

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

In the matter of:

**E & A FARMING
LOS ALAMOS RANCH
SANTA BARBARA COUNTY**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

ORDER NO. R3-2023-0075

SECTION I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team (Prosecution Team), and E & A Farming¹ (individually, E & A Farming or “Discharger”) (collectively, the Parties) and is presented to the Central Coast Water Board, or its delegate, for adoption as an order by settlement pursuant to California Water Code (Water Code) section 13323 and California Government Code (Government Code) section 11415.60. This Stipulated Order resolves the violation alleged in Administrative Civil Liability Complaint No. R3-2023-0052 (Complaint) by imposing administrative civil liability against the Discharger in the amount of **\$48,186**.

SECTION II: RECITALS

1. Irrigated agricultural discharges have been regulated by the Central Coast Water Board for over 15 years, since the adoption of the first agricultural order in 2004.² On April 15, 2021, the Central Coast Water Board adopted the fourth Agricultural Order *General Waste Discharge Requirements for Discharges from Irrigated Lands* Order No. R3-2021-0040 (Agricultural Order).³ The Agricultural Order requires that owners and operators of irrigated lands on or from which there are discharges of waste that could affect the quality of any surface water or groundwater in the central coast region to comply with the Agricultural Order.

¹ The electronic Notice of Intent (eNOI) submitted for the relevant ranch identified the permittee as “E&A Farming.” E & A Farming is also an entity assigned Entity ID 4572899 from the California Secretary of State public website.

² The first agricultural order was adopted on July 9, 2004, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2004-0117 (Agricultural Order 1.0). Agricultural Order 1.0 expired on July 9, 2009, and the Central Coast Water Board renewed Agricultural Order 1.0 several times (Order No. R3-2009-0050 on July 9, 2009; Order No. R3-2010-0040 on July 8, 2010; Order No. R3-2011-0208 on March 29, 2011; Order No. R3-2011-0017 on September 30, 2011). The second Agricultural Order was adopted on March 15, 2012, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2012-0011 (Agricultural Order 2.0). The third Agricultural Order was adopted on March 8, 2017, Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2017-0002 (Agricultural Order 3.0).

³ A copy of the Agricultural Order is available at:
https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/regulatory_information.html

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2. Pursuant to Water Code section 13267, the Agricultural Order required operators and landowners of irrigated land used for commercial crop production to submit Total Nitrogen Applied reports (TNA Reports) annually by March 1.

3. On April 6, 2020, E & A Farming submitted an electronic Notice of Intent (eNOI) and enrolled Los Alamos Ranch (Ranch ID AGL020037559) under Agricultural Order 3.0. E & A Farming (and all associated ranches) was automatically enrolled under subsequent adopted Agricultural Orders. Los Alamos Ranch was required to report TNA for the 2021 TNA reporting period (January 1, 2021 to December 31, 2021). The ranch eNOI stated Los Alamos Ranch was comprised of 164 acres of commercial irrigated land on Santa Barbara County Assessor's Parcel Number 099-010-060.

4. On July 27, 2022, the Central Coast Water Board issued a notice of violation to E & A Farming for failure to submit the 2021 TNA Report required by the Agricultural Order via First Class Mail. On December 13, 2022, Central Coast Water Board staff sent the notice of violation via Certified Mail having not received a response to the July 27, 2022 notice of violation. On December 27, 2022, the Central Coast Water Board received a signed certified mail receipt for the December 13, 2022 letter. In addition to issuance of the notice of violation, Central Coast Water Board staff conducted the following outreach with growers, including E & A Farming, regarding the requirement to submit TNA reports:

- a. E-mails on December 15, 2021, January 12, 2022, and February 16, 2022, reminding growers to submit the 2021 TNA report due on March 1, 2022.
- b. E-mail on March 29, 2022, notifying growers of their failure to submit 2021 TNA report.

5. On February 6, 2023, the Central Coast Water Board Prosecution Team issued a letter notifying E & A Farming of the forthcoming assessment of administrative civil liabilities and providing E & A Farming the opportunity to contact the Prosecution Team and discuss the matter. The Prosecution Team was not successful in contacting E & A Farming until February 24, 2023, when the Prosecution Team contacted E & A Farming by telephone. It wasn't until April 6, 2023, that the Prosecution Team was able to confirm E & A Farming's attendance for a settlement meeting on April 11, 2023, to engage in confidential settlement negotiations. After several follow-on communications, E & A Farming submitted the 2021 TNA Report on April 25, 2023. The Prosecution Team was unable to reach E & A Farming for additional discussion after several attempts and on July 21, 2023, the Central Coast Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R3-2023-0052 (Complaint) to E & A Farming for failure to submit the 2021 TNA report by the required due date. The Complaint was served to E & A Farming on August 15, 2023. At the request of E & A Farming, the Prosecution Team scheduled a meeting for August

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23, 2023 to meet with E & A Farming to further settlement discussions, however, E & A Farming did not attend the meeting.

6. On August 25, 2023, the Prosecution Team emailed E & A Farming to inquire about rescheduling a settlement meeting. On August 29, 2023, E & A Farming indicated that on August 30, Mr. Perez (representative of E & A Farming) would drop off a check with an intent to settle the matter. We did not hear from Mr. Perez on August 30 or September 1, at which time the Prosecution Team emailed the Advisory Team, letting them know that the matter would be proceeding to hearing. On September 5, 2023, consistent with the Hearing Procedures for this matter, the Prosecution Team submitted its initial evidentiary documents, including Mr. Perez's August 30, 2023 email communication. On September 13, 2023, Mr. Perez reached out to the Prosecution Team and stated he would be coming by the Central Coast Water Board office to submit a check for the penalty amount. The Prosecution Team provided contact information and requested a cashier's check for \$48,186.

7. On September 22, 2023, Mr. Perez submitted a cashier's check to resolve this matter.

8. For purposes of settlement, the Prosecution Team alleges E & A Farming failed to submit the 2021 TNA Report by the March 1, 2022 deadline set forth in the Agricultural Order. E & A Farming's failure to submit the 2021 TNA Report by the due date in the Agricultural Order subjects E & A Farming to administrative civil liability under Water Code section 13268.

9. Pursuant to Water Code section 13268, subdivision (a), a person who fails to submit technical or monitoring reports required under Water Code section 13267 is subject to administrative civil liability under Water Code section 13268, subdivision (b) "in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs."

10. The Parties have engaged in confidential settlement negotiations and agree to settle the alleged violation in the Complaint and also described in Section II, paragraph 6, without administrative or civil litigation and to present this Stipulated Order to the Central Coast Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

11. To resolve the alleged violation listed in Section II, paragraph 6 by consent, the Parties have agreed to the imposition of an administrative civil liability of **forty-eight thousand one hundred and eighty-six dollars (\$48,186)** against E & A Farming. The administrative civil liability amount is the liability amount the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board) Water Quality

Enforcement Policy (Enforcement Policy),⁴ as shown in Attachment A, which is incorporated herein by reference. The calculation of economic benefit is shown in Attachment B.

12. The Prosecution Team has determined that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violation except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

SECTION III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Jurisdiction:** The Parties agree the Central Coast Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
2. **Administrative Civil Liability:** E & A Farming hereby agrees to the imposition of **forty-eight thousand one hundred and eighty-six dollars (\$48,186)** in administrative civil liability to resolve the violation set forth in Section II, paragraph 6. The Prosecution Team will release the cashier's check from E & A Farming in the amount of **forty-eight thousand one hundred and eighty-six dollars (\$48,186)** 30 days following the date the Central Coast Water Board or its delegate signs this Stipulated Order. Payment must be made payable to the "State Water Board Cleanup and Abatement Account," reference "Order No. R3-2023-0075 CAA Payment," and be submitted to:

State Water Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

E & A Farming must provide a copy of the check or payment confirmation via e-mail to the State Water Board, Office of Enforcement to Julie Macedo at Julie.Macedo@waterboards.ca.gov, and the Central Coast Water Board to Tamara Anderson at Tamara.Anderson@waterboards.ca.gov.

3. **Party Contacts for Communications related to Stipulated Order:**
 - a. **For the Central Coast Water Board:**

Thea Tryon

⁴ State Water Board, 2017 Water Quality Enforcement Policy, effective October 5, 2017, https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

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Assistant Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Thea.Tryon@waterboards.ca.gov
(805) 542-4776

Tamara Anderson
Enforcement Coordinator
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
Tamara.Anderson@waterboards.ca.gov
(805) 549-3334

b. **For E & A Farming:**

Evodio Antonio Perez
P.O. Box 86
Los Alamos, CA 93440
eantoniofarming@gmail.com
eandafarming18@gmail.com

4. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party agrees to bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

5. **Matters Addressed by this Stipulated Order:** Upon the Central Coast Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation in the Complaint and also described in Section II, paragraph 8, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 2.

6. **Public Notice:** E & A Farming understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Coast Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Coast Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Coast Water Board or its delegate. E & A Farming agrees that he may not rescind or otherwise withdraw his approval of this Stipulated Order.

7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Coast Water Board's or its delegate's adoption of the Stipulated Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Central Coast Water Board, or its delegate, has the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Central Coast Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

8. **No Waiver of Right to Enforce:** The failure of the Central Coast Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Central Coast Water Board to enforce any such provision shall not preclude later enforcement of the same or any other provision of this Stipulated Order. If E & A Farming fails to comply with this Stipulated Order, the Central Coast Water Board or its delegate may refer the matter to the State Attorney General to enforce the terms of this Stipulated Order.

9. **Effect of this Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order precludes the Central Coast Water Board or any State agency, department, board, or local agency from exercising its authority under any law, statute, or regulation.

10. **Compliance with Applicable Laws:** E & A Farming understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse E & A Farming from meeting any more stringent requirements, which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

11. **Covenant Not to Sue:** E & A Farming covenants not to sue or pursue any administrative or civil claim(s) against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

12. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

13. **Modification:** The Parties must not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Coast Water Board or its delegate.

14. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

15. **Necessity for Written Approvals:** All approvals and decisions of the Central Coast Water Board, or its delegate, under the terms of this Stipulated Order must be communicated to E & A Farming in writing. No oral advice, guidance, suggestions, or comments from Central Coast Water Board employees or officials regarding submissions or notices shall be construed to relieve E & A Farming of his obligation to obtain any final written approval this Stipulated Order requires.

16. **If the Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Central Coast Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Coast Water Board to determine whether to assess administrative civil liabilities for the underlying violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

- a. Objections related to prejudice or bias of any of the Central Coast Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Coast Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

17. **Waiver of Hearing:** E & A Farming has been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waives its right to a hearing before the Central Coast Water Board prior to the Stipulated Order's adoption. However, E & A Farming may appear at any Central Coast Water

Board hearing where approval of this settlement is discussed, and if the settlement is not adopted and the matter proceeds to the Central Coast Water Board or State Water Board for a hearing, E & A Farming does not waive its right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.

18. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Central Coast Water Board or its delegate, E & A Farming hereby waives its right to petition the Central Coast Water Board's adoption of this Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate-level court.

19. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.

20. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

21. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

22. **Counterpart Signatures; Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by electronic signature, and any such electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature were an original signature.

23. **Effective Date:** This Stipulated Order becomes effective and binding on the Parties upon the date the Central Coast Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

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IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION, PROSECUTION TEAM**

*Original Signed by Thea Tryon
On September 22, 2023*

By: _____

Thea S. Tryon
Assistant Executive Officer
Central Coast Water Board

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E & A Farming

IT IS SO STIPULATED.

E & A FARMING

*Original Signed by Evodio Antonio Perez
On September 22, 2023*

Date: _____

By: _____

Evodio Antonio Perez

ORDER OF THE CENTRAL COAST WATER BOARD

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Central Coast Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 and has applied the Penalty Calculation Methodology set forth in the State Water Board's Enforcement Policy. The Central Coast Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulated Order, or otherwise provided to the Central Coast Water Board.
3. This is an action to enforce the laws and regulations administered by the Central Coast Water Board. The Central Coast Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with section 15321, subdivision (a)(2), title 14, of the California Code of Regulations.
4. The Executive Officer of the Central Coast Water Board is authorized to refer this matter directly to the Attorney General for enforcement if E & A Farming fails to perform any of its obligations under this Stipulated Order.

IT IS HEREBY ORDERED pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, Central Coast Region.

Ryan E. Lodge
Executive Officer
California Regional Water Quality Control Board
Central Coast Region

Attachment A: Factor Consideration and Penalty Calculation Methodology

Attachment B: Economic Benefit Analysis

ATTACHMENT A

FACTOR CONSIDERATION AND PENALTY CALCULATION METHODOLOGY FOR SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2023-0075

E & A FARMING LOS ALAMOS RANCH

AGRICULTURAL IRRIGATED LANDS SANTA BARBARA COUNTY

(GEOTRACKER GLOBAL ID# AGL020037559)

This document provides details on the proposed administrative civil liability penalty methodology related to E & A Farming, referred to as “Discharger,” for failure to submit the 2021 Total Nitrogen Applied Report (TNA Report) for Los Alamos Ranch (GeoTracker Global Identifier AGL020037559) by the annual March 1 deadline. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team derived the proposed administrative civil liability by following the State Water Resources Control Board’s (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy), which was adopted on April 4, 2017, and became effective on October 5, 2017.¹ The proposed administrative civil liability takes into account such factors as the Discharger’s culpability, cooperation in returning to compliance, ability to pay the proposed liability, and other factors as justice may require.

I. Application of the State Water Board’s Enforcement Policy

The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code (Water Code) section 13327, which require the Central Coast Water Board to consider several factors when determining the amount of civil liability to impose, including “...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.”

The Prosecution Team developed the proposed administrative civil liability based on the procedures included in the Enforcement Policy methodology. The steps used to calculate the proposed liability are discussed and summarized in the table below.

¹ Link to State Water Board 2017 Enforcement Policy:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

II. Regulatory Basis of Alleged Violation and Proposed Liability

The Central Coast Water Board regulates discharges from irrigated agricultural lands to protect surface water and groundwater by requiring enrollment in General Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2021-0040 (Agricultural Order).² The Discharger is enrolled in the Agricultural Order. The Discharger has failed to submit the 2021 TNA Report for Los Alamos Ranch by March 1, 2022, a violation of Agricultural Order Monitoring and Reporting Program section B.1.

Failure to submit the 2021 TNA Report is a violation of Water Code section 13267. Pursuant to Water Code section 13268, subdivision (b), a violation of a Water Code section 13267 requirement subjects the Discharger to administrative civil liability up to \$1,000 per day for each day in which the violation occurs.

In the table below, the Central Coast Water Board Prosecution Team presents the procedural steps used to calculate the proposed liability for failure to submit the 2021 TNA Report for Los Alamos Ranch.

² A copy of the Agricultural Order is available at:
https://www.waterboards.ca.gov/centralcoast/water_issues/programs/llp/regulatory_information.html

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 1 – Actual or Potential for Harm for Discharge Violations	Not applicable	This step is not applicable because this is not a discharge violation.
Step 2 – Assessments for Discharge Violations	Not applicable	This step is not applicable because this is not a discharge violation.
Step 3 – Per Day Assessments for Non-Discharge Violations	<p>Potential for Harm – Moderate</p> <p>Deviation from Requirement – Major</p> <p>Per Day Factor for Non-Discharge Violation – 0.55</p> <p>Initial Liability Amount – \$231,550</p>	<p>The per day assessment for non-discharge violations considers potential for harm and the extent of deviation from applicable requirements. Failing to submit a TNA Report substantially impairs the Central Coast Water Board’s ability to perform its regulatory functions, because the Central Coast Water Board uses TNA Reports to assess threats to water quality and compliance with Agricultural Order requirements. Therefore, a moderate potential for harm score is appropriate. Failing to submit the TNA Report also rendered the requirements ineffective in its essential function. Therefore, a major deviation from requirement is appropriate. Table 3 in the Enforcement Policy (page 16) is used to determine the initial penalty factor for a violation. Based on the potential for harm and the deviation from requirement determinations, a per day factor for a non-discharge violation of 0.55 is appropriate.</p> <p>The days of violation are alleged from March 1, 2022 to April 25, 2023 (421 days). The Prosecution Team calculated days of violation up to the date the Discharger submitted the 2021 TNA Report on April 25, 2023.</p>

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
		<p>The initial liability amount is calculated by multiplying the days of violation by the per day factor for non-discharge violations (0.55) by the statutory maximum liability pursuant to Water Code section 13268 (\$1,000 per day of violation).</p> <p>Initial liability amount: 421 days x 0.55 x \$1,000 per day = \$231,550</p>
Step 4 – Adjustment Factors (Conduct Factors)	Degree of Culpability – 1.3	<p>A discharger’s degree of culpability is determined by evaluating what a reasonable and prudent person would have done or not done under similar circumstances. This Adjustment Factor should result in a multiplier between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. The Discharger failed to submit the 2021 TNA Report, as required by the Agricultural Order, despite the Central Coast Water Board sending numerous reminders, a notice of violation, and a follow-up letter. The Discharger submitted the 2021 TNA Report after meeting in person to discuss settlement and with additional follow-on communication. Because the Discharger’s failure to submit this report demonstrates, at best, a negligent deviation from the standard of care, a score of 1.3 is appropriate.</p>
Step 4 – Adjustment Factors (Conduct Factors)	History of Violations – 1.0	<p>Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. The Discharger has a history of not submitting reports. However, there has not been formal enforcement for those missing reports. Therefore, this factor remains neutral at 1.0.</p>

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 4 – Adjustment Factors (Conduct Factors)	Cleanup and Cooperation – 1.3	The Cleanup and Cooperation Adjustment Factor is determined by evaluating the discharger’s voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance. This Adjustment Factor should result in a multiplier between 0.75 to 1.5 , using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and higher multiplier where there is not. The Discharger finally submitted the 2021 TNA Report after numerous communications including a settlement meeting with the Central Coast Water Board, therefore, a score of 1.3 is appropriate.
Step 4 – Adjustment Factors (Multiple Day Violations)	Multiple Day Violations – 48 days	For violations that last more than 30 days, the daily assessment can be less than the calculated daily assessment, provided it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Central Coast Water Board must make express findings that the violation: a) is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program; b) results in no discrete economic benefit from the illegal conduct that can be measured on a daily basis; or c) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. The violation is not causing daily detrimental impacts to the environment and is not causing daily detrimental impacts to the regulatory program. Therefore, the Prosecution Team has collapsed the number of days of violation for purposes of settlement from 421 days to 48 days.

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 5 – Determination of Total Base Liability Amount	Total Base Liability Amount – \$44,616	<p>After each of the above factors is considered for the violation, the applicable factors are multiplied by the initial liability amount proposed for the violation considering the adjusted number of days of violation to determine the total base liability amount for the violation.</p> <p>$48 \text{ days} \times 0.55 \times \\$1,000 \times 1.3 \times 1.0 \times 1.3 = \\$46,616.$</p>
Step 6 – Ability to Pay and Ability to Continue in Business	Ability to pay and continue in business – No adjustment	<p>The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team finds that the Discharger has the ability to pay the proposed liability. Los Alamos Ranch consists of 164 acres of squash and blackberries, which is valued at \$22,127 and \$64,906 per acre, respectively, according to the Santa Barbara County 2021 Crop Report. Assuming that the total acreage is used, and the crop types are equally divided, the estimated annual crop value of the operation is $(82 \text{ acres} \times \\$22,127) + (82 \text{ acres} \times \\$64,906) = \\$7.14 \text{ million}.$</p> <p>When we met with the Discharger, we discussed certain information that may be available to support an inability to pay argument. We have provided specific documents that can be submitted for the Central Coast Water Board’s consideration. After multiple communications went unanswered, E & A Farming indicated it would pay the proposed liability. Documents that would allow the Prosecution Team (or Central Coast Water Board) to evaluate this factor in consideration of adjusting the penalty has not been provided.</p>

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PENALTY CALCULATION METHODOLOGY STEPS	VALUE	DISCUSSION
Step 7 – Economic Benefit	Economic Benefit Amount - \$9.00	The economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. Using the United States Environmental Protection Agency’s (USEPA) BEN Model Version 2022.0.0 revised June 2022, the economic benefit was calculated to be \$9.00. This represents the cost the discharger saved by delaying the submittal of the 2021 TNA Report. In this instance, the economic benefit does not capture any value to the regulatory system of information expected from this report.
Step 8 – Other Factors as Justice May Require	Other factors as justice may require – \$3,570	The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Central Coast Water Board has incurred over \$3,570 in staff costs associated with the investigation and enforcement of the alleged violation. No attorney or management staff costs were included in this calculation.
Step 9 – Maximum and Minimum Liability Amounts	Minimum Liability – \$9.90 Maximum Liability – \$421,000	<u>Minimum Liability:</u> \$9.90 (economic benefit plus 10 percent) <u>Maximum Liability:</u> \$421,000 (\$1,000 per day per violation under Water Code section 13268)
Step 10 – Final Liability Amount	Final Liability Amount – \$48,186	Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is the sum of the Total Base Liability Amount (\$44,616) and other factors as justice may require (staff costs of \$3,570) totaling \$48,186. The Final Liability Amount is between the Minimum and Maximum Liability Amounts.

ATTACHMENT B

ECONOMIC BENEFIT ANALYSIS FOR SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2023-0075

E & A FARMING LOS ALAMOS RANCH AGRICULTURAL IRRIGATED LANDS SANTA BARBARA COUNTY

(GEOTRACKER GLOBAL ID# AGL020037559)

This document provides details on the proposed administrative civil liability economic benefit analysis related to E & A Farming (Discharger) for failure to submit the 2021 Total Nitrogen Applied Report (TNA Report) for Los Alamos Ranch (GeoTracker Global Identifier AGL020037559) by the annual March 1 deadline. The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) Prosecution Team derived the economic benefit by following the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy), which was adopted on April 4, 2017, and became effective on October 5, 2017.¹ The economic benefit analysis considers actions required to comply with a permit or order, how often these actions are required, what actions should have been taken to avoid the violation, whether the actions are avoided or simply delayed, and an estimate of costs.

The benefit of non-compliance was calculated using United States Environmental Protection Agency's BEN Model Version 2022.0 revised June 2022. The inputs and assumptions for the violation are as follows:

1. Per information from the California Secretary of State, the Discharger is a "Stock Corporation-CA-General" under Entity identification number 4572895, as such, the tax schedule for "C = Corporation" was used for this analysis.
2. According to the General Waste Discharge Requirements for Discharges from Irrigated Lands Order No. R3-2021-0040 (Agricultural Order),² Attachment A, Finding 82.c dated April 15, 2021, TNA tracking and reporting is estimated to cost between approximately \$8.97 and \$23.22 per acre over the course of five years. Using the lower value and averaging it over a five-year period, the cost to prepare the TNA Report is assumed to be \$1.79 per acre per year.
3. Los Alamos Ranch 246 ranch comprises 164 acres per the electronic Notice of Intent submittal. As such, total costs to prepare the TNA report is \$294.

¹ Link to State Water Board 2017 Enforcement Policy:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_fin_al%20adopted%20policy.pdf

² A copy of the Agricultural Order is available at:

https://www.waterboards.ca.gov/centralcoast/water_issues/programs/ilp/regulatory_information.html

Attachment B
Settlement Agreement and Stipulated Administrative Civil Liability
Order No. R3-2023-0075
E & A Farming

4. The expenditure type is assumed to occur once and is non-depreciable.
5. The cost basis assumes labor costs only.
6. Date of non-compliance is March 1, 2022, the date which the 2021 TNA Report was due.
7. Date of compliance is April 25, 2023, the date the Discharger submitted the 2021 TNA Report. Because the Discharger submitted the 2021 TNA Report late, the cost is “delayed.”
8. For computational purposes, the penalty payment date was established as November 18, 2023, representing thirty days after the Central Coast Water Board hearing date of October 19, 2023.

Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be \$9.00. This represents the costs the Discharger saved by not submitting the 2021 TNA Report on time. The Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is \$9.90.