

recycled water into the Channel on June 3-4, 2017). The District also reported the following:

- a) On June 3, 2017, at approximately 8:50 p.m., the Riverside County Fire Department notified the District of a sanitary sewer overflow (SSO) within the Channel from the sewer pipes. District staff responded to the SSO by approximately 9:40 p.m. and posted warning signs around the area while the District initiated corrective actions.
 - b) The 30-inch and 24-inch gravity sewer pipes were undermined and damaged by sudden severe erosion caused by the overflow of recycled water from the First Tee's Pond 3, which is owned and operated by the Desert Recreation District. Raw sewage flowed from the damaged sewer pipes into the Channel, a tributary to the Salton Sea.
 - c) Based on comparing the expected influent flow data for the District's Wastewater Reclamation Plant 10 on Cook Street (WRP10), the total discharge volume of the raw sewage was estimated to be 2.419 million gallons.
 - d) The District notified California Emergency Management Agency (CalEMA) and the Riverside County Environmental Health Department of the discharge.
 - e) The Colorado River Basin Water Board was notified of the discharge on June 4, 2017 at 8:41 a.m.
5. Prohibition C.1 of the General Permit 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. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 also prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
 6. As shown in Attachment A, incorporated herein by reference, the Colorado River Basin Water Board alleges that the Discharger violated CWC 13376 and Section 301 of the Clean Water Act by discharging raw sewage into the Channel.
 7. Water Code section 13385 provides that any person who violates the General Permit, Section 301 of the federal Clean Water Act, or California Water Code section 13376 may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs and, where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
 8. The State Water Board adopted Resolution 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327.

9. 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 Colorado River Basin Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Water Quality Enforcement Policy, as described in Attachment A. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

B. STIPULATIONS

1. **Jurisdiction:** The Parties agree that the Colorado River Basin Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **thirty-three thousand eight hundred and eight dollars (\$33,808)** in the form of a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall indicate Order R7-2018-0016 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services, ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Doug Wylie
Doug.Wylie@waterboards.ca.gov

3. **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 above may subject it to further enforcement, including additional administrative civil liability.
4. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board: For the Discharger:

Doug Wiley, Senior WRCE
Colorado River Basin Regional Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260
760-776-8960
Doug.wiley@waterboards.ca.gov

Jim Barrett, General Manager
Coachella Valley Water District
75-515 Hovley Lane, East
Palm Desert, CA 92211
760-391-2651
JBarrett@cvwd.org

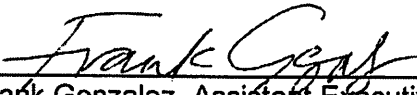
5. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
6. **Matters Covered by this Stipulation:** Upon adoption by the Colorado River Basin Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement and release of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this Stipulation are expressly conditioned on Discharger's full payment of the administrative civil liability by the deadline specified in Stipulation 2.
7. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Colorado River Basin Water Board against the Discharger.
8. **Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights 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.
9. **Public Notice:** The Parties agree that this Stipulation and Order must be noticed for a 30-day public comment period prior to being presented to the Colorado River Basin Water Board, or its delegee. In the event objections are raised during the public review and comment period, the Colorado River Basin Water 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 mutually agree to revise or adjust the proposed Stipulation and Order.
10. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Colorado River Basin 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.
11. **Interpretation:** This Stipulation and 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.

12. **Modification:** The 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 and signed by all Parties, and approved by the Colorado River Basin Water Board or its delegee.
13. **If the 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 Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Colorado River Basin 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 any subsequent administrative or judicial proceeding or hearing. The Parties agree to waive any and all objections related to their efforts to settle this matter:
 - a) Objections related to prejudice or bias of any of the Colorado River Basin Water 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 Colorado River Basin Water 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, except that Discharger may object to members of the Prosecution Team serving as advisors to the Colorado River Basin Water Board in any such subsequent administrative or judicial proceeding or hearing and may object to the Colorado River Basin Water Board members or their advisors participation in a contested evidentiary hearing on grounds not related to the settlement process addressed in this paragraph; 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.
14. **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 Colorado River Basin Water Board prior to the adoption of the Order.
15. **Waiver of Right to Petition:** The Discharger waives its right to petition the Colorado River Basin 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. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
16. **Discharger's Covenant not to Sue:** The Discharger covenants not to sue or pursue any civil or administrative claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or are relating to any matter expressly addressed by this Stipulation and Order.


17. **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.
18. **Counterpart Signatures:** This Settlement Agreement 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.
19. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Colorado River Basin Water Board or its delegee, which incorporates the terms of this Stipulation.
20. **Incorporated Attachments:** Attachment A is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED¹:



Frank Gonzalez, Assistant Executive Officer
Colorado River Basin Regional Water Quality Control Board
Prosecution Team

8/10/18
Date



Jim Barrett, General Manager
Coachella Valley Water District

08/09/18
Date

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¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

Attachment A
Penalty Methodology
ACL Order R7-2018-0016
Coachella Valley Water District (District or Discharger)

The State Water Resources Control Board's (State Water Board) *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (CWC) sections 13327 and 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy¹ can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

Violation 1: Discharge of raw sewage and recycled water from June 3, 2017 to June 4, 2017

Step 1 – Potential for Harm for Discharge Violations

This step considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation. A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement. Based on the scores for environmental harm, receptor risk, and cleanup susceptibility, and as further detailed below, a score of 6 is assigned to Step 1.

Factor 1: Harm or Potential Harm to Beneficial Uses

This factor evaluates direct or indirect harm, or potential for harm to beneficial uses that may result from exposure to the pollutants or contaminants in the unauthorized discharge, in accordance with the nature, circumstances, extent, and gravity of the violation. A score between 0 (minor) and 5 (major) is assigned.

The unauthorized discharge of almost four million gallons of raw sewage and recycled water occurred in the Whitewater River Stormwater Channel (Channel), which is in the Coachella Valley, within Riverside County, California. While Coachella Valley Water District (District) has potential liability associated with only the 2.419 million gallons of raw sewage discharged, for the purposes of conducting the most rational potential for harm analysis, the impacts of the entirety of the flow discharged (raw sewage and recycled water) should be considered since the discharges comingled immediately before impacting beneficial uses.

The eastern valley is largely agricultural, utilizing ground water and water from the Colorado River delivered by the Coachella Canal via the All-American Canal, for crop irrigation. The Channel is an engineered extension of the Whitewater River that functions as a conveyance channel for urban and storm water runoff. The Channel is approximately 25 miles in length, extending from the City of Palm Springs to Washington Street in the City of La Quinta, then becoming the Coachella Valley Stormwater Channel. The bottom of the Channel is natural, although the walls of the Channel are concrete-lined in some areas, to facilitate flow and reduce erosion.

The Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board) adopted the Water Quality Control Plan for the Colorado River Basin (Basin Plan) pursuant to

¹ The violations alleged herein occurred prior to the State Water Board's amendments to the Enforcement Policy, which became effective on October 5, 2017. The 2010 version of the Enforcement Policy was in effect on the dates of the violation at issue and, therefore, is the applicable policy. Amendments in the 2017 Enforcement Policy that are mere clarifications may be used immediately to assist the Water Boards in interpreting the 2010 Enforcement Policy.

Water Code section 13243 on November 17, 1993, and amended it on March 7, 2017. Chapter 2 of the Basin Plan lists the designated beneficial uses for Washes, including those that are tributary to the Salton Sea. Those beneficial uses include:

- Freshwater Replenishment
- Ground Water Recharge
- Non-Water Contact Recreation
- Wildlife Habitat
- Warm Freshwater Habitat

The Basin Plan delineates Freshwater Replenishment, Ground Water Recharge, Non-Water Contact Recreation, and Wildlife Habitat as intermittent beneficial uses because they occur only seasonally due to limiting environmental conditions or because they are dependent on sufficient flow. The Basin Plan states that Warm Freshwater Habitat beneficial uses may exist, but should be analyzed on a case-by-case basis. The discharge of roughly 2.4 million gallons of raw sewage and 1.5 million gallons of non-potable recycled water created sufficient flow to trigger the occurrence of the above listed beneficial uses. Furthermore, environmental conditions during the discharge in June of 2017 were conducive to the existence of Non-Water Contact Recreation beneficial uses regardless of flow in the Channel.

The Channel and its tributary drains provide habitat for a variety of wildlife including migratory songbirds, waterfowl, coyotes, raccoons, and rodents. During a Water Boards inspection of the Channel on January 16, 2018, Water Boards staff observed no evidence of harm to plants or wildlife resulting from the discharge, which supports that the discharge attenuated without chronic or acute effects. The volume of raw sewage and recycled water discharged to the Channel is reasonably expected to have impacted wildlife and warm freshwater habitat.

In addition to impacts to wildlife habitat, the discharge had the potential to impact non-contact recreation uses. The Palm Desert High School is adjacent to the Channel and there are residential areas both north and south of the unfenced Channel area. In addition, a portion of the Channel is used as a private golf course (Monterey Country Club) with turf areas throughout the Channel. While warning signs are posted at various locations along the Channel to prevent people from entering it and being exposed to various hazards, including but not limited to flash floods, unstable footing along the sidewalks, and exposure to contaminants from past and current discharges, people may still recreate in and around the Channel.

In the days following the discharge, District tilled the soil in the area to minimize the odor and restore the aesthetics of the Channel. The District used barricades and signs within the Channel to warn the public of the discharge, but did not recover any of the discharge. There were no reported incidents of member of the public coming into contact with the discharge. While people may recreate in the Channel, due to the mitigation actions immediately undertaken by the District, the impacts to Non-Water Contact Recreation uses were below-moderate.

Impacts to freshwater replenishment in the Channel were below-moderate. There are a limited number of annual storm events during which significant flows are measured in the Channel. According to a September 7, 2017 technical memorandum provided to the District by Todd Groundwater, measurable flows of greater than one cubic foot per second are observed downstream of the Channel an average of only 6 days per year. Given the mitigation actions of the District following the discharge, and the frequency of storm events, it is unlikely that the discharge had impacts on freshwater replenishment.

The discharge posed a less than moderate threat to groundwater recharge. The estimated depth to groundwater in the Channel is 160 feet or more. This allows the significant vertical soil column to provide natural filtering of the infiltrated discharge before it reaches groundwater. The potential for adsorption of the discharge in the underlying soil also lessens the threat of impact. When considering the estimated areal extent of the discharge at the surface, the estimated volume of available pore space in the soil column between the surface and 160 feet (assuming a porosity of 25%) is over 44,000,000 gallons. This means that the entire discharge has the capacity to occupy less than one percent of the total available pore space between the surface and 160 feet. As a result, it is reasonable to assert that much of the discharge is likely retained in the pore space of the underlying unsaturated soils above the water table, where it is being further attenuated by natural processes.

Significant microbial action is also likely to be consuming various residual contaminants in the discharge as it migrates vertically downward through the soil column. The stratification and the likely existence of fine-grained interbeds which serve to further retard the vertical migration of the discharge and allow it to further attenuate through natural processes before it reaches groundwater. Information obtained from the State Water Board's GeoTracker database indicates that there are approximately five water supply wells located within a mile of the discharge location, and that most of these are listed as either inactive or abandoned. In addition, according to the September 7, 2017 technical memorandum provided to the District by Todd Groundwater, the nearest water supply wells to the discharge site are "screened below and partially protected by the regional clay aquitard", making impact on these water supply wells further unlikely.

The Enforcement Policy defines a "below moderate" potential for harm as one which poses "*less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor)*". Based on the circumstances described above, impacts to beneficial uses were observed during the discharge, and may reasonably be expected to occur again in isolated circumstances in the future, but harm to beneficial uses is minor. Therefore, the potential impacts to the beneficial uses of the Channel were determined to be below moderate, and a score of 2 is assigned to Factor 1.

Factor 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge

This factor evaluates the degree of toxicity of the discharge by evaluating the physical, chemical, biological, and/or thermal nature of the discharge. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. A score between 0 (negligible risk) and 4 (significant risk) is assigned based on a determination of the risk or threat of the discharged material on potential receptors. Potential receptors are those identified considering human, environmental, and ecosystem health exposure pathways.

Raw sewage contains high levels of suspended solids, pathogenic organisms, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants that have the potential to seriously adversely impact human and environmental receptors. The recycled water delivered to the Desert Recreation District contained chlorine residuals of 9.9 mg/L for June 3, 2017. Chlorine residual concentration at this level, which is more than double the concentration in the drinking water standards (MCL) of 4 mg/L, poses a threat to both human and environmental receptors.

In this case, a score of 3 is assigned because the chemical and/or physical characteristics of the discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection).

The high degree of toxicity in raw sewage poses a direct threat to human and ecological receptors due to high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease, etc. that are found in sewage. The degree of toxicity in recycled water, which contains varying levels of chlorine residual, also poses a threat to ecological receptors. The characteristics of the discharge, which consisted of both recycled water and raw sewage posed an above-moderate risk or threat to potential receptors.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. Since the recycled water and raw sewage discharged to a dry desert storm channel, the flow percolated rapidly into the sandy channel bottom. No flow was recovered and a score of 1 is assigned because less than 50% of the discharged was susceptible to cleanup.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a final score of 6 was calculated (2 + 3 + 1). The total score is then used in Step 2 below.

Step 2 – Assessment for Discharge Violations

The Enforcement Policy provides that the initial liability amount shall be determined on a per day and a per gallon basis per Water Code section 13385, subdivision (c), using the score from Step 1 in conjunction with the Extent of Deviation from the Requirement of the violation (see Enforcement Policy, Tables 1 and 2).

Deviation from the Requirement

Section 301 of the Federal Water Pollution Control Act (33 U.S.C. § 1311) (Clean Water Act) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The State Water Resources Control Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems prohibits, “Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States...” (Order No. 2006-0003-DWQ, C. Prohibitions).

The Enforcement Policy defines a **Major** deviation as, “The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The raw sewage and recycled water discharge was a major deviation from requirements because it rendered the prohibitions on discharging untreated wastewater to waters of the United States and the prohibitions of Order No. 2006-0003-DWQ ineffective in their essential functions. The prohibitions would be effective only if no discharge had occurred.

Per Gallon Assessments for Discharge Violations

When there is a discharge, the Colorado River Basin Water Board is to determine the initial liability amount on a per gallon basis using the Potential Harm score from Step 1 and the Extent of Deviation from Requirement of the violation. Here, the Prosecution Team is assessing only the Per Day Assessment described below because it is pursuing liability based on a Per Gallon Assessment solely against the Desert Recreation District. While the imposition of administrative civil liability against the

District is supported due to its failure to meet the standard of care due during cleanup (see Step 4), the District's lack of culpability justifies the imposition of per day liabilities alone.

Per Day Assessments for Discharge Violations

When there is a discharge, the Colorado River Basin Water Board must determine the initial liability amount on a per day basis using the Step 1 (6) and the Deviation from Requirement (**Major**) scores described above. Table 2 of the Enforcement Policy is used to determine a "Per Day Factor for Discharges." The "Per Day Factor" is **0.22**, as determined from Table 2 in the Enforcement Policy. The Per Day Assessment is calculated as (factor from Table 2) x (number of days) x \$10,000 per day.

Violation – Per Gallon and Per Day Assessment for Discharge

The initial liability amount for the discharge violation is as follows:

Per Day Liability:

a) $0.22 \times (2 \text{ days}) \times \$10,000 = \$4,400$

Step 3 – Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply because the violation is a discharge.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's history of violations.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent or knowing behavior. The 24-inch and 30-inch gravity sewer pipes operated by the District were located along the top of the north bank of the Channel next to the Coachella Valley golf course, which is operated by the Desert Recreation District.

On June 3, 2017, non-potable water overtopped an irrigation pond at the golf course and cut a path to the Channel, which undermined and broke the concrete pond edge and eroded a cut in the earthen bank of the Channel, undermining and collapsing the two District-operated gravity sewers.

The District constructed the pipelines using standard specifications, and followed the inspection and maintenance program described in its Sewer Management Plan (SSMP). According to December 2015 inspection reports, both sewers were found to be in good condition without indication of need to be scheduled for replacement. In addition, the District conducted an audit of its entire system in 2016, and found its SSMP to be adequate, with minor recommended revisions. The State Water Board reviewed the audit results during January 2018, and also found the District's SSMP to be adequate, with minor recommended revisions.

The District has no culpability with regard to the cause of the discharge. The District is assigned a multiplier value of 1 because it met the due standard of care in preventing the violation.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. While the District has been cooperative in its interactions with Colorado River Basin Water Board staff following the discharge, the District fell below the due standard of care in attempting to mitigate the severity of the discharge. Specifically, the Discharger failed to attempt to recover any of the discharge and, instead, allowed the discharge to percolate to groundwater.

The District reported that the entire sanitary sewer overflow percolated into the soil. While the District did construct a dike to prevent downstream migration of the discharge, the District did not attempt to recover any of the contained wastewater. Had the District implemented recovery efforts, the volume of discharge allowed to infiltrate and potentially affect groundwater quality could have been significantly reduced.

In this case, a Cleanup and Cooperation multiplier of 1.5 has been selected.

History of Violations

This factor is to be used when there is a history of repeat violations. A minimum multiplier of 1.1 is to be used where there is a history of violations, and is to be increased as necessary. In this case, a multiplier of 1.1 was applied because there have been previous unauthorized discharge violations.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 2.

Violation 1 – Total Base Liability Amount

Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

Total Base Liability = \$4,400 x 1 x 1.5 x 1.1 = \$7,260

Steps 6 through 10 are applied to the Total Base Liability Amount

STEP 6 – Ability to Pay and Continue in Business

The District is a government agency in California that has approximately 500 employees and has annual revenues of approximately \$209 million. According to the District's Comprehensive Annual Financial Report for the fiscal year that ended June 30, 2012, current net assets amounted to \$394.3 million. Current net assets are calculated by subtracting current liabilities (\$19.2 million) from current assets (\$413.5 million)². The Colorado River Basin Water Board has determined that District has the ability to

² Coachella Valley Water District Comprehensive Annual Financial Report for the Fiscal Year ended June 30, 2012.
http://www.cvwd.org/news/publicinfo/2013_01_23_ComprehensiveAnnualFinancialReport2012.pdf

pay the penalty and has determined that the combined Total Base Liability Amount is appropriate and warranted with respect to this additional consideration. Accordingly, the Total Base Liability is not adjusted.

STEP 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are included in the liability amount. The Colorado River Basin Water Board has incurred \$7,835 in staff costs associated with the investigation and enforcement of the violations alleged herein. This represents 27 hours of staff time at a per hour rate based on staff salaries. It is appropriate to increase the Total Base Liability amount by \$7,835. This increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability amount. It is warranted given the totality of the circumstances and is intended to serve as a sufficient general and specific deterrent against future violations. Adding this amount to the total base liability amount results in an adjusted liability amount of fifteen thousand and ninety-five dollars (\$15,095).

STEP 8 – Economic Benefit

The economic benefit is the cost savings or monetary gain derived from delaying or avoiding actions that would have prevented or mitigated the violations and environmental damage from occurring. In this case, while the District responded promptly to stopping the SSO and bypassing the damaged sewer mains, they failed to recovery any of the overflow volume. This recovery effort is required to the extent practicable under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. Therefore, the District avoided costs associated with wastewater recovery (e.g. pumping, transportation, and disposal), and thus received an economic benefit.

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)³ penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.7.0. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The BEN model is the appropriate tool for estimating the economic benefit of failing to recover any amount of the 3.9 million gallons that were discharged from June 3 to 4, 2017. In the technical response provided by the District, the District was able to install bermed containment downstream of the discharge location, within the Channel. Had the District installed similar containment closer to the point of discharge, it is likely that significant volume could have been recovered, minimizing impacts to beneficial uses. Based on conservative estimates using information provided by District, soil information available from the United States Department of Agriculture's Natural Resources Conservation Service, and aerial imagery, it is estimated that approximately 2.2 million gallons (~40%) were recoverable. Based on standard engineering unit costs, recovery and transportation efforts are estimated to be approximately \$30,500.

³ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>; the Central Valley Water Board's application of the BEN Model to the circumstances here is summarized on the last page of Attachment E.

Specific assumptions related to these estimates are attached. Using the BEN model, the economic benefit of these avoided expenditures is approximately \$30,735.

STEP 9 – Maximum and Minimum Liability Amounts

Water Code section 13385, subdivision (e) requires that when pursuing administrative civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least ten percent (10%) higher than the Economic Benefit Amount. As discussed above, the economic benefit is \$30,735. In accordance with the Enforcement Policy, the minimum liability amount for the violation is **\$33,808** (\$30,735 + 10%).

The maximum liability authorized by statute for the violation is **\$24,200,000**, which is calculated by multiplying the days of violation (2) by the maximum per day liability pursuant to Water Code section 13385 (\$10,000 per day) and by multiplying the number of gallons exceeding 1,000, discharged and not cleaned up, by \$10 per gallon.

The proposed liability amount should fall between the minimum and maximum liability amounts. Here, the proposed liability amount is economic benefit plus ten percent, which is less than the maximum liability authorized by statute.

STEP 10 – Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount for the alleged violation is **\$33,808**.

REGIONAL BOARD MEETING

State of California
California Regional Water Quality Control Board
Colorado River Basin Region

BOARD MEETING AGENDA
Thursday, September 20, 2018, 1:00 p.m.
California Regional Water Quality Control Board
Colorado River Basin Region Board Room
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

ERRATA SHEET

ITEM NO. 6 – Tentative Board Order R7-2018-0016, Consideration of Settlement Agreement and Stipulations for Entry of Order, In the Matter of Coachella Valley Water District

Stipulation #16 on page 5: Insert footnote after "State Agency," as shown in the attached redline. The addition of the footnote clarifies that the Desert Recreation District is not a State Agency.

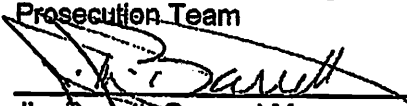
Other minor, non-substantive changes are made on pages 1-3 of the Stipulation and on the Proposed Order to streamline citation format and correct typos, as shown in the attached redline.

Attachment A on page 3: The second sentence of the second paragraph in "Fact 2: The Physical, Chemical, Biological, or Thermal Characteristics of the Discharge," on page 3, should state that the recycled water contained chlorine residuals of "8.1," not "9.9." This change to the chlorine residual level does not change any of the other statements, conclusions, or analysis in Attachment A, but is proposed for factual accuracy.

Coachella Valley Water District and the Prosecution Team both agree to these changes and that they shall be incorporated into the conformed copy of the Settlement Agreement and Stipulations For Adoption of Order R7-2018-0016.

Frank Gonzalez, Assistant Executive Officer
Colorado River Basin Regional Water Quality Control Board
Prosecution Team

Date



Jim Barrett, General Manager
Coachella Valley Water District

9.19.18
Date

REGIONAL BOARD MEETING

State of California
California Regional Water Quality Control Board
Colorado River Basin Region

BOARD MEETING AGENDA
Thursday, September 20, 2018, 1:00 p.m.
California Regional Water Quality Control Board
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ERRATA SHEET

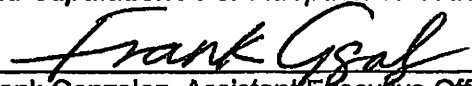
ITEM NO. 6 – Tentative Board Order R7-2018-0016, Consideration of Settlement Agreement and Stipulations for Entry of Order, In the Matter of Coachella Valley Water District

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Coachella Valley Water District and the Prosecution Team both agree to these changes and that they shall be incorporated into the conformed copy of the Settlement Agreement and Stipulations For Adoption of Order R7-2018-0016.



Frank Gonzalez, Assistant Executive Officer
Colorado River Basin Regional Water Quality Control Board
Prosecution Team

9/19/18
Date

Jim Barrett, General Manager
Coachella Valley Water District

Date

State of California
California Regional Water Quality Control Board
Colorado River Basin Region

IN THE MATTER OF:

Coachella Valley Water District

)
)
)
)
) Settlement Agreement and Stipulations For
) Adoption of Order R7-2018-0016
)

This Settlement Agreement and Stipulation for Entry of Order R7-2018-0016 (Settlement Agreement or Stipulated Order) is entered into by and between the Prosecution Team (Prosecution Team) for the Colorado River Basin Regional Water Quality Control Board (Colorado River Basin Water Board) and Coachella Valley Water District (Discharger or District) (the Colorado River Basin Water Board and the District are collectively referred to as the Parties) and is presented to the Colorado River Basin Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the District for alleged violations of ~~California Water Code (CWC)~~ section 13385.

A. RECITALS

1. The District operates a collection system and maintains a 24-inch vitrified clay pipe gravity sewer and a 30-inch ductile iron pipe gravity sewer that runs underneath the north-western berm of the Whitewater River Stormwater Channel (Channel) just west of Cook Street in Palm Desert, California.
2. On June 3-4, 2017, the District discharged 2.419 million gallons of untreated wastewater to the Channel. The District submitted a technical report dated July 17, 2017 in response to the unauthorized discharge.
3. In response to this unauthorized discharge, the Colorado River Basin Water Board staff issued Investigative Order R7-2017-0030 to the District on August 8, 2017, alleging violations of the Clean Water Act, ~~Section 301~~; ~~CWater Code~~ section 13376; the Colorado River Basin Water Board's Water Quality Control Plan (Basin Plan); and Prohibition C1 of State Water Resources Control Board (State Water Board) Order 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General Permit).
4. On September 13, 2017, in response to the Investigative Order, the District submitted an additional technical report about the unauthorized discharge. In this technical report, the District stated that the collapse of the 24-inch and the 30-inch gravity sewer pipes was caused by the overflowing, and subsequent collapse, of the Desert Recreation District's First Tee of the Coachella Valley (First Tee) Golf Course Pond 3 (the ~~Technical Report~~ estimated that, in addition to the raw sewage overflow, Pond 3's collapse released

recycled water into the Channel on June 3-4, 2017). The District also reported the following:

- a) On June 3, 2017, at approximately 8:50 p.m., the Riverside County Fire Department notified the District of a sanitary sewer overflow (SSO) within the Channel from the sewer pipes. District staff responded to the SSO by approximately 9:40 p.m. and posted warning signs around the area while the District initiated corrective actions.
 - b) The 30-inch and 24-inch gravity sewer pipes were undermined and damaged by sudden severe erosion caused by the overflow of recycled water from the First Tee's Pond 3, which is owned and operated by the Desert Recreation District. Raw sewage flowed from the damaged sewer pipes into the Channel, a tributary to the Salton Sea.
 - c) Based on comparing the expected influent flow data for the District's Wastewater Reclamation Plant 10 on Cook Street (WRP10), the total discharge volume of the raw sewage was estimated to be 2.419 million gallons.
 - d) The District notified California Emergency Management Agency (CalEMA) and the Riverside County Environmental Health Department of the discharge.
 - e) The Colorado River Basin Water Board was notified of the discharge on June 4, 2017 at 8:41 a.m.
5. Prohibition C.1 of the General Permit 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. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 also prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
 6. As shown in Attachment A, incorporated herein by reference, the Colorado River Basin Water Board alleges that the Discharger violated Water Code section 13376 and Section 301 of the Clean Water Act by discharging raw sewage into the Channel.
 7. Water Code section 13385 provides that any person who violates the General Permit, Section 301 of the federal Clean Water Act, or California Water Code section 13376 may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs and, where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
 8. The State Water Board adopted Resolution 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (c), and section 13327.

9. 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 Colorado River Basin Water Board or its delegatee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Water Quality Enforcement Policy, as described in Attachment A. The Prosecution Staff believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

B. STIPULATIONS

1. **Jurisdiction:** The Parties agree that the Colorado River Basin Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **thirty-three thousand eight hundred and eight dollars (\$33,808)** in the form of a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall indicate Order R7-2018-0016 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services, ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Doug Wylie
Doug.Wylie@waterboards.ca.gov

3. **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 above may subject it to further enforcement, including additional administrative civil liability.
4. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board: _____ For the Discharger:

and ambiguity shall not be interpreted against any one party.

- 12. Modification:** The 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 and signed by all Parties, and approved by the Colorado River Basin Water Board or its delegee.
- 13. If the 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 Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Colorado River Basin 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 any subsequent administrative or judicial proceeding or hearing. The Parties agree to waive any and all objections related to their efforts to settle this matter:
- a) Objections related to prejudice or bias of any of the Colorado River Basin Water 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 Colorado River Basin Water 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, except that Discharger may object to members of the Prosecution Team serving as advisors to the Colorado River Basin Water Board in any such subsequent administrative or judicial proceeding or hearing and may object to the Colorado River Basin Water Board members or their advisors participation in a contested evidentiary hearing on grounds not related to the settlement process addressed in this paragraph; 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.
- 14. 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 Colorado River Basin Water Board prior to the adoption of the Order.
- 15. Waiver of Right to Petition:** The Discharger waives its right to petition the Colorado River Basin 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. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
- 16. Discharger's Covenant not to Sue:** The Discharger covenants not to sue or pursue any civil or administrative claim(s) against any State Agency¹ or the State of California, their

¹ The Parties agree that the term "State Agency" does not include the Desert Recreation District.

PROPOSED ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, FINDS THAT:

1. In adopting this Order, the Colorado River Basin Regional Water Quality Control Board ~~(Colorado River Basin Water Board) or its Delegee~~ has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Colorado River Basin ~~Regional Water Quality Control Board~~. The Colorado River Basin ~~Regional Water Quality Control Board, acting through its Executive Officer,~~ finds that 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 sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD HEREBY ADOPTS THIS ORDER.

I, Paula Rasmussen, Acting Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region on September 20, 2018.

Paula Rasmussen, Acting Executive Officer
Colorado River Basin Regional Water Quality Control Board

Date

ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, FINDS THAT:

1. In adopting this Order, the Colorado River Basin Regional Water Quality Control Board (Colorado River Basin Water Board) has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought 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 section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2) of title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE WATER CODE AND SECTION 11415.60 OF THE GOVERNMENT CODE, THE COLORADO RIVER BASIN WATER BOARD HEREBY ADOPTS THIS ORDER.

I, Paula Rasmussen, Acting Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region on September 20, 2018.



Paula Rasmussen, Acting Executive Officer
Colorado River Basin
Regional Water Quality Control Board