

California Regional Water Quality Control Board, Colorado River Basin  
Prosecution Team Evidence  
on the matter of  
Administrative Civil Liability Complaint R7-2014-0041  
Exhibit 2

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

TIME SCHEDULE ORDER NO. 99-054

ISSUED TO

**CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
Brawley - Imperial County**

The Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region (hereinafter referred to as the Regional Board) finds that:

1. The City of Brawley, Owner/Operator (hereinafter referred to as the discharger), owns and operates the City of Brawley Wastewater Treatment Plant. The plant is located at 400 Main Street, Brawley, California, 92227. The facility is designed to treat 3.9 million gallons-per-day of wastewater.
2. The treatment system at this facility consists of a bar screen, grit chamber, two primary clarifiers, two aeration ponds and three stabilization ponds. Sludge is digested in aerobic digesters and dried in sludge drying beds.
3. On March 29, 1995, the Regional Board adopted Board Order No. 95-014 (NPDES No. CA 0104523) that allows for discharge of treated wastewater to the New River. Board Order No. 95-014 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of surface waters in Imperial County.
4. Finding No. 3 of Board Order No. 95-014 states that:

"The discharger presently discharges a monthly average flow of 3.15 million gallons-per-day of secondary treated wastewater to the New River, from a plant having a design capacity of 3.9 million gallons-per-day. Treatment consists of a bar screen, grit chamber, two primary clarifiers, two aeration ponds and three stabilization ponds. Sludge is treated by anaerobic digestion, dried in sludge drying beds and accumulated at the site prior to disposal."

5. Provision No. 35 of Board Order No. 95-014 states that:

"The discharger shall provide a report to the Regional Board when it determines that the plant is operating at 80 percent of the design capacity specified in Finding No. 3, above. The report should indicate what steps, if any, the discharger intends to take to provide for the expected wastewater treatment capacity necessary when the plant reaches design capacity."

6. On April 7, 1993, during a plant inspection, staff noted that the plant exceeded 80 % of its design capacity (3.12 million gallons-per-day). On inquiry staff was informed that a consultant (Engineering Science) was working on the design of the plant expansion and the final design would be sent to this office.
7. On May 25, 1993, Mr. Dave Guggemos, of Engineering Science, telephoned Regional Board staff. Mr. Guggemos said that he was working on the design of the plant and discussed permit requirements.
8. On November 11, 1993, during a plant inspection, the Public Works Director discussed the proposed plant expansion.
9. In a letter dated June 14, 1994, in addition to other requests, staff asked the City of Brawley to address the issue of plant expansion and requested a status report.
10. On September 30, 1994, during a plant inspection, the Public Works Director discussed the plant expansion with staff.
11. On March 15, 1995, during a plant inspection, staff was told that the City was discussing plant expansion with several firms.

12. In a letter dated June 7, 1995, staff asked for the status of the wastewater treatment plant expansion.
13. In a letter to the Regional Board's Executive Officer dated October 8, 1995, the City stated that the design work was well underway and that the design would be available for construction by July, 1996.
14. During the December 20, 1995 inspection, staff was told that a new consultant, Black & Veatch was working on the plant design. Staff requested a project description and final drawings, when available.
15. In a letter dated April 8, 1996, Regional Board staff requested additional information for the proposed facility.
16. In a letter dated April 17, 1996, Black & Veatch, requested disinfection requirements for the proposed plant.
17. On May 30, 1996, consultants Black & Veatch submitted a project description for the proposed facility.
18. On July 21, 1996, in a telephone conversation with the Public Works Director, staff was told expansion of the plant was contingent on funding by the City Council, who had not yet provided any funding.
19. On October 9, 1996, the Public Works Director, in a telephone conversation with staff, said that the plant design would be complete in four months.
20. On June 3, 1997, a staff letter requested additional information and a compliance schedule for the proposed facility.
21. By letter on August 4, 1997, a compliance schedule for the proposed plant was requested under Section 13267 of the Water Code.
22. In a letter dated August 15, 1997, the City provided staff with the following compliance schedule:
 

- Design Complete	March 1998
- Construction Start	June 1998
- Construction Complete	December 1998
23. In a letter dated February 11, 1998, staff expressed concerns about the plant capacity and plant design, and therefore requested additional information under Section 13267 of the Water Code .
24. In a letter dated March 9, 1998, the City indicated that the design was 90% complete and that the plans were given to the State Board for review. Furthermore, they gave staff a new compliance schedule:
 

- Complete Financing	End of 1998
- Complete Bidding	June 1999
- Award Contract	September 1999
- Complete Construction	May 1, 2001
25. During the April 29, 1998 inspection, staff was told that the plant expansion was in the design stage.
26. In September 1998, the plant exceeded the design capacity. Since then the wastewater treatment plant has operated close to or exceeded, the design capacity on a regular basis. Furthermore, the City of Brawley has a combined sewer system and the wastewater treatment plant does not have adequate capacity to handle stormwater flow from the storm sewer system.
27. On November 4, 1998, a letter of non-compliance for flow violations of September 1998 was sent to the City of Brawley.
28. The flow violations noted above, are documented on Attachment No. 1, which also includes flow violations that continued through February 28, 1999.

29. On November 25, 1998, the City responded to the letter of non-compliance and indicated that the City had engaged the services of Roy F. Weston Inc. to perform a Master Plan Study.
30. On December 28, 1998, in a telephone conversation, personnel from the City of Brawley informed Regional Board staff that at this time they had no final design and no funding. Roy F. Weston Inc. would do a presentation before the City Council in January 1999 and submit final recommendations in March 1999.
31. On January 14, 1999, Regional Board staff met with representatives from the City of Brawley, who indicated that they would submit a revised compliance schedule upon approval by the Brawley City Council.
32. In a letter dated February 5, 1999, the City of Brawley stated that the Brawley City Council adopted a time schedule for the expansion of the wastewater treatment plant as follows:

- Complete Bidding Documents	June 1, 1999
- Open Bids	September 15, 1999
- Award Contract	October 15, 1999
- Start Work	December 1, 1999
- Complete Work	December 1, 2001

33. The discharger is in violation of Effluent Limitation No. 1, which in part states that:

" Effluent discharged to the New River shall not contain constituents in excess of the following limits:

<u>Daily</u> <u>Constituent</u>	<u>Unit</u>	<u>Maximum</u>	
Flow	MGD	3.9	"

34. The discharger is in violation of Prohibition No. 3, which states that:

" The discharger shall not accept waste in excess of the design treatment capacity of the disposal system."

35. The discharger is in violation of Provision No. 4, which states that:

" The discharger shall comply with all conditions of this Board Order. Any noncompliance with this Board Order constitutes a violation of the Porter Cologne Water Quality Control Act and is grounds for enforcement action."

36. The discharger is in violation of Provision No. 5, which states that:

" The discharger shall comply with all conditions of this Board Order. Noncompliance constitutes a violation of the Federal Clean Water Act, and is grounds for enforcement action; for Board Order termination, revocation and reissuance, or modification; or denial of a Board Order application."

37. The Water Quality Control Plan for the Colorado River Basin Region of California (Basin Plan) was adopted on November 17, 1993 and designates the beneficial uses of ground and surface waters in this Region.

38. The beneficial uses of waters in the New River are:

Fresh water Replenishment of Salton Sea (FRSH)  
 Water Contact Recreation (REC I)  
 Non-contact Water Recreation (REC II)  
 Warm Water Habitat (WARM)  
 Wildlife Habitat (WILD)  
 Preservation of Rare, Endangered or Threatened Species (RARE)

39. Section 13300 of the California Water Code states:

"Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board, or the state board, or that the waste collection, treatment or disposal facilities of a discharger are approaching capacity, the Board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements."

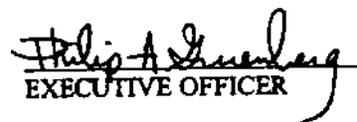
40. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED THAT, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, the discharger shall comply with the following:

1. The discharger shall take specific actions as indicated in the following time schedule, in order to achieve compliance with all the requirements of its existing or future waste discharge requirements:

<u>TASK DESCRIPTION</u>	<u>COMPLETION DATE</u>
Award Construction Contract	January 15, 2000
Start Construction	March 1, 2000
Complete Construction	March 1, 2002

2. The discharger shall submit quarterly progress reports on the status of the tasks described above. These progress reports shall be part of the facility's monthly monitoring reports. These reports shall be submitted to the Regional Board by January 15, April 15, July 15, and October 15, of each year.
3. If, in the opinion of the Regional Board's Executive Officer, the discharger fails to comply with this Order, the Executive Officer may recommend additional enforcement action, which may include monetary penalties.

  
EXECUTIVE OFFICER

4-30-99  
DATE

I. ATTACHMENT NO. 1

CITY OF BRAWLEY  
MUNICIPAL, WASTEWATER TREATMENT PLANT

Instances of Exceedances (Permitted Flow 3.9 MGD)

FLOW IN MILLION GALLONS-PER-DAY

----	3.98	3.97	3.96	----	----
----	4.06	3.94	3.98	----	----
3.98	3.91	4.02	----	----	----
----	3.91	4.07	----	----	----
3.93	----	3.97	----	4.11	----
3.97	3.91	3.93	----	----	----
3.92	----	----	----	----	----
4.27	----	4.09	----	----	----
4.00	----	3.99	----	----	----
3.96	----	----	----	----	----
----	----	----	----	----	----
----	3.94	3.95	----	----	----
3.91	4.02	----	3.91	----	----
4.05	----	4.03	4.00	----	----
----	----	----	3.97	----	----
----	3.92	4.01	----	3.95	----
3.93	----	----	----	----	----
----	----	----	----	----	----
----	----	----	----	----	4.03
----	3.97	3.97	----	----	----
----	----	----	----	----	----
4.03	----	----	----	----	----
4.01	----	----	----	----	----
----	----	----	----	----	----
----	4.21	3.94	----	----	----
----	3.98	4.00	----	----	----
----	----	3.96	----	----	----
4.00	3.92	----	----	----	----
4.04	4.00	----	----	----	----
----	3.93	----	----	----	----
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
COLORADO RIVER BASIN REGION**

TIME SCHEDULE ORDER NO. R7-2009-0035  
ISSUED TO  
CITY OF BRAWLEY, OWNER/OPERATOR  
MUNICIPAL WASTEWATER TREATMENT PLANT  
Brawley - Imperial County

The California Regional Water Quality Control Board, Colorado River Basin Region (Regional Board) finds that:

1. California Water Code (CWC) Section 13223 states, in part, that:  
  
“(a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer ...”
2. Consistent with CWC Section 13223, the Regional Board has delegated authority to its Executive Officer to issue the time schedule orders as provided for by CWC Section 13308. In turn, and consistent with CWC Section 13220(d), the Executive Officer has delegated to the Assistant Executive Officer the authority to issue Time Schedule Orders where deemed necessary to preserve the neutrality of the Executive Officer and the integrity of a separation of functions during an adjudicatory proceeding.
3. The City of Brawley, 400 Main Street, Brawley, California 92227 (hereinafter referred to as the Discharger) owns and operates the wastewater collection, treatment and disposal system located at 1550 Best Road, Brawley, California, 92227 and provides sewerage service to the City of Brawley, a population of approximately 29,000.
4. The total design capacity of the wastewater treatment plant (WWTP) is 5.9 million gallons-per-day (MGD). The WWTP consists of a lagoon system. The treatment system is comprised of a headworks system, three primary clarifiers, five treatment ponds, an ultraviolet light (UV) disinfection system, and sludge drying beds. Effluent from the existing lagoon system is disinfected with a UV disinfection system prior to discharge to the New River, a water of the United States.
5. The effluent from the lagoons is UV-disinfected and then discharged to the New River, in the SW ¼, Section 15, T13S, R14E, SBB&M, which is a tributary to the Salton Sea. The New River and the Salton Sea are waters of the United States.
6. On June 29, 2005, the Regional Board adopted Board Order No. R7-2005-0021, which specified effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.
7. On June 25, 2008, the Regional Board adopted Special Board Order No. R7-2008-0027, which amended Board Order No. 2005-0021. Special Board Order No. R7-2008-0027 specifies effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of the surface and ground waters within the Colorado River Basin Region.

8. The Water Quality Control Plan for the Colorado River Basin, as amended to date, designates the beneficial uses of ground and surface waters in the Region.
9. The designated beneficial uses of waters in the New River are:
  - a. Fresh Water Replenishment of Salton Sea (FRSH)
  - b. Industrial Service Supply (IND)<sup>1</sup>
  - c. Water Contact Recreation (REC I)<sup>2</sup>
  - d. Non-Contact Water Recreation (REC II)
  - e. Warm Water Habitat (WARM)
  - f. Wildlife Habitat (WILD)
  - g. Preservation of Rare, Threatened, or Endangered Species (RARE)<sup>3</sup>
10. Effluent Limitations of Special Board Order No. R7-2008-0027 are as follow:

**“e. Bacteria:** The bacterial density in the wastewater effluent discharged to the “R” Drain shall not exceed the following values, as measured by the following bacterial indicators:

- i. *E. coli.*** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 126, nor shall any sample exceed the maximum allowable bacterial density of 400.
- ii. Enterococci.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 33, nor shall any sample exceed the maximum allowable bacterial density of 100.
- iii. Fecal Coliform.** The geometric mean bacterial density (based on a minimum of not less than five samples equally spaced over a 30-day period) shall not exceed a Most Probable Number (MPN) of 200, nor shall more than ten percent of the total samples during any 30-day period exceed 400 MPN per 100 milliliters.

11. Provision VI.B. of Board Order No. R7-2005-0021 states:

“The Discharger shall comply with the Monitoring and Reporting Program, and future revisions thereto, as specified by the Regional Board’s Executive Officer, found in Attachment E of this Order.”

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1 Potential use

2 Although some fishing occurs in the downstream reaches, the presently contaminated water in the river makes it unfit for any recreational use. An advisory has been issued by the Imperial County Health Department warning against the consumption of any fish caught from the river and the river has been posted with advisories against any body contact with the water.

3 Rare, endangered, or threatened wildlife exists in or utilizes some of these waterway(s). If the RARE beneficial use may be affected by a water quality control decision, responsibility for substantiation of the existence of rare, endangered, or threatened species on a case-by-case basis upon the California Department of Fish and Game on its own initiative and/or at the request of the Regional Board; and such substantiation must be provided within a reasonable time frame as approved by the Regional Board.

Finding No. 1.C. of Monitoring and Reporting Program No. R7-2005-0021 states:

“Unless otherwise approved by the Regional Water Board’s Executive Officer, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. All analyses shall be conducted in accordance with the latest edition of “Guidelines Establishing Test Procedures for Analysis of Pollutants”, promulgated by the United States Environmental Protection Agency.”

12. Monthly monitoring reports submitted by the Discharger pursuant to Sections 13267 and 13383 of the CWC for the months of July - December 2008 showed that the results for *E. coli* and *Enterococci* were prepared by an uncertified laboratory. Therefore, the Discharger is in violation of Provision B. of Board Order No. R7-2005-0021 and Finding No. 1.C. of the Monitoring and Reporting Program. Attachment ‘A’, a part of this Order by reference, shows the monitoring data in question.
13. Because the Discharger is submitting effluent monitoring data for bacteria from an uncertified lab, the Regional Water Board is unable to determine whether the Discharger is in compliance with the Effluent Limitations and Discharge Specifications of Board Order Nos. R7-2005-0021 and R7-2008-0027, cited above in Finding Nos. 10-12. Therefore, the Discharger also threatens violation of Effluent Limitations and Discharge Specifications of Board Order No. R7-2008-0027.
14. Currently, there are no commercial Labs in Imperial County that are certified by California Department of Public Health, Environmental Laboratory Accreditation Program (CDPH-ELAP) for microbiology of wastewater analysis (*E. Coli* and *Enterococci*). Due to the holding time constraints for samples, the samples must be delivered within six-hours to a certified lab. The nearest laboratory that has CDPH-ELAP certification for microbiology of wastewater analysis is in San Diego County, several hours by car to the west. Presently, local commercial Labs are seeking to be certified by CDPH-ELAP; this process is estimated to take several months.
15. Section 13308 of the CWC states:

”If the regional board determines there is a threatened or continuing violation of any cleanup and abatement order, cease and desist order, or any order issued under Section 13267 or 13383, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule.”
16. Section 13267(b) of the CWC provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports

which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports." The evidence supporting this requirement is discussed in Findings 1-12, above. Additional information may be available in the Regional Board's files. Section 13383 of the CWC also authorizes the Regional Board to establish monitoring requirements for publicly owned treatment works or other treatment works treating domestic sewage.

17. This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA: Public Resources Code Section 21000, et. Seq.), pursuant to Section 15321, Article 19, Division 3, Title 14, California Code of Regulations (CCRs).
18. Any person aggrieved by this action of the Regional Board may petition the State Water Board to review the action in accordance with CWC Section 13320 and CCRs, Title 23, Section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

IT IS HEREBY ORDERED, that in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, the Discharger shall comply with the following:

1. The Discharger must be in full compliance with WDRs Board Order Nos. R7-2005-0021 and R7-2008-0027, Monitoring and Reporting Programs by July 1, 2009.
2. By March 14, 2009, the Discharger shall submit a technical report specifying the steps it will take to ensure that bacteria data is collected and analyzed as specified in Board Order No. R7-2008-0027.
3. If, in the opinion of the Regional Board's Executive Officer, the Discharger fails to comply with this Time Schedule Order, the Regional Board's Executive Officer may issue a Complaint against the Discharger under Article 2.5, Chapter 5, Division 7 of the CWC, for up to \$10,000 in administrative civil liability penalties for each day in which the violation occurs.

This Order is effective upon the date of signature.

2/23/09  
Date

  
JOSE L. ANGEL, P.E.  
Assistant Executive Officer