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. R4-2010-0027**
	)	**Administrative Civil Liability**
Zuma Canyon Orchids	)	**Pursuant to California Water Code § 13261**
5949 Bonsall Drive	)	**For Violations of**
Malibu, CA 90265	)	**California Water Code § 13260**

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Zuma Canyon Orchids (hereinafter, the "Discharger"), a commercial irrigated farming operation located at 5949 Bonsall Drive in Malibu, California (Assessor Parcel Number (APN) 4467-024-003), 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 $32,100 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.

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

5. Zuma Canyon Orchids, which is owned and operated by Amado, Maria, and George Vazquez, is a 3.89-acre commercial irrigated farming operation that is located at 5949 Bonsall Drive in Malibu, California. The property on which Zuma Canyon Orchids operates is owned by Amado and Maria Vazquez and the Vazquez Trust.

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 as well as a letter mailed to agriculture stakeholders (addressed to interested parties) on May 30, 2006. .

8. According to available records, including information from the Los Angeles County Assessor and a Regional Board staff site visit on January 14, 2010, Zuma Canyon Orchids 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.

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 March 13, 2008, 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 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 March 13, 2008 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 March 13, 2008 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 707 days have passed since the Regional Board sent the Notice of Violation.

13. On January 14, 2010, Regional Board staff conducted a site visit of APN 4467-024-003. Regional Board staff walked the eastern boundary of the parcel 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 March 13, 2008 Notice of Violation (which required the Discharger to submit a Notice of Intent, MRP Plan, and QAPP) through February 18, 2010 is $707,000.

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 March 13, 2008 Notice of Violation. The March 13, 2008 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. Regional Board staff mailed the March 13, 2008 Notice of Violation by certified mail and received a return receipt confirming delivery to the Discharger.

Penalty Category	Calculation	Total
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)	CWC § 13261(b)(1): 707 days x $1,000/day	$707,000
Potential Maximum Civil Liability (as of the date of this Complaint)		**$707,000**

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 Nursery Growers Association, Irrigated Lands Group, 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 January 14, 2010, staff determined that the Discharger grows nursery crops. Moreover, the nursery license issued to Zuma Canyon Orchids by the California Department of Food and Agriculture (CDFA) classifies the Discharger as a producer of decorative plants, including orchids. The 2007 Los Angeles County Crop Report documents that nursery products are the number one crop in the County. In 2007, miscellaneous nursery crops in Los Angeles County, which includes orchids, were valued at approximately $14.1 million.

Based on information from the Los Angeles County Assessor, the 2008 Assessed Total Value of APN 4467-024-003 is $568,757.

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 March 13, 2008. 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 group enrollment in the Nursery Growers Association, Irrigated Lands Group. Therefore, Regional Board staff estimates the cost savings for non-compliance to be approximately $5,253 (including administration and monitoring costs, State Water Resources Control Board waiver fees, and education costs).

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 Zuma Canyon Orchids in the amount of $32,100. 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 Zuma Canyon Orchids 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 $32,100 plus $400 a day for the number of days past 30 days in which Zuma Canyon Orchids fails to submit a Notice of Intent or report of waste discharge, after so requested by the Regional Board.

$32,100 + ($400 x # 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
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)	CWC § 13261(b)(1): If documents are submitted within 30 days of the date of this Complaint. **OR**	$32,100
	CWC § 13261(b)(1): $32,100+ ($400 x # of days past 30 days) If documents are submitted after 30 days of the date of this Complaint.	$XXXX
TOTAL RECOMMENDED PENALTY (AS OF THE DATE OF THIS COMPLAINT)		$32,100

26. Zuma Canyon Orchids may waive its right to a hearing and pay the recommended civil liability. Should Zuma Canyon Orchids 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 $32,100 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. R4-2010-0027."

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.

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

February 18, 2010

WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0027

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

I am duly authorized to represent Zuma Canyon Orchids (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R4-2010-0027 (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 **$32,100** by check that references "ACL Complaint No. R4-2010-0027" 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

☐ ***(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)

EXHIBIT A
PENALTY CALCULATION

Instructions
1. Select Harm/Potential Harm for Discharge Violations
2. Select Degree of Toxicity
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day"
6. Enter Values into the Yellow highlighted fields

Select Item	Harm/Potential Harm for Discharge Violations
Select Item	Degree of Toxicity
Select Item	Susceptibility of Cleanup or Abatement
Select Item	Deviation from Standard

Discharger Name/ID: Zuma Canyon Orchids

			Violation 1	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)		
	Step 2	Per Gallon Factor (Generated from Button)		
		Gallons		
		Statutory / Adjusted Max per Gallon ($)		
		Total		$ -
		Per Day Factor (Generated from Button)		
		Days		
		Statutory Max per Day		
		Total		$ -
Non-Discharge Violations	Step 3	Per Day Factor	0.4	
		Days	29	
		Statutory Max per Day	$ 1,000	
		Total		$ 11,600.00
		Initial Amount of the ACL		**$ 11,600.00**
Additional Factors	Step 4	Culpability	1.5	$ 17,400.00
		Cleanup and Cooperation	1.5	$ 26,100.00
		History of Violations	1	$ 26,100.00
	Step 5	**Total Base Liability Amount**		**$ 26,100.00**
	Step 6	Ability to Pay & to Continue in Business	1	$ 26,100.00
	Step 7	Other Factors as Justice May Require	1	$ 26,100.00
		Staff Costs	$ 6,000	$ 32,100.00
	Step 8	Economic Benefit	$ 5,253	**$ 32,100.00**
	Step 9	Minimum Liability Amount	0	
		Maximum Liability Amount	$ 707,000	
	Step 10	**Final Liability Amount**		**$ 32,100.00**

Penalty Day Range Generator

Start Date of Violation=	3/13/08	
End Date of Violation=	2/18/10	
Maximum Days Fined (Steps 2 & 3) =	707	Days
Minimum Days Fined (Steps 2 & 3) =	29	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 707 days, which was calculated from the March 13, 2008 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 $282,000 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 707 days, only 29 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.

After adjusting the number of days in violation, Staff calculated the Initial Amount of the Administrative Civil Liability as $11,600. This amount was determined by multiplying the Per Day Factor (0.4) by the adjusted number of days of violation (29 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 $17,400.

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 $17,400, which resulted in $26,100.

History of Violations – Staff is unaware of any prior violations by the Discharger. Therefore, Staff selected 1, which is a neutral multiplier. Therefore, the $26,100 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 $26,100.

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 $32,100.

Step 8 – Economic Benefit

Staff estimates the cost-savings for non-compliance to be approximately $5,253, 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 707 days of violation is $707,000.

Step 10 – Final Liability Amount

In accordance with the above methodology, Staff recommends a Final Liability Amount of $32,100. Staff has determined that this Final Liability Amount is within the statutory minimum and maximum amounts.

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

ACLC R4-2010-0027

NOTICE OF PUBLIC HEARING

TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND PROPOSE RECOMMENDATIONS

DISCHARGER	DISCHARGE LOCATION	RECEIVING WATERS
Zuma Canyon Orchids	5949 Bonsall Drive Malibu, CA 90265	Santa Monica Bay

Administrative Civil Liability Complaint ("ACLC") No. R4-2010-0027 alleges that Zuma Canyon Orchids 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. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of $32,100 be assessed against Zuma Canyon Orchids for the violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three 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 ACLC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: May 17, 2010
Time: 10:00 A.M.
Place: 320 W. 4th Street
Los Angeles, CA 90013
Room location TBD

II. AVAILABILITY OF DOCUMENTS

The ACLC, related documents, proposed order, comments received, and other information about 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 copies of the documents may be made by calling the Los Angeles Regional Board at (213) 576-6600.

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. However, the entire file might not be available 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 Prosecution Team during business hours, not later than **April 27, 2010**. 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. Zuma Canyon Orchids
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 no later than **April 5, 2010**. The request shall 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 party or 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 the 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 **March 26, 2010**, 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.

Zuma Canyon Orchids is required to submit:

1) Any additional documents or evidence the Party/ies want(s) the Hearing Panel to consider,
2) A summary of any testimony the Party/ies intend(s) to present, and
3) A statement regarding how much time the Party/ies need(s) to present the case

to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties no later than 5:00 pm on **April 19, 2010**. 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 **May 6, 2010**.

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 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 no later than **March 23, 2010**. 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 witness, 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 not later than **April 19, 2010** 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. 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 Executive Officer Tracy Egoscue, and a Legal Advisor, Mr. Michael Levy, Senior Staff Counsel for the Regional Board.

While Ms. Egoscue exercises general oversight over the staff's enforcement activities, neither she nor Mr. Levy 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 no later than **April 19, 2010** to the Legal Advisor to the Hearing Panel:

Michael Levy
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5193
mlevy@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 **April 19, 2010** 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. APPLICABILITY OF NOTICE

The Executive Officer has directed the use of this standard notice in an order dated March 5, 2008. If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: February 18, 2010