).)”

14. Federal Standard Provision No. I.E.3.c. in Attachment D of WDRs Board Order No. R7-2005-0016 states:

“[Monitoring Reports] If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Board. (40 CFR § 122.41(l)(4)(ii).)”

15. Provision VI.B. of WDRs Board Order No. R7-2005-0016 states:

“[Monitoring and Reporting Program Requirements.] The discharger shall comply with the Monitoring and Reporting Program, and future revisions thereto as specified by the Regional Board’s Executive Officer, found in Attachment E of this Order.”

16. Section VIII.A.1. in Attachment E of WDRs Board Order No. R7-2005-0016 states:

“[Monitoring Location R-001.] The Discharger shall monitor Central Drain No. 5 at R-001 as follows:

Constituents	Units	Sample Type	Minimum Sampling Frequency	Required Test Method
Dissolved Oxygen	mg/L	Grab	1x/Month	1
pH	standard units	Grab	1x/Month	1
Total Nitrogen	mg/L	Grab	1x/Month	1
Ammonia Nitrogen as N	mg/L	Grab	1x/Month	1
Total Phosphate as Phosphorus (P)	mg/L	Grab	1x/Month	1
Sulfate	mg/L	Grab	1x/Month	1
Total Dissolved Solids	mg/L	Grab	1x/Month	1
Total Suspended Solids	mg/L	Grab	1x/Month	1
Hardness (CaCO ₃)	mg/L	Grab	1x/Month ⁴	1
Priority Pollutants ^{2,3}	µg/L	Grab	1x/year ⁴	1

1 Pollutants shall be analyzed using the analytical methods described in 40 CFR Sections 136; for priority pollutants the methods must meet the lowest minimum levels (MLs) specified in Attachment 4 of the SIP, where no methods are specified for a given pollutant, by methods approved by this Regional Board or the State Water Board.

2 Priority Pollutants as defined by the CTR defined in Finding II.I of this Order.

3 Must analyze pH and hardness of the receiving water at the same time the samples are collected for priority pollutants analysis

4 Monitored concurrently with effluent Priority Pollutant monitoring specified in Attachment E, Monitoring and Reporting Program, Section IV.A.1 of this Order.

17. Based on July 2005 through April 2006 monitoring data provided by the Discharger, Regional Board Notices of Noncompliance cited the Discharger for alleged violations as follows:

Violation ID ²	Description Of Violation	Date Occurred
		Date Notice of Noncompliance
298489	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 48 µg/L	07/06/2005 06/06/2006
298490	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 48 µg/L	07/30/2005 06/06/2006
365935	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 22 µg/L	08/04/2005 10/13/2005
365936	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 22 µg/L	08/31/2005 10/13/2005
304739	Exceeded average monthly of 60 mg/L Total Suspended Solids (TSS). Reported as 73.8 mg/L	09/30/2005 10/20/2005
365179	Exceeded interim average monthly of 47µg/L for Zinc. Reported as 55 µg/L	10/31/2005 12/12/2005

² Data Source: California Integrated Water Quality System (CIWQS)

Violation ID ²	Description Of Violation	Date Occurred
		Date Notice of Noncompliance
365181	Exceeded average monthly of 60 mg/L TSS. Reported as 63.9 mg/L	10/31/2005 12/12/2005
365648	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 29 µg/L	12/06/2005 02/03/2006
365649	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 29 µg/L	12/31/2005 02/03/2006
407342	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 46 µg/L	04/04/2006 05/23/2006
407352	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 46 µg/L	04/30/2006 05/23/2006

18. Based the violations identified in Finding No. 17, above, the Regional Board Assistant Executive Officer issued on November 17, 2006, ACL Complaint No. R7-2006-0084. The Complaint proposed that the Discharger pay thirty-three thousand dollars (\$33,000) in MMPs, pursuant to CWC Sections 13385(h) and (i) for the alleged lead, TSS, and zinc violations that occurred from July 2005 through April 2006.
19. On December 11, 2006, the Discharger contacted the Assistant Executive Officer via telephone and requested a time extension until January 16, 2007, to respond to ACL Complaint No. R7-2006-0084. The Discharger's letter, dated December 12, 2006, formalized the request. The Assistant Executive Officer provided the Discharger with the requested time extension.
20. By letter dated January 8, 2007, the Discharger contested the alleged zinc and lead violations. The letter stated that the zinc and lead violations were a direct result of errors by D-TEK Analytical Laboratories, Inc. (hereinafter "D-TEK"), a contract laboratory of the Discharger's. To support its contention, the Discharger's letter stated, in relevant part, that:
 - a. Early in 2006, the Discharger became concerned about receiving notice of permit violations;
 - b. Immediately upon receiving the Complaint, IID commenced an investigation of the alleged violations;
 - c. The Discharger started an [internal] investigation to determine the source of the violations [i.e., whether on-site operation and maintenance at the Hatchery had been changed, whether there were "illegal" connections to its influent water and effluent outfalls, etc. (9/27/2007 Personal communication between the Assistant Executive Officer and Mr. Steve Charlton of the IID)];
 - d. The Discharger established additional sampling stations at the canal gate for the source water of the Hatchery and at the Hatchery's source water inlet [in October 2006].
 - e. Upon receiving the supplemental data, it was apparent that the problem was not with the Hatchery or its effluent, but somewhere within its contract laboratory.
 - f. On October 30, 2006, the Discharger collected "duplicate" water samples from the canal gate (identified as "Dogwood"), water samples at the Hatchery's inlet (identified as "Inflow"), and effluent samples (identified as "Outlet Composite" or "Fish Farm

² Data Source: California Integrated Water Quality System (CIWQS)

Composite" (FFC)). One set of the "duplicates" was sent to and analyzed by D-TEK; the other set of samples was sent to and analyzed by Edward S. Babcock & Sons, Inc. (hereinafter Babcock), which is another contract laboratory of the Discharger's. The Discharger also sent a "blind" quality assurance sample to D-TEK, identified as "FFC" (Fish Farm Composite).

- g. Because the blind sample analyzed by D-TEK had an unexpectedly high lead concentration of 0.488 mg/L (488 ppb), the Discharger asked D-TEK to re-test effluent samples [for June 2006 and July 2006 that D-TEK still had in storage].

The Discharger's letter was accompanied by copies of D-TEK memoranda dated November 22, 2006, and January 5, 2007, and analyses from Babcock and D-TEK for the samples cited in Item "f." above.

21. The November 22, 2006 D-TEK memorandum stated, in relevant part, that:
 - a. D-TEK re-tested the June 2006 effluent sample for zinc, and retested the July 2006 effluent sample for lead. The re-testing showed that the effluent had a lead concentration of < 5 µg/L.
 - b. An investigation by D-TEK traced the discrepancies in the lead analyses to a bottle of lead-contaminated hydrochloric acid. The acid is used as a reagent to conduct metal analyses. D-TEK reported that it received the acid in lots, each of which consists of six bottles.
 - c. D-TEK routinely tested one of the six bottles in the lot for metal contamination, as part of its routine quality assurance procedures, and found the bottle acceptable. It explained that it was assumed that the single test bottle would be representative of the case lot.
 - d. D-TEK indicated that it has subsequently modified its Quality Assurance protocol to check every acid reagent bottle for metal contamination as it is put in service.
22. The January 5, 2007, D-TEK memorandum added the following clarification to its November 22, 2006 memorandum. It stated, in relevant part, that "[a]lthough it is not possible to go back to the same [lead-contaminated] bottle [of hydrochloric acid which resulted in inconsistent lead results on IID samples] and/or case lot of the HCl used at that time [to determine whether those bottles were also contaminated], a serious question can be raised as to the possibility of low levels of both lead and zinc contaminations [in the bottle(s)], which may have been present in earlier case lots from the same vendor." Based on this explanation, D-TEK stated that there is a "basis to suspect there could have been low levels of lead and zinc contamination in the July '05 through April '06 samples as well." D-TEK opines further that "[l]evels of up to 20 µg/L lead and up to 15 µg/L zinc could have been possible."
23. Attachment "A", which is incorporated herein and made a part of this Order by reference, shows the results reported by D-TEK and Babcock for the samples cited in Finding No. 20, above. As shown in Attachment "A," D-TEK did not analyze the samples for all of the constituents that Babcock did. Further, the data submitted by the Discharger showed that only D-TEK received the so-called "blind quality control" sample.
24. On February 26, 2007, the Regional Board rescinded ACL Complaint No. R7-2006-0084 in order for staff to investigate the Discharger's claims contained in Finding Nos. 20 through 23, above.

25. In investigating the Discharger's claim, the Assistant Executive Officer conducted a comprehensive review of the Discharger's track record regarding compliance with WDRs Board Order No. R7-2005-0016. The investigation revealed the following:
- a. ACL Complaint No. R7-2006-0084 addressed eight (8) lead, one (1) zinc, and two (2) TSS serious and chronic effluent violations that allegedly occurred from July 2005 through April 2006.
 - b. From July 2005 through July 2006 there were two additional alleged serious/chronic violations of effluent limits: one for zinc in June 2006 (effluent sample Lab ID No. 06-3929) and one for lead in July 2006 (effluent sample Lab ID No. 06-4492). These additional violations were not included in ACL Complaint No. R7-2006-0084.
 - c. One additional alleged violation for TSS was reported in March 2007 subsequent to issuance of ACL Complaint No. R7-2006-0084.
 - d. WDRs Board Order No. R7-2005-0016 includes final zinc effluent limitations that become effective after June 29, 2010, but it does not have interim zinc effluent limitations that are currently in effect. Therefore, Regional Board staff erroneously cited the Discharger for all alleged zinc effluent limitation violations. Accordingly, and henceforth for the purposes of this Complaint, the only metal violations that remain in dispute are a total of nine (9) lead violations. There are also a total of three (3) TSS serious/chronic violations, which the Discharger is not disputing.
 - e. Notwithstanding Item "a." above, a total of eight Notices of Noncompliance were issued against the Discharger from October 2005 through May 2007. The Notices brought to the Discharger's attention the alleged lead and TSS violations.
 - f. A Notice of Noncompliance was also issued against the Discharger on February 3, 2006, for failure to sample its effluent and the receiving waters for priority pollutants, as required by Monitoring and Reporting Program No. R7-2005-0016. The Notice of Noncompliance informed the Discharger that the metals and Priority Pollutants data were overdue and requested the Discharger to submit the data as soon as possible.
 - g. The Discharger was able to retest the June 2006 and July 2006 effluent samples for zinc ("check split effluent sample Lab ID No. 06-4656) and lead (check effluent sample Lab ID No. 06-5330), respectively. D-TEK reported the results of its re-testing for zinc as "143 µg/L" and for lead as "[< 5 µg/L]." Based on that showing for lead, the Assistant Executive Officer is proposing to dismiss the alleged July 2006 lead violation. Therefore, eight (8) serious/chronic lead violations remain in dispute.
 - h. The results for zinc are relevant here only to evaluate the Discharger's argumentation and because they indicate that the effluent has zinc at concentrations that may adversely impact receiving waters and beneficial uses. The latter requires that the NPDES permit be amended to control zinc.
 - i. It has taken the Discharger eighteen (18) months, measured from the date of the occurrence of the first of the alleged violations, July 6, 2005, to the date of the Discharger's letter, January 8, 2007, to respond to the Regional Board about the alleged effluent violations. The Discharger has still not responded to the failure to monitor, as required by WDRs Board Order No. R7-2005-0016.
26. The information provided by the Discharger, including the lab memoranda, to support its claim that the metals violations were a direct result of lab error are overall inconclusive. By the Discharger's own admission (D-TEK memoranda), not all of the acid bottles used by its lab were contaminated. The lab itself only goes so far as stating that the Discharger's metals data can be questioned. Further, another problem with the Discharger's line of argumentation is that the analyses for most of the influent samples collected for the investigation and analyzed by D-TEK came back negative (i.e., had lead at < 5 µg/L) and

that certain effluent samples (e.g., the November 2005, January 2006, and March 2006 samples) also show compliance with effluent limitations. Regardless of the Discharger's admission, these apparently compliant results effectively eliminate the Discharger's claim that all of the allegedly non-compliant results for the Hatchery are due to lab error (e.g., lead-contaminated bottles used by D-TEK). In short, the Discharger cannot have it both ways. In any event, a line of argumentation that effectively brings into question the quality of the Discharger's monitoring results does not absolve the Discharger from noncompliance with its permit. Far from it, the argumentation places the Discharger in chronic violation of Federal Standard Provision No. I.A.4, which requires the Discharger to provide accurate data to the Regional Board and to establish and implement adequate quality controls for its effluent.

27. Violations of Federal Standard Provision No. I.A.4 would also subject the Discharger to penalties under CWC Sections 13385(a) and (c) in the order of up to ten thousand dollars per day plus ten dollars times the number of gallons of effluent discharged daily in excess of one thousand gallons ($\$10,000/\text{day} + \$10 \times (\text{gallons of effluent discharged daily} - 1000 \text{ gallons})$). Under this statutory penalty scheme, the maximum liability available to the Regional Board would be in excess of five hundred million dollars ($\$500,000,000$). This figure is derived from an average calculated daily liability of one million dollars ($\$1,000,000$), which is based on the daily flow discharged from the hatchery from July 2005 through November 15, 2006. The latter date is the date when the Discharger notified the Regional Board about potential quality assurance problems.
28. Therefore, in the absence of data to indicate the contrary, such as the lead re-test data presented in Finding No. 25.g, the presumption is that all of the results submitted by the Discharger for lead and TSS are accurate. What is critical in making such a determination is that the record clearly indicates that whatever concern the Discharger had in early 2006 about the violations, the concern was not sufficient enough for the Discharger to address the violations in an effective and timely manner until October 2006, when it collected and analyzed duplicate samples. As noted above, eighteen months passed before the Discharger responded to the Regional Board regarding the alleged effluent violations. Had the Discharger responded in an effective and timely manner to the Notices of Noncompliance, including conducting a more timely investigation, the Discharger could have found out the actual extent to which lab bottles were contaminated, as alleged. The Discharger could have then presented a more persuasive defense and even, possibly, have prevented some of the violations.
29. Based on the foregoing, the Discharger violated TSS and lead effluent limits of WDRs Board Order No. R7-2005-0016 and its Monitoring and Reporting Program No. R7-2005-0016, as shown in Attachment "B," which is incorporated herein and made a part of this Order by reference.
30. The Regional Board can opt to assess liability under CWC Section 13385(c) for all of the lead, TSS, and monitoring violations, but must at least assess the minimum liability prescribed by CWC Sections 13385(h) and (i) for the TSS and lead violations. The maximum liability available to the Regional Board, pursuant to CWC 13385(c), is over twenty-two million, six hundred eighty thousand dollars ($\$22,680,000$). The minimum civil liability (mandatory minimum penalties) prescribed under CWC Sections 13385(h)(1) and (i)(1) for the serious and chronic effluent violations is thirty-three thousand dollars ($\$33,000$). Attachment "B" shows the maximum liability available to the Regional Board that it could assess and the minimum liability that it must assess.

31. In determining the amount of any liability, a Regional Board is required “to take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.” (CWC Section 13385(e).)

32. The factors in Finding No. 31, above, are evaluated for the violations as follows:

a. Nature, circumstances, extent, and gravity of the violations:

From July 2005 through March 2007, self-monitoring reports submitted by the Discharger showed that the discharge from the Hatchery violated TSS and lead effluent limitations of WDRs Board Order No. R7-2005-0016. The Discharger failed to sample its discharge for the annual Priority Pollutants in 2005, as required by the Monitoring and Reporting Program (Attachment E, Effluent Monitoring Requirements Section IV.A.1 of WDRs Board Order No. R7-2005-0016). The Discharger also failed to timely respond to the Regional Board’s repeated requests to correct the problem in a timely manner. The number of violations alone is significant in itself.

b. Susceptibility of discharge to cleanup and abatement, and the degree of toxicity of the discharge:

The discharge is not susceptible to cleanup and/or abatement. There is no evidence the discharge is not toxic.

c. Discharger’s ability to pay:

The Discharger has not demonstrated an inability to pay the proposed amount.

d. Effect on Discharger’s ability to continue in business:

The proposed fine should not affect the Discharger’s ability to continue operating as a public agency since the fine largely pertains to costs that the Discharger would have normally incurred if compliance with the WDRs had been properly observed.

e. Voluntary cleanup efforts undertaken:

The Discharger made no efforts for nearly eighteen months to clean up the discharge when violations occurred. It waited until November 2006 to identify and correct its on-site and off-site problems. It did not notify the Regional Board about its alleged quality control problems until November 15, 2006, in its October 2006 self-monitoring report.

f. Prior history of violations:

There is no record of prior violations or noncompliance at this facility before July 2005.

g. Degree of culpability:

The Discharger is the responsible party for compliance with WDRs Board Order No. R7-2005-0016, and it is fully culpable for violating the terms and conditions of the Order. The Discharger was repeatedly cited for the subject violations through numerous Notice of Noncompliance letters, and failed to respond to the letters. The record shows that Discharger responded to the violations only when the Assistant Executive Officer issued ACLC No. R7-2007-0084 on November 17, 2006. In addition, it is the Discharger's responsibility to use laboratories that can provide consistently reliable results that are representative of the discharge, and that enable the Regional Board to determine compliance. If the Discharger had responded promptly to the violations, it would have not put itself in its current position where the Regional Board now needs to assess liability for chronic non-compliance.

h. Economic benefits or savings resulting from the violation:

The Discharger has realized cost savings by discharging wastes in violation of the effluent limits and by failing to submit complete and timely self-monitoring reports. The savings realized from the missing monitoring data alone are estimated at \$3,000.

i. Other matters as justice may require:

Staff time to prepare the ACL complaint and supporting information is estimated to be 120 hours. Based on an average cost to the State of \$100 per hour, the total cost is \$12,000. On the credit side, aside from meeting its own obligations to comply with the Regional Board Silt TMDL requirements for the Imperial Valley, the Discharger has been instrumental in assisting the farming community in the Imperial Valley to comply with these Silt TMDL requirements.

33. CWC Section 13385(l) states:

“(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

“(2) For the purposes of this section, a ‘supplemental environmental project’ means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.”

34. On February 19, 2002, the State Water Resources Control Board adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. In accordance with Section IX of the Enforcement Policy, among other requirements, Supplemental Environmental Projects (SEPs) proposed by the Discharger must "enhance the beneficial uses of the waters of the State, provide a benefit to the public at large, and that, at the time they are included in an ACL action, are not otherwise required of the discharger." (Enforcement Policy, pp. 42-43).
35. On November 1, 2007, the Regional Board Assistant Executive Officer issued ACL Complaint No. R7-2007-0032 proposing that the Discharger pay fifty-three thousand dollars (\$53,000) in ACL for the violations. The Assistant Executive Officer also indicated that he would consider offsetting a portion of this ACL amount by the monetary value of a SEP proposed by the Discharger in an amount not to exceed \$34,000.
36. The Regional Board has notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date the Complaint was issued unless the Discharger waives its right to a hearing under CWC Section 13323(b). By letter dated November 26, 2007, the Discharger waived its right to a hearing on this matter (see Attachment "C").
37. On November 26, 2007, the Discharger proposed the implementation of the two SEPs described in Attachment "C", which is made a part of this ACL Order by reference.
38. The Regional Board heard and considered all comments pertaining to this matter in a public meeting.
39. Issuance of this ACL Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, Section 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, the Discharger is assessed fifty-three thousand dollars (\$53,000) in ACL for the violations set forth in Attachment "B". In lieu of paying the ACL in the amount of fifty-three thousand dollars (\$53,000), the Discharger shall pay a reduced penalty amount in accordance with CWC Section 13385(l) and shall implement the two proposed SEPs described in Attachment "C" in accordance with the following:

1. The Discharger shall comply with the Enforcement Policy relating to implementation of SEPs.
2. The two SEPs shall be implemented in accordance with the time schedule stipulated in Attachment "D", appended to and made a part of this Order by reference. The Regional Board Executive Officer may modify the stipulated completion date and approve an alternative completion date for the SEPs if he determines that a delay is necessary for a timely return of the Discharger to full and sustained compliance with its WDRs, and is beyond the reasonable control of the Discharger. Under no circumstances may the completion date extend beyond five (5) years from the date of this Order.

3. The suspended portion of the proposed ACL penalty of \$53,000 that is hereby directed to be expended on the two SEPs is \$34,000. The discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$19,000. Payment by check of this amount shall be made payable to the "State Water Pollution Cleanup and Abatement Account" and mailed to the address shown in paragraph 7 below.
4. If the Discharger completes a phase of the SEPs to the satisfaction of the Executive Officer by the stipulated completion date, the corresponding portion of the ACL indicated in Attachment "D" for that phase shall be permanently suspended. Similarly, if the Discharger fails to complete any phase of the SEPs to the satisfaction of the Executive Officer by the stipulated completion date, and the Executive Officer has not approved an extension in the completion date, the corresponding portion of the ACL for that phase shall become due and payable by the Discharger within 30 days of being so informed in writing by the Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take any necessary actions to achieve compliance.
6. Completion of the SEPs shall be certified in writing by the Executive Officer. No portion of the ACL shall be suspended without a written certification issued by the Executive Officer.
7. The Discharger shall make payable all ACL amounts not offset by the SEPs to the "State Water Pollution Cleanup and Abatement Account", and shall submit such payments to the following address:

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

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on January 16, 2008.


ROBERT PERDUE
Executive Officer

Attachment "A"

Date Sampled 10/3/2006 Date Received 10/4/2006 Date Analyzed See below			Babcock			
Constituent	RDL	Units	Results			
			Dogwood 5S	Fish Farm Inflow	Fish Farm Effluent	Fish Farm Composite
Copper	10	ug/L	ND*	ND*	ND*	
Lead	10	ug/L	ND*	ND*	ND*	
Selenium	5.0	ug/L	ND**	ND**	ND**	
Zinc	10	ug/L	ND**	ND**	25**	

* Analyzed 10/06/06, ** Analyzed 10/11/06

Date Sampled 10/3/2006 Date Received 10/4/2006 Date Analyzed See below			D-TEK			
Constituent	RDL	Units	Results			
			Dogwood 5S	Fish Farm Inflow	Fish Farm Effluent	Fish Farm Composite
Copper	1	ug/L	6	5*		[1]****
Lead	5.0	ug/L	< 5	26**		28
Selenium	4.0	ug/L	< 4	ND***		ND
Zinc	5.0	ug/L	< 5	27**		27

* Analyzed 10/10/06, ** Analyzed 10/09/06, *** Analyzed 10/11/06

Date Sampled 10/30/2006 Date Received 11/29/2006 Date Analyzed 12/4/2006			Babcock			
Constituent	RDL	Units	Results			
			Dogwood 5S	Fish Farm Inflow	Fish Farm Effluent	Fish Farm Composite
Copper	10	ug/L	ND	ND		ND
Lead	10	ug/L	ND	ND		ND
Selenium	5.0	ug/L	ND	ND		ND
Zinc	10	ug/L	22	ND		13

Date Sampled 10/30/2006 Date Received 10/31/2006 Date Analyzed 11/3/2006			D-TEK			
Constituent	RDL	Units	Results			
			Dogwood 5S	Fish Farm Inflow	FFC	Fish Farm Composite
Copper						
Lead	0.001	mg/L	0.240	0.120	0.488	< 0.100
Selenium						
Zinc						

Date Sampled 10/31/2006 Date Received 11/29/2006 Date Analyzed 12/4/2006			Babcock			
Constituent	RDL	Units	Results			
			Dogwood 5S	Fish Farm Inflow	Fish Farm Effluent	Fish Farm Composite
Copper	10	ug/L				
Lead	10	ug/L				
Selenium	5.0	ug/L				
Zinc	10	ug/L				

Date Sampled 10/30/2006 Date Received 10/31/2006 Date Analyzed 11/3/2006			D-TEK			
Constituent	RDL	Units	"Re-test Results" (Sample Nos. 06-7484,5,6,7)			
			Dogwood 5S	Fish Farm Inflow	FFC	Fish Farm Composite
Copper						
Lead	0.005	mg/L	< 0.005	< 0.005	< 0.005	< 0.005
Selenium						
Zinc						

Attachment "A"

Date Sampled		11/1/2006		Babcock			
Date Received		11/29/2006		Results			
Date Analyzed		12/4/2006		Dogwood 5S	Fish Farm Inflow	Fish Farm Effluent	Fish Farm Composite
Constituent	RDL	Units					
Copper	10	ug/L	ND	ND	ND	ND	ND
Lead	10	ug/L	ND	ND	ND	ND	ND
Selenium	5.0	ug/L	ND	ND	ND	ND	ND
Zinc	10	ug/L	ND	ND	ND	ND	25

Date Sampled		7/5/2006		D-TEK			
Date Received		8/9/2006		"Re-test Results" (Sample No. 06-5330)			
Date Analyzed		NA		Dogwood 5S	Fish Farm Inflow	FFC	Fish Farm Composite
Constituent	RDL	Units					
Copper							
Lead	5	mg/L					< 5
Selenium							
Zinc							

Date Sampled		6/6/2006		D-TEK			
Date Received		7/12/2006		"Re-test Results" (Sample No. 06-4656)			
Date Analyzed		NA		Dogwood 5S	Fish Farm Inflow	FFC	Fish Farm Composite
Constituent	RDL	Units					
Copper							
Lead							
Selenium							
Zinc	0.05	mg/L					0.14

ATTACHMENT "B"

Summary of Violations of Board Order R7-2005-0016

Assessed Violation ² No.	Description Of Violation	<u>Date Occurred</u> <u>Date Notice of Noncompliance Sent</u>	Is this a serious violation ³	Mandatory Minimum Penalty CWC 13385(i)	Maximum Liability Amount CWC 13385(c)
298489	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 48 µg/L	<u>07/06/2005</u> <u>06/06/2006</u>	Yes	\$3,000	\$1,250,000 \$10,000 + (125,000 gal – 1,000 gal)(\$10/gal)
298490	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 48 µg/L	<u>07/30/2005</u> <u>06/06/2006</u>	Yes	\$3,000	\$1,250,000 \$10,000 + (125,000 gal – 1,000 gal)(\$10/gal)
365935	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 22 µg/L	<u>08/04/2005</u> <u>10/13/2005</u>	Yes	\$3,000	\$1,250,000 \$10,000 + (125,000 gal – 1,000 gal)(\$10/gal)
365936	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 22 µg/L	<u>08/31/2005</u> <u>10/13/2005</u>	Yes	\$3,000	\$1,250,000 \$10,000 + (125,000 gal – 1,000 gal)(\$10/gal)
304739	Exceeded average monthly of 60 mg/L TSS. Reported as 73.8 mg/L	<u>09/30/2005</u> <u>10/20/2005</u>	No	\$3,000	\$1,500,000 \$10,000 + (150,000 gal – 1,000 gal)(\$10/gal)
365181	Exceeded average monthly of 60 mg/L TSS. Reported as 63.9 mg/L	<u>10/31/2005</u> <u>12/12/2005</u>	No	\$3,000	\$1,000,000 \$10,000 + (100,000 gal – 1,000 gal)(\$10/gal)
365648	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 29 µg/L	<u>12/06/2005</u> <u>02/03/2006</u>	Yes	\$3,000	\$1,000,000 \$10,000 + (100,000 gal – 1,000 gal)(\$10/gal)
365649	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 29 µg/L	<u>12/31/2005</u> <u>02/03/2006</u>	Yes	\$3,000	\$1,000,000 \$10,000 + (100,000 gal – 1,000 gal)(\$10/gal)
365642	Incomplete or Deficient Monitoring and Report	<u>02/01/2006</u> <u>02/03/2006</u>	No	\$0	\$6,220 000 (622 days) x (\$10,000/day)

² Data Source: California Integrated Water Quality System (CIWQS)

³ As defined by CWC Section 13385(h)

Imperial Irrigation District-Grass Carp Hatchery
 Administrative Civil Liability
 Order No. R7-2008-0009

Assessed Violation ² No.	Description Of Violation	Date Occurred Date Notice of Noncompliance Sent	Is this a serious violation ³	Mandatory Minimum Penalty CWC 13385(i)	Maximum Liability Amount CWC 13385(c)
407342	Exceeded interim maximum daily of 16 µg/L for Lead. Reported as 46 µg/L	04/04/2006 05/23/2006	Yes	\$3,000	\$2,000,000 \$10,000 + (200,000 gal – 1,000 gal)(\$10/gal)
407352	Exceeded interim average monthly of 16 µg/L for Lead. Reported as 46 µg/L	04/30/2006 05/23/2006	Yes	\$3,000	\$2,000,000 \$10,000 + (200,000 gal – 1,000 gal)(\$10/gal)
604991	Exceeded average monthly of 60 mg/L TSS. Reported as 97.6 mg/L	03/31/2007 05/11/2007	Yes	\$3,000	\$1,110,000 \$10,000 + (111,000 gal – 1,000 gal)(\$10/gal)

Accrued Mandatory Minimum Penalties for violations of Board Order No. R7-2005-0016: **\$33,000**

ACL for violations of Monitoring & Reporting Program of Board Order No. R7-2005-0016, including staff cost: **\$20,000**

TOTAL: \$53,000

² Data Source: California Integrated Water Quality System (CIWQS)

³ As defined by CWC Section 13385(h)

ATTACHMENT "C"



IMPERIAL IRRIGATION DISTRICT

OPERATING HEADQUARTERS • P. O. BOX 937 • IMPERIAL, CALIFORNIA 92251

WD

November 26, 2007

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. R7-2007-0032 for Imperial
Irrigation District Grass Carp Hatchery, Imperial County

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 \$53,000 dollar civil liability and
chooses to waive the right to a hearing before the Regional Water Board.
However, the IID does propose a settlement plan to pay the requisite \$19,000
dollars to the "State Water Pollution Cleanup and Abatement Account", and the
remaining \$34,000 to two Supplemental Environmental Projects (SEP).

The first SEP IID proposes is the installation of staff gauges at five drop
structures along the New and Alamo rivers. The proposed sites are located at the
New River Drop #2 and the Alamo River Drops #6, #6A, #8, and #10. These staff
gauges would provide the means to calculate an instantaneous flow at these
River points using visual measurements obtained from the gauge readings (in
terms of water depth over a weir). The installation of staff gauges at these
locations can provide additional measurement data not currently available for use
by various other entities (USGS, USBR, DWR, CDFG, RWQCB, ICFB, etc.).
This increased level of monitoring ability has multiple uses to these entities'
ability to measure flow rates within the rivers at these specific sites, but would be
of particular benefit to water quality sampling efforts or during flood and storm
events. Existing New and Alamo River monitoring sites are limited to inlet and
outlet measurements with an absence of mid-river flow data. IID staff estimates
that the cost to install these five staff gauges would be approximately \$10,000
dollars, including materials and labor.

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Imperial Irrigation District-Grass Carp Hatchery
Administrative Civil Liability
Order No. R7-2008-0009

-2-

November 26, 2007

CRWQCB
Colorado River Basin Region

The second SEP IID proposes to fund with the balance of this civil liability is future operations and maintenance (O&M) expenses associated with the Imperial, Brawley, and Shank Road wetland sites for the Citizen's Congressional Task Force on the New River. Currently, the Salton Sea Authority (SSA) is managing unrelated SEP funds that have been approved for this purpose; however, those funds will be exhausted shortly and additional monies are needed to ensure these projects' continued operation. IID proposes payment of the balance of this civil liability (\$34,000 less the actual costs for the installation of five staff gauges noted above, or an estimated \$24,000) to the SSA to continue funding for wetlands O&M activities.

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

Sincerely,


MICHAEL L. KING
Manager, Water

SLC/lc
ACLC R7-2007-0032.doc

ATTACHMENT "D"

STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

Phase No.	Description of SEP	Completion Date	Due Date	Portion of ACL that May be Suspended
1	Installation of staff gauges for flow measurements at New River and Alamo River In Imperial Valley.	July 17, 2008	Final report due on or before August 18, 2008	\$10,000
2	Imperial Valley Wetlands Operation and Maintenance	February 16, 2009	Final report due on or before March 17, 2009	\$24,000