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## San Diego Regional Water Quality Control Board

February 12, 2021

Courier Tracking No: 551677944

In reply refer to: 803119:FMelbourn

Shahin R. Tehrani, Agent for Service of Process  
Five Safe T, LLC  
1225 Casiano Road  
Los Angeles, California 90049-1613

Assessor's Parcel Number: 932-190-009 (70.74 acres)

Ms. Tehrani:

### **Settlement Offer No. R9-2021-0010 to Resolve Administrative Civil Liability for Alleged Violation of California Water Code Section 13260**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team alleges that Five Safe T, LLC (Discharger) violated California Water Code (Water Code) section 13260 by failing to timely obtain regulatory coverage for discharges from a commercial agricultural operation in the San Diego Region, as detailed below. This letter contains a revised Settlement Offer from the Prosecution Team to resolve potential claims for administrative civil liability arising out of the alleged violation. This revised settlement offer is reflective of the Discharger's ultimate enrollment and supersedes Settlement Offer No. R9-2020-0231, issued to the Discharger on September 2, 2020.

**This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violation through payment of \$1,000. Please read this letter carefully and respond no later than March 15, 2021.**

CELESTE CANTÚ, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

**Description of Alleged Violation**

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

**Directive**

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

The Prosecution Team alleges that the Discharger was in violation of Water Code section 13260 by failing to timely submit an NOI by October 31, 2019, the due date specified in the Directive. After numerous outreach efforts by San Diego Water Board staff to the Discharger to explain the enrollment requirements and offer its assistance (Exhibit 2, Record of Contacts), the Discharger submitted an NOI and required permit fee payment on October 27, 2020.

**Statutory Liability**

Pursuant to Water Code section 13261, the Discharger is liable for administrative civil liability of up to \$1,000 per day of violation. The State Water Resources Control Board's [Water Quality Enforcement Policy](#)<sup>1</sup> states that the minimum liability should be the economic benefit plus ten percent. For the alleged violation described in the attachments, the maximum liability is \$360,000, and the minimum liability is \$78.

**Notice of Violation No. R9-2020-0058**

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

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[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

### Proposed Settlement Offer

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

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

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

### Options for Responding to the Settlement Offer

#### Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing* (Exhibit 4, Acceptance and Waiver form) shall be completed and submitted, via email, no later than March 15, 2021, to the following address:

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

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

Please note, this Settlement Offer may be withdrawn if substantive comments are received in opposition to the settlement and/or the Executive Officer declines to accept the settlement. If that occurs, the Discharger will be notified, and the *Acceptance and Waiver* will be treated as withdrawn and a new ACL Complaint may be issued and the matter may be set for a hearing before the San Diego Water Board.

**Option B: Contest the Alleged Violation**

If the Discharger chooses to contest the alleged violation or the methodology used to calculate the proposed liability, then it must submit a written response identifying the basis for the challenge, including any evidence to support its claims. The Discharger's response must be received by the San Diego Water Board no later than March 15, 2021. The Prosecution Team will evaluate the Discharger's response and may seek clarifying information or schedule a meeting before determining whether adjustments are warranted. The Prosecution Team will inform the Discharger of its decision regarding the settlement amount and will provide the Discharger a final opportunity to accept the revised or original settlement amount before proceeding to formal enforcement.

**Option C: Reject Offer**

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

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

Sincerely,

KELLY DORSEY, P.G.  
Assistant Executive Officer

Copies to:

Chiara Clemente, San Diego Water Board, [chiara.clemente@waterboards.ca.gov](mailto:chiara.clemente@waterboards.ca.gov)  
Roger Mitchell, San Diego Water Board, [roger.mitchell@waterboards.ca.gov](mailto:roger.mitchell@waterboards.ca.gov)  
Christina Arias, San Diego Water Board, [christina.arias@waterboards.ca.gov](mailto:christina.arias@waterboards.ca.gov)  
Jason DuMond, San Diego Water Board, [jason.dumond@waterboards.ca.gov](mailto:jason.dumond@waterboards.ca.gov)  
Catherine Hawe, State Water Board, [catherine.hawe@waterboards.ca.gov](mailto:catherine.hawe@waterboards.ca.gov)  
Steve Corona, Upper Santa Margarita Irrigated Lands Group, [stevec@usmilg.org](mailto:stevec@usmilg.org)  
Matt Yeager, County of Riverside, [myeager@rivco.org](mailto:myeager@rivco.org)

ECM PIN: CW-803119 (San Diego Region Agricultural Operations)  
CW-868536 (Five Safe T Avocado Grove)

Documents relied upon (attached)

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

Documents relied upon and available upon request (ECM Document Handle Number)  
Directive, October 1, 2019 (4698184)

Golden State Overnight Directive Delivery Confirmation, October 2, 2019 (8838166)

Notice of Violation, February 12, 2020 (4863419)

Golden State Overnight NOV Delivery Confirmation, February 14, 2020 (8838167)

US EPA BEN Model Analysis (9041276)

Grant Deed for APN 932-190-009 (8838163)

2019 Property Tax for APN 932-190-009 (8838165)

Property Details for APN 932-090-009 (8838160)

USMILG Email, October 27, 2020, Permit fee check received (8969411).

Five Safe T Grove receives Agricultural Water Rate, December 29, 2020, Rancho California Water District email (9024161).



**Exhibit 1**

**Five Safe T, LLC Grove Satellite Image**



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*Exhibit 1: Satellite Image of Agricultural Operation (Assessor's Parcel 932-190-009 outlined in blue)*

## Exhibit 2

### Enforcement Timeline and Comments

Name of Operation: Avocado Grove

Owner: Five Safe T, LLC

Site Address: Accessor's Parcel Number 932-190-009

Mailing Address: 1225 Casiano Road, Los Angeles, California 90049-1613

Telephone: (310) 344-8665

<b>Date</b>	<b>Action Taken</b>	<b>Comments</b>	<b>Staff</b>
10/01/2019	Directive Letter	Delivery confirmation on October 2, 2019.	Jason DuMond
10/03/2019	Telephone Call	Ms. Tehrani on behalf of Five Safe T, LLC called Christina Arias about the Directive Letter. Ms. Arias explained the regulation of the grove, her third-party options, and reminded her of the October 31, 2019, enrollment deadline. Ms. Tehrani said that she spoke with the Upper Santa Margarita Irrigated Lands Group and will contact the other third-parties. Additionally, she expressed her views on government over regulation.	Christina Arias
10/17/2019	Telephone Call	Ms. Tehrani called Jason DuMond for an explanation of why her grove needed permit coverage. She also said that she will complain to the Governor about over regulation.	Jason DuMond
10/18/2019	Telephone Calls	Ms. Tehrani left a voicemail message for Mr. DuMond asking why her grove needs a permit. Mr. DuMond returned her call; however, his explanation did not satisfy Ms. Tehrani and she asked to speak to Mr. DuMond's supervisor, Craig Carlisle. Mr. Carlisle spoke to Ms. Tehrani about the irrigated agriculture program, the need for permit coverage, and provided her with the date and time of the next Regional Board Meeting.	Jason DuMond and Craig Carlisle
02/12/2020	NOV No. R9-2020-0058	Delivery confirmation on February 14, 2020.	Craig Carlisle
02/14/2020	Telephone Call	Ms. Tehrani called Mr. DuMond after receipt of the Notice of Violation and requested to speak to Mr. Carlisle. Mr. Carlisle called her and encouraged her to comply with the Directive.	Jason DuMond and Craig Carlisle

## Exhibit 2

<b>Date</b>	<b>Action Taken</b>	<b>Comments</b>	<b>Staff</b>
02/20/2020	Telephone Call	Ms. Tehrani called Mr. DuMond and expressed her views on government over regulation.	Jason DuMond
02/25/2020	Telephone Call	Ms. Tehrani called Mr. DuMond and again expressed her views about government over regulation.	Jason DuMond
03/05/2020	Board Meeting	Ms. Tehrani addressed the Regional Board during the Public Forum.	Regional Board
09/02/2020	ACL Settlement Offer	The Prosecution Team issued Five Safe T, LLC Administrative Civil Liability (ACL) Settlement Offer R9-2020-0231.	Frank Melbourn
09/10/2020	Telephone Calls	Mr. Melbourn called Ms. Tehrani three times and left detailed voicemail messages that included his email address and how to bring the site into compliance.	Frank Melbourn
09/24/2020	Telephone Call	Mr. Melbourn spoke with Ms. Tehrani about bringing the site into compliance. Ms. Tehrani said that she will not pay the permit fee because she is a taxpayer and that this is “an unfair government shakedown.”	Frank Melbourn
10/02/2020	Email and Telephone Call	Ms. Arias and Mr. Melbourn emailed Ms. Tehrani instructions on how to enroll under the permit after Ms. Tehrani requested the information from Ms. Arias and Mr. DuMond. Ms. Tehrani called and spoke with Ms. Arias about enrolling.	Frank Melbourn
10/05/2020	Email	Ms. Arias emailed Ms. Tehrani Third-Party Group contact information.	Christina Arias
10/06/2020	Telephone Call	Ms. Arias coordinated with the San Diego Farm Bureau and had a native Farsi speaking employee explain the permit requirements and enrollment procedures to Ms. Tehrani.	Christina Arias
10/12/2020	Telephone Call	Ms. Arias spoke with Ms. Tehrani about the various Third-Party Groups.	Christina Arias
10/27/2020	U.S. Mail	San Diego Water Board received permit fees check demonstrating enrollment from Five Safe T, LLC.	N/A

*Exhibit 2 – Enforcement Timeline and Comments*



# Exhibit 3

## Penalty Calculation Methodology

### Enforcement Policy Background

In 2017, the State Water Resources Control Board adopted updates to the [Water Quality Enforcement Policy](#)<sup>2</sup> with the goal to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most fair, efficient, effective, and consistent manner. According to the Enforcement Policy, enforcement is a critical component in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Formal enforcement should always result when a non-compliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. Formal enforcement should be used as a tool to maintain a level playing field for those who comply with their regulatory obligations by setting appropriate civil liabilities for those who do not.

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

### Description of Violation

Water Code section 13260 requires any person discharging waste, or proposing to discharge waste, that could affect the quality of waters of the State in the San Diego Region, to submit a report of waste discharge (RoWD) to the San Diego Water Board. Such discharges of waste include irrigation return flows or storm water runoff from irrigated lands that may contribute waste to groundwater or surface waters. A person that owns or operates a commercial agricultural operation (Agricultural Operation) in the San Diego Region can meet the RoWD requirement by submitting a complete Notice of Intent (NOI)<sup>3</sup> for coverage under one of the two General Agricultural Orders issued by the San Diego Water Board: 1) Order No. R9-2016-0004, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region* (Third-Party General Order); or 2) Order No. R9-2016-0005, *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers Not Participating in a Third-Party Group in the San Diego Region* (Individual General Order).

The [General Agricultural Orders](#) are available at the San Diego Water Board's website<sup>4</sup>.

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[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

<sup>3</sup> In the Commercial Agriculture Regulatory Program, the NOI is the "report of the discharge" described in Water Code section 13260.

<sup>4</sup> [https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/commercial\\_agriculture/](https://www.waterboards.ca.gov/sandiego/water_issues/programs/commercial_agriculture/)

## Exhibit 3

Five Safe T, LLC (Discharger), owns and/or operates at least 70.74 acres of irrigated land that is used for an Agricultural Operation in the Temecula Valley of California and receives water at the agricultural rate from Rancho California Water District. On October 1, 2019, the San Diego Water Board issued the Discharger a directive to obtain regulatory coverage for its Agricultural Operation pursuant to Water Code section 13260. The Directive required the Discharger to obtain regulatory coverage by enrolling in one of the General Agricultural Orders through submission of a complete NOI on or before October 31, 2019. In developing the Directive, San Diego Water Board staff used publicly available information to identify farmed parcels used for agricultural purposes, including satellite images.

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

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

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

This step is not applicable.

#### **Step 2. Assessment for Discharge Violations**

This step is not applicable.

#### **Step 3. Per Day Assessment for Non-Discharge Violations**

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

##### *Potential for Harm: Moderate*

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

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

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

## Exhibit 3

monitoring results or information on its practices, the Discharger substantially impaired the San Diego Water Board's efforts to assess potential impacts and risks to water quality.

Unregulated discharges of waste from irrigated agriculture can present a substantial threat to beneficial uses because irrigated cropland can be a source of sediment, biostimulatory substances (i.e., nutrients from fertilizers), and other waste discharges to waters of the State. Here, the Discharger owns and/or operates 70.74 irrigated acres in the Temecula Valley portion of the Santa Margarita watershed, which is over 17 times the median farm size in the San Diego Region. The Santa Margarita watershed drains to the Santa Margarita Estuary, a high priority water body that provides significant refuge, foraging, and breeding areas for several threatened and endangered species, making it a Key Area for habitat and ecosystems. The estuary is impaired for eutrophic conditions that threaten the aquatic life beneficial use. Nitrogen and phosphorus (nutrients) are the primary cause of eutrophic conditions and are routinely used in agriculture to promote crop yield.

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

### *Deviation from Requirement: Major*

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

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

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

### *Per Day Assessments for Non-Discharge Violations = 0.55*

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

## Exhibit 3

### *Days of Violation = 360*

The Discharger obtained coverage under the Third-Party General Order on October 27, 2020. The Directive required the Discharger to obtain regulatory coverage by enrolling in one of the two General Agricultural Orders through submission of a complete NOI on or before October 31, 2019. Therefore, the Discharger was in violation from November 1, 2019, to October 26, 2020, or 360 days.

### *Multiple Day Violations = 46*

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

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

Collapsing days per the Enforcement Policy = 46 days of violation (1-30, 35, 40, 45, 50, 55, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, and 360).<sup>5</sup>

### *Initial Liability Amount = \$25,300*

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

[\$1,000 (per day statutory maximum) x 0.55 (factor) x 46 (days of violation)] = **\$25,300**

### **Step 4. Adjustment Factors**

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

### *Degree of Culpability = 1.5*

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

The Prosecution Team assigned a multiplier of 1.5 because a reasonably prudent person would have obtained permit coverage when notified of the requirement to do so.

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

## Exhibit 3

Here the Discharger failed to obtain coverage for almost a year after being put on notice of the requirement and numerous compliance assistance efforts over the telephone and in writing by San Diego Water Board staff, including the issuance of the Directive Letter and NOV.

### *History of Violations = 1.0*

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

### *Cleanup and Cooperation = 1.5*

This factor reflects the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, using a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. The Prosecution Team assigned a multiplier of 1.5 because the Discharger failed to obtain coverage after repeated San Diego Water Board staff compliance assistance outreach and it wasn't until the Prosecution Team sought an administrative civil liability did the Discharger enroll. Cleanup is not applicable here.

### **Step 5. Determination of Total Base Liability Amount**

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

Total Liability Amount = [\$25,3000 (initial liability amount) x 1.5 (degree of culpability) x 1.0 (history of violations) x 1.5 (cleanup and cooperation)] = **\$56,925**

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

The Enforcement Policy allows for an adjustment to a proposed liability after an analysis of a violator's ability to pay a proposed penalty and continue in business. This is determined by looking at the violator's income and net worth. According to the [2018 Riverside County Agricultural Production Report](#)<sup>6</sup>, the annual value of avocados from 70.74 acres was \$640,990 (3.81 tons/acre and \$2,378.27/ton). Additionally, the parcel was sold for \$1,200,000 in 2009. Therefore, evidence available to the Prosecution Team indicate that the Discharger has the ability to pay the proposed penalty based upon its income and net worth.

### **Step 7. Economic Benefit**

The economic benefit is any savings or monetary gains from noncompliance. The economic benefit was calculated assuming enrollment under the Individual General Order on October 31, 2019 (the last date allowed under San Diego Water Board Directive to the Discharger). Had the Discharger enrolled by October 31, 2019, it would have been billed by the State Water Resources Control Board, a one time \$200 enrollment fee and an annual fee of \$79 (\$1.12 per acre for 70.74 acres) for fiscal years 2019/20 and 2020/21. Table 1 calculates the economic benefit enjoyed from the noncompliance.

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<sup>6</sup> <https://www.rivcoawm.org/Portals/0/PDF/2018-Crop-Report.pdf>

## Exhibit 3

Item	Type	Avoided or Delayed Cost	Benefit of Non-Compliance calculated using the US EPA BEN Model
State Water Board Enrollment Fee	One Time (Delayed)	\$200	\$7
State acreage fee (Fiscal Year 2019/20)	Annual (Avoided)	\$79	\$63
State acreage fee (Fiscal Year 2020/21)	Annual (Delayed)	\$79	\$1
<b>Total</b>		<b>\$358</b>	<b>\$71</b>

*Table 1, Five Safe T, LLC's Economic Benefit*

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

### Step 8. Other Factors as Justice May Require

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

### Step 9. Maximum and Minimum Liability Amounts

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

Statutory maximum liability = (360 days multiplied by \$1,000 per day) = **\$360,000**

Minimum Liability = [\$71 + (\$71 X 10%)] = **\$78**

### Step 10. Final Liability Amount

The final liability amount is \$1,000.



## Exhibit 4

### ORDER NO. R9-2021-0010

ACCEPTANCE OF SETTLEMENT OFFER  
AND WAIVER OF RIGHT TO A HEARING FOR  
FIVE SAFE T, LLC

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), Five Safe T, LLC (Discharger) hereby accepts the Settlement Offer described in the letter dated February 12, 2021, with subject title **Settlement Offer No. R9-2021-0010 to Resolve Administrative Civil Liability for an Alleged Violation of California Water Code Section 13260**. The Discharger also hereby waives its right to a hearing before the San Diego Water Board to dispute the alleged violation described in the Settlement Offer and its exhibits.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code (Water Code) and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violation. The Discharger agrees to pay an administrative civil liability in the sum of \$1,000 to the "State Water pollution Cleanup and Abatement Account." This payment shall be deemed payment in full of any civil liability pursuant to Water Code sections 13261 and 13350 that might otherwise be assessed for the violation described in the Settlement Offer and its attachments.

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

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

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

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

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

## Exhibit 4

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

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

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

By: ORIGINAL SIGNED BY SHAHIN R. TEHRANI

Title: MANAGER, FIVE SAFE T, LLC

Date: 7/18/2021

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

DAVID W. GIBSON  
Executive Officer, San Diego Water Board