

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

In the matter of: )

**SALTON COMMUNITY )  
SERVICES DISTRICT )**

**Order R7-2015-0017**

**Settlement Agreement and Stipulation for  
Entry of Order; Order**

**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Order") is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board), on behalf of the Colorado River Basin Water Board Prosecution Team (Prosecution Staff), and the Salton Community Services District ("District") (collectively, "Parties") and is presented to the Colorado River Basin Water Board, for adoption as an order, by settlement, pursuant to Government Code section 11415.60.

**Section II: Recitals**

1. The District owns, operates, and maintains a sanitary sewer system, which serves the community of Salton City.
2. On May 2, 2006, the State Water Resources Control Board issued Order 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*. The District is covered under this Order.
3. Prohibition C.1 of State Water Resources Control Board Order 2006-0003-DWQ provides that any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.
4. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and California Water Code ("CWC") Section 13376 prohibit the discharge of pollutants to navigable waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

5. From November 26 to 29, 2011, the District caused the discharge of 200,000 gallons of untreated wastewater to an unnamed dry drainage channel and then to the dry Arroyo Salado channel, which ultimately terminates at the Salton Sea. The CVSC and the Salton Sea are waters of the United States. The discharge of untreated wastewater is in violation of Prohibition C.1 of State Water Resources Control Board Order 2006-0003-DWQ, and of *Section 301 of the Clean Water Act (33 U.S.C. § 1311)* and CWC section 13376.
  - a. Based on pumping records for an adjacent sewer lift station, the SSO began on Saturday night, November 26, 2011 of the Thanksgiving Holiday weekend at approximately 12:00 a.m.
  - b. Initially, the total discharge volume was estimated to be 10,000 gallons; however the District later determined that the spill volume to be approximately 200,000 occurring over four days with 10,000 gallons recovered.
  - c. A clog in the 6-inch line caused sewage to back up and exit from a manhole cover.
  - d. Actions needed to stop the SSO were completed at approximately 1:30 p.m. on November 29, 2011.
  - e. The District notified California Emergency Management Agency (CalEMA) and the Imperial County Environmental Health Department of the discharge.
  - f. The Colorado River Basin Water Board was first notified of the discharge at 1:39 p.m. on November 29, 2011.
  
6. On November 3, 2014, the Colorado River Basin Water Board issued Administrative Civil Liability Complaint ("ACLC" or "Complaint") R7-2014-0062. The Complaint alleged that the District violated State Water Board Order 2006-0003-DWQ, and proposed a penalty of \$19,810. Specifically, the Complaint alleged that:
  - a. **Violation 1-** From November 26 to 29, 2011, the District caused the discharge of 200,000 gallons of untreated wastewater to an unnamed drainage channel and then to the Arroyo Salado channel, which are waters of the United States. The discharges of untreated wastewater are in violation of Prohibition C.1 of State Water Resources Control Board Order 2006-0003-DWQ, and in violation of Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376.
  - b. The discharge caused by the District constitutes a violation under CWC Section 13350, or, in the alternative, CWC Section 13385.
  
7. On December 1, 2014, in order to enter into settlement negotiations, the District waived their right to a hearing on the matter within 90 days of issuance of the Complaint.

8. To resolve the alleged violations of the California Water Code ("CWC"), set forth in Attachment A of R7-2014-0062, without formal administrative proceedings, the Parties have agreed to the final imposition of **\$19,810** in liability against the District pursuant to Government Code section 11415.60. Prosecution Staff calculated liability in accordance with the *Water Quality Enforcement Policy* as outlined in Attachment A of R7-2014-0062. Further, consistent with the Water Quality Enforcement Policy any Enhanced Compliance Action (ECA), up to 50 percent of the total adjusted monetary assessment (i.e. total amount assessed excluding investigative and enforcement costs) can be dedicated to an ECA. The Parties have agreed that **\$9,405** of the total liability will be allocated to an ECA, as described below. The District shall pay a total of **\$10,405** to the State Water Resources Control Board Cleanup and Abatement Account, consisting of \$1,000 in staff costs and the balance in stipulated penalties, no later than 30 days following the Colorado River Basin Water Board's adoption of this Order. The remainder of the penalty shall be suspended and dismissed upon completion of the ECA as described below and in Attachment A.
9. The Prosecution Staff has determined based on the information in the record that the resolution of the alleged violations (i.e., assessment of penalties, a portion of which are approved for application to implementing the ECA) is fair and reasonable and fulfills its enforcement objectives of CWC sections 13000 et seq., and the *Water Quality Enforcement Policy*, and it satisfies the objectives and requirements of the Federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order; and that this Order is in the best interest of the public.

### **Section III: Stipulations**

The Parties stipulate to the following:

10. Party Contact Information:

For the Colorado River Basin Water Board:

- i) Designated Representative: The representative from the Colorado River Basin Water Board responsible for oversight of the ECA:

Doug Wylie, Senior Water Resources Control Engineer  
Colorado River Basin Region, Regional Water Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[doug.wylie@waterboards.ca.gov](mailto:doug.wylie@waterboards.ca.gov)  
(760) 776-8960

- ii) Enforcement Coordinator: The representative at the Colorado River Basin Water Board who is responsible for enforcement coordination:

Mary Serra, Supervising Water Resources Control Engineer  
Colorado River Basin Region, Regional Water Board  
73-720 Fred Waring Drive, Suite 100  
Palm Desert, CA 92260  
[mary.serra@waterboards.ca.gov](mailto:mary.serra@waterboards.ca.gov)  
(760) 776-8972

For the Salton Community Services District:

Mitch Mansfield, General Manager  
Salton Community Services District  
P.O. Box 5268  
Salton City, CA 92275  
[mmansfield@saltoncsd.gov](mailto:mmansfield@saltoncsd.gov)  
(760) 394-4446

11. Administrative Civil Liability: The District hereby agrees to the imposition of an administrative civil liability totaling \$19,810 as set forth in Paragraph 8 of Section II herein. Further, the District agrees that \$9,405 of this administrative civil liability shall be suspended ("Suspended Liability") pending completion of an ECA as set forth in Paragraph 8 of Section II herein and Attachment A attached hereto and incorporated by reference. Failure to complete the ECA as set forth in this Stipulated Order will result in the payment of the Suspended Liability in full to the State Water Board Cleanup and Abatement Account fund.
12. Payment and Costs: The District shall pay the unsuspended portion of the total administrative liability amount (\$10,405) within 30 days of receipt of the Stipulated Order executed by the Colorado River Basin Water Board. Payment shall be made to the "*State Water Board Cleanup and Abatement Account*". The District shall indicate on the check the number of this Order (R7-2015-0017) and send it to:

State Water Resources Control Board  
Division of Administrative Services, Accounting Branch  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The District shall send a copy of the check to the Designated Colorado River Basin Water Board Representative. The payment of Colorado River Basin Water Board staff costs incurred for overseeing the implementation of the ECA is addressed in paragraph 15, herein. Payment of any unexpended ECA funds is addressed in paragraph 21 of this Order. Payment in the event of failure to complete the ECA is addressed in paragraph 22 of this Order.

13. ECA Description: The Parties agree that this Stipulated Order includes the performance of an ECA that will mitigate the water quality impacts associated with the above violation. The District proposed an ECA consisting of the purchase and installation of SmartCover® and SmartFloe™ Monitoring Systems for the District's wastewater collection system to prevent future sewage spills. The District maintains that the purchase and installation of the SmartCover® and SmartFloe™ are not otherwise required by law.
14. Agreement of the District to Construct, Report, and Guarantee Implementation of ECA: The District represents that: (1) it will install the ECA described in this Order; (2) it will provide certifications and written reports to the Colorado River Basin Water Board consistent with the terms of this Order detailing the installation of the ECA; and (3) it will guarantee timely installation of the ECA by remaining liable for the entire cost of the administrative liability until the ECA is completed and accepted by the Colorado River Basin Water Board in accordance with the terms of this Order. The District agrees that the Colorado River Basin Water Board has the right to require an audit of the funds expended by it to implement the ECA.
15. Oversight of ECA: The District is solely responsible for paying for all oversight costs incurred by the Colorado River Basin Water Board to oversee the ECA. The ECA oversight costs are in addition to the total administrative civil liability imposed against the District and are not credited toward the District's obligation to fund the ECA. Reasonable oversight tasks include, but are not limited to, updating regulatory databases, reviewing and evaluating ECA progress, reviewing progress and final reports, verifying ECA completion with a site inspection and auditing appropriate expenditures of funds. Oversight costs shall be payable within 30 days of receipt of an invoice from the Colorado Water Board or State Water Board.
16. ECA Progress Reports: The District shall provide quarterly reports of progress to the Designated Water Board Representative, commencing 90 days after the effective date of this Order and continuing through submittal of the final reports described in Paragraph 18. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted. Quarterly reports must be submitted in accordance with the following schedule:

Reporting Period	Date Due Each Year
January – March	April 30
April – June	July 31
July – September	October 31
October – December	January 31

17. ECA Completion Date: The ECA shall be completed in its entirety no later than May 1, 2015 (ECA Completion Date). If other circumstances beyond the reasonable control of the District prevent completion of the ECA by that date, the Colorado River Basin Water Board Assistant Executive Officer may, in writing, extend the ECA Completion Date by up to one (1) year, to May 1, 2016. The District must send its request for an extension in writing with necessary justification to the Enforcement Coordinator no later than April 1, 2015.
18. Certification of Completion of ECA and Final Reports: On or before the ECA Completion Date, the District shall submit a certified statement of completion of the ECA (Certification of Completion). The Certification of Completion shall be submitted under penalty of perjury, to the Enforcement Coordinator by a responsible corporate official representing the District. The Certification of Completion shall include the following:
- a. Certification that the ECA has been completed in accordance with the terms of this Order. Such documentation should include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Colorado River Basin Water Board to evaluate the completion of the ECA and the costs incurred by the District.
  - b. Certification documenting the expenditures by the District during the completion period for the ECA. Expenditures may be external payments to outside vendors or contractors performing the ECA. 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 Colorado River Basin Water Board for oversight. The District shall provide any additional information requested by the Colorado River Basin Water Board staff which is reasonably necessary to verify ECA expenditures.
  - c. Certification that the District followed all applicable environmental laws and regulations in the implementation of the ECA including, but not limited to, the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.

19. **Third Party Financial Audit:** In addition to the certification, upon completion of the ECA and at the written request of the Colorado River Basin Water Board, the District, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Colorado River Basin Water Board staff, or its designated representative, providing such party's(ies)' professional opinion that the District and/or an implementing party (where applicable) have expended money in the amounts claimed by the District. The audit report shall be provided to the Colorado River Basin Water Board staff within three months of notice from Colorado River Basin Water Board to the District of the need for an independent third party financial audit. The audit need not address any costs incurred by the Colorado River Basin Water Board for oversight.
20. **Colorado River Basin Water Board Acceptance of Completed ECA:** Upon the District's satisfaction of its ECA obligations under this Order and completion of the ECA and any audit requested by the Colorado Water Board, Colorado River Basin Water Board staff shall send the District a letter recognizing satisfactory completion of its ECA obligations under this Order. This letter shall terminate any further ECA obligations of the District.
21. **Failure to Expend all Suspended Administrative Liability Funds on the approved ECA:** In the event that the District timely completes the ECA but is not able to demonstrate to the reasonable satisfaction of the Colorado River Basin Water Board staff that the entire ECA amount has been spent as described herein, the District shall pay the difference between \$19,810 and the amount the District can demonstrate was actually spent on the ECA. The District shall pay the additional administrative civil liability within 30 days of its receipt of notice of the Colorado River Basin Water Board's determination that the District has failed to demonstrate that the entire ECA amount has been spent to complete the ECA components.
22. **Failure to Complete the ECA:** If the ECA is not fully implemented within the ECA Completion Date required by this Order, the Enforcement Coordinator shall issue a Notice of Violation. As a consequence, the District shall be liable to pay the entire Suspended Liability. The District shall not be entitled to any credit, offset, or reimbursement from the Colorado River Basin Water Board for expenditures made on the ECA prior to the date of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a Motion for Payment of Suspended Liability before the Colorado River Basin Water Board or a hearing panel. Upon a final determination of the amount of the Suspended Liability assessed, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the Colorado River Basin Water Board serves its final determination on the District. The District shall be liable for the Colorado River Basin Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed Suspended Liability amount will satisfy the District's obligations pursuant to this Order to implement the ECA.

23. **Matters Addressed by Stipulation:** Upon adoption of this Order by the Colorado River Basin Water Board, this Order represents a final and binding resolution to settle, as set forth herein, all claims, violations, or causes of action as alleged in Attachment A of R7-2014-0062 (Covered Matters). The provisions of this paragraph are expressly conditioned on the payment of the administrative civil liability as provided herein by the deadlines specified in this Order, and the District's full satisfaction of the obligations described in this Order.
24. **Publicity:** Should the District or its agents or subcontractors publicize one or more elements of the ECA, they shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Colorado River Basin Water Board against the District.

#### Section IV: Standard Stipulations

25. **Compliance with Applicable Laws:** The District understands that payment of the administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in this Order may subject it to further enforcement, including additional administrative civil liability.
26. **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.
27. **Public Notice:** The District understands that the Colorado River Basin Water Board will conduct a 30-day public review and comment period prior to consideration and adoption. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Colorado River Basin Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Colorado River Basin Water Board. The District agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
28. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedures contemplated for adopting the Stipulation and Proposed Order by the Colorado River Basin Water Board and conducting review of this Stipulation by the public are lawful and adequate. In the event procedural objections are raised prior to the proposed 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.



29. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Colorado River Basin Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Colorado River Basin Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
30. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
31. **Modification:** This Stipulated 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 Colorado River Basin Water Board.
32. **If Proposed Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Colorado River Basin Water Board, or its delegee, 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 Colorado River Basin Water Board and/or a hearing panel to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree to re-initiate the hearing process in that new hearing procedures will be issued with scheduled due dates for a hearing within 90 days from the date the Proposed Order is deemed not accepted by the Colorado River Basin Water Board. 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 pursuant to California Evidence Code section 1152. The Parties agree to waive any and all objections based on settlement communications in this matter, other than California Evidence Code section 1152 evidentiary objections, including, but not limited to:
  - a. Objections related to prejudice or bias of any of the Colorado River Basin Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Colorado River Basin 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 Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged, in Attachment A of R7-2014-0062, 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.

33. **Waiver of Hearing:** The District has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the Colorado River Basin Water Board prior to the adoption of this Order by the Colorado River Basin Water Board, or its delegee.
34. **Waiver of Right to Petition:** The District hereby waives its right to petition the Colorado River Basin Water Board's adoption of the Stipulated 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.
35. **Covenant Not to Sue:** The District covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
36. **Colorado River Basin Water Board is Not Liable:** Neither the Colorado River Basin Water Board members nor the Colorado River Basin 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 District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Colorado River Basin Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
37. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of, and to bind the entity on whose behalf he or she executes the Order.
38. **Necessity for Written Approvals:** All approvals and decisions of the Colorado River Basin Water Board under the terms of this Order shall be communicated to the District in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Colorado River Basin Water Board regarding submissions or notices shall be construed to relieve the District of its obligation to obtain any final written approval required by this Order.
39. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
40. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Colorado River Basin Water Board enters the Order.

41. Counterpart Signatures: This Order 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.
42. Severability: The provisions of this Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

It is so stipulated.

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

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

Date: 2/6/2015

Salton Community Services District

By: Mitch Mansfield  
Mitch Mansfield, General Manager


Date: 2-6-15

**Section V: Findings of the Colorado River Basin Water Board**

43. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Colorado River Basin Water Board.
44. The Colorado River Basin Water Board finds that the Recitals set forth herein are true.
45. The proposed settlement was noticed to receive public comment for a minimum of 30 days prior to Colorado River Basin Water Board consideration.
46. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
47. In adopting this Stipulated Order, the Colorado River Basin Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Colorado River Basin Water Board's staff in investigating the allegations herein or otherwise provided to the Colorado River Basin Water Board or its delegate by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Colorado River Basin Water Board for this matter.
48. This is an action to enforce the laws and regulations administered by the Colorado River Basin Water Board. The Colorado River Basin 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.
49. The Colorado River Basin Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the District fails to perform any of its obligations under the Order.
50. Fulfillment of the District's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order.

Pursuant to CWC section 13323, 13385, and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Colorado River Region.

I, Robert Perdue, Executive Officer, do hereby certify that 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 12, 2015**.



Robert Perdue

Executive Officer

Date: 3/12/15

ATTACHMENT:

Attachment A. Description of Enhanced Compliance Action