

been submitted it on a timely basis had Balcom Ranch requested staff to provide the documents earlier, either via subpoena or the Public Records Act. Both parties agreed that Balcom Ranch did not attempt to obtain these documents prior to February 16, even though the complaint was issued over one year ago, and the Prosecution Team made clear in November and December, 2010, that the matter would not be settled. Balcom Ranch has never requested to review the site file or other public files related to the irrigated agriculture program, nor did they contact the Prosecution Team after submitting the document requests on February 16.

The Administrative Procedure Act (APA) provides that the Board shall issue subpoenas upon request. This language does not supercede applicable due dates for submitting evidence in advance of an administrative hearing. The APA also allows the board to quash unreasonable subpoenas. In light of the volume of materials requested and the timing of the request, this provision appears to apply. Board counsel offered to provide subpoena forms to Balcom Ranch so they could issue the requested subpoenas, but suggested it would be a waste of time in light of the Prosecution Team's objections and their representation that they would move to quash. Balcom Ranch declined the offer of subpoena forms.

The Prosecution Team also objected that the documents requested were irrelevant. Balcom Ranch did not cite any basis to believe the Prosecution Team has any discriminatory intent, except that Balcom Ranch was the only target of enforcement in the irrigated agriculture program. Prosecution Team counsel noted that one order has already been issued (Guadalupe Reyes), and approximately nine others are either pending or have settled. Balcom Ranch also noted that the Prosecution Team previously provided a list of other non-compliers who might have been interested in forming a competing user group, which did not happen. The Hearing Panel will rule on the relevance objection at the hearing, or when it issues its proposed decision on the merits.

Some of the requested documents may be in the site file, which will be available at the hearing.

Evidence of Ability to Pay

The Prosecution Team objected to Balcom Ranch's testimony regarding ability to pay. The objection is overruled.

Balcom Ranch acknowledged that the Board could not close the hearing during this testimony but requested that its item be heard last on the agenda. This request had not been made previously. Despite the Chair's reluctance to depart from the Board's usual practice of hearing the longest items earliest in the day, the Prosecution Team has been directed to determine whether the order can be changed at this time without prejudicing other participants in this or other matters on the agenda.

Relevance of Evidence Related to Other Enforcement Action

The Board makes no finding at this time regarding Balcom Ranch's Equal Protection defense or the relevance of any evidence related thereto.

Request to Delay Hearing

Balcom Ranch requested a delay of the March 17 hearing date to address the foregoing issues. Although the Chair commends the parties for their attempts to settle this matter, it has been pending for over one year, and only a portion of that year was spent in settlement negotiations. The request for a continuance is denied.

-Lori T. Okun

>>> Paul Beck <pab@pablaw.org> 3/8/2011 9:51 PM >>>

Dear Ms. Okun:

Please see the attached letter in connection with the above-entitled administrative proceeding.

Please contact me with any questions.

Thank you.

Cordially,

Paul A. Beck

Tab 4.20

Prosecution Team's Reply to Respondent's
Objections and Responses

Exhibit 10

1 JENNIFER FORDYCE, Staff Counsel (SBN 241418)
Office of Chief Counsel
2 State Water Resources Control Board
1001 I Street, 22nd Floor
3 Sacramento, California 95814
Telephone: 916-324-6682
4 Fax: 916-341-5199
E-mail: jfordyce@waterboards.ca.gov

5
6 Attorney for the Prosecution Team

7 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

8
9 LOS ANGELES REGION

10 In the Matter of:)

11 **Balcom Ranch**)
21099 South Mountain Road)
12 Santa Paula, CA 93060)

Prosecution Team's Reply to
Respondent's Objections and
Responses

13 **Administrative Civil Liability Complaint**)
14 **No. R4-2010-0023**)

15 The Regional Water Quality Control Board, Los Angeles Region (Regional Board)
16 Prosecution Team files this reply brief in response to Balcom Ranch's (Respondent)
17 Objections and Responses to Revised Notice of Public Hearing and Administrative
18 Proceedings, dated February 16, 2011. As the deadline for Respondent's submission of
19 evidence and arguments was on February 16, 2011, this is the earliest possible time
20 pursuant to Section VIII.C.3 of the Revised Notice of Public Hearing for the Prosecution
21 Team to submit this reply brief responding to Respondent's affirmative defenses and filing
22 the objections contained herein. The Prosecution Team respectfully requests a
23 prehearing conference to resolve the procedural and evidentiary objections raised in this
24 reply brief.

25
26 REPLY TO RESPONDENT'S OBJECTION

27 In its Objections and Responses, Respondent asserts that the Regional Board "is
28 neither legally competent (in terms of its limited jurisdiction) nor qualified to or structured

PROSECUTION TEAM'S REPLY BRIEF

1 to entertain constitutional challenges." Respondent includes absolutely no facts or legal
2 authority for its assertion. The Regional Board is a state agency granted both quasi-
3 judicial and quasi-legislative powers. (See generally, Wat. Code, §§ 13000 et seq.)
4 When acting in a quasi-judicial capacity, as it does when considering enforcement
5 matters such as administrative civil liabilities, the Regional Board frequently holds
6 adjudicatory proceedings, which are "evidentiary hearing[s] for determination of facts
7 pursuant to which the...Regional Board formulates and issues a decision." (Cal. Code
8 Regs., tit.23, § 648.) Both the State Water Resources Control Board (State Water
9 Board) and the nine Regional Boards often hear and decide a multitude of factual and
10 legal issues during adjudicatory proceedings, including the sufficiency of evidence subject
11 to constitutional objection. (See e.g., *In the Matter of the Petition of Jamal Khan*, State
12 Water Resources Control Board Order WQ 99-01-CWP [deciding that evidence seized
13 during a search of petitioner was not unconstitutional and was therefore admissible.]
14 Because the Regional Board is justified in hearing and ruling on Respondent's
15 constitutional challenges, (*Goldin v. Public Utilities Commission* (1997) 23 Cal. 3d 638,
16 669 [administrative bodies are competent to examine evidence before them in light of
17 constitutional standards.]), Respondent's objection should be overruled.

18 19 REPLY TO RESPONDENT'S AFFIRMATIVE DEFENSES

20 The Prosecution Team generally objects to Respondent's affirmative defenses on
21 the basis that Respondent fails to include any factual or legal authority to support its
22 defenses. Each of the affirmative defenses raised by Respondent consists of conclusory
23 statements of law or opinion. Many of the asserted defenses state not a single fact in
24 support of the conclusory statement of law or opinion proffered by Respondent.
25 Respondent carries the burden of proving the existence of each of its affirmative
26 defenses. Respondent has failed to do so. As pled, Respondent's purported affirmative
27 defenses are no more than legal conclusions and do not put the Prosecution Team on
28 notice as to what facts give rise to the asserted defenses.

1
2 **A. Reply to First Affirmative Defense (Violation of Fourth Amendment)**

3 The Prosecution Team does predicate its complaint, in part, on a site visit
4 conducted by Regional Board staffmember Rebecca Veiga Nascimento. At the site visit,
5 Ms. Nascimento verified through visual observations that Respondent's property is land
6 used for irrigated agriculture and therefore subject to Order Nos. R4-2005-0080 and R4-
7 2010-0186, *Conditional Waiver of Waste Discharge Requirements for Discharges from*
8 *Irrigated Lands within the Los Angeles Region (Conditional Waiver)*. Respondent fails to
9 include any facts or legal authority to support its assertions that Ms. Nascimento's site
10 visit constituted a search under the Fourth Amendment, how the site visit was an alleged
11 unreasonable search, how Respondent is entitled to a reasonable expectation of privacy,
12 and how the site visit violated Respondent's constitutional rights to be free from
13 unreasonable searches and seizures. As pled, Respondent's purported affirmative
14 defense is no more than a conclusory statement of opinion and law and does not put the
15 Prosecution Team on notice as to what facts give rise to this asserted defense.

16 The Prosecution Team contends that Ms. Nascimento's site visit was not an
17 unreasonable search under the Fourth Amendment. At the hearing, Ms. Nascimento will
18 testify to facts surrounding her site visit. Many of Ms. Nascimento's visual observations
19 are also documented in Exhibit 12 (Memo to File, Site Visit of Parcels 046-0-150-140 and
20 046-0-150-320, November 17, 2009). What Ms. Nascimento observed from a lawful
21 vantage point, specifically the road outside of Respondent's property boundary, is clearly
22 not a search under the Fourth Amendment, because a person cannot maintain a
23 reasonable expectation of privacy regarding anything visible to the naked eye from that
24 position. It is also well-established under Fourth Amendment search and seizure law that
25 a search conducted without consent or warrant violates constitutional rights only if there
26 exists a reasonable expectation of privacy in the area searched. (*Oliver v. U.S. (1984)*)
27
28

1 466 U.S. 170.) It is equally well-established that, while a reasonable expectation of
2 privacy exists in residences, other closed structures, and their curtilage,¹ no such
3 expectation of privacy exists in "open fields." (*Ibid.*) Respondent's agricultural land
4 consisting of approximately 108 acres of orchards and row crops constitute open fields.
5 Accordingly, if Ms. Nascimento entered Respondent's property, such entry did not amount
6 to a search within the meaning of the Fourth Amendment.

7 Respondent's assertion that the Conditional Waiver is unconstitutional in that it
8 requires citizen's to waive its constitutional rights from unreasonable searches and
9 seizures is both irrelevant to this action and without merit. Respondent is not enrolled in
10 the Conditional Waiver and lacks any grounds to challenge any of its requirements.
11 Moreover, under the doctrine of collateral estoppel, Respondent is precluded from
12 contesting the validity of any requirements of the Conditional Waivers contained in Order
13 No. R4-2005-0080 or Order No. R4-2010-0186. (Wat. Code § 13330(d).) Collateral
14 estoppel precludes a party to an action from re-litigating, in a second proceeding, matters
15 that were litigated and determined in a prior proceeding. (*Lucido v. Superior Court* (1998)
16 51 Cal.3d 335, 341.) On November 3, 2005, the Regional Water Board adopted Order
17 No. R4-2005-0080, which established requirements for dischargers who enrolled in the
18 Conditional Waiver. On October 7, 2010, the Regional Water Board renewed the
19 Conditional Waiver through issuance of Order No. R4-2010-0186. Respondent could
20 have filed a petition with the State Water Board pursuant to Water Code section 13320
21 challenging Order No. R4-2005-0080 and/or Order No. R4-2010-0186. If the State Water
22 Board denied review, Respondent could have filed a petition for writ of mandate, as
23 prescribed by Water Code section 13330. Because no petition was filed, the Orders are
24 final and not subject to review. (Wat. Code, § 13330(d).)

25
26

27 ¹ Refers to open areas immediately surrounding residential or commercial structures, usually enclosed by a
28 fence or wall, such as a backyard.

1 **B. Reply to Second Affirmative Defense (Denials of Due Process and Equal**
2 **Protection)**

3 Respondent fails to include any facts or legal authority for its proposition that the
4 Regional Board has violated Respondent's constitutional rights to due process and equal
5 protection. Respondent carries the burden of proving the existence of this affirmative
6 defense, including all necessary elements. Respondent has failed to do so. As pled,
7 Respondent's purported affirmative defense is no more than a conclusory statement of
8 opinion and law and does not put the Prosecution Team on notice as to what facts give
9 rise to this asserted defense.

10 Respondent's asserted facts do not accurately reflect the Conditional Waiver or
11 the role of the Ventura County Farm Bureau (VCFB), nor the Ventura County Agriculture
12 Irrigated Lands Group (VCAILG).² The Conditional Waiver provides flexibility for
13 dischargers who are required to comply by providing them with the option of complying
14 through participation in a Regional Board-approved discharger group or as an individual
15 owner or operator of irrigated lands. Dischargers can choose whichever track they wish in
16 order to comply.

17 A discharger group is any group receiving Regional Board approval to operate
18 under the terms and conditions of the Conditional Waiver for a discharger group. In
19 additions to landowners and operators, groups may include representatives from diverse
20 interests such as the County Farm Bureaus, UC Cooperative Extension, County
21 Agricultural Commissioners, Resources Conservations Districts, Natural Resources
22 Conservation Service, local water agencies and water districts, irrigation districts, grower
23 groups, environmental interests, and other local, state or federal government agencies.
24 Although by no means required, many owners and operators of irrigated lands may find it

25
26
27 ² Respondent's suggestion that the VCFB is a Regional Board-approved discharger group is incorrect. VCFB
28 created and administers VCAILG. In 2006, the Regional Board approved VCAILG, not VCFB, as a
discharger group under the Conditional Waiver.

1 advantageous to join a discharger group to reduce the cost of compliance.

2 Further, neither VCFB or VCAILG are Regional Board programs; rather, VCAILG is
3 a Regional Board-approved discharger group. As a discharger group, VCAILG does not
4 determine, administer, nor manage the policies and provisions of the Conditional Waiver.
5 That authority lies solely with the Regional Board. VCAILG only administers and manages
6 its own discharger group. By approving VCAILG as a discharger group, the Regional
7 Board in no way delegated any of its regulatory powers to VCAILG or to any private
8 landowners. VCAILG is simply a group that complies with the Conditional Waiver.
9 Respondent utterly fails to explain how the Regional Board's approval of VCAILG as a
10 discharger group violates Respondent's constitutional rights to due process and equal
11 protection of the law.

12 It also must be noted that if Respondent chooses not to be covered by the
13 Conditional Waiver, yet another option for compliance with the Water Code is for
14 Respondent to submit a Report of Waste Discharge for individual waste discharge
15 requirements. Thus, as relayed to Respondent on several occasions, Respondent has
16 three options to comply and may choose whichever option it prefers. Thus, to the extent
17 that Respondent feels membership in VCAILG is not an appropriate option, Respondent
18 does not have to become a member of VCAILG.

19
20 **C. Reply to Third Affirmative Defense (Violation of Equal Protection – Selective**
21 **and Discriminatory Enforcement)**

22 Respondent fails to include any facts or legal authority for its proposition that the
23 Regional Board has violated Respondent's constitutional right of equal protection.
24 Respondent carries the burden of proving the existence of this affirmative defense,
25 including all necessary elements. Respondent has failed to do so. As pled, Respondent's
26 purported affirmative defense is no more than a conclusory statement of opinion and law
27 and does not put the Prosecution Team on notice as to what facts give rise to this
28 asserted defense.

1 The Executive Officer's authority to issue an administrative civil liability complaint
2 (Complaint) is discretionary and the Executive Officer has sole discretion whom to
3 charge, what charges to file and pursue, and what liability to seek.³ (Wat. Code, § 13323;
4 *Dix v. Superior Court of Humboldt County (The People)* (1991) 53 Cal.3d 442, 451;
5 *People v. Birks* (198) 19 Cal.4th 108, 134; *People v. Superior Court (Lyons Buick-Opel-*
6 *GMC)* (1977) 70 Cal.App.3d 341, 344.) In order to establish a claim of discriminatory
7 enforcement, Respondent must demonstrate that it has been deliberately singled out for
8 prosecution on the basis of some invidious criterion, such as race, religion, intent to inhibit
9 or punish the exercise of constitutional rights, or malicious or bad faith intent to injure.
10 (*Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 298; *People v. Superior Court (Hartway)*
11 (1977) 19 Cal.3d 338, 348 ["To establish the defense [of discriminatory enforcement], the
12 defendant must prove: (1) 'that he has been deliberately singled out for prosecution on
13 the basis of some invidious criterion'; and (2) that 'the prosecution would not have been
14 pursued except for the discriminatory design of the prosecuting authorities.'].)
15 Respondent bears the burden of establishing the discriminatory prosecution defense.
16 (*Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 305). Respondent has failed to identify,
17 and the record is devoid of, any facts to support that it has been singled out for
18 prosecution on the basis of an invidious criterion and that the prosecution would not have
19 been pursued but for the discriminatory design of the prosecuting authorities. What the
20 record does show is that Respondent was selected as appropriate for enforcement given
21 the large acreage that Respondent owns, as well as the fact that its parcels are adjacent
22 to the Santa Clara River. The fact that there may be other persons who are also in
23 violation but have not yet been subject to formal enforcement action does not give rise to
24 a claim of discriminatory prosecution. (*Baluyut v. Superior Court* (1996) 12 Cal.4th 826,
25 832 [Unequal treatment which results simply from laxity of enforcement which reflects a
26

27 ³ Complaint No. R4-2010-0023 was issued by the Assistant Executive Officer pursuant to a delegation of
28 authority by the Executive Officer, in accordance with Water Code section 7.

1 nonarbitrary basis for selective enforcement of a statute does not deny equal protection
2 and is not constitutionally prohibited discriminatory enforcement.}]

3
4 **D. Reply to Fourth Affirmative Defense (Expiration of Conditional Waiver)**

5 Respondent fails to include any facts or legal authority for its proposition that the
6 Complaint cannot proceed. To the contrary, Provision I.5. of Order No. R4-2005-0080
7 states "This Order and Conditional Waiver shall become effective on November 3, 2005
8 and expire on November 3, 2010, *except for enforcement purposes*, unless rescinded,
9 renewed, or extended by the Regional Board" (emphasis added).

10
11 **E. Reply to Fifth Affirmative Defense (Improper Tax)**

12 Respondent includes no legal authority and insufficient facts to support its
13 proposition that the Regional Board has imposed a tax. Respondent further fails to
14 explain how the fees imposed by the Conditional Waiver program even constitute a tax.
15 Respondent carries the burden of proving the existence of this affirmative defense.
16 Respondent has failed to do so. As pled, Respondent's purported affirmative defense is
17 no more than a conclusory statement of opinion and law.

18 Under the doctrine of collateral estoppel, Respondent is also precluded from
19 contesting the validity of any fee imposed by Order No. R4-2005-0080 or Order No. R4-
20 2010-0186, *Conditional Waiver of Waste Discharge Requirements for Discharges from*
21 *Irrigated Lands within the Los Angeles Region*. (Wat. Code § 13330(d).) Collateral
22 estoppel precludes a party to an action from re-litigating, in a second proceeding, matters
23 that were litigated and determined in a prior proceeding. (*Lucido v. Superior Court* (1998)
24 51 Cal.3d 335, 341.) On November 3, 2005, the Regional Board adopted Order No. R4-
25 2005-0080, which provides that individual dischargers, or discharger groups, shall pay a
26 fee to the State Water Board in compliance with the fee schedule contained in Title 23 of
27 the California Code of Regulations. On October 7, 2010, the Regional Board renewed
28 the Conditional Waiver through issuance of Order No. R4-2010-0186. Respondent could

1 have filed a petition with the State Water Board pursuant to Water Code section 13320
2 challenging Order No. R4-2005-0080 and/or Order No. R4-2010-0186. If the State Water
3 Board denied review, Respondent could have a filed a petition for writ of mandate, as
4 prescribed by Water Code section 13330. Because no petition was filed, the Orders and
5 the imposition of fees pursuant to the Orders, are final and not subject to review. (Wat-
6 Code, § 13330(d).)

7 Even if the doctrine of collateral estoppel does not preclude Respondent from
8 challenging the fee imposed under Order No. R4-2005-0080 or No. R4-2010-0186, the
9 proper procedure for challenging the fee is for Respondent to enroll in the Conditional
10 Waiver, refuse to pay the fee, (or pay under protest and demand a refund) and then
11 petition for review under the aforementioned Water Code Sections 13320 and 13330 if
12 the Regional Board refuses to accept the enrollment for failure to pay the fee. Even if the
13 fee were to be deemed invalid at some time in the future, the invalidity of the fee would
14 not constitute a defense to this enforcement action.

15
16 **F. Reply to Sixth Affirmative Defense (Offset and Excuse from Compliance)**

17 Respondent includes no evidence whatsoever to support its claim that it has
18 provided great "environmental and ecological benefit" to the public from the management
19 of its property, and cites to no legal authority that this alleged "environmental and
20 ecological benefit" constitutes an affirmative defense to the enforcement action. Further,
21 Respondent includes absolutely no evidence to substantiate its claims that it has lost
22 money every year to maintain the alleged "environmental and ecological benefits."
23 Although given the opportunity, Respondent chose to submit no documentation
24 whatsoever on its financial status.

25
26 **G. Reply to Seventh Affirmative Defense (Estoppel)**

27 Respondent includes no legal authority and insufficient facts to support its
28 proposition that the Regional Board "should be estopped from asserting that Respondent

1 must comply with the Conditional Waiver or that it must be enroll in the Ventura County
2 Farm Bureau." Respondent carries the burden of proving the existence of this affirmative
3 defense, including all necessary elements. Respondent has failed to do so. As pled,
4 Respondent's purported affirmative defense of estoppel is no more than a conclusory
5 statement of opinion and law.

6 The Prosecution Team agrees that Respondent informed the Prosecution Team in
7 the summer of 2010 that Respondent was exploring the possibility of forming an
8 organization that would be independent of VCAILG. As such, Respondent stated that it
9 was going to send a letter to other nonenrolled agricultural landowners in Ventura County
10 to determine their interest in forming such a group. At that time, the Prosecution Team did
11 request (but by no means "insisted") to see a draft of Respondent's letter before it was
12 sent to the nonenrolled landowners. Respondent was kind enough to provide a draft to
13 the Prosecution Team. As stated in Rebecca Veiga Nascimento's email to Paul Beck on
14 September 21, 2010, when Ms. Nascimento relayed the Prosecution Team's comments
15 on the draft letter, the comments were solely provided so that recipients of the letter were
16 given accurate information concerning the Regional Board and its Conditional Waiver for
17 irrigated lands program. Ms. Nascimento also informed Respondent that the Prosecution
18 Team was neither supporting nor endorsing the letter, nor did sending the letter to other
19 nonenrolled landowners resolve the pending Complaint. As such, the Prosecution Team's
20 comments were limited to correcting several factual misstatements that were in the draft
21 letter. Most of the factual errors concerned statements in the draft letter that either stated
22 or implied that all nonenrolled agricultural landowners were the subject of a pending
23 enforcement action. As explained, that was, and still is, not the case. Not all of the
24 unenrolled landowners are also presently the subject of a pending enforcement action
25 such as receiving an administrative civil liability complaint. Thus, it was reasonable and
26 appropriate for the Prosecution Team to request that Respondent correct the factual
27 errors in the letter so as not to provide unenrolled landowners with false information.

28 Respondent further includes a cursory statement that the letter was no longer

1 viable after the Prosecution Team provided its comments, "which ensured that
2 Respondent would not be able to accomplish its intended purpose in formulating and
3 circulating such a letter." Respondent utterly fails to explain how its letter was no longer
4 viable and how the Prosecution Team's comments prevented Respondent from
5 circulating the letter. In fact, Respondent was free to send its letter, even without
6 incorporating the Prosecution Team's comments, to nonenrolled landowners. The
7 Prosecution Team did not, and simply could not, prevent Respondent from sending the
8 letter.

9 REPLY TO RESPONDENT'S PRAYER

10 Respondent includes no facts or legal authority for its proposition that it can and
11 should be awarded its attorney's fees and expenses. Respondent further fails to show
12 how it is acting as a private attorney general in this matter that deserves an award of
13 attorney's fees under the California Private Attorney General Doctrine. The burden is on
14 the Respondent to establish each prerequisite to an award of attorney's fees under the
15 California Private Attorney General Doctrine. (*Ebbetts Pass Forest Watch v. Cal. Dept. of*
16 *Forestry and Fire Protection* (2010) 187 Cal.App.4th 376, 381, review den. Nov. 10,
17 2010.) Moreover, Respondent's cursory statement does not put the Prosecution Team on
18 notice as to what facts give rise to the Respondent's prayer. The Prosecution Team
19 contends that Respondent cannot provide any facts justifying an award of attorney's fees
20 since none exist. Therefore, Respondent's prayer should be denied.

21
22 REPLY TO RESPONDENT'S WITNESSES

23 The Prosecution Team objects to Respondent's witnesses numbered 1 through 5.
24 The witnesses numbered 1 through 5 were not specifically identified by name. Rather, in
25 language that reads like a subpoena, Respondent provided a vague description of
26 witnesses based on subject matter and requested "that, promptly upon receipt of
27 Respondent's Objections and Responses, the Board's Prosecution Team stipulate to
28 identify and produce the witnesses described and referred to in the foregoing categories

1 numbered 1 through 5, above, for examination by Respondent at the hearing." Unless
2 ordered by the Hearing Panel, the Prosecution Team will neither stipulate to identify nor
3 produce any witnesses as requested by Respondent. The Prosecution Team has no
4 obligation to identify Respondent's own witnesses; only Respondent has that duty.
5 Moreover, Respondent's actions constitute an improper attempt at late discovery. The
6 Complaint in this matter was issued to Respondent over one-year ago on February 18,
7 2010. Respondent has therefore had ample opportunity to conduct any discovery
8 regarding this matter, which included subpoenaing witnesses. Furthermore, pursuant to
9 Section II (Availability of Documents) of the Notice of Public Hearing dated February 18,
10 2010 and the Revised Notice of Public Hearing dated December 17, 2010, Respondent
11 was notified that it could conduct a file review of the administrative record for this matter.
12 Respondent chose not to conduct any discovery at all prior to its written submission
13 deadline of February 16, 2010. Accordingly, Respondent should not be allowed to do so
14 now.

15 The Prosecution Team has already identified its witnesses, first in the preliminary
16 Hearing Panel binder sent to Respondent on or about January 26, 2011, and second in
17 the final Hearing Panel binder sent to Respondent and the Hearing Panel on or about
18 March 7, 2011. All of the Prosecution Team's identified witnesses that testify before the
19 Hearing Panel will be available for cross-examination. If Respondent desires to call any of
20 the Prosecution Team witnesses as its own witness, then Respondent must subpoena
21 the individual witnesses and pay any necessary witness fees. If Respondent chooses to
22 subpoena any witness in response to this Reply Brief, the Prosecution Team will move to
23 quash the subpoena based on any and all appropriate legal grounds.

24 The Prosecution Team has no objections to Respondent's witnesses numbered 6
25 (Pat Thomas) and 7 (David Park). However, Respondent submitted absolutely no
26 evidence when it filed its Objections and Responses dated February 16, 2011, including
27 any financial information on the value of crops produced on the property and
28 Respondent's ability to pay the recommended administrative civil liability amount. Thus, to

1 the extent that Ms. Thomas and/or Mr. Park testify to facts not previously raised in
2 Respondent's Objections and Responses, or are not supported by any evidence, the
3 Prosecution Team reserves its right to raise objections concerning the witness' testimony
4 at the hearing.

5 ~~The Prosecution Team objects to Respondent's unreasonable estimate that it will~~
6 need a minimum of eight (8) hours to examine its witnesses. Respondent fails to include
7 any explanation as to why eight (8) hours is reasonable and/or necessary and why it
8 would not be able to provide an adequate defense in less time. The Prosecution Team's
9 Complaint is predicated on the Respondent's failure to file a Notice of Intent or a report of
10 waste discharge, after receiving notice to do so. As such, the allegations in the Complaint
11 and the penalty calculation are not complex matters that require a lengthy hearing. The
12 Prosecution Team requests that the Hearing Panel allocate Respondent a reasonable
13 amount of time for its presentation.

14 The Prosecution Team anticipates that it will need no more than 1 hour for its
15 presentation, which includes its case-in-chief, cross examination of Respondent's
16 witnesses, rebuttal, and closing statement. However, if Respondent is allotted more than
17 one (1) hour for its presentation, the Prosecution Team requests equal time.

18
19 REPLY TO RESPONDENT'S DOCUMENTS

20 The Prosecution Team has no objection to Respondent's documents numbered 1
21 (Letter dated January 31, 2011 from Paul A. Beck to Rebecca Veiga Nascimento), 2
22 (Email dated February 10, 2011 from Jennifer Fordyce to Paul A. Beck), and 3
23 (Memorandum to File dated November 17, 2009). While Respondent failed to include
24 these documents with its Objections and Responses, Respondent's document number 3
25 was already included in the preliminary Hearing Binder and will also be included in the
26 final Hearing Binder. Respondent's documents numbered 1 and 2 were not included in
27 the preliminary Hearing Binder since they did not exist when the preliminary Hearing
28 Binder was created. They will, however, be included in the final Hearing Binder.

1 The Prosecution Team objects to Respondent's additional documents numbered 1
2 through 6. Like Respondent's witnesses, Respondent's documents numbered 1 through 6
3 were not specifically identified by name; nor were they provided to the Prosecution Team.
4 Rather, in language that reads like a subpoena, Respondent provided a vague description
5 of documents based on subject matter and requested "that the Prosecution Team,
6 promptly upon its receipt [of Respondent's Objections and Responses], stipulate in writing
7 to produce the documents described in categories 1 through 6, [] at a reasonable time
8 and place to permit Respondent's inspection and copying thereof and to facilitate
9 Respondent's introduction of such documents or portions thereof into evidence at the
10 hearing." Unless ordered by the Hearing Panel, the Prosecution Team will neither
11 stipulate to nor produce any documents as requested by Respondent. The Prosecution
12 Team has no obligation to identify and/or produce documents that Respondent intends to
13 use as evidence at the hearing; only Respondent has that duty. Moreover, Respondent's
14 actions constitute an improper attempt at late discovery. The Complaint in this matter was
15 issued to Respondent over one-year ago on February 18, 2010. Respondent has
16 therefore had ample opportunity to conduct any discovery regarding this matter, which
17 included subpoenaing documents. Furthermore, pursuant to Section II (Availability of
18 Documents) of the Notice of Public Hearing dated February 18, 2010 and the Revised
19 Notice of Public Hearing dated December 17, 2010, Respondent was notified that it could
20 conduct a file review of the administrative record for this matter. Respondent chose not to
21 conduct any discovery at all prior to its written submission deadline of February 16, 2010,
22 and further chose not to submit any additional documents with its February 16, 2010
23 submission. Accordingly, Respondent should not be allowed to do so now.

24 The Prosecution Team has already provided Respondent with the documents and
25 evidence the Prosecution Teams intends to rely on, first in the preliminary Hearing Panel
26 binder sent to Respondent on or about January 26, 2011, and second in the final Hearing
27 Panel binder sent to Respondent and the Hearing Panel on or about March 7, 2011. If it
28 chooses, Respondent may also rely on documents in the Hearing Panel binder. If

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Respondent desires to introduce any additional documents in the possession of the Regional Board, then Respondent must subpoena the production of documents and pay any necessary costs. If Respondent chooses to subpoena the production of documents in response to this Reply Brief, the Prosecution Team will move to quash the subpoena based on any and all appropriate legal grounds.

REQUEST FOR PREHEARING CONFERENCE

The Prosecution Team requests a prehearing conference to address the procedural and evidentiary objections raised in this Reply Brief before March 11, 2011 so that the hearing will be conducted as efficiently as possible.

Respectfully submitted,

Jennifer Fordyce
Jennifer Fordyce
Attorney for the Prosecution Team

Date: 3/4/2011

Tab 4.4

Revised Notice of Public Hearing
December 17, 2010

Exhibit 11

HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLIC No. R4-2010-0023

REVISED NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
AND PROPOSE RECOMMENDATIONS

DISCHARGER
Balcom Ranch

DISCHARGE LOCATION
21099 S. Mountain Road
Santa Paula, CA 93060

RECEIVING WATERS
Santa Clara River

Administrative Civil Liability Complaint ("ACLIC") No. R4-2010-0023 alleges that Balcom Ranch violated California Water Code section 13260 by failing to submit a Notice of Intent to comply with the Regional Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands with the Los Angeles Region, Order No. R4-2005-0080 (Conditional Waiver), or a report of waste discharge for an individual waste discharge permit. As stated in the ACLIC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$35,700 be assessed against Balcom Ranch for the violations. The Prosecution Team is also seeking an additional \$400 for each day past 30 days from the date of the ACLIC (February 18, 2010) up to the date that Balcom Ranch submits either a Notice of Intent or a report of waste discharge for an individual waste discharge permit.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLIC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: March 17, 2011
Time: 9:00 A.M.
Place: TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by 5:00 pm on February 25, 2011. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Balcom Ranch
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by 5:00 pm on January 31, 2011. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest. The requesting party will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Rebecca Veiga Nascimento, Environmental Scientist. Jennifer Fordyce, Staff Counsel for the Regional Board, will advise the Prosecution Team prior to and at the panel hearing. Ms. Fordyce is currently advising the Regional Board in other unrelated matters, but neither Ms. Fordyce nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Rebecca Veiga Nascimento
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6784
rveiga@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than **January 26, 2011**, the Prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

Balcom Ranch is required to submit:

- 1) Any additional documents or evidence the Party wants the Hearing Panel to consider,
- 2) A summary of any legal and technical arguments and testimony the Party intends to present,
- 3) The name of each witness, if any, whom the Party intends to call at the hearing, and
- 4) A statement regarding how much time the Party needs to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties so that it is received by **5:00 pm on February 16, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **March 7, 2011**.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by 5:00 pm on January 18, 2011. If possible, please submit written comments in Word format electronically to rveiga@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by 5:00 pm on February 16, 2011 to state how much time they believe is necessary for their presentations (see Section VI. A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B.,

above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Chief Deputy Executive Officer Deb Smith, and a Legal Advisor, Mr. Jeff Ogata, Senior Staff Counsel for the Regional Board. Neither Ms. Smith nor Mr. Ogata have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by 5:00 pm on February 16, 2011.

Jeff Ogata
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5190
jogata@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by 5:00 pm on February 16, 2011 if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: December 17, 2010

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Title Addressed to: Paul Beck Offices of Paul Beck 101 Riverside Drive, Suite 701 Beverly Hills, CA 91423	B. Received by (Printed Name) C. Date of Delivery <i>Raychael Trean</i> <i>12/20/10</i>
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Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Tab 4.26

February 10, 2011 email from Prosecution Team
responding to Mr. Paul Beck's
January 31, 2011 letter

Exhibit 12

From: Jennifer Fordyce
To: pab@pablaw.org
CC: Jenny Newman; Rasmussen, Paula; Veiga Nascimento, Rebecca
Date: 2/10/2011 3:55 PM
Subject: Regional Water Quality Control Board - Balcom Ranch (ACL Complaint No. R4-2010-0023)

Dear Mr. Beck:

This email is in response to your email to Rebecca Veiga Nascimento dated February 2, 2011, which included a letter dated January 31, 2011. Like you, we want to keep the dialogue between Balcom Ranch and the Prosecution Team as constructive as possible. Accordingly, you should have already received the preliminary Hearing Panel binder containing the Prosecution Team's evidence and summary of testimony for the March 17, 2011 hearing. As the Prosecution Team has not received a response to the Complaint from Balcom Ranch, we look forward to receiving Balcom Ranch's written submission on or before February 16, 2011. As a reminder, in accordance with the Revised Notice of Public Hearing dated December 17, 2010, Balcom Ranch is required to submit by February 16, 2011: 1) any additional documents or evidence Balcom Ranch wants the Hearing Panel to consider; 2) a summary of any legal and technical arguments and testimony Balcom Ranch intends to present at the hearing; 3) the name of each witness that Balcom Ranch intends to call at the hearing, and 4) a statement regarding how much time Balcom Ranch needs to present its case. Once we receive Balcom Ranch's written submission on or before that deadline, we will be able to engage in a more meaningful discussion concerning the merits of this enforcement action and the concerns you raised in your letter. At that time, the Prosecution Team would also be amenable to convening another meeting with Balcom Ranch to discuss a possible settlement of this matter prior to the March 17, 2011 hearing. In the meantime, your letter contained some inaccurate assertions that warrant a response at this time.

When we met with you and your clients on July 15, 2010, we agree that you informed us that Balcom Ranch was exploring the possibility of forming an organization that would be independent of the Ventura County Farm Bureau. As such, you stated that you were going to send a letter to other nonenrolled agricultural landowners in Ventura County to see if they would be interested in forming such a group. As you stated, we did request to see a draft of the letter before it was sent to the nonenrolled landowners. You were kind enough to provide to us with a draft, which we appreciated. However, as stated in Ms. Nascimento's email to you on September 21, 2010 when she relayed our comments on the draft letter, our comments were solely provided so that recipients of the letter were given accurate information concerning the Regional Board and its Conditional Waiver for irrigated lands program. Ms. Nascimento also informed you that we were not supporting or endorsing the letter, nor did sending the letter to other nonenrolled landowners resolve the pending Complaint. As such, our comments were limited to correcting several factual misstatements that were in the draft letter. Most of these factual errors concerned statements in the draft letter that implied that all nonenrolled agricultural landowners were the subject of a pending enforcement action. As we explained, that was, and still is, not the case. While almost all of the nonenrolled landowners in Ventura County have received a Notice of Violation letter from the Regional Board, it is true that not all of these landowners are also presently the subject of a pending enforcement action such as receiving an administrative civil liability complaint. While it is our desire that every landowner come into compliance immediately, it is impossible for staff of the Regional Board to bring an

enforcement action against every nonenrolled landowner at the same time given the Regional Board's limited staff resources and mandatory furloughs. Accordingly, Regional Board staff prioritizes its enforcement actions against nonenrolled agricultural landowners based on factors such as the size of the parcel and the parcel's proximity to a waterbody. Using these criteria, Balcom Ranch was selected as appropriate for enforcement given the large acreage that Balcom Ranch owns, as well as the fact that the Balcom Ranch's parcels are adjacent to the Santa Clara River. Once this matter is resolved, Regional Board staff will continue its efforts to bring enforcement actions against other nonenrolled landowners.

In your letter, you also asked whether there was "some other more acceptable but cooperative course of action that would obviate such an adversarial result." As I stated above, once we receive Balcom Ranch's written submission pursuant to the Revised Notice of Public Hearing, the Prosecution Team would be amenable to convening another meeting with Balcom Ranch to discuss a possible settlement of this matter prior to the March 17, 2011 hearing.

If you would like to discuss this matter further, please contact me at the information below.

Sincerely,

Jennifer Fordyce
Legal Advisor to the Prosecution Team

Jennifer L. Fordyce, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd floor
Sacramento, CA 95814
Phone - (916) 324-6682
Fax - (916) 341-5199
Email - jfordyce@waterboards.ca.gov

Item 11

Consideration of Complaint No. R4-2010-0023 for
Administrative Civil Liability to assess a penalty in the
amount of \$193,850 against Balcom Ranch for violation of
Water Code section 13260

Complaint No R4-2010-0023



Linda S. Adams
Secretary for
Environmental
Protection



Arnold Schwarzenegger
Governor

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:)	Complaint No. R4-2010-0023
)	
Balcom Ranch)	Pursuant to California Water Code § 13261
21099 South Mountain Road)	For Violations of
Santa Paula, CA 93060)	California Water Code § 13260

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Balcom Ranch (hereinafter, the "Discharger"), a commercial irrigated farming operation located at 21099 South Mountain Road in the City of Santa Paula, Ventura County, with Assessor Parcel Numbers (APNs) 046-0-150-140 and 046-0-150-320, is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose administrative civil liability pursuant to section 13261 of the California Water Code (CWC).
2. The Discharger is alleged to have violated CWC § 13260 by failing to submit a Notice of Intent to comply with the Regional Board's Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands with the Los Angeles Region, Order No. R4-2005-0080 or, alternatively, by failing to submit a report of waste discharge, when so requested by the Regional Board.
3. A hearing will be conducted on this Complaint by the Regional Board or a Regional Board Hearing Panel (Hearing Panel) within 90 days after service of this Complaint on the Discharger pursuant to CWC §§ 13228.14 and 13323, unless the Discharger waives the hearing and pays the recommended penalty of \$35,700 by March 22, 2010. The Discharger's representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. The Notice of Public Hearing that accompanies this Complaint contains the date, time, location, and specific procedures of the scheduled hearing.
4. At the hearing, the Regional Board will consider whether to affirm, increase, decrease, or reject the recommended administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability in a greater amount. The Regional Board may also take any other action appropriate as a result of the hearing.

Balcom Ranch
Administrative Civil Liability Complaint No. R4-2010-0023

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

5. Balcom Ranch owns and operates a 108-acre commercial irrigated farming operation that is located at 21099 South Mountain Road in Santa Paula, California, which is located near the intersection of South Mountain Road and Balcom Canyon Road. The APNs for these sites are 046-0-150-140 and 046-0-150-320. Balcom Ranch's mailing address is 943 S. Burnside Avenue, Los Angeles, CA 90036.
6. The Regional Board adopted the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands with the Los Angeles Region, Order No. R4-2005-0080 (Conditional Waiver) on November 3, 2005. The Conditional Waiver applies to wastewater (irrigation and stormwater runoff) discharged from irrigated agricultural operations in the Los Angeles Region, which includes the coastal watersheds of Los Angeles and Ventura Counties.
7. The Conditional Waiver required all commercial irrigated farming operations in the Los Angeles Region to submit a Notice of Intent, Monitoring and Reporting Program (MRP) Plan, and Quality Assurance Project Plan (QAPP), individually or as a member of a Discharger Group, to comply with the Conditional Waiver by August 3, 2006, pursuant to California Water Code Section 13260. Public notification regarding the adoption of this program included a Notice of Public Hearing on August 30, 2005, a September 27, 2005 newspaper notice published in the Ventura County Star, Thousand Oaks Star, Oxnard Star, Simi Valley Star, Moorpark Star, and Camarillo Star, as well as a letter mailed to agriculture stakeholders (addressed to interested parties) on April 17, 2006.
8. According to available records, including information from the Ventura County Assessor and a Regional Board staff site visit on November 17, 2009, Balcom Ranch owns and/or operates irrigated land and is subject to the Conditional Waiver.
9. On January 23, 2007, the Regional Board's Executive Officer sent an official notice entitled "Notice to Comply with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region." This Notice to Comply directed the Discharger to comply with the terms of the Conditional Waiver by first submitting a Notice of Intent, MRP Plan, and a QAPP, individually or as a member of a Discharger Group. Alternatively, if the Discharger did not enroll in the Conditional Waiver, the Discharger was required to submit a report of waste discharge in order to apply for an individual waste discharge permit. Finally, if the property was not commercially irrigated agriculture, and therefore not subject to the Conditional Waiver, the Discharger was asked to provide such information to the Regional Board. This Notice to Comply was sent to Balcom Ranch's mailing address.
10. The Discharger failed to respond to the January 23, 2007 notice, either by: a) submitting a Notice of Intent, MRP Plan, and QAPP to comply with the Conditional Waiver individually, b) providing proof of Discharger Group membership, c) submitting a report of waste discharge, or d) by providing information showing that the operation was not a commercial irrigated farming operation.
11. On November 15, 2007, the Executive Officer issued the Discharger a Notice of Violation for failure to enroll under the Conditional Waiver pursuant to California Water Code Section 13269. This Notice of Violation once again directed the Discharger to immediately

Balcom Ranch
Administrative Civil Liability Complaint No. R4-2010-0023

comply with the terms of the Conditional Waiver and to submit a Notice of Intent, MRP Plan, and QAPP or to join a Discharger Group. Regional Board staff mailed the November 15, 2007 Notice of Violation by certified mail, and received a return receipt confirming delivery to the Discharger at the same mailing address as the January 23, 2007 Notice to Comply letter.

12. The Discharger failed to respond to the November 15, 2007 Notice of Violation either by submitting a Notice of Intent, MRP Plan, and QAPP to comply with the Conditional Waiver or providing proof of Discharger Group membership. As of the date of this Complaint, more than 826 days have passed since the Regional Board sent the Notice of Violation.
13. On November 17, 2009, Regional Board staff conducted a site visit of APNs 046-0-150-140 and 046-0-150-320. Regional Board staff drove the eastern boundary of parcel 046-0-150-140 and the southern boundary of parcel 046-0-150-320 and verified that a portion of the parcel's land use is irrigated agriculture.
14. Agricultural activities can generate pollutants such as sediment, pesticides, and nutrients. Unregulated discharges of water containing these pollutants from irrigated lands to receiving water bodies can degrade water quality and impair beneficial uses.
15. The Discharger is alleged to have violated California Water Code section 13260 by failing to submit a report of waste discharge for an individual waste discharge permit or Notice of Intent to enroll under the Conditional Waiver by August 3, 2006, despite at least two subsequent notices by the Regional Board, and is therefore subject to civil liability pursuant to California Water Code Section 13261. To date, the Discharger still has not enrolled under the Conditional Waiver.

POTENTIAL MAXIMUM CIVIL LIABILITY

16. CWC § 13261(a) states that "Any person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b)."
17. CWC § 13261(b)(1) states that "Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."
18. Accordingly, the maximum civil liability authorized by CWC § 13261(b)(1) for violation of CWC § 13260 is \$1,000 per day for each day in which the Discharger failed to submit a report of waste discharge, Notice of Intent, MRP Plan, and QAPP, or proof of Discharger Group membership, after requested so by the Regional Board. Thus, the total potential maximum civil liability as of the date of this Complaint, calculated from the November 15, 2007 Notice of Violation (which required the Discharger to submit a Notice of Intent, MRP Plan, and QAPP) through February 18, 2010 is \$826,000.
19. While the Regional Board can assess penalties starting from the January 23, 2007 Notice to Comply, the Assistant Executive Officer is recommending that penalties be calculated starting from the November 15, 2007 Notice of Violation. The November 15, 2007 Notice of Violation was selected as the date from which penalties would be calculated because there is documentation that the Notice of Violation was received by the Discharger at its

Balcom Ranch
 Administrative Civil Liability Complaint No. R4-2010-0023

mailing address. Regional Board staff mailed the November 15, 2007 Notice of Violation by certified mail and received a return receipt confirming delivery to the Discharger.

Penalty Category	Calculation	Total
<i>Failure to submit: a) report of waste discharge, or b) Notice of Intent, MRP Plan, and QAPP, individually or as a member of a Discharger Group, to comply with Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080).</i>	CWC § 13261(b)(1): 826 days x \$1,000/day	\$826,000
Potential Maximum Civil Liability (as of the date of this Complaint)		\$826,000

20. The intent of this enforcement action is to encourage compliance with the Conditional Waiver and to ensure that commercial irrigated farming operations are meeting their legal responsibility to comply with the Conditional Waiver and to protect water quality.
21. The Discharger is hereby notified that the Regional Board's Assistant Executive Officer is also seeking civil penalties for each day past 30 days from the date of this Complaint up to the date that the Discharger submits either: (a) Notice of Intent, MRP Plan, and QAPP to individually comply with the Conditional Waiver, (b) proof of current membership in a Regional Board approved Discharger Group, such as the Ventura County Agriculture Irrigated Lands Group (VCAILG); or (c) a report of waste discharge for an individual waste discharge permit. Thus, the total potential maximum civil liability referenced above and the recommended civil liability referenced below will increase for each day past 30 days from the date of this Complaint that the Discharger continues to fail to submit a Notice of Intent, MRP Plan, and QAPP, proof of Discharger Group membership, or report of waste discharge. As such, the Discharger has the burden of submitting the required documentation in order to stop the accrual of penalties. For the Discharger's convenience, a copy of the Notice of Intent form, MRP Plan, and QAPP, as well as a list of the Discharger Groups that are currently on record with the Regional Board as submitting Notices of Intent and other required information, accompanies this Complaint.

RECOMMENDED CIVIL LIABILITY

22. On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted revisions to the Water Quality Enforcement Policy, which governs enforcement proceedings by the Regional Water Quality Control Boards and the State Water Board under the Porter-Cologne Water Quality Control Act. The revised Enforcement Policy sets forth provisions that apply to all discretionary administrative civil liabilities, including a 10-step penalty calculation methodology to develop a recommended civil liability for water quality violations. While the revised Enforcement Policy has not yet been approved by the Office of Administrative Law, and is therefore not a final regulation, the penalty calculation methodology in the revised Enforcement Policy may be used on a case-by-case basis as methodology to consider in assessing penalties. The Regional Board Prosecution Team used the penalty calculation methodology in the revised Enforcement Policy in developing a recommended penalty for the violations in this Complaint. Calculation of this penalty is provided in Exhibit A, attached hereto and incorporated herein by reference. An explanation of the 10-step process used to develop the recommended penalty is given in Exhibit B, attached hereto and incorporated herein by reference.

23. Pursuant to section 13327 of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:

a. Nature, circumstances, extent, and gravity of the violations:

The Discharger has been given sufficient notice to either submit: (1) a Notice of Intent, MRP Plan, and QAPP to individually enroll under the Conditional Waiver, (2) proof of Discharger Group membership, or (3) a report of waste discharge for an individual waste discharge permit. The Discharger has received at least two notices from the Regional Board requiring compliance. Enrollment is essential to Regional Board regulation in order to ensure compliance with the requirements of the Conditional Waiver. Moreover, the Conditional Waiver program requires water quality monitoring, which is fundamental to evaluating the health of waterbodies in the region.

b. Susceptibility to cleanup or abatement of the discharge:

Non-submittal of a Notice of Intent to enroll under the Conditional Waiver or report of waste discharge for an individual waste discharge permit constitutes a non-discharge violation. Therefore, the susceptibility to cleanup or abatement of the discharge is not applicable to the recommended penalty in this Complaint.

c. Degree of toxicity of the discharge:

The Regional Board does not have any specific information on the toxicity of potential discharges from this site. However, agriculture operations often use pesticides, fertilizers and/or other chemicals that are known to cause aquatic toxicity. Additionally, monitoring data, collected under the Conditional Waiver program, has reported toxic discharges in other locations that receive discharges from agriculture operations.

d. The ability of the Discharger to pay:

During the Regional Board staff site visit on November 17, 2009, staff determined that the Discharger grows oranges and row crops. Based on the 2008 Ventura County Crop

Balcom Ranch
Administrative Civil Liability Complaint No. R4-2010-0023

report, the production of Valencia oranges was 15.44 tons per acre. The value of this crop was \$264.37/ton. The value of Valencia oranges per acre is estimated at \$4,082.00. Based on the 2008 Ventura County Crop report, the median production of vegetable row crops was 12.24 tons per acre. The median value of this crop was \$586.53/ton. The value of vegetable row crops per acre is estimated at \$7,179.13.

Based on information from the Ventura County Assessor, the 2009-2010 tax assessment value of APN 046-0-150-140 is \$1,020,263; the 2009-2010 tax assessment value of APN 046-0-150-320 is \$1,007,699.

Regional Board staff lack sufficient financial information necessary to assess the Discharger's ability to pay the Total Base Liability Amount.

e. The effect on the Discharger's ability to continue its business:

Regional Board staff lack sufficient financial information necessary to assess the effect of the Total Base Liability Amount on the Discharger's ability to continue in business.

f. Any voluntary cleanup efforts undertaken:

The Regional Board is unaware of any voluntary cleanup efforts undertaken by this Discharger.

g. Prior history of violations:

The Regional Board is unaware of any prior violations.

h. Degree of culpability:

The Discharger is culpable because two official notices for the need to submit a Notice of Intent, MRP Plan, and QAPP, provide proof of Discharger Group membership, or submit a report of waste discharge were ignored. The Discharger was sent a Notice to Comply on January 23, 2007 and a Notice of Violation on November 15, 2007. The Discharger knew about the requirement to submit a Notice of Intent, MRP Plan, and QAPP, provide proof of Discharger Group membership, or submit a report of waste discharge and still did not comply.

i. Economic benefit or savings, if any, resulting from the violations:

The Discharger realized cost savings by failing to pay fees and failing to perform required individual water quality monitoring or participate in the Discharger Group option established under the Conditional Waiver. The Discharger realized additional cost savings by failing to attend required education courses. Regional Board staff conservatively assumes that the Discharger will select the most cost-effective option for compliance with the Conditional Waiver, which is enrollment in VCAILG. According to Ventura County Assessor records, the Discharger owns approximately 108.07 acres in Ventura County. Therefore, Regional Board staff estimates the cost savings for non-compliance to be approximately \$3,233 (including administration and monitoring costs, State Water Resources Control Board waiver fees, and education costs).

Balcom Ranch
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j. Other matters as justice may require:

An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violations and preparing this Complaint and related documents. The Regional Board charges a rate of \$150 per hour for recovery of staff costs. With total staff time at approximately 40 hours, staff costs incurred by the Regional Board are estimated at \$6,000.

24. After consideration of the factors in §13327 of the California Water Code and the penalty calculation methodology in Exhibits A and B attached hereto, the Assistant Executive Officer recommends that the Regional Board impose administrative civil liability on Balcom Ranch in the amount of \$35,700. This amount is recommended only if the Discharger enrolls (individually or as a Discharger Group member) in the Conditional Waiver for Irrigated Lands Program (Order No. R4-2005-0080) or submits a report of waste discharge for an individual waste discharge permit within 30 days from the date of this Complaint. This recommended civil liability includes staff costs.
25. If the Discharger does not enroll in the Conditional Waiver for Irrigated Lands Program (Order No. R4-2005-0080) or submits a report of waste discharge within 30 days from the date of this Complaint, then the Assistant Executive Officer recommends that the Regional Board impose administrative civil liability on Balcom Ranch in the additional increased amount of \$400 per day for each day past 30 days that they do not submit the required documentation. Thus, this recommended civil liability would be calculated as follows:

An assessment of \$35,700 plus \$400 a day for the number of days past 30 days in which Balcom Ranch fails to submit a Notice of Intent or report of waste discharge, after so requested by the Regional Board.

$$\$35,700 + (\$400 \times \# \text{ of days past 30 days}) = \$XXXXX^*$$

* As previously noted, the Regional Board's Assistant Executive Officer is seeking penalties for each day past 30 days from the date of this Complaint up to the date that the Discharger submits either: (a) a Notice of Intent, MRP Plan, and QAPP to individually comply with the Conditional Waiver, (b) proof of Discharger Group membership, or (c) a report of waste discharge for an individual waste discharge permit. Thus, the recommended civil liability referenced above will increase for each day past 30 days from the date of this Complaint that the Discharger continues to fail to submit a Notice of Intent and other documentation, proof of Discharger Group membership, or report of waste discharge. As such, the Discharger has the burden on submitting the required documentation in order to stop the accrual of penalties.

RECOMMENDED CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>Failure to submit: (a) report of waste discharge, or (b) Notice of Intent, MRP Plan, and QAPP, individually or as a member of a Discharger Group, to comply with Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Order No. R4-2005-0080)</i>	CWC § 13261(b)(1): If documents are submitted <u>within</u> 30 days of the date of this Complaint.	\$35,700
	OR CWC § 13261(b)(1): \$35,700+ (\$400 x # of days past 30 days) If documents are submitted <u>after</u> 30 days of the date of this Complaint.	\$XXXX
TOTAL RECOMMENDED PENALTY (AS OF THE DATE OF THIS COMPLAINT)		\$35,700

26. Balcom Ranch may waive its right to a hearing and pay the recommended civil liability. Should Balcom Ranch choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return it, along with a check in the amount of \$35,700 to the Regional Board at 320 W. 4th Street, Suite 200, Los Angeles, CA 90013 by 5:00 pm on March 22, 2010. The check must be made payable to the "State Water Pollution Cleanup and Abatement Account" and reference "ACL Complaint No. R4-2010-0023."
27. If the Discharger waives its right to a hearing and pays the civil liability recommended herein, this Complaint only resolves liability that the Discharger incurred through the date of this Complaint, for the violations specified herein, and does not relieve the Discharger from liability for any violations after the date of this Complaint or any violations not alleged in this Complaint.
28. If the Regional Board does not receive a waiver and full payment of the recommended civil liability by March 22, 2010, this Complaint will be heard before the Regional Board or Regional Board Hearing Panel pursuant to California Water Code §§13228.14 and 13323. The Notice of Public Hearing accompanying this Complaint contains the date, time, location, and specific procedures of the scheduled hearing on this matter.

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29. Nothing in this Complaint relieves the Discharger of any reporting obligation under the Conditional Waiver, including the obligation to submit the required Notice of Intent, conduct water quality monitoring (individually or as part of a Discharger Group), and implement Best Management Practices (BMPs), as necessary. Failure to submit the Notice of Intent, conduct water quality monitoring, and implement necessary BMPs may subject the Discharger to additional enforcement action, including penalties accrued after the date of this Complaint.
30. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.

Samuel Unger

Samuel Unger, PE
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board

February 18, 2010

Balcom Ranch
Administrative Civil Liability Complaint No. R4-2010-0023

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-XXXX-XXXX

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Balcom Ranch (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2010-0023 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the recommended liability.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$35,700** by check that references "ACL Complaint No. R4-2010-0023" made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Water Board by March 22, 2010 or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

See next page for Option 2

Balcom Ranch
Administrative Civil Liability Complaint No. R4-2010-0023

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future.
- b. I certify that the Discharger will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s).
- c. By checking this box, the Discharger requests that the Regional Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(Print Name and Title)

(Signature)

(Date)

Instructions
 1. Select Harm/Potential Harm for Discharge Violations.
 2. Select Degree of Offense.
 3. Select Susceptibility to Cleanup/Abatement.
 4. Select Deviation from Standard.
 5. Click Determine Harm Factor per Gallon/Day.
 6. Enter Values in the yellow highlighted fields.

Select Item: Harm/Potential Harm for Discharge Violations
 Select Item: Degree of Offense
 Select Item: Susceptibility to Cleanup/Abatement
 Select Item: Deviation from Standard

Discharger Name/ID:

		Violation 1		
Discharge Violations	Step 1	Potential Harm Factor (Generated from Bulion)		
	Step 2	Per Gallon Factor (Generated from Bulion)		
		Gallons		
		Statutory / Adjusted Max per Gallon (\$)		
	Total	\$		
Non-Discharge Violations	Step 3	Per Day Factor (Generated from Bulion)		
		Days		
		Statutory Max per Day		
	Total	\$		
Initial Amount of the ACL		\$	13,200.00	
Additional Factors	Step 4	Culpability	1.5	\$ 19,800.00
		Cleanup and Cooperation	1.5	\$ 29,700.00
		History of Violations		\$ 29,700.00
	Step 5	Total Base Liability Amount	\$	29,700.00
Step 6	Ability to Pay & to Continue in Business	\$	29,700.00	
Step 7	Other Factors as Justice May Require		\$ 29,700.00	
		Staff Costs	\$ 5,000.00	\$ 35,700.00
Step 8	Economic Benefit	\$ 3,233.00	\$ 35,700.00	
Step 9	Minimum Liability Amount	\$ 0		
	Maximum Liability Amount	\$ 826,000.00		
Step 10	Final Liability Amount	\$	35,700.00	

Penalty Day Range Generator

Start Date of Violation=
 End Date of Violation=

Maximum Days Fined (Steps 2 & 3) = Days
 Minimum Days Fined (Steps 2 & 3) = Days

EXHIBIT B
10-STEP PENALTY CALCULATION METHODOLOGY

Step 1 - Potential for Harm for Discharge Violations

This step does not apply since the violations alleged in the Complaint are non-discharge violations.

Step 2 - Assessment for Discharge Violations

This step does not apply since the violations alleged in the Complaint are non-discharge violations.

Step 3 - Per Day Assessments for Non-Discharge Violations

Regional Board staff used the matrix set forth in the revised Enforcement Policy to calculate an initial liability factor for the violations, considering Potential for Harm and the extent of deviation from applicable requirements. Staff determined that the Deviation from Requirement was Major since the Discharger completely disregarded the requirement to enroll in the Conditional Waiver, thus constituting a complete deviation from the requirement. Staff determined that the Potential for Harm was Moderate since agricultural operations often use pesticides, fertilizers, and/or other chemicals that are known to cause aquatic toxicity. From the range given in the matrix, Staff selected a Per Day Factor of 0.4, which was the most conservative factor in the given range.

Pursuant to CWC section 13261, the Regional Board may assess a maximum administrative civil liability of \$1,000 for each day in which the Discharger failed to submit the required documentation, after so requested by the Regional Board.

As of the date of the Complaint, the Discharger has been in violation for 826 days, which was calculated from the November 15, 2007 Notice of Violation through February 18, 2010. Thus, the initial per day assessment is the Per Day Factor multiplied by the maximum per day amount allowed under the CWC. Thus, 0.4 multiplied by \$1,000 equals an initial per day assessment of \$400, which would calculate to \$330,400 as the initial amount of the penalty.

However, in accordance with the revised Enforcement Policy, an alternative approach to penalty calculation for violations that last more than 30 days may be used if one of three findings is made by the Regional Board. Regional Board staff has determined that this multiple-day approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis. For violations that last more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of the violation, plus an assessment for each 5 day period of violation until the 30th day, plus an assessment for each 30 days of violation thereafter. Since this violation lasted 826 days, only 33 days worth of violations would be accrued, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, and so forth for every additional 30 days of violation.

Balcom Ranch
Complaint No. R4-2010-0023

After adjusting the number of days in violation, Staff calculated the Initial Amount of the Administrative Civil Liability as \$13,200. This amount was determined by multiplying the Per Day Factor (0.4) by the adjusted number of days of violation (33 days) by the maximum per day amount (\$1,000).

Step 4 – Adjustment Factors

Staff considered Violator's Conduct Factors to calculate adjustments to the amount of the Initial Amount of the Administrative Civil Liability as follows:

Culpability - The Discharger has a high degree of culpability for the violations. The Discharger was given sufficient notice (at least 2 official notices) to submit the required documentation to come into compliance. The Discharger therefore knew about the requirement and failed to comply. Upon receiving the first notice, a reasonable and prudent person would have enrolled in the Conditional Waiver to come into compliance. Therefore, Staff selected 1.5, which is the highest multiplier in the given range. 1.5 was then multiplied by the Initial Amount, which resulted in \$19,800.

Cleanup and Cooperation - The Discharger has not voluntarily cooperated in returning to compliance. As of the date of the Complaint, the Discharger has yet to come into compliance with submitting the required documentation, despite two official notices by the Regional Board. Therefore, Staff selected 1.5, which is the highest multiplier in the given range. 1.5 was then multiplied by \$19,800, which resulted in \$29,700.

History of Violations - Staff is unaware of any prior violations by the Discharger. Therefore, Staff selected 1, which is a neutral multiplier. Therefore, the \$29,700 amount remained the same.

Step 5 – Determination of Total Base Liability Amount

After considering the Adjustment Factors, Staff calculated the Total Base Liability Amount as \$29,700.

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

Staff lack sufficient financial information necessary to assess the Discharger's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the Discharger's ability to continue in business. Therefore, Staff selected 1, which is a neutral multiplier. Accordingly, the Total Base Liability Amount was not adjusted.

Step 7 – Other Factors as Justice May Require

Staff believe that the Total Base Liability Amount determined using the above factors is appropriate. Therefore, Staff selected 1, which is a neutral multiplier. Accordingly, the Total Base Liability Amount was not adjusted.

The costs of investigation and enforcement are "other factor as justice may require" and should be added to the Total Base Liability Amount. Staff costs incurred by the Regional Board to date are \$6,000. This amount was added to the Total Base Liability Amount, which equals \$35,700.

Balcom Ranch
Complaint No. R4-2010-0023

Step 8 – Economic Benefit

Staff estimates the cost-savings for non-compliance to be approximately \$3,233, which is a conservative estimate based on the most cost-effective method of compliance. Staff has determined that the adjusted Total Base Liability Amount is at least 10 percent higher than the Economic Benefit Amount, thus the amount was not adjusted.

Step 9 – Maximum and Minimum Liability Amounts

The Regional Board is not required to assess any minimum liability amount for these violations; therefore, the minimum liability amount is \$0. The maximum liability amount for 826 days of violation is \$826,000.

Step 10 – Final Liability Amount

In accordance with the above methodology, Staff recommends a Final Liability Amount of \$35,700. Staff has determined that this Final Liability Amount is within the statutory minimum and maximum amounts.

Tab 4.14

Memo to File, Compliant No. R4-2010-0023
Economic Benefit or Savings Resulting from
Violations, January 28, 2010

Exhibit 14



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

TO: Memo to File

FROM: Rebecca Veiga Nascimento
Environmental Scientist

DATE: January 28, 2010

SUBJECT: COMPLAINT NO. R4-2010-0023 – ECONOMIC BENEFIT OR SAVINGS
RESULTING FROM VIOLATIONS

California Water Code (CWC) section 13327 requires the Regional Board to consider any economic benefit or savings, if any, resulting from a violation. This memo details the economic benefit or savings resulting from the violations alleged in Complaint No. R4-2010-0023. As indicated below, Balcom Ranch (Discharger) realized cost savings by failing to pay fees and failing to conduct required individual water quality monitoring or participate in the Discharger Group option of the Conditional Waiver. Balcom Ranch realized additional cost savings by failing to attend required education courses.

Balcom Ranch owns commercial irrigated agriculture land (Assessor Parcel Numbers 046-0-150-140 and 046-0-150-320) in Santa Paula, California. According to Ventura County Assessor records, Balcom Ranch owns approximately 108 acres.

Table 1 is an estimate of fee, monitoring, and education costs saved based on typical individual enrollment in the Conditional Waiver program. The cost savings for individual enrollment is \$46,817.20.

Table 1

Estimated Cost Saved, Typical Individual Enrollment		
	Cost	Total
State Water Resources Control Board Annual Fee*	(\$100/farm + \$0.30/acre) x 3 yrs	\$ 397.20
Monitoring cost (analysis only)	\$4,562/event	
Monitoring 2007	4 events per year	\$18,248
Monitoring 2008	4 events per year	\$18,248
Monitoring 2009	2 events per year	\$9,124
Education cost (personal time)	\$100/hour x 8 hours	\$800
		\$46,817.20

*Based on 108 acres

California Environmental Protection Agency

Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations

Recycled Paper
Exhibit 14

4-312

Table 2 is an estimate of fee, monitoring, and education costs saved based on group enrollment in the Conditional Waiver program. This group enrollment estimate was based on cost information provided by the Ventura County Farm Bureau (administrator of the Ventura County Agricultural Irrigated Lands Group (VCAILG)) that consists of the average annual cost of group administration and monitoring. The cost savings for group enrollment is \$3,257.00.

Table 2

Estimated Cost Saved VCAILG Enrollment		
	Cost	Total
State Water Resources Control Board Annual Fee*	(\$0.12/acre) x 3 years	\$38.88
Group cost* (average annual cost of administration and monitoring)		
Group cost 2005-06	\$3.48/acre	\$375.84
Group cost 2006-07	\$4.70/acre	\$507.60
Group cost 2007-08	\$6.89/acre	\$744.12
Group cost 2008-09	\$7.32/acre	\$790.56
Education cost (personal time)	\$100/hour x 8 hours	\$800
	Total	\$3,257.00

*Based on 108 acres.

I conservatively assume that the Discharger will select the most cost effective option for compliance with the Conditional Waiver, which is group enrollment in VCAILG. Therefore, for purposes of this Complaint only, I estimate that Balcom Ranch realized cost savings for non-compliance in the amount of \$3,257.00.