

Confidential Settlement Communication
Evidence Code §§ 1152, 1154

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the Matter of:

G.J. SILVA DAIRY
STANISLAUS COUNTY

ORDER R5-2021-0512

SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Settlement Agreement and Stipulation for Order) is entered into by and between the California Regional Water Quality Control Board, Central Valley Region Prosecution Team (Prosecution Team), on the one hand, and Susie Latter, on the other hand (the Discharger, and collectively the Parties), and is presented to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

Section II: RECITALS

1. Ms. Susie Latter owns and operates the G.J. Silva Dairy, located at 3107 S. Prairie Flower Road in Turlock, Stanislaus County (the Dairy).
2. On May 3, 2007, the Central Valley Water Board issued the *General Order for Existing Milk Cow Dairies*, Order R5-2007-0035 (Dairy General Order), which served as waste discharge requirements for discharges of waste from milk cow dairies. The Dairy General Order applied to owners and operators of existing milk dairies that (a) had submitted a complete Report of Waste Discharge in response to the Central Valley Water Board's August 8, 2005 request for such a report, and (b) had not expanded since October 17, 2005. The Dairy submitted such a Report of Waste Discharge on August 10, 2005.
3. On October 3, 2013, the Central Valley Water Board adopted the *Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies*, Order R5-2013-0122 (Reissued Dairy General Order). The Reissued Dairy General Order rescinded and replaced the Dairy General Order with updated requirements. Among other requirements, the Reissued Dairy General Order prohibits the application of process wastewater to cropland other than for nutrient recycling (Prohibition A.9) and to soil when saturated (Attachment C, Technical Specification V.C.2); requires that process wastewater applications are based on crop nutrient needs, daily water

use, and water holding capacity of soil (Attachment C, Technical Specification V.C.1); and requires submission of and adherence to a Nutrient Management Plan.

4. On February 13, 2019, 216,000 gallons of wastewater was discharged from the Dairy to 13 acres of cropland, in violation of the Reissued Dairy General Order as follows: (1) manure was applied to cropland for purposes other than nutrient recycling, in violation of Prohibition A.9; (2) the application of process wastewater was not based on crop needs, in violation of Attachment C, Technical Specification V.C.1; and (3) wastewater was applied when the soil was already saturated, in violation of Attachment C, Technical Specification V.C. The discharge was also contrary to the Discharger's Nutrient Management Plan.
5. On July 31, 2019, the Central Valley Water Board Prosecution Team issued the Offer to Settlement Administrative Civil Liability R5-2019-0903 (ACL), which included an offer to settle the alleged violations for thirty-eight thousand sixteen dollars (\$38,016). The ACL is attached hereto as Attachment A and incorporated herein by reference. Subsequent to issuance of the ACL, the Parties agreed to enter into confidential settlement negotiations.
6. Pursuant to Water Code section 13350, subdivision (a)(1), any person who in violation of a waste discharge requirement, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state, shall be subject to administrative civil liability pursuant to Water Code section 13350 subdivision (e), in an amount not to exceed either of the following: (1) five thousand dollars (\$5,000) for each day in which the violation occurs; or (2) where there is a discharge, liability not to exceed ten dollars (\$10) for each gallon discharged.
7. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, 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 the ability to continue in 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 as justice may require.
8. The *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy) was adopted on April 4, 2017 and effective October 5, 2017. The use of the Enforcement Policy's liability methodology addresses the factors required to be considered when imposing administrative civil liability.
9. To resolve the alleged violations in Section II, paragraph 4, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of \$10,000 against the Discharger.
10. The stipulated liability in this matter has been reduced from the Prosecution Team's initial proposal in the ACL in light of the following material conditions of settlement,

which the Prosecution Team has considered in its revised analysis of the Enforcement Policy's methodology (Attachment B):

- a. The Dairy's current compliance with the Reissued Dairy General Order: At an inspection on February 17, 2021, Central Valley Water Board staff observed that the Dairy is in relatively good condition and did not observe any significant violations of the Reissued Dairy General Order. The inspection report is attached hereto as Attachment C and incorporated herein by reference.
- b. However, based on a review of the Dairy's Waste Management Plan, Nutrient Management Plan, Production Area inspections from October 2018 through March 2020, and Land Application Area inspections from October 2018 through May 2019, Central Valley Water Board staff identified a number of issues with the Dairy's compliance with the Reissued Dairy General Order. The Dairy has agreed to implement operational and physical improvements to resolve these compliance issues. Prior to this Order's posting, the Dairy completed the following agreed upon settlement tasks:
 - (1) Installed freeboard markers in Pond 2, Pond 4N, Pond 4S, Pond 5, Pond 6, and the heifer ranch pond and submitted a report with photos documenting the work.
 - (2) Submitted a report describing how the eight wastewater ponds are being managed to ensure there is 2 feet of freeboard for above ground ponds and 1 foot of freeboard for below ground ponds.
 - (3) Submitted a comprehensive workplan to (1) complete grading between Pond 2 and Pond 3 at the Dairy, and (2) remove excessive solid manure and complete grading at the heifer feedlot. The workplan includes a schedule for implementation of work at the Dairy by August 15, 2021 and a schedule for implementation of work at the heifer feedlot by September 15, 2021. Upon approval by the Central Valley Water Board Prosecution Team, the Discharger shall implement the work between Pond 2 and Pond 3 and shall submit a completion report by no later than September 15, 2021. Upon approval by the Central Valley Water Board Prosecution Team, the Discharger has agreed to implement the work at the heifer feedlot and shall submit a completion report by no later than October 15, 2021. The Discharger's ability to complete the work and submit the completion reports by the dates identified are contingent upon receiving timely approval of the workplans by the Central Valley Water Board Prosecution Team. In the event that approval of the workplans is delayed, such that the Discharger does not have sufficient time to complete the work as identified here, the Parties agree to meet and confer to adjust the due dates contained in this provision.
 - (4) Submitted an addendum to its Waste Management Plan (WMP), including a water balance certified by an engineer.

- (5) Committed to implement the annual nitrogen soil sampling program described in the 2018 Nutrient Management Plan (NMP): collect a spring pre-plant composite sample from each field at a depth of 1-2,' and analyze for Total Nitrogen. The first samples shall be collected in the spring of 2021 and then annually thereafter. The results shall be included in future Annual Reports as "existing soil nutrient content" in the nutrient budget for each field.
- (6) Submitted an updated NMP to reflect the violations of the nitrogen applied-to-removed ratios (of both 1.4 and 1.65) in 2018 and 2019. This submission included an attachment describing in detail why the ratios were exceeded and the changes that the Dairy made to ensure that the ratios will not be exceeded in the future. The updated NMP shall continue the annual soil sampling program described in the 2018 NMP, as revised in Item (5), above.
- c. Hearing and litigation risk: Pursuant to Enforcement Policy section VI.B, the final proposed liability, as described in Attachment B, was further reduced in consideration of hearing and/or litigation risks from \$12,500 to \$10,000.
11. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of **ten thousand dollars (\$10,000)**.
12. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

13. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **ten thousand dollars (\$10,000)**.
14. **Payment:** The Discharger will make a payment of \$10,000 made payable to the "State Water Resources Control Board Cleanup and Abatement Account" **within 30 days** of the Central Valley Water Board or Executive Officer issuing this Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order). The check or money order shall reference Administrative Civil Liability Order No. R5-2021-0512 and be submitted to:

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

The Discharger shall email a copy of the check to Robert Busby at Robert.Busby@waterboards.ca.gov with the subject line "G.J. Silva Dairy Payment."

15. **Representations:** The Discharger understands that completion of the settlement tasks described in Section II, paragraph 10.b, is a material condition of this settlement of liability between the Dischargers and the Central Valley Water Board Prosecution Team. As a material consideration for the Central Valley Water Board's acceptance of this Stipulated Order, the Discharger represents and agrees that they will complete the settlement tasks as described in Section II, paragraph 10.b above.
16. **Failure to Complete the Settlement Tasks:** If the settlement tasks are not fully implemented within the schedule required by this Order or as otherwise modified in writing by the Parties, or if there has been a material failure to satisfy a requirement, the Discharger shall be in breach of this Order. If it is determined that the Discharger has not satisfied the requirements of Section II, paragraph 10.b, the Prosecution Team reserves the right to withdraw this Stipulated Order and Settlement Agreement, prior to its adoption by the Central Valley Water Board, or its delegee.
17. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, their employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, their employees, agents, representatives or contractors in carrying out activities pursuant to this Order. The Discharger covenants not to sue or pursue any administrative or civil claim or claims against any state agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Order.
18. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with its terms is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject the Discharger to further enforcement, including additional administrative civil liability.

19. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

Robert Busby
Supervising Engineering Geologist
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4666
Robert.Busby@waterboards.ca.gov

For the Discharger:

Ms. Susie Latter
G.J. Silva Dairy
3107 S. Prairie Flower Rd.
Turlock, CA 95380
(209) 634-9091
gjsilva@fire2wire.com

Discharger's counsel:
Tess Dunham, Esq.
Kahn, Soares & Conway, LLP
1415 L Street, Suite 400
Sacramento, California 95814
916-448-3826
tdunham@kscsacramento.com

20. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
21. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board or the Executive Officer issuing the proposed Order as final, this Order represents a final and binding resolution and settlement of all claims, violations or causes of action arising from the February 13, 2019 discharge of wastewater from the Dairy, as detailed in paragraph 4 and Attachment B. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, Paragraph 14 and the Discharger's full satisfaction of the obligations described in Section II, paragraph 10.b, and Section III, paragraph 15.
22. **Public Notice:** The Discharger understands that this Order will be noticed for a 30-day public comment period prior to consideration by the Central Valley Water Board or the Executive Officer. If significant new information is received that reasonably affects the propriety of presenting this Order to the Central Valley Water Board for

adoption, the Prosecution Team Lead may unilaterally declare it void and decide not to present it to the Central Valley Water Board. The Discharger agrees that she may not rescind or otherwise withdraw her approval of this Order.

23. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting this Order by the Central Valley Water Board or the Executive Officer and its review by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
24. **Interpretation:** This Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Dischargers are represented by counsel in this matter.
25. **Modification:** This Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved by the Central Valley Water Board or the Executive Officer. All approvals and decisions of the Central Valley Water Board and the Executive Officer under the terms of this Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Order.
26. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Central Valley Water Board or Executive Officer, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that California Evidence Code sections 1152 and 1154 apply to oral and written statements and agreements made during the course of settlement discussions. The Parties agree to waive the following objections based on settlement communications in this matter:
 - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley 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 Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing 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.
27. **Waiver of Hearing:** The Discharger has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives her right to a hearing before the Central Valley Water Board prior to the adoption of the Order.
28. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives her right to petition the Central Valley Water Board's adoption of the Order for review by the State Water Board, and further waives her rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Central Valley Water Board, or its delegate related to this Order, including but not limited to time extensions and other terms contained in this Order.
29. **Covenant Not to Sue:** If the Order is approved by the Central Valley Water Board or its Executive Officer in a manner as agreed to by this Stipulation and Agreement, the Discharger covenants not to sue or pursue any administrative or civil claim(s) against any state agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter covered herein. This provision does not alter or apply to the Discharger's right to petition, challenge, object to, sue or defend against any future Central Valley Water Board actions that the Central Valley Water Board may take against the Discharger.
30. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations in Attachment B, or that it has been or is in violation of the Water Code, any order adopted by the Board, or any other federal, state, or local law or ordinance
31. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute it on behalf of and to bind the entity on whose behalf he or she executes it.
32. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of her obligation to obtain any final written approval required by this Stipulated Order.
33. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.

34. **Effective Date:** The obligations in this Order are effective and binding only upon the entry of an Order by the Central Valley Water Board or Executive Officer which incorporates the terms of this Order.
35. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
36. **Counterpart Signatures:** This 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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: Original Signed by John J. Baum
John J. Baum
Assistant Executive Officer

30 April 2021
Date

G.J. Silva Dairy

By: Original Signed by Ms. Susie Latter
Susie Latter

23 April 2021
Date

Order of the Central Valley Water Board

This Order incorporates the foregoing Settlement Agreement and Stipulation for Entry of Order.

1. In accepting the foregoing Settlement Agreement and Stipulation for Entry of Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327. The Central Valley Water Board's consideration of these factors is based upon information obtained by the Central Valley Water Board staff in investigating allegations or otherwise provided to the Central Valley Water Board.
2. Issuance of this Settlement Agreement and Stipulation for Entry of Order is being taken for the protection of the environment and to enforce the laws and regulations administer by the Central Valley Water Board. As such, it is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, sections 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, and 15321.

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

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

Attachment A: Compressed Administrative Civil Liability R5-2019-0903

Attachment B: Revised Liability Methodology

Attachment C: February 17, 2021 Inspection Report