

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

In the matter of:)	
)	Order R7-2012-0016 (Proposed)
Seeley County Water District)	
Wastewater Treatment Plant)	SETTLEMENT AGREEMENT AND
)	STIPULATION FOR ENTRY OF
Complaint R7-2011-0030 for)	ADMINISTRATIVE CIVIL LIABILITY ORDER;
Administrative Civil Liability)	ORDER (PROPOSED)
)	

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 Team (Prosecution Team) and Seeley County Water District (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.

Section II: Recitals

1. The Discharger owns and operates a municipal wastewater treatment plant (WWTP) and corresponding collection and disposal systems, located at 1898 West Main Street, Seeley, CA 92273. The Discharger's WWTP is a publicly owned treatment works (POTW) and provides sewerage service to the town of Seeley, a small community as defined by California Water Code (Water Code) section 13385, subdivision (k)(2). The WWTP has a treatment capacity of 0.25 million gallons per day (MGD). Wastewater from the WWTP is discharged to the New River, and ultimately to the Salton Sea. The New River and the Salton Sea are waters of the United States.
2. The WWTP is subject to the requirements set forth in Waste Discharge Requirements (WDRs) Board Order R7-2007-0036 (National Pollutant Discharge Elimination System Permit (NPDES) No. CA0105023).
3. On March 1, 2011, the Prosecution Team issued Administrative Civil Liability (ACL) Complaint R7-2011-0030 to the Discharger. The Complaint alleges that the Discharger violated WDRs Order R7-2007-0036 on thirty-six (36) occasions from July 1, 2008 through January 26, 2009, when it used an uncertified laboratory to perform *E. coli* and Enterococci analysis. The Complaint also alleges that the Discharger exceeded the effluent limits for *E. Coli*, enterococci, Fecal Coliform, and Biochemical Oxygen Demand 5-day 20°C (BOD) set forth in WDRs Order R7-2007-0036 on twenty-eight (28) occasions, of which twenty-five (25) are subject to mandatory minimum penalties. The Complaint recommended imposing an administrative civil liability totaling \$92,137.50 for alleged violations of WDRs Order R7-2007-0036. That amount includes \$75,000 in mandatory minimum penalties and staff costs of \$6,000.
4. Subsequent to the issuance of the Complaint, the Prosecution Team learned that the Discharger had exceeded the effluent limits for *E. Coli*, enterococci, Fecal Coliform, and

Biochemical Oxygen Demand 5-day 20°C (BOD) set forth in WDRs Order R7-2007-0036 on twelve (12) occasions, of which all ten (10) are subject to mandatory minimum penalties. These violations are specifically identified in Attachment A to this Stipulation and Order, which is attached hereto and incorporated herein by this reference. Pursuant to Water Code section 13385, subdivisions (h) and (i), the Regional Water Board is required to impose a mandatory minimum penalty in the amount of three thousand dollars (\$3,000) for each serious violation.

5. 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. To resolve by consent and without further administrative proceedings all alleged violations of Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of one hundred thirteen thousand three hundred eighty dollars and thirty-five cents (\$113,380.35) in administrative civil liability against the Discharger. The Discharger shall pay a total of eight thousand three hundred eighty dollars and thirty-five cents (\$8,380.35) to the State Water Pollution Cleanup and Abatement Account, equal to the calculated economic benefit amount plus 10 percent as shown on page 7 of the Complaint. The remaining one hundred five thousand dollars (\$105,000) in liability shall be suspended upon completion of a Compliance Project as set forth in this Stipulation and Order. The Discharger shall expend, at a minimum, one hundred five thousand dollars (\$105,000) to complete the Compliance Project in accordance with the terms of this Stipulation and Order.

6. The Prosecution Team 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.

Section III: Stipulations

The Parties stipulate to the following:

7. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

8. **Administrative Civil Liability:** The Discharger shall pay a total of eight thousand three hundred eighty dollars and thirty-five cents (\$8,380.35) in stipulated administrative civil liability by check made payable to the State Water Pollution Cleanup and Abatement Account" no later than thirty (30) days following the Regional Water Board executing this Order. The check shall reference the Order number listed on page one of this Stipulation and Order. The original signed check shall be sent to the Party Contact for the Regional Water Board set forth in Paragraph 19, with a copy to: Ann Carroll, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812-0100. Further, the remaining one hundred five thousand dollars (\$105,000) in stipulated administrative civil liability shall be suspended (Suspended Liability) pending completion of a compliance project (CP), as set forth herein and in Attachment A attached hereto and incorporated by this reference.

9. **CP Descriptions:** The Parties agree that this resolution includes the performance of a CP to construct a series of evaporation/percolation ponds in existing property located directly west and south of the current treatment ponds at the WWTP. The CP's implementation timeline

and estimated costs are detailed in Attachment B to this Stipulation and Order, which is attached hereto and incorporated herein by this reference.

10. **CP Completion Date:** The CP shall be concluded by August 1, 2015 ("CP Completion Date"). A final report certifying the completion of the CP shall be provided to the Regional Water Board and the State Water Resources Control Board's (State Water Board) Division of Financial Assistance by October 15, 2015, as described in Paragraph 14.

11. **Cost of CP:** The cost estimate to implement the CP is approximately one hundred fifty-two thousand six hundred thirty-five (\$152,635) (Attachment B). The amount of liability to be suspended upon completion of the CP is one hundred five thousand dollars (\$105,000). No additional liability above and beyond the one hundred five thousand dollars (\$105,000) shall be suspended for costs incurred to complete the CP in accordance with this Stipulation. The Discharger represents that it will guarantee implementation of the CP identified in this Stipulation by remaining liable for the Suspended Liability until all the CP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation.

12. **Failure to Complete the CP:** If the CP as described in this Stipulation and Order is determined to be infeasible, or if the Discharger fails to complete the CP by August 1, 2015, as required by this Stipulation and Order, the Regional Water Board shall issue a Notice of Violation (NOV). If other circumstances beyond the reasonable control of the Discharger prevent completion of the CP by the CP Completion Date, Regional Water Board staff may extend the CP Completion Date by up to one (1) year, to August 1, 2016. The Discharger must send its request for an extension in writing with necessary justification to the Regional Water Board Contact identified in Paragraph 19 no later than July 1, 2015. As a consequence, the Discharger shall be liable to pay the State Water Pollution Cleanup and Abatement Account the Suspended Liability within 30 days of receipt of the NOV.

13. **CP Oversight:** The Discharger will oversee implementation of the CP. Additional oversight of the CP will be provided by the Regional Water Board. The Discharger is solely responsible for paying all reasonable oversight costs incurred by the Regional Water Board to oversee the CP. The CP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to implement and complete the CP. Reasonable oversight tasks to be performed by the Regional Water Board include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final report, verifying completion of the CP.

14. **Final Report Certifying Completion of CP:** On or before the CP Completion Date, the Discharger shall submit a final report (Certification of Completion) to the Regional Water Board Contact identified in Paragraph 19 and the State Water Board's Division of Financial Assistance. The Certification of Completion shall include following:

- a. A cover letter that clearly identifies the Discharger, the Discharger's WDID number, reference to the Order number listed on page one of this Stipulation and Order, and includes the following statement: "I declare under the penalty of perjury under the laws of the State of California that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

- b. Certification that the CP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by the Discharger.
- c. Certification documenting the expenditures by the Discharger during the completion period for the CP. Expenditures may include external payments to outside vendors or contractors performing the CP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board for oversight. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.

15. **Third Party Financial Audit of CP.** At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger directly on the CP. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

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

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

18. **Compliance with Applicable Laws:** The Discharger 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 it to further enforcement, including additional administrative civil liability.

19. 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) 776-8960

For the Discharger:

Frank Cornejo, Waterworks Supervisor
City of Holtville
121 West Fifth Street
Holtville, CA 92250-1298
fcornejo@holtville.ca.gov
(760) 356-3186

20. 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.

21. Matters Addressed by Stipulation: Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the violations alleged in the Complaint (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 8 and the Discharger's full satisfaction of the CP obligations described herein.

22. Public Notice: Federal law mandates that any settlement will not become final until after 30-day public notice and comment period expires, (40 CFR 123.27). On March 3, 2011, the Assistant Executive Officer issued the Complaint and provided notice to the public that the violations alleged in the Complaint could be resolved by settlement, including, but not limited to performance of a CP. This Stipulation was publicly noticed on the Regional Water Board's website on or before February 23, 2012. Thus, the settlement of the violations alleged in the Complaint and this Stipulation has been properly noticed.

23. 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.

24. 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.

25. 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 or its delegee.

26. **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.

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

28. **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 Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

29. **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/or 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 activities pursuant to this Stipulation and Order.

30. **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.

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

32. **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.

33. **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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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

IT IS SO STIPULATED.

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

Date:

2/21/2012

By:

Jose Angel, P.E.
Jose Angel,
Assistant Executive Officer

Seeley County Water District

Date:

2/16/12

By:

Donald H. Turner
Donald H. Turner
Board President

Order of the Regional Water Board:

IT IS HEREBY ORDERED:

35. This Order incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 34 above, by this reference, as if set forth fully herein.

36. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint, or otherwise provided to the Regional Water Board.

Seeley County Water District WWTP
Settlement Agreement; Stipulation for Entry of Administrative Civil Liability Order;
Order R7-2012-0016

37. 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 (Pub. Resources Code § 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.

38. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under the 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 on May 17, 2012.



Robert Perdue
Executive Officer

Date:

5/17/12

ATTACHMENT A
Summary of Violations and Mandatory Minimum Penalties (MMPs)

Violation ID ¹	Date Occurred	Description of Violation	Serious Violation Defined by CWC 13385(h)	Amount Assessed Dollars (\$)
884282	09/22/2010	Exceeded daily maximum limit of 400 MPN/100 mL for Fecal coliform; Reported 1,600 MPN/100 mL	No	3,000 ²
884278	09/22/2010	Exceeded daily maximum limit of 400 MPN/100 mL for E. coli; Reported 1,300 MPN/100 mL	No	3,000 ²
898677	03/09/2011	Biochemical Oxygen Demand (BOD) (5-day @ 20 Deg. C) Weekly Average limit is 65 mg/L and reported value was 120 mg/L.	Yes	3,000
905255	05/18/2011	E. coli Single Sample Maximum limit is 126 MPN/100 mL and reported value was 1120 MPN/100 mL.	No	3,000
905071	05/31/2011	Biochemical Oxygen Demand (BOD) (5-day @ 20 Deg. C) Monthly Average limit is 45 mg/L and reported value was 48.8 mg/L.	No	3,000
905256	05/31/2011	Biochemical Oxygen Demand (BOD) (5-day @ 20 Deg. C) Monthly Average limit is 45 mg/L and reported value was 48.8 mg/L.	No	3,000
905621	06/01/2011	Enterococci Single Sample Maximum limit is 100 MPN/100 mL and reported value was 1600 MPN/100 mL.	No	3,000
905623	06/22/2011	Enterococci Single Sample Maximum limit is 100 MPN/100 mL and reported value was 900 MPN/100 mL.	No	3,000
905619	06/30/2011	Enterococci Geometric Mean of Minimum 5 Samples in 30-Days limit is 33 MPN/100 mL and reported value was 57 MPN/100 mL.	No	3,000
907675	07/12/2011	Fecal Coliform Instantaneous Maximum limit is 400 MPN/100 mL and reported value was 500 MPN/100 mL.	No	3,000
910266	08/09/2011	Enterococci Instantaneous Maximum limit is 100 MPN/100 mL and reported value was 220 MPN/100 mL.	No	3,000
911847	09/21/2011	Fecal Coliform Instantaneous Maximum limit is 400 MPN/100 mL and reported value was 500 MPN/100 mL.	No	3,000
916135	11/28/2011	Enterococci Instantaneous Maximum limit is 100 MPN/100 mL and reported value was 240 MPN/100 mL.	No	0 ³
916136	11/29/2011	Enterococci Instantaneous Maximum limit is 100 MPN/100 mL and reported value was 300 MPN/100 mL.	No	0 ³
TOTAL				\$30,000

¹ California Integrated Water Quality System (CIWQS)

² Assessed in Administrative Civil Liability Complaint R7-2011-0030 and therefore not included in the final total in the table.

³ Exempt from MMPs pursuant to CDO R7-2011-0058