



San Diego Regional Water Quality Control Board

September 2, 2020

Golden State Overnight Tracking: 549892067
In reply refer to: 803119:FMelbourn

George Ochoa
Rancho Ochoa, LLC
357 Tangerine Place
Brea, California 92823-1812

Assessor's Parcel Number: 933-020-036 (46.96 acres)

Mr. Ochoa:

Settlement Offer No. R9-2020-0218 to Resolve Administrative Civil Liability for an Alleged Violation of California Water Code Section 13260

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team alleges that Rancho Ochoa, LLC (Discharger) is in violation of California Water Code (Water Code) section 13260 for failure to obtain regulatory coverage for discharges from a commercial agricultural operation in the San Diego Region, as detailed below. This letter contains a Settlement Offer from the Prosecution Team to resolve potential claims for administrative civil liability arising out of the alleged violation.

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violation through payment of \$1,000. Please read this letter carefully and respond no later than October 2, 2020.

Description of Alleged Violation

Water Code section 13260 requires a report of waste discharge be submitted to the San Diego Water Board when any person discharges waste, or proposes to discharge waste, that could affect the quality of waters of the State in the San Diego Region. Such discharges include irrigation return flows or storm water runoff from irrigated lands that may contribute waste to groundwater or surface waters. A person that owns or operates a commercial agricultural operation in the San Diego Region can meet the report of waste discharge requirement by applying for coverage under one of two General Agricultural Orders issued by the San Diego Water Board: 1) Order No. R9-2016-0004, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region* (Third-Party General Order); or 2) Order No. R9-2016-0005, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region* (Individual General Order).

HENRY ABARBANEL, PH.D., CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

The [General Agricultural Orders](#)¹ are available on the San Diego Water Board's website.

To obtain coverage under one of the General Agricultural Orders, a person must either submit a complete Notice of Intent (NOI)² under membership with an approved Third-Party Group grower coalition or obtain regulatory coverage by submitting an NOI without the assistance of a Third-Party Group.

Directive

On October 1, 2019, the San Diego Water Board issued the Discharger a Directive (Directive) to obtain regulatory coverage for its commercial agricultural operations pursuant to Water Code section 13260. The Directive required the Discharger to obtain regulatory coverage by enrolling in one of the two General Agricultural Orders through submission of a complete NOI on or before October 31, 2019. The Directive cited publicly available information regarding the parcel owned or operated by the Discharger. A satellite image of the agricultural operation is shown in Exhibit 1.

The Prosecution Team alleges that the Discharger is in violation of Water Code section 13260 by failing to timely submit an NOI by October 31, 2019, the due date specified in the Directive. On August 17, 2020, the Discharger submitted an NOI after multiple attempts by San Diego Water Board staff to contact Discharger to explain the enrollment requirements and offer its assistance (Exhibit 2, Record of Contacts).

Statutory Liability

Pursuant to Water Code section 13261, the Discharger is liable for administrative civil liability of up to \$1,000 per day of violation. The State Water Resources Control Board's [Water Quality Enforcement Policy](#)³ states that the minimum liability should be the economic benefit plus ten percent. For the alleged violation described in the attachments, the maximum liability is \$290,000, and the minimum liability is \$48.40.

Notice of Violation No. R9-2020-0055

On February 12, 2020, the San Diego Water Board put the Discharger on notice of the alleged violation and statutory liability.

1

https://www.waterboards.ca.gov/sandiego/water_issues/programs/commercial_agriculture/

² In the Commercial Agriculture Regulatory Program, the NOI is the "report of the discharge" described in Water Code section 13260.

3

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Proposed Settlement Offer

The Prosecution Team proposes to resolve the alleged violation for \$1,000. This Settlement Offer is based on an application of the Enforcement Policy's Penalty Calculation Methodology, which addresses factors that are required to be considered by Water Code section 13327. The attached "Penalty Calculation Methodology" describes in detail how the settlement amount was calculated for the alleged violation (Exhibit 3). The Prosecution Team believes that the proposed resolution of the alleged violation is fair and reasonable, fulfills the San Diego Water Board's enforcement objectives, and is in the public's best interest.

If the Discharger chooses **not** to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint (ACL Complaint) or by referring the matter to the Attorney General's Office. If an ACL Complaint is issued, the Prosecution Team will include the staff costs for investigation and enforcement associated with this case. Staff costs are currently estimated at \$5,000 and would continue to accrue until an ACL Complaint is issued.

The Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine if additional violations occurred. Any additional violations subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violation by enrolling in one of the two General Agricultural Orders and accepting this Settlement Offer.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing* (Exhibit 4, Acceptance and Waiver form) shall be completed and submitted, via email, no later than September 26, 2020, to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: 803119:FMelbourn
Email: SanDiego@waterboards.ca.gov

Important! Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period. If no substantive comments are received within the 30 days, and the Discharger has obtained regulatory coverage under one of the two General Agricultural Orders, the Prosecution Team will ask the San Diego Water Board's Executive Officer to sign the *Acceptance and Waiver* as an Order of the San Diego Water Board. An invoice will then be mailed to the Discharger requiring payment of the **\$1,000** administrative civil liability within 30 days of the Order's effective date.

Please note, this Settlement Offer may be withdrawn if either of the following occur: a) substantive comments are received in opposition to the settlement and/or the Executive Officer declines to accept the settlement; or b) the Discharger fails to obtain coverage under one of the two General Agricultural Orders for its commercial agricultural operation(s) before the close of the 30-day comment period. Should either occur, the Discharger will be notified, and the *Acceptance and Waiver* will be treated as withdrawn. The unresolved violation may then be addressed in a formal enforcement action. An ACL Complaint seeking a higher liability amount may be issued and the matter may be set for a hearing before the San Diego Water Board.

Option B: Contest the Alleged Violation

If the Discharger chooses to contest the alleged violation or the methodology used to calculate the proposed liability, then it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the San Diego Water Board no later than October 2, 2020. The Prosecution Team will evaluate the Discharger's response and may seek clarifying information or schedule a meeting before determining whether adjustments are warranted. The Prosecution Team will inform the Discharger of its decision regarding the settlement amount and will provide the Discharger a final opportunity to accept the revised or original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If the Discharger chooses to reject this Settlement Offer or does not timely complete and return the *Acceptance and Waiver*, it should expect the Prosecution Team to conduct further investigation of the alleged violation, issue an ACL Complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought or imposed will likely exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this Settlement Offer, please contact Mr. Frank Melbourn at (619) 521-3372 or at frank.melbourn@waterboards.ca.gov.

Sincerely,

KELLY DORSEY, P.G.
Assistant Executive Officer

Copies to:

Chiara Clemente, San Diego Water Board, chiara.clemente@waterboards.ca.gov
Roger Mitchell, San Diego Water Board, roger.mitchell@waterboards.ca.gov
Craig Carlisle, San Diego Water Board, craig.carlisle@waterboards.ca.gov
Christina Arias, San Diego Water Board, christina.arias@waterboards.ca.gov
Jason DuMond, San Diego Water Board, jason.dumond@waterboards.ca.gov
Catherine Hawe, State Water Board, catherine.hawe@waterboards.ca.gov
Eric Larson, San Diego Region Irrigated Lands Group, eric@sdfarmbureau.org
Hannah Gbeh, San Diego Region Irrigated Lands Group, hannah@sdfarmbureau.org
Steve Corona, Upper Santa Margarita Irrigated Lands Group, stevec@usmilg.org
Thomas Leung, Frog Environmental, Inc., thomas@frogenv.com
Matt Yeager, County of Riverside, myeager@rivco.org

ECM PIN: CW-803119 (San Diego Region Agricultural Operations)
CW-868274 (Rancho Ochoa Groves)

Documents relied upon (attached)

Exhibit 1: Satellite Image of Agricultural Operation
Exhibit 2: Record of Contacts
Exhibit 3: Penalty Calculation Methodology
Exhibit 4: Acceptance and Waiver form

Documents relied upon and available upon request (ECM Document Handle Number)
Directive, October 1, 2019 (4698163)

Notice of Violation, November 12, 2019 (4863410 and cover letter 4862462)

Golden State Overnight Directive Delivery Confirmation, October 3, 2019 (8811918)

Golden State Overnight NOV Delivery Confirmation, February 14, 2020 (8811919)

US EPA BEN Model Analysis (8831589)

Grant Deed for APN 933-020-036 (8829651)

2019 Property Tax for APN 933-020-036 (8829653)

Property Details for APN 933-020-036 (8829654)

August 17, 2020, Email from Frog Environmental that NOI was submitted (8831595)

Exhibit 1

Rancho Ochoa, LLC Grove Satellite Image



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1

Exhibit 1: Satellite Image of Agricultural Operation (Assessor's Parcel Number 933-020-036)

Exhibit 2

Enforcement Timeline and Comments

Name of Operation: Rancho Ochoa Groves

Owner: Rancho Ochoa, LLC

Site Address: Accessor's Parcel Number 933-020-036

Mailing Address: 357 Tangerine Place, Brea, California 92823-1812

Telephone: (714) 713-0087

Email: gochoa@westcoastfairview.com

Acreage: 46.96 acres

Date	Action Taken	Comments	Staff
10/01/2019	Directive Letter	Delivery confirmation on October 3, 2019.	Jason DuMond
10/22/2019	Telephone calls	(714) 983-7304 (No answer and no voicemail), and two other listed numbers were disconnected.	Martin Valerocasa
02/12/2020	NOV No. R9-2020-0055	Delivery confirmation on February 14, 2020.	Jason DuMond
02/25/2020	Telephone call and email	George Ochoa on behalf of Rancho Ochoa, LLC called staff after receiving the Notice of Violation. George stated that Rancho Ochoa, LLC wants to comply; however, he is having difficulty getting responses from Third-Party Group Frog Environmental. Staff emailed Frog Environmental to encourage a quicker response.	Jason DuMond
02/27/2020	Email	Email from Kathy Rathbun, San Diego Irrigated Lands Third-Party Group notifying the San Diego Water Board that Steven Liu, on behalf of Rancho Ochoa, LLC contacted her asking if there would be a regulatory consequence if they enroll and then immediately drop out.	Not applicable
06/17/2020	Email	Staff emailed George Ochoa that Third-Party Group Frog Environmental could not complete its enrollment without additional information.	Jason DuMond
06/19/2020	Email	George Ochoa emailed staff that he spoke with Frog Environmental and that the enrollment is proceeding.	Jason DuMond
08/17/2020	Email	Frog Environmental confirmed NOI submittal on behalf of Rancho Ochoa, LLC.	Christina Arias

Exhibit 2 – Enforcement Timeline and Comments

Exhibit 3

Penalty Calculation Methodology

Enforcement Policy Background

In 2017, the State Water Resources Control Board adopted updates to the [Water Quality Enforcement Policy](#)⁴ with the goal to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most fair, efficient, effective, and consistent manner. According to the Enforcement Policy, enforcement is a critical component in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Formal enforcement should always result when a non-compliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. Formal enforcement should be used as a tool to maintain a level playing field for those who comply with their regulatory obligations by setting appropriate civil liabilities for those who do not.

California Water Code (Water Code) section 13327 requires the San Diego Water Board to consider several factors in determining administrative civil liability, such as the potential for harm to the environment, and a violator's culpability and ability to pay. The Enforcement Policy incorporates these factors in a methodology for determining administrative civil liability in instances of noncompliance. Each factor of the Enforcement Policy's ten-step approach (Page 9 of the Policy) is evaluated in context of the specific allegation and is described below.

4

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Exhibit 3

Description of Violation

Water Code section 13260 requires any person discharging waste, or proposing to discharge waste, that could affect the quality of waters of the State in the San Diego Region, to submit a report of waste discharge (RoWD) to the San Diego Water Board. Such discharges of waste include irrigation return flows or storm water runoff from irrigated lands that may contribute waste to groundwater or surface waters. A person that owns or operates a commercial agricultural operation (Agricultural Operation) in the San Diego Region can meet the RoWD requirement by submitting a complete Notice of Intent (NOI)⁵ for coverage under one of the two General Agricultural Orders issued by the San Diego Water Board: 1) Order No. R9-2016-0004, General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region (Third-Party General Order); or 2) Order No. R9-2016-0005, General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region* (Individual General Order).

The [General Agricultural Orders](#) are available at the San Diego Water Board's website⁶.

Rancho Ochoa, LLC (Discharger), owns and/or operates at least 46.96 acres of irrigated land that is used for an Agricultural Operation in the Temecula Valley of California. On October 1, 2019, the San Diego Water Board issued the Discharger a directive to obtain regulatory coverage for its Agricultural Operation pursuant to Water Code section 13260. The Directive required the Discharger to obtain regulatory coverage by enrolling in one of the General Agricultural Orders through submission of a complete NOI on or before October 31, 2019. In developing the Directive, San Diego Water Board staff used publicly available information to identify farmed parcels used for agricultural purposes, including satellite images.

The Prosecution Team alleges that the Discharger is in violation of Water Code section 13260 by failing to timely submit an NOI by the due date specified in the Directive. The alleged violation is subject to a maximum administrative civil liability of \$1,000 per day of violation under Water Code section 13261, subdivision (b)(1).

⁵ In the Commercial Agriculture Regulatory Program, the NOI is the "report of the discharge" described in Water Code section 13260.

⁶

https://www.waterboards.ca.gov/sandiego/water_issues/programs/commercial_agriculture/

Exhibit 3

Ten-Step Penalty Calculation Methodology (Page 9 of the Policy)

Step 1. Actual Harm or Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering two factors: the potential for harm and the extent of deviation from the applicable requirements.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

A "moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the San Diego Water Board's ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

Failure to enroll in and comply with the conditions of the Third-Party General Order or Individual Order substantially impaired the San Diego Water Board's ability to perform its statutory and regulatory functions. Owners or operators of Agricultural Operations regulated under the General Agricultural Orders either conduct monitoring or contribute to monitoring efforts to identify water quality problems associated with agricultural practices. Regulated dischargers are subject to educational requirements, and regularly report on the practices they engage to protect water quality. By failing to provide monitoring results or information on its practices, the Discharger substantially impaired the San Diego Water Board's efforts to assess potential impacts and risks to water quality.

Unregulated discharges of waste from irrigated agriculture can present a substantial threat to beneficial uses because irrigated cropland can be a source of sediment, biostimulatory substances (i.e., nutrients from fertilizers), and other waste discharges to waters of the State. Here, the Discharger owns and/or operates 46.96 irrigated acres in the Temecula Valley portion of the Santa Margarita watershed, which is over ten times the median farm size in the San Diego Region. The Santa Margarita watershed drains to the Santa Margarita Estuary, a high priority water body that provides significant refuge, foraging, and breeding areas for several threatened and endangered species, making it a Key Area for habitat and ecosystems. The estuary is impaired for eutrophic conditions that threaten the aquatic life beneficial use. Nitrogen and phosphorus (nutrients) are the primary cause of eutrophic conditions and are routinely used in agriculture to promote crop yield.

Exhibit 3

Because the Discharger substantially impaired the San Diego Water Board's ability to perform its statutory or regulatory functions and given the substantial threat to the beneficial uses of the Santa Margarita River from the Discharger's Agricultural Operation, a moderate potential for harm is appropriate.

Deviation from Requirement: Major

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements.

A "major" deviation from requirement is appropriate when a violator disregards the requirement, and/or the requirement is rendered ineffective in its essential functions.

The deviation from requirement in this instance is major. The Discharger failed to timely submit a complete NOI and obtain regulatory coverage under one of the General Agricultural Orders, which is foundational to the San Diego Water Board's efforts to protect water quality from discharges of waste associated with Agricultural Operations. This failure to complete the NOI undermines the regulatory program because staff resources are directed to bringing the Discharger into enrollment compliance rather than conducting field inspections or reviewing annual reports. Additionally, failure by the Discharger to enroll renders the requirements of the program, including monitoring, reporting, and completion of educational requirements, completely ineffective.

Per Day Assessments for Non-Discharge Violations = 0.55

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.4 to 0.7 for non-discharge violations with a moderate potential for harm and major deviation from requirement. The Prosecution Team determined that the midpoint of the range, 0.55, is appropriate for the per day factor given the size of the Discharger's Agricultural Operation and the substantial threat to beneficial uses.

Days of Violation = 290

The Directive required the Discharger to obtain regulatory coverage by enrolling in one of the two General Agricultural Orders through submission of a complete NOI on or before October 31, 2019. Therefore, the Discharger has been in violation from November 1, 2019, to August 17, 2020 (the day that the NOI was submitted), or 290 days.

Multiple Day Violations = 43

For violations that do not cause daily detrimental impacts to the environment or the regulatory program, the Enforcement Policy allows for an adjustment in days of violation when liability is assessed on a per-day basis and the violation lasts longer than 30 days.

Exhibit 3

The Discharger's failure to obtain coverage under the General Agricultural Orders has not detrimentally impacted the environment on a daily basis because obtaining regulatory coverage does not result in an immediate evaluation of, or changes in, practices that could impact water quality. Additionally, the violation has not detrimentally impacted the regulatory program on a daily basis because the information required to be submitted by the Discharger pursuant to the General Agricultural Orders would have been provided on an intermittent, rather than daily basis.

Collapsing days per the Enforcement Policy = 43 days of violation (1-30, 35, 40, 45, 50, 55, 60, 90, 120, 150, 180, 210, 240, and 270).⁷

Initial Liability Amount = \$23,650

The initial liability amount for the violation calculated on a per-day basis is:

[\$1,000 (per day statutory maximum) x 0.55 (factor) x 43 (days of violation)] = **\$23,650**

Step 4. Adjustment Factors

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the violator's degree of culpability, the violator's prior violation history, and the violator's voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

Degree of Culpability = 1.5

Higher penalties should result from intentional or negligent violations as opposed to accidental violations. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligence behavior.

The Prosecution Team assigned a multiplier of 1.5 because the Discharger failed to timely obtain coverage even though staff made numerous compliance assistance efforts over the telephone and in writing including the issuance of the Directive and NOV.

History of Violations = 1.0

The Discharger does not have a history of violations, so a neutral factor was applied.

⁷ The Enforcement Policy states that when collapsing days, the liability shall not be less than an amount calculated based on an assessment of the initial Total Base Liability Amount for the first 30 days of the violation, plus an assessment for each 5-day period of violation, until the 60th day, plus an assessment for each 30 days of violation thereafter.

Exhibit 3

Cleanup and Cooperation = 1.5

This factor reflects the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, using a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. The Prosecution Team assigned a multiplier of 1.5 because the Discharger failed to timely obtain coverage. Cleanup is not applicable here.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount is determined by multiplying the initial liability by the Adjustment Factors in Step 4:

Total Liability Amount = [\$23,650 (initial liability amount) x 1.5 (degree of culpability) x 1.0 (history of violations) x 1.5 (cleanup and cooperation)] = **\$53,213**

Step 6. Ability to Pay and Ability to Continue in Business

The Enforcement Policy allows for an adjustment to a proposed liability after an analysis of a violator's ability to pay a proposed penalty and continue in business. This is determined by looking at the violator's income and net worth. According to the [2017 Riverside County Agricultural Production Report](#)⁸, the annual value of avocados from 46.96 acres was \$415,724 (3.92 tons/acre and \$2,258.35/ton). Additionally, the Discharger purchased the parcel on April 17, 2019, for \$600,000. Therefore, the Discharger has the ability to pay the proposed penalty based upon its income and net worth.

Step 7. Economic Benefit

The economic benefit is any savings or monetary gains from noncompliance. The economic benefit was calculated assuming enrollment under the Individual General Order on October 31, 2019 (the last date allowed under San Diego Water Board Directive to the Discharger). Had the Discharger enrolled by October 31, 2019, it would have been billed by the State Water Resources Control Board, a one time \$200 enrollment fee and an annual fee of \$1,268 (\$27 per acre for 46.96 acres). Table 1 calculates the economic benefit enjoyed from the noncompliance.

⁸ <https://www.rivcoawm.org/Portals/0/PDF/2017-crop-report.pdf>

Exhibit 3

Item	Type	Delayed Cost	Benefit of Non-Compliance calculated using the US EPA BEN Model
State Water Board Enrollment Fee	One Time	\$200	\$6
State acreage fee (Fiscal Year 2019/20)	Annual	\$1,268	\$38
Total		\$1,468	\$44

Table 1, Rancho Ochoa, LLC's Economic Benefit

These calculations do not take into consideration any additional costs associated with ensuring compliance with waste discharge requirements, including preparing and implementing water quality monitoring plans, which could be considered additional monetary gains from noncompliance.

Step 8. Other Factors As Justice May Require

The Enforcement Policy allows an adjustment to the administrative civil liability if the San Diego Water Board believes that the amount determined using the above factors is inappropriate. The Prosecution Team believes that the total base liability using the Enforcement Policy is disproportionately high for a relatively new regulatory program for the agricultural community in the San Diego Region. Based on that consideration, it is appropriate to adjust the total base liability amount to \$1,000. The resulting liability is fair as it ensures that no competitive economic advantage is attained through non-compliance and deters future violations.

Step 9. Maximum and Minimum Liability Amounts

Water Code section 13261 states that the maximum administrative civil liability for a violation of Water Code section 13260 is \$1,000 per day. The Enforcement Policy states that the minimum liability should be at least ten percent higher than the economic benefit amount.

Statutory maximum liability = (290 days multiplied by \$1,000 per day) = **\$290,000**

Minimum Liability = [\$44 + (\$44 X 10%)] = **\$48.40**

Step 10. Final Liability Amount

The final liability amount is \$1,000.

Exhibit 4

ORDER NO. R9-2020-0218

ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING FOR RANCHO OCHOA, LLC

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), Rancho Ochoa, LLC (Discharger) hereby accepts the Settlement Offer described in the letter dated September 2, 2020, with subject title **Settlement Offer No. R9-2020-0218 to Resolve Administrative Civil Liability for an Alleged Violation of California Water Code Section 13260**. The Discharger also hereby waives its right to a hearing before the San Diego Water Board to dispute the alleged violation described in the Settlement Offer and its exhibits.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code (Water Code) and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violation. The Discharger agrees to perform the following:

1. Pay an administrative civil liability in the sum of \$1,000 to the "State Water pollution Cleanup and Abatement Account." This payment shall be deemed payment in full of any civil liability pursuant to Water Code sections 13261 and 13350 that might otherwise be assessed for the violation described in the Settlement Offer and its attachments; and
2. Enroll in and fully comply with the requirements of Order No. R9-2016-0004, General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region (Third-Party General Order) or Order No. R9-2016-0005, General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region (Individual General Order).

The Discharger understands that by signing this *Acceptance and Waiver*, it is waiving its right to contest the violation alleged in the Settlement Offer and the assessed civil liability amount. The Discharger further understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified and alleged in the Settlement Offer and its Exhibits.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: CW-803119/FMelbourn
Email: SanDiego@waterboards.ca.gov

Exhibit 4

The Discharger understands that the San Diego Water Board Prosecution Team (Prosecution Team) publishes notice of and provides at least 30 days for public comment on any proposed resolution of an enforcement action for Water Code violations. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the San Diego Water Board, or its delegate, will be published for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the San Diego Water Board's Executive Officer for formal endorsement on behalf of the San Diego Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the Prosecution Team may withdraw the Settlement Offer. If the Settlement Offer is withdrawn, then the Discharger will be notified, and the *Acceptance and Waiver* will be treated as withdrawn. The unresolved violation will be addressed in a formal enforcement action. An administrative civil liability complaint (ACL Complaint) may be issued and the matter may be set for a hearing before the San Diego Water Board.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed, then the full payment of the administrative civil liability amount (\$1,000) is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice. Additionally, the Discharger must submit a Notice of Intent and enroll in either the Third-Party General Order or Individual General Order within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

By:

Title:

IT IS SO ORDERED, pursuant to Water Code section 13261.

DAVID W. GIBSON
Executive Officer, San Diego Water Board