

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2010-0017
IN THE MATTER OF
CITY OF BRAWLEY, OWNER/OPERATOR
MUNICIPAL WASTEWATER TREATMENT PLANT
Brawley — Imperial County

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13385, is issued to the City of Brawley, based on a finding of violations of Waste Discharge Requirements (WDRs) Board Order No. R7-2005-0021, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0104523.

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

1. The City of Brawley (Discharger), 400 Main Street, Brawley, California 92227, owns and operates the Wastewater Treatment Plant (WWTP) located at 1550 Best Road, Brawley, California 92227. According to a Report of Waste Discharge submitted by the Discharger and dated January 14, 2005, the WWTP has a design capacity of 5.9 million gallons per day (MGD).
2. The WWTP consists of headworks, three primary clarifiers, five lagoons, an ultraviolet (UV) disinfection system, and sludge drying beds. The three primary clarifiers have not been in service since digesters were removed in 2002 due to excessive corrosion of the digester system's steel structure. The first and second aerated lagoons operate in parallel. Aerated lagoons 1 and 2 operate in series with lagoons 3, 4, and 5.
3. The WWTP treats and disposes of an average daily flow of 3.4 MGD of wastewater. The effluent from the lagoons is UV-disinfected and discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
4. The Regional Board may establish monitoring and reporting requirements, known as the Monitoring and Reporting Program (MRP), as authorized by CWC Sections 13376 and 13383.
5. CWC Section 13385(a) states, in part, the following:

“Any person who violates any of the following shall be liable civilly in accordance with this section ... (1) Section 13375 or 13376; (3) Any requirements established pursuant to Section 13383.”
6. CWC Section 13385(c) states:

“Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

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

“(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.”

7. On June 29, 2005, the Regional Board adopted WDRs Order No. R7-2005-0021 for the Discharger to regulate discharges of treated wastewater to the New River.
8. On June 25, 2008, the Regional Board adopted Special WDRs Board Order No. R7-2008-0027, which amended WDRs Board Order No. R7-2005-0021 to designate the Discharger’s discharge location at the New River as a freshwater environment and establish interim and final effluent limits based on the California Toxics Rule (CTR) and State Implementation Policy freshwater criteria for the discharge.
9. In relevant part, WDRs Order No. R7-2008-0027 (Page 7, Section 4, Final Effluent Limitations for Discharge Point 001) contains the following amended final effluent limitations:

“**e. 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 MPN per 100 millimeters, nor shall any sample exceed the maximum allowable bacterial density of 400 MPN per 100 millimeters.

ii. *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 Most Probable Number (MPN) of 33 MPN per 100 millimeters, nor shall any sample exceed the maximum allowable bacterial density of 100 MPN per 100 millimeters.

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

10. Further, Special WDRs Board Order No. R7-2008-0027 states that the Discharger shall comply with those portions of WDRs Board Order No. R7-2005-0021 that were not specifically amended by the Special WDRs Board Order. Provision VI.B of WDRs Board Order No. R7-2005-0021 states:

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

11. Attachment E, General Monitoring Provisions I.C states:

“Unless otherwise approved by the Regional Water Board’s Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services [now known as the California Department of Public Health, Environmental Laboratory Accreditation Program]. All analyses shall be

conducted in accordance with the latest edition of 'Guidelines Establishing Test Procedures for Analysis of Pollutants', promulgated by the United States Environmental Protection Agency (USEPA)."

12. Since at least August 2008, the Discharger has used an uncertified laboratory to perform E. coli analyses. Since at least November 2008, the Discharger has used an uncertified laboratory to perform Enterococci analyses. Attachment "A", made a part of this ACL Order by reference shows the monitoring data in question.
13. Because the Discharger submitted effluent self-monitoring data for E. coli and Enterococci from a laboratory that did not possess certification for analysis of bacteria constituents, the Regional Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations of Special WDRs Board Order No. R7-2008-0027 for E. coli and Enterococci, cited above in Finding No. 9.
14. On February 23, 2009, the Assistant Executive Officer issued Time Schedule Order (TSO) No. R7-2009-0035 pursuant to CWC Section 13308, requiring the Discharger to correct the monitoring violations of Board Order No. R7-2005-0021 in accordance with a series of tasks stated in the time schedule. The TSO was issued following the discovery in Findings Nos. 12 and 13, above.
15. More specifically, TSO No. R7-2009-0035 provides in substantive relevant part for the Discharger to comply with the following:
 - a. The Discharger must be in full compliance with WDRs Board Order No. R7-2005-0021 and Special WDRs Board Order No. R7-2008-0027, Monitoring and Reporting Programs by July 1, 2009.
 - b. By March 14, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Special WDRs Board Order No. R7-2008-0027.
16. As stated above, the data indicating potential effluent limitation violations for bacterial parameters cannot be used to assess compliance with the Effluent Limitations of Special WDRs Board Order No. R7-2008-0027 and similarly cannot be used to impose mandatory penalties for potential effluent violations for E. coli and Enterococci. While the Discharger may not be subject to mandatory minimum penalties for these potential E. coli and Enterococci effluent limit violations, the Discharger is still liable for violating the MRP for WDRs Board Order No. R7-2005-0021 pursuant to CWC Section 13385(a). The maximum statutory liability for the MRP violations under CWC Section 13385(c) is \$360,000 [\$10,000 per day for 36 violations from August 4, 2008 through December 29, 2008].
17. The Regional Board may assess liability pursuant to CWC Section 13385(c). CWC Section 13385(e) requires the Regional Board, in determining the amount of liability, to consider the nature, circumstances, extent and gravity of the 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 taken, 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.

18. The factors in Finding No. 17, above, are evaluated for the violations as follows:

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

Using an uncertified laboratory for compliance monitoring for specified constituents is a violation of the Discharger's Monitoring and Reporting Program for its NPDES Permit. The nature of the NPDES program relies on the Discharger self-monitoring and self-reporting violations. In order to determine whether the Discharger is in compliance with its effluent limitations as set forth in its NPDES Permit, the Regional Board needs to have confidence that the data self-reported by the Discharger is accurate and reliable. Because the analysis of the bacteria constituents was conducted by an uncertified laboratory, the results from the bacteria analyses cannot be seen as reliable to determine compliance with effluent limitations. See Attachment "A" for a summary of the days of violation.

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

The discharge is not susceptible to cleanup and/or abatement because it is a non-discharge violation.

c. Discharger's ability to pay:

The Discharger had the opportunity to provide financial data to the Regional Board regarding its ability to pay the proposed liability. There was no evidence presented that would indicate that the Discharger would be financially incapable of paying the assessed liability.

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 penalty 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:

There was no cleanup and abatement necessary as these violations were non-discharge violations.

f. Prior history of violations:

On June 25, 2008, the Regional Water Board adopted ACL Order No. R7-2008-0043 imposing administrative civil liability in the amount of \$354,750 for violations of Cleanup and Abatement Order No. R7-2004-0079 and mandatory minimum penalties. On September 19, 2008, the Regional Water Board adopted ACL Order No. R7-2008-0064 in the amount of \$129,000 for mandatory minimum penalties.

g. Degree of culpability:

As the permittee, the Discharger is responsible for complying with all aspects of WDRs Board Order No. R7-2005-0021 and Special WDRs Board Order No. R7-2008-0027. The provisions of WDRs Board Order No. R7-2005-0021 and its corresponding Monitoring and Reporting Program (MRP) are clear and unambiguous regarding the requirement that all analyses be conducted at a laboratory certified for such analyses by the California Department of Public Health. It is the Discharger's responsibility to utilize certified laboratory contracts that can provide reliable results that are representative of the discharge. The Discharger failed to do so for the period from August 4, 2008 to December 29, 2008, as evidenced by the monitoring results it submitted.

h. Economic Benefit and Savings resulting from the violations:

The Discharger realized an estimated savings of several thousands of dollars by not using a certified lab. The Discharger was in violation of the MRP for WDRs Board Order Nos. R7-2005-0021 from at least August 4, 2008 to December 29, 2008. During this time period, the Discharger conducted sampling on 36 occasions on 28 different days. The Discharger should have transported its samples to a certified laboratory at least 28 times to comply with the MRP for WDRs Board Order No. R7-2005-0021, thus incurring travel expenses.

In addition to travel expenses, there are also associated staff costs with transporting samples. Because performing analyses on bacteria samples is time sensitive, it is likely that staff would transport samples to a certified laboratory rather than sending them through a courier service.

i. Other matters that justice may require:

Staff time to investigate this matter and prepare Administrative Civil Liability Complaint (ALCL) No. R7-2009-0078 and supporting information is estimated to be 40 hours. Based on an average cost to the State of \$150 per hour, the total cost is \$6,000.

19. On December 22, 2009, the Assistant Executive Officer issued ALCL No. R7-2009-0078, which proposed that the Discharger be assessed administrative civil liability pursuant to CWC Section 13385(c) in the amount of sixteen thousand dollars (\$16,000) for the violations described above. The proposed administrative civil liability is based upon the consideration of the factors cited in CWC Section 13385(e), set forth in Finding 18 above, and the State Water Resources Control Board's Water Quality Enforcement Policy.
20. 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, which was approved by the Office of Administrative Law and became effective on July 30, 2002, establishes criteria for Supplemental Environmental Projects (SEPs).
21. On February 3, 2009, the State Water Board Policy on Supplemental Environmental Projects (SEPs) became effective. Pursuant to that policy, SEPs "enhance the beneficial uses of the waters of the State, that 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."
22. Regional Board staff 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 signing the Waiver of 90-Day Hearing Requirement for Administrative Civil Liability Complaint on January 15, 2010, the Discharger waived its right to a hearing on this matter. (See Attachment "B").

23. In a letter to Regional Board staff dated February 26, 2010, the Discharger proposed to apply \$8,000 of the \$16,000 ACLC penalty to an existing SEP (K Street Drainage Improvement Project) and to remit the balance of \$8,000 to the State Water Board Cleanup and Abatement Count. Said letter is attached hereto as "Attachment "C" and made a part of this Order by reference.
24. The Regional Board heard and considered all comments pertaining to this matter in a public meeting held on March 18, 2010 in La Quinta, California.
25. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5, is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), in accordance with Section 15321(a)(2) ("Enforcement Actions by Regulatory Agencies"), Title 14, California Code of Regulations.
26. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and California Code of Regulations, Title 23, Sections 2050 and following. The State Water Board must receive the petition no later than 5:00 p.m., thirty (30) days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality. Copies will also be provided upon request.

IT IS HEREBY ORDERED, pursuant to CWC Section 13385, that the Discharger is assessed \$16,000 in ACL penalties for the violations described in ACL Complaint No. R7-2009-0078 and the Complaint's corresponding Attachment A. In lieu of paying the full amount of \$16,000, the Discharger shall implement the proposed SEP described in Attachment "C" in accordance with the following:

1. The Discharger shall comply with the State Water Board Water Quality Enforcement Policy relating to implementation of a SEP.
2. The Discharger shall implement the SEP in accordance with the time schedule stipulated in Attachment "D", attached hereto and made a part of this Order by reference. The Regional Board's Executive Officer may modify the stipulated completion date and approve an alternative completion date for the SEP 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 portion of the proposed ACL penalty of \$16,000 that is hereby directed to be expended on the SEP (a total of \$8,000), as set forth in Attachment C, shall be deemed suspended based on the conditions set forth in Paragraph 4 below. The Discharger shall pay within thirty (30) days of the date of this Order the remaining portion of \$8,000. 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. Failure to pay the remaining unsuspended portion of \$8,000 on a timely basis will cancel the provisions for suspended penalties to be expended on the SEP and that

suspended amount will become payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.

4. If the Discharger completes the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, the \$8,000 portion directed to be expended on the SEP shall be permanently suspended. Similarly, if the Discharger fails to complete the SEP to the satisfaction of the Regional Board's Executive Officer by the approved date, and the Regional Board's Executive Officer has not approved an extension of the completion date, the \$8,000 portion directed to be expended on the SEP shall become due and payable by the Discharger within 30 days of being so informed in writing by the Regional Board's Executive Officer.
5. Previously suspended amounts do not relieve the discharger of the independent obligation to take necessary actions to achieve compliance.
6. The Regional Board's Executive Officer shall verify the completion of the SEP in writing. No portion of the ACL penalty shall be suspended without a written certification issued by the Executive Officer.
7. The Discharger shall submit all unsuspended ACL penalty amounts, made payable to the "State Water Pollution Cleanup and Abatement Account", 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 March 18, 2010.


ROBERT PERDUE, Executive Officer

ATTACHMENT "A"
Summary of Violations of Board Order No. R7-2008-0027 for City of Brawley

	Violation Type	Violation Date	Violation Description
1	<i>E. Coli</i>	08/04/2008	Used uncertified laboratory
2	<i>E. Coli</i>	08/11/2008	Used uncertified laboratory
3	<i>E. Coli</i>	08/13/2008	Used uncertified laboratory
4	<i>E. Coli</i>	08/25/2008	Used uncertified laboratory
5	<i>E. Coli</i>	08/26/2008	Used uncertified laboratory
6	<i>E. Coli</i>	09/08/2008	Used uncertified laboratory
7	<i>E. Coli</i>	09/15/2008	Used uncertified laboratory
8	<i>E. Coli</i>	09/22/2008	Used uncertified laboratory
9	<i>E. Coli</i>	09/24/2008	Used uncertified laboratory
10	<i>E. Coli</i>	09/29/2008	Used uncertified laboratory
11	<i>E. Coli</i>	10/08/2008	Used uncertified laboratory
12	<i>E. Coli</i>	10/13/2008	Used uncertified laboratory
13	<i>E. Coli</i>	10/15/2008	Used uncertified laboratory
14	<i>E. Coli</i>	10/21/2008	Used uncertified laboratory
15	<i>E. Coli</i>	10/22/2008	Used uncertified laboratory
16	<i>E. Coli</i>	11/06/2008	Used uncertified laboratory
17	<i>Enterococci</i>	11/06/2008	Used uncertified laboratory
18	<i>E. Coli</i>	11/10/2008	Used uncertified laboratory
19	<i>Enterococci</i>	11/10/2008	Used uncertified laboratory
20	<i>E. Coli</i>	11/12/2008	Used uncertified laboratory
21	<i>E. Coli</i>	11/17/2008	Used uncertified laboratory
22	<i>Enterococci</i>	11/17/2008	Used uncertified laboratory
23	<i>E. Coli</i>	11/24/2008	Used uncertified laboratory
24	<i>Enterococci</i>	11/24/2008	Used uncertified laboratory
25	<i>Enterococci</i>	11/26/2008	Used uncertified laboratory
26	<i>E. Coli</i>	12/03/2008	Used uncertified laboratory
27	<i>Enterococci</i>	12/03/2008	Used uncertified laboratory
28	<i>E. Coli</i>	12/08/2008	Used uncertified laboratory
29	<i>Enterococci</i>	12/10/2008	Used uncertified laboratory
30	<i>E. Coli</i>	12/15/2008	Used uncertified laboratory
31	<i>E. Coli</i>	12/17/2008	Used uncertified laboratory
32	<i>Enterococci</i>	12/17/2008	Used uncertified laboratory
33	<i>E. Coli</i>	12/22/2008	Used uncertified laboratory
34	<i>Enterococci</i>	12/22/2008	Used uncertified laboratory
35	<i>E. Coli</i>	12/29/2008	Used uncertified laboratory
36	<i>Enterococci</i>	12/29/2008	Used uncertified laboratory

Attachment "B"

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this Waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent the City of Brawley, owner/operator of the City's Municipal Wastewater Treatment Plant (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R7-2009-0078 (hereinafter the "Complaint");
2. I am informed that California Water Code Section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4. (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full)
 - a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
 - b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **sixteen thousand dollars (\$16,000)** by check, which contains a reference to "ACLC No. R7-2009-0078" and is made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Regional Water Board by January 18, 2010 or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
 - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to the approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
 - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. (OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

RECEIVED

JAN 20 2010

REGION 7

RUBEN MIRELES

(Print Name and Title)

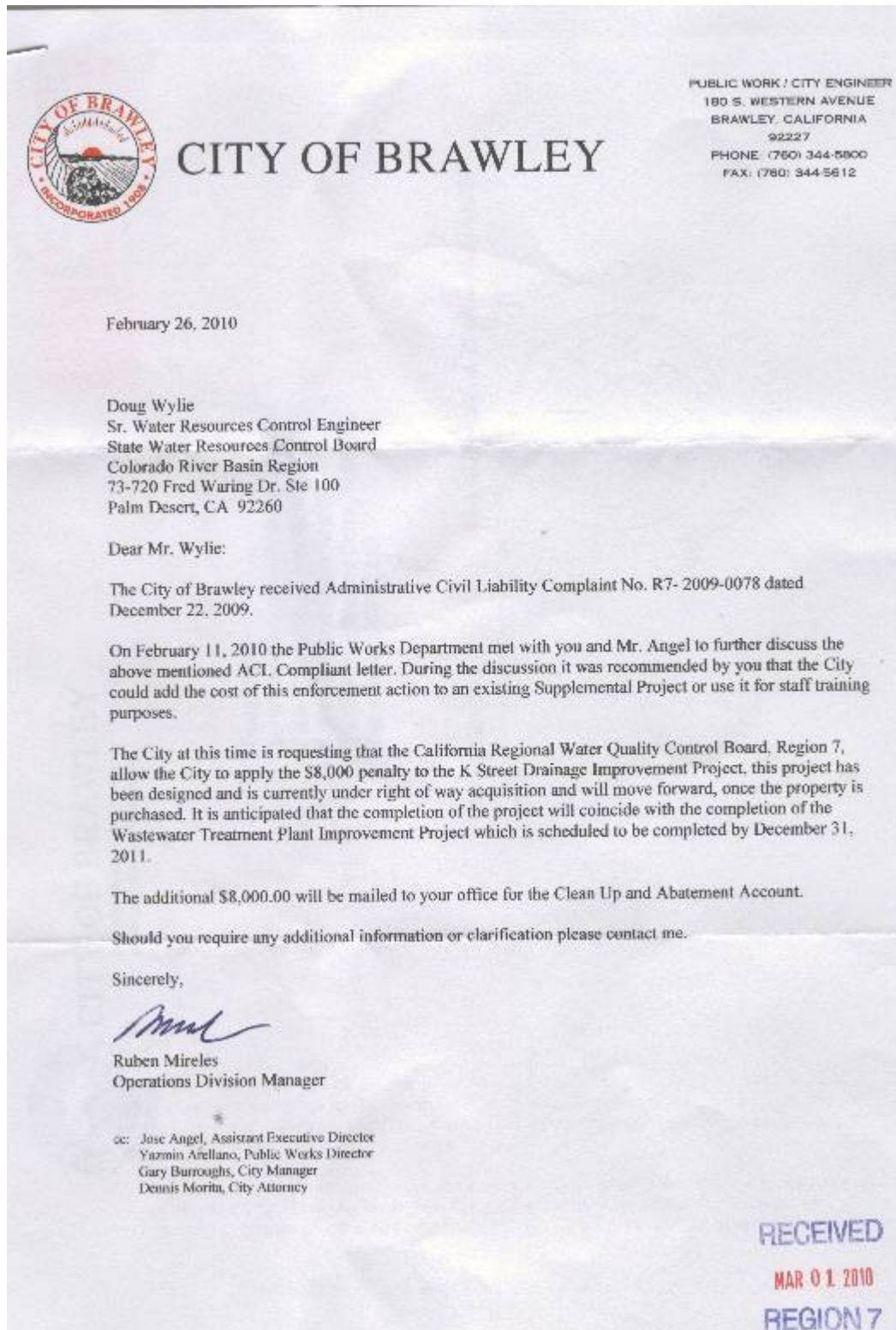


(Signature)

1/15/10

(Date)

ATTACHMENT "C"



ATTACHMENT "D"

STIPULATED TIME SCHEDULE
FOR THE IMPLEMENTATION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS

Phase No.	Description of SEP	Completion Date	Estimated Cost of Project	Portion of ACL that May be Suspended	Due Date
1	K Street Drainage Improvement Project	December 31, 2011	\$340,000	\$8,000	Final report due on or before December 31, 2011