

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

In the Matter of:

JOE AND RENEE BARROSO DAIRY

**ORDER R5-2023-0505
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 Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, Central Valley Region Prosecution Team (Prosecution Team), and Joe and Renee Barroso Dairy, LP, Mark Barroso, and David Barroso (the Dischargers, 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 (Water Code) section 13323 and California Government Code (Government Code) section 11415.60.

Section II: RECITALS

1. The Joe and Renee Barroso Dairy (Dairy) is located in at 6902 Le Grand Road in Merced, Merced County, California. The Joe and Renee Barroso Dairy, LP is a limited partnership registered in California for which Mark Barroso is a general partner. David Barroso has identified himself as an operator of the Dairy.
2. On 3 May 2007, the Central Valley Water Board adopted General Waste Discharge Requirements Order R5-2007-0035 (General Order) for several dairies including the Joe and Renee Barroso Dairy, LP. On 3 October 2013, the Central Valley Water Board adopted Reissued General Waste Discharge Requirements Order R5-2013-0122 (Reissued General Order) to replace the General Order.

3. The Reissued General Order prescribes requirements for the storage, treatment, and disposal of solid manure, liquid manure, and other wastes which could impact water quality, and includes a Monitoring and Reporting Program (MRP), which requires the submittal of monitoring and technical reports. These monitoring and technical reports are required pursuant to Water Code section 13267.
4. The Reissued General Order, including the associated MRP, requires the Dischargers to submit Annual Reports by July 1 of each year. The Dischargers are alleged to have violated the Reissued General Order by failing to submit the Annual Reports for the 2017, 2018, 2019, and 2020 reporting periods.
5. Water Code section 13268 authorizes the Central Valley Water Board to administratively impose civil liability in an amount not to exceed one thousand dollars (\$1,000) for each day in which a discharger fails to submit an adequate report required by Water Code section 13267. The Dischargers are subject to administrative civil liability per Water Code section 13268 for the alleged violations described above.
6. 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.
7. The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) was adopted on 4 April 2017 and became effective on 5 October 2017. The use of the Enforcement Policy's liability methodology addresses the factors required to be considered by Water Code section 13327 when imposing administrative civil liability.
8. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and 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 administrative

civil liability (ACL) in the amount of forty-two thousand three hundred and fifty-three dollars (\$42,353).

9. 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:

10. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Settlement Agreement and Stipulated Order.
11. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an administrative civil liability totaling forty-two thousand three hundred and fifty-three dollars (\$42,353).
12. **Payment:** The Dischargers will make a payment of forty-two thousand three hundred and fifty-three dollars (\$42,353) 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 Order. The check or money order shall reference Administrative Civil Liability Order No. R5-2023-0505 and be submitted to:

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

The Dischargers shall email a copy of the check to Robert Busby at <mailto:Robert.Busby@waterboards.ca.gov> with the subject line "Barroso Dairy ACL R5-2023-0505."

13. **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 Dischargers, its 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 Dischargers, its employees, agents, representatives, or contractors in carrying out activities pursuant to this Order. The Dischargers covenant 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.

14. **Compliance with Applicable Laws:** The Dischargers understand that payment of administrative civil liability in accordance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject the Dischargers to further enforcement, including additional administrative civil liability.

15. **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:

David Barroso
6930 Legrand Road
Merced, CA 95340
dbaroso@aol.com

16. **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.

17. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board or the Executive Officer, this Order represents a final and binding resolution and settlement of the alleged violations identified in Paragraph 7 as of the effective date of this Order. The provisions of this paragraph are conditioned upon full payment of the administrative civil liability as discussed in this Order. The Central Valley Water Board does not waive its

- enforcement authority with regards to violations not alleged herein or for violations which occur subsequent to the adoption of this Order.
18. **Public Notice:** The Dischargers understand 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 Dischargers agree that it may not rescind or otherwise withdraw its approval of this Order.
 19. **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.
 20. **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.
 21. **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.
 22. **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 its Executive Officer, or is vacated in whole or in part by the State Water Resources Control Board (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 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 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.
23. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waive their right to a hearing before the Central Valley Water Board prior to the adoption of this Order.
24. **Waiver of Right to Petition or Appeal:** The Dischargers hereby waive their right to petition the Central Valley Water Board's adoption of the Order 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. 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.
25. **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 Settlement Agreement and Stipulated Order, the Dischargers covenant 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.
26. **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.

27. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board 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.
28. **No Third Party Beneficiaries:** This 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 Order for any cause whatsoever.
29. **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.
30. **Severability:** This Settlement Agreement and Stipulated Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
31. **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

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

Date: 4/13/2023

Original Digitally Signed by John J. Baum on
By: Date: 2023.04.13 10:40:30 -07'00'
John J. Baum
Assistant Executive Officer

Joe and Renee Barroso Dairy

Date: 4/6/2023 By: **Original Signed by**
David Barroso on behalf of self and Joe and Renee Barroso Dairy, LP

Date: 4/7/2023 By: **Original Signed by**
Mark Barroso on behalf of self and Joe and Renee Barroso Dairy, LP

ORDER OF THE CENTRAL VALLEY WATER BOARD

This Order incorporates the foregoing Settlement Agreement and Stipulated Order.

1. In accepting the foregoing Settlement Agreement and Stipulated 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 Stipulated Order is being taken for the protection of the environment and to enforce the laws and regulations administered 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: ACL Penalty Methodology R5-2023-0505

Attachment A – ACL Penalty Methodology R5-2023-0505
Specific Factors Considered for Administrative Civil Liability
David Barroso, Mark Barroso, and Joe and Renee Barroso Dairy, LP
Merced County

The State Water Resources Control Board's (State Water Board) *2017 Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code (Water Code) section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The [Enforcement Policy](#) can be found at:

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Regulatory Background

On 3 May 2007, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) adopted General Waste Discharge Requirements Order R5-2007-0035 (General Order) for several dairies including the Joe and Renee Barroso Dairy. On 3 October 2013, the Central Valley Water Board adopted Reissued General Waste Discharge Requirements Order R5-2013-0122 (Reissued General Order) to replace the prior General Order. The Reissued General Order prescribes requirements for the storage, treatment, and disposal of solid manure, liquid manure, and other wastes which could impact water quality, and includes a Monitoring and Reporting Program (MRP). The MRP includes reporting provisions prescribed pursuant to Water Code section 13267.

The Joe and Renee Barroso Dairy, LP is a limited partnership registered in California. Mark Barroso is a general partner in the Joe and Renee Barroso Dairy, LP. David Barroso has identified himself as an operator of the dairy. The Joe and Renee Barroso Dairy, LP, David Barroso, and Mark Barroso are collectively referred to as "Dischargers."

The Dischargers own and/or operate the dairy located at 6902 Le Grand Road, Merced, Merced County. The Renee and Joe Barroso Dairy (Dairy) has been enrolled under the General Order since 29 June 2007 and the Reissued General Order since 3 October 2013.

The Reissued General Order, including the associated MRP, requires the Dischargers to submit Annual Reports by July 1 of each year. The Dischargers have failed to comply with these requirements for the 2017, 2018, 2019, and 2020 reporting periods.¹

Pursuant to Water Code section 13268, failure to submit technical reports required by Water Code section 13267 subjects the Dischargers to an administrative civil liability of up to \$1,000 per day for each missing or incomplete report.

Violations 1 through 4: Failure to Submit 2017, 2018, 2019, and 2020 Annual Reports

The Reissued General Order requires the Dischargers to submit Annual Reports by 1 July of each year. Central Valley Water Board staff inspected the Dairy on 23 May 2018 and 19 June 2018. A Notice of Violation (NOV) was issued on 8 August of 2018, which documented violations and put the Dischargers on notice that the 2017 Annual Report was overdue. The Dischargers did not correct that violation.

On 6 August 2019 Central Valley Water Board staff again inspected the Dairy. An NOV was issued on 12 August 2019, which documented violations. The NOV noted that both the 2017 and 2018 Annual Reports were overdue. To date, those reports have not been submitted. Similarly, the 2019 and 2020 annual reports have not been submitted to date.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, it is not necessary to evaluate this factor.

Step 3 – Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm: Moderate

¹ The Dischargers have other documented Reissued General Order violations. Those violations are being addressed through a proposed Cease and Desist Order.

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. In this case, the failure to submit Annual Reports as required by the Reissued General Order prevents Central Valley Water Board staff from evaluating the Dischargers' compliance with the regulatory program. The failure to submit reports has "substantially impaired the Water Board's ability to perform its statutory and regulatory functions, present[s] a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm." (See Enforcement Policy, p. 16.) Failure to submit the four Annual Reports has deprived Central Valley Water Board staff of the ability to conduct essential technical evaluations by reviewing monitoring and data to determine the extent and severity of the water quality impacts posed by the Dischargers' ongoing dairy operation. A value of moderate is therefore warranted.

Deviation from Requirement: Major

The Enforcement Policy requires determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A major deviation from requirement is appropriate when the applicable requirement was rendered ineffective in its essential function. A major factor is appropriate in this case because the Dischargers have failed to submit Annual Reports for four consecutive years, rendering the requirement completely ineffective.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability Amount table below.

Days of Violation

The 2017 Annual Report was due by 1 July 2018; the 2018 Annual Report by 1 July 2019; the 2019 Annual Report by 1 July 2020, and the 2020 Annual Report by 1 July 2021. To date, the reports have not been submitted, however, the Prosecution Team has exercised discretion in counting the period of violation for each missing report as 365 days of violation, which is representative of the time transpiring from a report's due date until the next report is due. This method is in the alternative of counting the time period as commencing on the Annual Report's due date through issuance of this Complaint, which would yield many more days of violation.

Multiple Days Reduction

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if

any, resulting from the violation. In order to adjust the per-day basis, the Central Valley Water Board must make express findings that the violation: (a) is not causing daily detrimental impacts to the environment or the regulatory program; or (b) results in no 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. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used. For this violation, the Prosecution Team finds that the failure to submit the Annual Reports does not result in an economic benefit that can be measured daily. Therefore, the Prosecution Team recommends compressing the days of violation. Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: the first 30 days of violation, every fifth day of violation until the 60th day, and every 30 days thereafter. The 365 days of violation for each of the four Annual Reports is compressed to 46 days by counting days 1-30, 35, 40, 45, 50, 55, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, and 360.

Initial Liability Amounts

The initial liability amounts for each of the four violations calculated on a per-day basis is as follows: 46 days x \$1,000/day x 0.55 = \$25,300

Total Initial Liability = \$25,300

Step 4: Adjustment Factors

Culpability: 1.5

The Enforcement Policy directs that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. A multiplier value of 1.5 is appropriate in this matter. The Dischargers are responsible for the failure to submit the required report, as follows: The General Order and the Reissued General Order clearly set forth the annual reporting requirements. Based on the Report of Waste Discharge, the Dairy has been in operation since 1960. The Dischargers submitted Annual Reports in 2011, 2012, and 2013. This demonstrates that the Dischargers knew of the requirements.

Aside from the specific provisions of the General Order and Reissued General Order, which provide specific instructions on how to comply, the Central Valley Water Board has played an active role in oversight of this Dairy. Central Valley Water Board staff have conducted inspections of the Dairy, and issued two NOVs, which specifically discussed the annual

reporting requirements. These interactions with Central Valley Water Board staff have put the Dischargers on notice of the reporting requirements. However, to date, the Dischargers have not complied with the requirement to submit Annual Reports.

History of Violation: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Dischargers do not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: 1.4

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. As discussed above, the NOV's directed the Dischargers to submit missing Annual Reports and offered the Dischargers an opportunity to submit missing reports to come back in compliance. Despite multiple notifications of violations and outreach by the Central Valley Water Board, the Dischargers have only recently cooperated and attempted to return to compliance with the Reissued General Order. Therefore, it is appropriate to use a cleanup and cooperation multiplier of 1.4.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amounts

The total base liability amounts for each of the four violations is as follows: $\$25,300 \times 1.5 \times 1.0 \times 1.4 = \$53,130$

Total Initial Liability = \$53,130

Step 5: Combined Total Base Liability for all Violations

The combined total base liability is the sum of the total base liability for each of the four violations, as follows:

Violation 1: \$53,130 + Violation 2: \$53,130 + Violation 3: \$53,130 + Violation 4: \$53,130 =

Total: \$212,520

Step 6: Ability to Pay and Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team conducted a preliminary asset search of publicly available information and finds that the Dischargers have the ability to pay the proposed liability because the Dairy is a business that continues to operate and generate profits. According to the Dischargers' 2010 Waste Management Plan, the Dairy has the following assets: 650 milking cows; 140 dry cows; 250 heifers; and 125 calves. In addition, publicly available information indicates that the land assets associated with Dairy are significant and include properties assessed at a total value of well over the proposed final liability amount. Based on publicly available information, the Dischargers have the ability to pay the proposed liability and remain in business.

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require.” These costs could be added to the liability amount. The Central Valley Water Board Prosecution Team has spent at least 230 hours in connection with the investigation and enforcement of the violations alleged herein. While an amount representative of these costs could be added to the penalty, the Prosecution Team, in its discretion, is not adding this amount to the total proposed liability.

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” but only if express findings are made to justify this.

In this case, application of the Enforcement Policy results in a liability of \$212,520. The amount is the result of the application of the Enforcement Policy to the violations alleged herein. However, the Prosecution Team has determined that a penalty of \$212,520 is not appropriate in this matter because the Dischargers are also subject to a separate enforcement action—a proposed Cease and Desist Order.

Concurrent with this action, the Prosecution Team has proposed a Cease and Desist Order (Proposed CDO; available at [Tentative Orders | California State Water Resources Control Board](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/)) (https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/). The Proposed CDO requires the Dischargers to invest significant resources to correct compliance issues at the Dairy. Compliance with the Proposed CDO will require the Dischargers to focus financial resources on improving operations and management at the Dairy. It is a priority for the Prosecution Team that the Dischargers make the necessary

investment of resources at the Dairy such that the Dairy operates in compliance with the Reissued General Order and the Proposed CDO.

In light of this, the Prosecution Team proposes a reduction in the liability in this matter in order to allow the Dischargers to appropriately prioritize compliance with the Reissued General Order and the Proposed CDO, over payment of a higher administrative civil liability. The Prosecution Team asserts that the goals of the Water Code and Enforcement Policy can be met here with a smaller, though still substantial, final liability in the amount of \$42,353, which would recover substantially more than the economic benefit of the Dischargers' noncompliance, which is discussed below. The proposed final liability in the amount of \$42,353 is still adequate to provide a deterrent effect because it recovers a liability amount in excess of the minimum liability, described in more detail below.

This application of discretion is a result of the specific circumstances particular to this case.

Step 8 – Economic Benefit

Pursuant to Water Code section 13327, civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. In other words, the Dischargers realized a gain by not expending the resources to comply with water quality laws, including not submitting certain technical reports and not completing the monitoring and reporting as required by the Reissued General Order. In addition, 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 a meaningful deterrent to future violations."

It is possible to determine the economic benefit accrued from the Dischargers' failure to submit the 2017, 2018, 2019, and 2020 annual reports, requiring nutrient monitoring for process wastewater, manure, plant tissue, irrigation water, soil, and groundwater monitoring. This determination can be made using the U.S. Environmental Protection Agency's BEN computer model, which calculates the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations. As shown in the attached Exhibit 1, the delayed costs of groundwater monitoring well installation, and the avoided costs of sampling, and writing the annual reports was computed based on the Reissued General Orders annual reporting requirements, which necessitate annual monitoring for process wastewater, manure, plant tissue, irrigation water, soil, and

groundwater. These estimated costs are based on actual billed work, bid proposals, and/or estimated costs provided by other dischargers for completing similar type work and/or consulting firms that complete similar work.

Using the BEN model, the economic benefit for not completing the required monitoring and not submitting the required monitoring and technical reports is estimated to be \$23,233. Pursuant to the Enforcement Policy, the total proposed liability amount should be at least 10% higher than the calculated economic benefit. Therefore, the minimum liability is \$25,556.30.

Step 9 – Maximum and Minimum Liability Amounts

The statutory maximum and minimum liabilities must be determined and compared to the proposed liability. The minimum amount is described in Step 8, above. The maximum liability amount is based on the statutory maximum established in Water Code section 13268. Maximum Liability Amount: \$1,460,000 Minimum Liability Amount: \$25,556.30.

Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory maximum and minimum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is **forty-two thousand three hundred and fifty-three dollars (\$42,353)**.