

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

REVISED (PROPOSED) SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2016-0022
IN THE MATTER OF
IMPERIAL IRRIGATION DISTRICT
GRASS CARP HATCHERY
EL CENTRO – IMPERIAL COUNTY

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability (“Stipulated Order” or “Order”) is entered into by and between the Interim Assistant Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region (“Regional Board”), on behalf of the Regional Board Prosecution Team (“Prosecution Team”) and the Imperial Irrigation District (“Discharger”) (collectively “Parties”), and is presented by the Parties to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulated Order is based on violations of Waste Discharge Requirements (WDRs) Order R7-2010-0023 (National Pollutant Discharge Elimination System Permit CA7000004), for which the Regional Board is required to assess mandatory minimum penalties pursuant to California Water Code (Water Code) section 13385, as alleged in Administrative Civil Liability (ACL) Complaint No. R7-2016-0021 (“Complaint”).

SECTION I: RECITALS

1. The Discharger owns and operates the Grass Carp Hatchery (Hatchery) located at 485 E. Villa Road, El Centro, CA 92243 in Imperial County. The facility is split into two sections to accommodate different phases in grass carp growth and development. Fertilization and initial growth of the fish is conducted at the El Centro Fish Hatchery served by Discharge Point 001. When the carp have matured sufficiently to subsist on green plant material, they are transported to the Villa Road Grow-out Facility served by Discharge Point 002.
2. The Regional Board adopted WDRs Order R7-2010-0023 on September 16, 2010. The purpose of the WDRs is to regulate discharges of wastewater from the Hatchery. This Order includes effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
3. Water Code section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty (MMP) of three thousand dollars (\$3,000) for each serious violation.
4. Water Code section 13385(h)(2) states, in part, the following: “For the purpose of this Section, a ‘serious violation’ means any waste discharge that violates the effluent limitations...for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.”
5. Water Code section 13385(i)(1) requires the Regional Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if a person does any of the following four or more times in a period of six consecutive months (hereafter “chronic violation”):

- a. Violates a waste discharge requirement effluent limitation;
 - b. Fails to file a report pursuant to section 13260;
 - c. Files an incomplete report pursuant to section 13260; or
 - d. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant specific effluent limitations for toxic pollutants.
6. Water Code section 13385(i)(2) states the following: “For the purpose of this Section, a ‘period of six consecutive months’ means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.”
7. WDRs Order R7-2010-0023 contains the following final effluent limitations for total suspended solids (page 9, section IV.A.1.a., Table 6) with which the Discharger is required to maintain compliance at Discharge Point 001:

Parameter	Units	Effluent Limitations
		Average Monthly
Total Suspended Solids (TSS)	mg/L	60
	lbs/day ¹	721

¹ The mass-based effluent limitations are based on a design capacity of 1.44 MGD

8. WDRs Order R7-2010-0023 contains the following final effluent limitations for total suspended solids (page 10, section IV.B.1.a, Table 7) with which the Discharger is required to maintain compliance at Discharge Point 002:

Parameter	Units	Effluent Limitations
		Average Monthly
Total Suspended Solids (TSS)	mg/L	60
	lbs/day ¹	540

¹ The mass-based effluent limitations are based on a design capacity of 1.08 MGD

9. California Water Code section 13385 subdivision (l) states:
- (a) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).
 - (b) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

- (c) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.
10. The Discharger is alleged to have violated its WDRs and the Water Code by committing 40 effluent limitation violations. A summary of each violation is contained in Administrative Civil Liability (ACL) Complaint No. R7-2016-0021 and Exhibit A to that Complaint, which are incorporated herein by reference. The total amount of MMPs for the 40 violations is \$111,000.00.
11. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Board for adoption as an Order by settlement, 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.
12. To resolve by consent and without further administrative proceedings, the Parties have agreed to the imposition of one hundred eleven thousand dollars (\$111,000) in mandatory minimum penalties for alleged violations of the California Water Code and the WDRs, as set forth in Exhibit A. The Discharger shall pay sixty-three thousand dollars (\$63,000) in penalties to support three Supplemental Environmental Projects ("SEP") for New River Wetlands Project associated with the Citizen's Congressional Task Force on the New River (Task Force) to improve water quality and to reduce the degradation of the Salton Sea. The SEP No.1 proposes to implement wetland operation and maintenance activities directly associated with the Task Force Brawley wetland site, which is owned by Imperial County. The SEP No.2 proposes to support implementation of the New River Wetlands Project education and outreach program. The SEP No. 3 proposes to support the New River Improvement Project, Calexico Area. The revised SEP Proposal outlined in Attachment B is incorporated into this Stipulated Order and satisfies the provisions of the State Water Resources Control Board Policy on Supplemental Environmental Projects. The remaining forty-eight thousand dollars (\$48,000) shall be paid to the State Water Resources Control Board Cleanup and Abatement Account.
13. The Parties agreed to withdraw the previously proposed Stipulated Order from the Regional Board's June 30, 2016 Board meeting agenda and reschedule for a later Board meeting.

SECTION II: STIPULATIONS

The Parties incorporate Paragraphs 1 through 13 by this reference, as if set forth fully herein, and stipulate to the entry of this Order as set forth below, and recommend that the Regional Board issue this Stipulated Order to effectuate the settlement:

14. This Stipulated Order is entered into by the Parties to resolve by consent and without further administrative proceedings the 40 alleged violations of WDRs Order R7-2010-0023 that are subject to MMPs, as set forth in Exhibit A.

15. **Mandatory Minimum Penalty:** The Discharger shall pay one hundred eleven thousand dollars (\$111,000) in mandatory minimum penalties. Within thirty (30) days of adoption of this Stipulated Order, Discharger shall remit, by check, forty-eight thousand dollars (\$48,000) payable to the State Water Resources Control Board Cleanup and Abatement Account, to the following address ("Order No. R7-2016-0022" shall be indicated on the check):

State Water Resources Control Board
Division of Administrative Services
ATTN: Accounting
1001 "I" Street, 18th Floor
Sacramento, California 95814

A copy of the check shall also be mailed to the following address:

Maribel Jernegan
Colorado River Basin Regional Water Quality Control Board
73720 Fred Waring Drive, Ste 100
Palm Desert, CA 92260

The Discharger shall pay the remaining sixty-three thousand dollars (\$63,000) towards the SEP projects. That amount is a suspended administrative civil liability, which shall be deemed satisfied once the Discharger has funded the SEP projects and they have been completed in accordance with the schedule proposed in the SEP Proposal (Attachment B). The Discharger shall ensure that the SEP allocation of sixty-three thousand dollars (\$63,000) is used as per the proposed budget in accordance with the schedule included in Attachment B of this Order. A description of the SEPs, a description of the deliverable products from both SEPs, and the SEPs Budget and Milestones is included in Attachment B. The Discharger is ultimately responsible for ensuring that the work described in Attachment B is satisfactorily completed.

16. **Representation of the Discharger:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that it will utilize the funds outlined in paragraph 15 to implement the SEPs in accordance with the schedule included in Attachment B. The Discharger understands that its promise to implement three (3) SEPs, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.
17. **Agreement of Discharger to Implement three (3) SEPs:** The Discharger represents that: 1) it will spend the SEP amount as described in this Stipulated Order; 2) it will provide a certified, written report to the Water Board consistent with the terms of this Stipulated Order detailing the implementation of three (3) SEPs, and 3) within 30 days of the completion of all three (3) SEPs, it will provide written certification, under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in the implementation of the SEPs including but not limited to the California Environmental Quality Act, the federal Clean Water Act and the Porter-Cologne Act. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement three (3) SEPs.
18. **Final Completion Report:** By August 1, 2017, the Discharger shall provide a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under the

laws of the state of California, to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board. The Certification of Completion shall include the following:

- (a) Certification that the SEPs have been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of three (3) SEPs and the costs incurred by the Discharger.
- (b) Certification documenting the expenditures by the Discharger during the implementation of three (3) SEPs in order to complete the SEPs. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the SEPs. The Discharger shall provide a complete accounting of hours and costs incurred that is consistent with acceptable professional standards along with any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
- (c) Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the SEPs 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: 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. In the event of such an audit, the Discharger agrees that it will provide the third-party auditor with access to all documents that the auditor requests. The Regional Water Board staff's written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Designated Regional Water Board Representative 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.

20. Failure to Expend the Entire Suspended Liability on the Approved SEP: 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 of \$63,000 has been spent to complete three (3) SEPs as required by this Stipulated Order, the Discharger shall pay the difference between the Suspended Liability of \$63,000 and the amount the Discharger can demonstrate was actually spent on the completion of the SEPs, as administrative civil liability. The Discharger shall be liable to pay the State Water Resources Control Board Cleanup and Abatement Account the difference within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire Suspended Liability was spent to complete three (3) SEPs as required by this Stipulation and Order. Payment shall be submitted to the Designated Regional Water Board Representative.

21. Failure to Complete three (3) SEPs: If the Discharger fails to complete all SEPs by July 31, 2017, as required by this Stipulated Order, or there has been a material failure to timely submit a progress report or the Certification of Completion as required by this Stipulated Order, the Regional Water Board staff shall issue a Notice of Violation (NOV). As

a consequence, the Discharger shall be liable to pay the entire suspended liability of \$63,000, or some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulated Order, to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of receipt of the NOV. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEPs.

22. **Completion of three (3) SEPs to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulation and completion of the SEPs 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. Receipt of 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.
23. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/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 the Discharger to further enforcement, including additional administrative civil liability.
24. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEPs, the Discharger shall state in a ***prominent manner*** that the SEPs are undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
25. **Waiver of Hearing:** 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 Board prior to the adoption of the Stipulated Order.
26. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

Scope of Order: Upon adoption by the Regional Board this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted on the 7 violations that are subject to mandatory minimum penalties alleged in Exhibit A or this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of the administrative civil liability by the specified deadlines.

27. **Timely Payment:** Failure to make timely payment of the forty-eight thousand dollars (\$48,000) in Paragraph 15 to the State Water Resources Control Board within thirty (30) days of the adoption of this Order shall cancel the SEP provisions for suspended penalty and that suspended penalty amount will be immediately due and payable.
28. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature

whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

29. **Public Notice:** The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Board, or its delegee, for adoption. In the event objections are raised during the public review and comment period, the Regional Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. Except in such event, the Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
30. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated 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.
31. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that the Prosecution Staff may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- (a) Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - (b) Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
32. **Waiver of Right to Petition or Appeal:** The Discharger 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. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate related to this Order, including, but not limited to time extensions, completion of SEP milestones, and other terms contained in this Order.
33. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution

Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

34. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members, or staff be held as parties to or guarantors of any contract entered into by Discharger, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
35. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Regional 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 this Stipulated Order. The failure of the Prosecution Staff or Regional Water. Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. This Order relates only to the mandatory minimum penalty for 7 violations that are listed in Exhibit A of the Complaint. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
36. **Regulatory Changes:** Nothing in this Stipulated Order shall excuse Discharger from meeting any more stringent requirements, which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
37. **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.
38. **Authority to Enter Stipulated Order:** Each person executing this Stipulated 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.
39. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
40. **Modification:** This Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Board.
41. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
42. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

43. **Third Party Claims:** Nothing in this Order shall be deemed to create any right in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
44. **Extensions:** The Regional Water Board may extend any of the due dates in this Order upon the joint request of the Parties. Such extensions must be in writing.
45. **Effective Date:** The effective date of this Order shall be the date on which it is adopted by the Regional Water Board.
45. **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.
46. **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.
47. **Incorporated Attachments:** ACL Complaint No. R7 2016-0021, Exhibit A, and Attachment B are incorporated by reference.

IT IS SO STIPULATED:

8-12-16
Date

Abdi Haile
Abdi Haile
Interim Assistant Executive Officer
California Regional Water Quality Control Board,
Colorado River Basin Region
Prosecution Team

9-22-2016
Date

Michael Pacheco
Michael Pacheco
Imperial Irrigation District

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE REGIONAL BOARD FINDS THAT:

48. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.
49. Any person aggrieved by this action of the Regional Board may petition the State Water Board to review the action in accordance with Water Code 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.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE IMPERIAL IRRIGATION DISTRICT IS ASSESSED AN ADMINISTRATIVE CIVIL LIABILITY OF ONE HUNDRED ELEVEN THOUSAND DOLLARS (\$111,000) IN MANDATORY MINIMUM PENALTIES.

I, JOSE ANGEL, 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 SEPTEMBER 15, 2016.

9/23/2016
Date

Jose L. Angel
Jose Angel
Executive Officer
Regional Water Quality Control Board
Colorado River Basin