

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

**In the matter of:**

**CEASE AND DESIST ORDER  
R5-2020-XXXX (PROPOSED)  
REQUIRING JOE SILVA, TONY SILVA AND  
JAMES SILVA  
SILVA BROTHERS DAIRY #1  
SAN JOAQUIN COUNTY  
TO CEASE AND DESIST FROM  
DISCHARGING WASTE CONTRARY TO  
REQUIREMENTS**

**STIPULATION FOR ENTRY OF CEASE AND DESIST ORDER R5-2020-0529**

**Section I: INTRODUCTION**

This Stipulation for Entry of Cease and Desist Order R5-2020-0529 (Stipulation) and Cease and Desist Order R5-2020-XXXX (PROPOSED) (Proposed CDO) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), and Joe Silva, Tony Silva, and James Silva, collectively Silva Brothers Dairy #1, on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team) and Silva Brothers Dairy #1 (together, Parties).

**Section II: RECITALS**

1. Silva Brothers Dairy #1, owned by Joe Silva and Tony Silva, and operated by Tony Silva and James Silva, located at 12997 E. Peltier Road in Acampo, San Joaquin County is regulated by Waste Discharge Requirements (WDRs) per the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order).
2. Silva Brothers Dairy #1 is alleged to have violated the Reissued General Order. The specific alleged violations are described in the Proposed CDO, which is attached hereto and incorporated by reference.
3. Section 13301 of the Water Code states, in relevant part, that: "When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and

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direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action...Cease and desist orders may be issued directly by a board, after notice and hearing.”

4. The Parties have engaged in settlement negotiations and agree to present this Stipulation and Proposed CDO to the Central Valley Water Board for adoption as decision by settlement, pursuant to Government Code section 11415.60.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
2. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13301, and hereby waives its right to a hearing before the Central Valley Water Board.
3. **Attorney’s Fees and Costs:** Each Party shall bear all attorneys’ fees and costs arising from the Party’s own counsel in connection with the matters set forth herein.
4. **Interpretation:** This Stipulation and Proposed CDO shall be construed as if the Parties prepared each jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
5. **Advocating for Adoption of the Proposed CDO:** The Parties expect the Central Valley Water Board to consider adoption of the Proposed CDO within 90 days of execution of this Stipulation. The Parties agree to advocate in support of the Proposed CDO to the Central Valley Water Board by having a representative appear before the Central Valley Water Board, including via Zoom or another digital meeting platform as allowed by the Board, at the public meeting to consider adoption of the Proposed CDO, and to speak in support of the Proposed CDO, as allowed.
6. **Matters Covered:** This Stipulation and Proposed CDO resolves only the issuance of a Cease and Desist Order pursuant to Water Code section 13301. This Stipulation and Proposed CDO does not preclude the Central Valley Water Board or any other state, local or federal agency from seeking to impose civil liability for any of the violations alleged in the proposed CDO or any future violations. In addition, this Stipulation and Proposed CDO does not preclude the Central Valley Water Board or any other state, local or federal agency from

requiring cleanup pursuant to Water Code section 13304, or from taking any other action to abate the effects of the discharge, as allowed by law.

7. **Modification:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, and signed by all Parties. The Parties acknowledge that the Central Valley Water Board may make minor, non-substantive amendments to the Proposed CDO prior to adoption and without approval by the Parties, including assignment of a final order number. The Parties agree that any substantive revisions to the Proposed CDO must be agreed to by all Parties and approved by the Central Valley Water Board.
8. **If the Proposed CDO Does Not Take Effect:** In the event that the Proposed CDO does not take effect because it is not approved by the Central Valley Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties agree that this Stipulation will be void and acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to issue a Cease and Desist Order, 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:
  - 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Central Valley Water Board in any such subsequent administrative or judicial proceeding or hearing and may object to the Central Valley Water Board members or their advisors participation in contested evidentiary hearing on grounds not related to the settlement process addressed in this paragraph, 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.
9. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Central Valley Water Board's adoption of the Proposed CDO for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

10. **The Discharger's Covenant Not to Sue:** 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 expressly addressed by this Stipulation or Proposed CDO.
11. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
12. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation 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 Stipulation may be executed by facsimile or electronic signature, and any such facsimile or 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 facsimile or electronic signature were an original signature.
13. **Effective Date:** This Stipulation is effective and binding on the Parties upon execution. The Proposed CDO, as may be modified in accordance with Paragraph 7, shall be effective upon issuance by the Central Valley Water Board.

**IT IS SO STIPULATED.**

**California Regional Water Quality Control Board,  
Central Valley Region Prosecution Team**

By: ORIGINAL SIGNED BY

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**Clay Rodgers**  
**Assistant Executive Officer**

Date: 5/18/2020

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**Silva Brothers Dairy #1**

By: ORIGINAL SIGNED BY

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**James Silva**

Date: 5-18-2020

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Attachment 1: Proposed CDO No. R5-2020-XXXX