

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

In the matter of:)	
)	
HEBER PUBLIC UTILITY DISTRICT)	Order No. R7-2011-0009
)	
Complaint No. R7-2010-0051 Administrative Civil Liability)	Settlement Agreement and Stipulation for Entry of Order; Order (Proposed)
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Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the Colorado Basin Regional Water Quality Control Board Prosecution Staff (“Prosecution Staff”) and the Heber Public Utility District (“Settling Respondent”) (collectively “Parties”) and is presented to the Colorado Basin Regional Water Quality Control Board (“Regional Water Board”) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Settling Respondent owns and operates a municipal wastewater treatment plant (WWTP) located at 1184 Rockwood Avenue, Heber, CA 92249 and provides sewerage service to the community of Heber. The WWTP has a design capacity of 0.810 million gallons per day (MGD). Wastewater from the WWTP is discharged to the Central Drain 3-D No. 1, tributary to the Alamo River, and ultimately to the Salton Sea. The Central Drain 3-D No. 1, the Alamo River and Salton Sea are waters of the United States.
2. On June 21, 2006, the Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. R7-2006-0049 (NPDES Permit No. CA0104370) for the Heber Public Utility District (PUD) to regulate discharges of treated wastewater from the WWTP.
3. On November 10, 2010, the Prosecution Staff issued Administrative Civil Liability (ACL) Compliant No. R7-2010-0051 to the Settling Respondent. The Complaint alleges that the Settling Respondent violated effluent limitations set forth in Board Order No. R7-2006-0049, as identified in Exhibit “A” attached to the Complaint, and that the Settling Respondent violated Board Order No. R7-2006-0049 on sixty-one (61) occasions, as identified in Exhibit “B” attached to the Complaint, by using an uncertified laboratory to perform E. coli analysis. The Complaint recommends imposing mandatory minimum penalties (MMPs) in the amount of \$6,000 for two effluent limit violations and discretionary administrative civil liability in the amount of \$24,871.87, which includes staff costs of \$6,000, for violations

incurred by the Discharger for using an uncertified laboratory for E. coli analyses as alleged.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution 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.
5. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code (CWC) set forth in the Complaint, the Parties have agreed to the imposition of \$26,553.32 against the Settling Respondent, which includes a mandatory minimum penalty in the amount of \$6,000, staff costs in the amount of \$6,000, and discretionary administrative civil liability in the amount of \$14,553.32. (See Exhibit "A" attached hereto and incorporated herein by this reference). The stipulated discretionary administrative civil liability amount is at least 10 percent higher than the economic benefit derived from the violations, and is within the maximum and minimum liability amounts, as required by the State Water Resources Control Board's Water Quality Enforcement Policy. The adjustment in the discretionary liability from the amount proposed in the Complaint is the result of the Prosecution Staff's consideration of the litigation risks and the relative likelihood that the Regional Water Board would impose the liability proposed in the Complaint, given the history of liabilities imposed by the Regional Water Board in similar cases and considering the available evidence on the Settling Respondent's culpability and the environmental harm resulting from the Settling Respondent's conduct. Payment of \$26,553.32 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

Section III: Stipulations

The Parties stipulate to the following:

6. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$26,553.32 as set forth in Paragraph 5 of Section II herein.
7. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

8. Party Contacts for Communications related to Stipulation/Order:

For the Regional Water Board:

Doug Wylie, Senior Water Resource Control Engineer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
dwylie@waterboards.ca.gov
(760) 346-6585

For the Settling Respondent:

John Jordan, General Manager
Heber Public Utility District
1078 Dogwood Road, Suite 103
Heber, CA 92249
jjordan@heber.ca.gov
(760) 482-2440

9. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
10. **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 Settling Respondent as of November 10, 2010 based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 5.
11. **Public Notice:** Pursuant to the State Water Board Enforcement Policy, it is the policy of the State Water Board that a 30 day public comment period shall be posted on the Regional Water Board's website prior to the settlement or imposition of any administrative civil liability. Only one notice need be posted for each civil liability. On November 10, 2010, the Assistant Executive Officer issued the Complaint and provided notice to the public that the violations alleged in the Complaint could be resolved by settlement. During the 30-day period following the notice, no persons submitted comments to the Regional Water Board regarding the Complaint and/or potential settlement of the Complaint. In addition, the Regional Water Board will provide notice that it will consider this matter at a public hearing at least ten (10) days prior to the date of the hearing. Thus, the terms of this Stipulation and Order have been properly noticed.
12. **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,

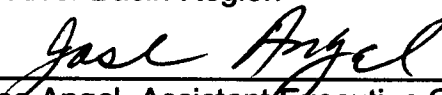
and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

13. **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.
14. **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 the Regional Water Board.
15. **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.
16. **Waiver of Hearing:** The Settling Respondent 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.
17. **Waiver of Right to Petition:** The Settling Respondent 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.

18. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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.
19. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent 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 Settling Respondent of its obligation to obtain any final written approval required by this Order.
20. **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.
21. **Effective Date:** The obligations under Paragraph 5 of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.
22. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
23. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

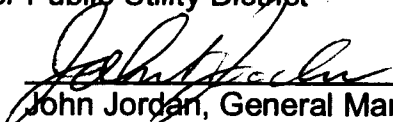
IT IS SO STIPULATED.

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

By: 
Jose Angel, Assistant Executive Officer

Date: 1/6/2011

Heber Public Utility District

By: 
John Jordan, General Manager

Date: December 17, 2010

Order of the Regional Water Board

24. This Order incorporates the foregoing Stipulation.
25. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC Section 13385(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. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.
26. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Sections 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

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 on January 20, 2011.

for Jose Angel, P.E.
Robert Perdue
Executive Officer

Date: 1/26/2011

EXHIBIT "A"



Heber Public Utility District

1078 Dogwood Rd., Suite 103 • P. O. Box H
Heber, CA 92249
TEL. (760) 482-2440 • FAX (760) 353-9951
www.heber.ca.gov

RECEIVED
DEC - 2 2010
REGION 7

November 29, 2010

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

SUBJECT: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R7-2010-0051 FOR MANDATORY MINIMUM PENALTY; HEBER PUBLIC UTILITY DISTRICT MUNICIPAL WASTEWATER TREATMENT PLANT, IMPERIAL COUNTY.

I, John Jordan acting as General Manager and the authorized representative of Heber Public Utility District, as discharger, respectfully present for consideration to the California Regional Water Quality Control Board, a settlement for the above mentioned complaint according to CWC Section 13323(b) option 2(b), attached is the signed waiver and this cover letter as the settlement proposal.

Heber Public Utility District is proposing a settlement in reference to the Administrative Civil Liability Complaint No. R7-2010-0051 for mandatory minimum penalty, Heber PUD is proposing a lump sum payment in the amount of \$26,553.32 (Twenty Six Thousand Five Hundred and Fifty Three Dollars and 32/100 USD), in lieu of the \$30,871.87 (Thirty Thousand Eight Hundred and Seventy One Dollars 87/100 USD) as follows:

Table with 4 columns: ID, Date, Description, Amount. Rows include mandatory minimum penalties for 10/11/2006 and 10/31/2006, Staff Cost, Minimum Liability (Economic Benefit + 10%), and TOTAL HPUD'S PROPOSED SETTLEMENT AMOUNT: 26,553.32.

This settlement proposal is covering the Staff cost, mandatory minimum penalties 449414, 449415 and the minimum liability equivalent to the economic benefit of \$13,230.20 + 10% that amounts to \$26,533.32.

As SWRCB has already determined that Heber PUD serves a small community with a financial hardship and has been historically an economically disadvantaged area; this community will highly appreciate the approval of this settlement, as it will cover the mandatory minimum penalties, the minimum liability and the staff cost.

Should any questions arise, please do not hesitate to contact me or Francisco Rodriguez at

(760) 482-2440

Sincerely,

Handwritten signature of John Jordan

John Jordan, General Manager

File: 7A 13 0104 011, Heber WWTP