

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

In the matter of:	)	
	)	
<b>N&amp;M Dairy</b>	)	<b>Order No. R6V-2013-0075</b>
<b>Neil and Mary de Vries</b>	)	
	)	<b>Settlement Agreement and Stipulation for</b>
	)	<b>Entry of Order</b>
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**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the California Regional Water Quality Control Board, Lahontan Region Prosecution Staff ("Prosecution Staff"), and Neil and Mary de Vries (Discharger, dba "N&M Dairy") ("Discharger") (collectively "Parties") and is presented to the Lahontan Regional Water Quality Control Board ("Lahontan Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. Neil and Mary de Vries operate N&M Dairy and as trustees of the Neil and Mary de Vries Family Trust also own the 909-acre site adjacent to the Mojave River, located at 36001 Lords Road and 18200 Lords Road, and on Indian Trail and Wild Road, in Helendale in San Bernardino County ("Facility" or "Dairy"). The N&M Dairy includes San Bernardino County Assessor's parcel numbers 466-041-01, -17, and -20 through -23; parcel numbers 466-091-15, -17, and -26; parcel numbers 466-101-06, and 07; and parcel number 466-111-02. A Facility location map that shows the location of the N&M Dairy parcels is provided in Exhibit A.
2. The barn, corrals, and feedlots of the Dairy are located on approximately 45 acres. Most of the remaining 864 acres of land are used for various purposes related to the dairy, including temporarily stockpiling of manure prior to off-site disposal and growing fodder crops. A portion of the manure generated at the Facility has been periodically applied to the agricultural fields where the fodder crops are grown.
3. Dairy waste includes constituents in manure, wash water, storm water, animal feed, and other materials that are produced or used at the Dairy and have the potential to be released into the environment and affect water quality.

4. Discharger is subject to Waste Discharge Requirements, Board Order No. 6-01-38, (WDRs 6-01-38, or Facility permit) prescribing waste discharge requirements including manure application rates and design criteria for new waste containment structures.
5. On July 2, 2010 the Lahontan Water Board issued Cleanup and Abatement Order No. R6V-2010-0029 (CAO 0029) directing the Discharger to correct nuisance conditions resulting from the wash water discharge and on-site manure management (odor and flies) by removing excess manure and developing a Nutrient Management Plan and a Best Management Practices Plan for the N&M Dairy. CAO 0029 was amended on December 2, 2010 (CAO 0029-A1) to allow an additional year to remove all excess manure by October 19, 2011.

CAO 0029 was amended a second time (CAO 0029-A2) on December 13, 2011, extending the October 19, 2011 compliance date for removing excess manure to January 17, 2012. This amendment also established minimum standards and reporting requirements for monthly manure removal. CAO 0029-A2 contains the following pertinent requirements.

- a. Directive No. 4 in CAO 0029-A1, as amended by CAO 0029-A2, requires the Discharger to remove all excess manure by January 17, 2012.
  - b. Directive No. 2 in in CAO 0029-A2 requires the Discharger to submit monthly manure removal progress reports by the third day of each month starting January 3, 2012, until all excess manure is removed.
6. On August 8, 2011, the Lahontan Water Board issued Cleanup and Abatement Order No. R6V-2011-0056 (CAO 0056) directing the Discharger to correct continued and ongoing nuisance conditions of odors and flies from improper wash water and storm water discharges and manure management practices. CAO 0056 also directed the Discharger to address groundwater pollution originating from its unlined wastewater ponds.

Directive No. 7 of CAO 0056 requires the Discharger complete grading of all drainage systems and corrals to convey storm water from the corrals and eliminate ponding within the corrals by December 15, 2012.

7. The Facility permit requires the Discharger to monitor four on-site groundwater monitoring wells on a semi-annual basis and report the results to the Lahontan Water Board. The Discharger's self-monitoring reports indicate the Facility has contaminated and/or caused a condition of pollution to groundwater where nitrates and salts (total dissolved solids, or TDS) exceeded maximum contaminant levels (MCLs).

8. On August 2, 2011, the Lahontan Water Board issued Cleanup and Abatement Order No. R6V-2011-0055 (CAO 0055), amended by Order No. R6V-2011-0055-A1 (CAO 0055-A1). The Orders direct the Discharger to supply interim uninterrupted replacement water service for consumption and cooking to residences served by private domestic wells that have been adversely impacted by concentrations of nitrates and/or total dissolved solids (TDS or salts).
9. The Discharger is alleged to have violated Directive No. 4 of CAO 0029-A1, as amended by CAO 0029-A2, Directive No. 2 of CAO 0029-A2 and Directive No. 7 of CAO-0056, resulting in liabilities pursuant to Water Code sections 13350 and 13268 for violating a cleanup and abatement order issued, reissued, or amended by the Lahontan Water Board. Below is a summary of the violations.
  - a. Violation 1: The Discharger violated Directive No. 4 of CAO 0029-A1 (as amended by CAO 0029-A2) by failing to remove all excess manure from the facility by January 17, 2012. A minor amount of excess older manure remained at the facility in December 2012.
  - b. Violation 2: The Discharger violated Directive No. 2 of CAO 0029-A2 by submitting the March through September, 2012, monthly manure removal progress reports past their respective due dates (the third day of every month). No manure was being removed during this period of time. The progress reports were later submitted on October 26, 2012.
  - c. Violation 3: The Discharger violated Directive No. 7 of CAO 0056 by failing to complete drainage and corral grading and eliminate ponding in corrals by December 15, 2012.
10. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Staff considered the methodology set forth in the Enforcement Policy for Violations 1 through 3, as shown in Exhibit B, which is attached hereto and incorporated by reference as though fully set forth herein.
11. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulation to the Lahontan Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Parties agree to settle the matter without any further investigation or analysis of culpability or adequacy of the allegations. In settling this matter, the Discharger does not admit to any of the findings in this Order that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance, provided, the Discharger agrees that in the event of any future enforcement actions by the Lahontan Water Board, this Order may be used as

evidence of a prior enforcement action consistent with Water Code section 13267. The amount of administrative civil liability imposed pursuant to this Stipulation and Order is the amount calculated by the Prosecution Staff using the State Water Board's Enforcement Policy. The resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning Violations 1 through 3, except as provided in this Stipulation and Order, and that this Stipulation and Order is in the best interest of the public.

**12. Additional Settlement Considerations:** The Parties acknowledge the following in agreeing to this Settlement:

- a. The Discharger has removed the cows from the Dairy and will be closing its operations. Considerations related to the Dairy closing include, the cost of approximately \$250,000 to close the Dairy, the removal of manure, a potential source of the nuisance conditions, and the beneficial reuse of that manure for composting, the elimination of a source of nitrate and salts to soil and groundwater, and elimination of potential wastewater discharges to groundwater and surface water from the Dairy operations, the removal of a potential income-stream from the Discharger.
- b. The Discharger has proposed a Supplemental Environmental Project (SEP) consisting of the creation of a conservation easement of a portion of the Dairy property within and adjacent to the Mojave River's active channel. The conservation easement may reduce the value of the property with the extinguishment of the property's development rights.
- c. The Lahontan Water Board approves modifications or substantially similar modifications of the monitoring requirements in CAO 0055-A1 and the monitoring and reporting program for WDRs 6-01-38 as follows:
  - i. Domestic Wells Nos. 3a, 9b, 9c, 15, 16, 20, 21, 31, and 32 as identified in the Dairy's "Domestic Supply Well Sampling Report" dated April 29, 2013, will be removed from the monitoring program, because they are located within a tight cluster of domestic wells that can be represented by a single well and the Discharger's data has shown historically insignificant detections of nitrate and TDS.
  - ii. Domestic Wells Nos. 26, 27, 28, 29, and 30, as identified in the N&M Dairy's "Domestic Supply Well Sampling Report" dated April 29, 2013, will be removed from the monitoring program, because they are abandoned inoperable wells.
  - iii. Domestic Wells Nos. 7a, 42, 43, 44, 45, 46, and 47, as identified in the Dairy's "Domestic Supply Well Sampling Report" dated April 29, 2013, will be removed from the monitoring program because they are out of the study area.

- iv. A trigger for TDS for domestic well water replacement at 815 mg/L rather than 500 mg/L as required under R6-2011-0055.
- v. Monitoring frequency for Facility and other wells in the monitoring program(s) will be updated to every nine (9) months.
- d. Lahontan Water Board staff will consider a reduction of the area of study for replacement water, otherwise known as the Revised Affected Area or Study Area, as appropriate, based on information obtained from Discharger and other sources. In the meantime, Discharger will continue to provide replacement drinking water as required under CAO 0055-A1.
- e. At a future Lahontan Water Board Meeting after the Discharger complies with the Dairy Closure Plan, Lahontan Water Board staff intend to propose a rescission of the Waste Discharge Requirements No. 6-01-38.
- f. Lahontan Water Board staff propose to rescind CAO 0055-A1 Investigative Order No. R6V-2010-044 and propose the Executive Officer to issue a new Cleanup and Abatement Order containing the above monitoring and replacement water trigger modifications.
- g. The total adjusted monetary assessment is \$376,850 as a result of negotiations with the Discharger pursuant to Government Code section 11415.60 and Page 22 of the Enforcement Policy. Due to recent administrative considerations, staff costs are not being recovered as part of this settlement.
- h. As a negotiated term pursuant to Government Code section 11415.60, the parties agree that failure by the Discharger to comply with the terms of the Conservation Easement including the prohibited activities shall result in a penalty of \$1,000 per day of violation.

### **Section III: STIPULATIONS**

The Parties incorporate Paragraphs 1 through 12 by this reference, as if set forth fully herein, and stipulate to entry of this Order as set forth below, and recommend that the Lahontan Water Board issue this Stipulated Order to effectuate the settlement:

- 13. Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **\$376,850**. The Discharger agrees to remit ONE HUNDRED EIGHTY EIGHT THOUSAND FOUR HUNDRED TWENTY-FIVE DOLLARS (\$188,425) by check payable to the *Waste Discharge Permit Fund*. Payment is due within thirty (30) days of issuance of this Order. Further, the Parties agree that the remaining \$188,425 administrative civil liability shall be suspended pending completion of a supplemental environmental project (SEP) as outlined in this Stipulation and Order.

The Discharger shall indicate on the check the number of this Order. The Discharger shall send the original signed check to the State Water Resources Control Board, attention: Accounting, P.O. Box 100, Sacramento, CA 95812-0100 and shall send a copy to Lauri Kemper, Assistant Executive Officer, Lahontan Regional Water Quality Control Board, 2501 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150.

#### 14. SEP Definitions

- a. "Designated Lahontan Water Board Representative" – the representative from the Lahontan Water Board responsible for oversight of the supplemental environmental project (SEP). The contact information for this representative will be determined by the Lahontan Water Board Executive Officer and will be transmitted to the Discharger.
- b. "Enforcement Coordinator" – The person on the Lahontan Water Board staff who is responsible for enforcement coordination.
- c. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.

#### 15. Description of the SEP

**Background:** The Mojave River is normally dry, except for a small stretch of perennial flow and periods of flow after intense or extended storms. The Mojave River Floodplain Aquifer, which flows beneath the river's surface and adjacent floodplain, is the primary source of water to meet agricultural, municipal and domestic needs in the area. The Facility is located adjacent to, and partially within, the floodplain of the Mojave River.

**SEP Project:** The Parties have agreed the SEP Amount will be credited towards the creation of a Conservation Easement in perpetuity on a portion of the Dairy property within and adjacent to the Mojave River's active channel. The SEP will allow for the area placed within the Conservation Easement to naturally return to a fully functioning river floodplain and adjacent habitat area, thereby improving floodplain function, water quality and beneficial uses. In addition, the Conservation Easement serves to buffer any future agricultural, commercial and/or industrial uses at the Facility from the Mojave River, which could reduce or prevent the additional loading of nutrients into waters of the state in the future, thereby benefitting water quality within the Mojave River watershed. The Conservation Easement will restrict the Dischargers' ability to use the land for farming and for other uses as detailed within the SEP Project Description (Exhibit C) in order to allow the land to return to natural floodplain habitat. The existing water wells and related infrastructure will be allowed to remain and in active use.

The SEP boundaries, depicted in Exhibit C will include approximately 310 acres to be finalized at the conservation easement demarcation milestone. The SEP boundaries include areas within the active channel of the Mojave River, and areas that are irrigated agricultural fields within the floodplain or adjacent to the floodplain of the Mojave River.

The SEP meets the qualification criteria as specified in the State Water Board's Policy on Supplemental Environmental Projects, February 3, 2009 (SEP Policy), as follows:

- The SEP Amount identified in this Order (\$188,425) does not exceed 50 percent of the total adjusted monetary assessment.
- The SEP is not otherwise required of the Discharger, as it has no permit, order or other requirement to set aside its land for conservation purposes, and the SEP is not mitigation to offset the impacts of the Discharger's projects.
- The SEP benefits ground water quality through removing an alleged source of salts and nutrients pollution in this closed ground water basin.
- The SEP meets the SEP Policy's nexus criteria where there is a relationship between the nature and location of the violation and the nature and location of the SEP. The violations relating to the failure to maintain management practices at N&M Dairy are directly associated with the SEP, which is to prohibit the use of the land as a dairy or other agricultural operation and allow the area to return to the natural floodplain habitat. There is also an immediate nexus between the location of the violation and the SEP, where the SEP is located on the same property that the violations occurred.
- The SEP does not directly benefit the Lahontan Water Board, its members, its staff or family of members of staff.

Exhibit C provides additional detail and tasks that must be completed and is incorporated herein.

**SEP Milestones:** The following SEP milestones constitute tasks that must be completed by dates certain. The SEP shall be completed in its entirety no later than July 31, 2014 (SEP Completion Date). If other circumstances beyond the reasonable control of the Discharger prevent completion of the SEP by that date, the Assistant Executive Officer may extend the SEP Completion Date. The Discharger must send its request for an extension in writing with the necessary justification to the Assistant Executive Officer.

a. **Conservation Easement Boundary Demarcation Proposal**

A proposal and plan to identify on the land the boundaries of the Conservation Easement must be submitted by January 31, 2014 for the Lahontan Water Board Executive Officer's approval.

b. **Conservation Easement Boundary Survey**

A report consisting of maps, plats, descriptions or other documents produced as a result of the boundary survey must be submitted to the Lahontan Water Board by March 31, 2014.

c. **Completion of Conservation Easement Demarcation**

Documentation, consisting of photographs or other proof, that the Conservation Easement has been demarcated in accordance with the Lahontan Water Board-accepted Demarcation Proposal must be submitted to the Lahontan Water Board by May 30, 2014.

d. **Terms of Conservation Easement**

The terms of the conservation easement must be submitted for the Lahontan Water Board Executive Officer's approval by May 30, 2014. If the Lahontan Water Board Executive Officer does not approve the terms of the conservation easement by June 30, 2014, a request can be made to the Lahontan Water Board Executive Officer for consideration to extend the due date for the Conservation Easement.

e. **Recording the Conservation Easement**

Proof of the execution of the Conservation Easement must be submitted to the Lahontan Water Board by July 31, 2014. The Conservation Easement must be recorded with the County Recorder by July 31, 2014.

**16. Publicity Associated with SEP:** Whenever the Discharger publicizes one or more elements of the SEP, it shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Lahontan Water Board against the Discharger.

**17. Site Inspections:** Discharger shall permit inspection of the SEP by the Lahontan Water Board staff at any time without notice during normal business hours.

**18. Audits and Certification of Environmental Project**

a. **Certification of Performance of Work (Final Completion Report)**

On or before 60 days after completion of the SEP, the Discharger shall submit a report, submitted under penalty of perjury, stating that the SEP has been completed in accordance with the terms of this Stipulation. Such documentation must include a copy of document creating the Conservation Easement, and may include photographs, invoices, receipts, certifications, and other materials



reasonably necessary for the Lahontan Water Board to evaluate the completion of the SEP by the Discharger.

**b. Third Party Audit**

If the Designated Lahontan Water Board Representative obtains information that causes the representative to reasonably believe that the Discharger has not adequately completed any of the work in the SEP Workplan, the Designated Lahontan Water Board Representative may require, and the Discharger shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Lahontan Water Board staff providing such party(ies)'s professional opinion that Discharger has completed the SEP as claimed by the Discharger. In the event of such an audit, the Discharger agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Lahontan Water Board Representative within three (3) months of the completion of the Discharger's SEP obligations. The audit need not address any costs incurred by the Lahontan Water Board for oversight.

- 19. Lahontan Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulation and Order, the completion of the SEP and any audits, the Designated Lahontan Water Board Representative, with notice to the Enforcement Coordinator, shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. The letter shall terminate any further SEP obligations of the Discharger, except as identified in No. 20, below, and result in the permanent stay of the Suspended Administrative Civil Liability.
- 20. Failure to Complete the SEP:** If the SEP is not fully implemented within the SEP Completion Period required by this Stipulation and Order, as identified in Stipulation No. 15, above, the Designated Lahontan Water Board Representative shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Administrative Civil Liability. Discharger shall not be entitled to any credit, offset, or reimbursement from the Lahontan Water Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Lahontan Water Board. The amount of the Suspended Administrative Civil Liability owed, \$188,425, shall be brought before the Lahontan Water Board via a "Motion for Payment of Suspended Liability." Upon approval by the Lahontan Water Board, the Suspended Administrative Civil Liability amount owed shall be paid to the Waste Discharge Permit Fund within thirty (30) days after the service to the Discharger of the Lahontan Water Board's determination. In addition, the Discharger shall be liable for the Lahontan Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the Suspended Administrative Civil Liability amount will satisfy the Discharger's obligations to implement the SEP.

**21. Lahontan Water Board is Not Liable:** Neither the Lahontan Water Board members nor the Lahontan Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the Lahontan Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

The Discharger 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 Stipulation and Order or the SEP.

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

**23. Attorney's 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.

**24. Matters Addressed by Stipulation:** Upon adoption by the Lahontan Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein. The provisions of this Paragraph are expressly conditioned on the full payment of the stipulated penalty amounts, in accordance with Paragraphs 13, 15, and 20, and by the deadlines specified in Paragraphs 13, 15, and 20, and the Discharger's full satisfaction of the obligations described in Paragraphs 13, 14, 15, 16, 17, 19, 20 and 21.

**25. No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Lahontan Regional Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Order. The failure of the Prosecution Staff or Lahontan Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

**26. Public Notice:** The Parties agree that this Stipulation and Proposed Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Lahontan Water Board for adoption. If the Lahontan Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulation to the Lahontan Water Board for adoption as an Order by settlement, the Parties agree to

meet and confer concerning any such objections and comments, and may agree to revise or adjust the Stipulation as necessary or advisable under the circumstances. Alternatively, the Assistant Executive Officer may unilaterally declare this Stipulation void and decide not to present the Order to the Lahontan Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

27. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
28. **No Oral Modification:** This Stipulation and 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 the Lahontan Water Board.
29. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
30. **If the Stipulated Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Lahontan Water Board, or its delegate, 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 Lahontan 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:
- a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Lahontan 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 Stipulation and/or 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.
31. **Waiver of Hearing:** The Discharger has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to an evidentiary hearing before the Lahontan Water Board prior to the adoption of the Order. The Stipulation and Order will be heard as a settlement agreement before the Lahontan Water Board, but the hearing will not be an evidentiary hearing.

32. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Lahontan 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.
33. **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 this Stipulation and Order.
34. **No Third Party Benefits:** Nothing in this Stipulated Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any persons, who are not a signatory to this Stipulation (third party), or to waive or release any defense or limitation against third party claims.
35. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
36. **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.
37. **Authority of Executive Officer to Extend Due Dates:** The Executive Officer or the Executive Officer's delegee may extend any of the due dates in this Stipulated Order upon the joint request of the Parties. Such extensions must be in writing.
38. **Effective Date:** The obligations in this Stipulated Order are effective and binding only upon the entry of an Order by the Lahontan Water Board which incorporates the terms of this Stipulation.
39. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
40. **Counterpart Signatures:** 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.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board  
Lahontan Region

By: \_\_\_\_\_  
Lauri Kemper  
Assistant Executive Officer

Date: \_\_\_\_\_

By: Neil de Vries  
Neil de Vries

Date: 12-6-13

By: Mary de Vries  
Mary de Vries

Date: 12-6-13

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board  
Lahontan Region

By: Lauri Kemper  
Lauri Kemper  
Assistant Executive Officer

Date: 12/12/13

By: \_\_\_\_\_  
Neil de Vries

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mary de Vries

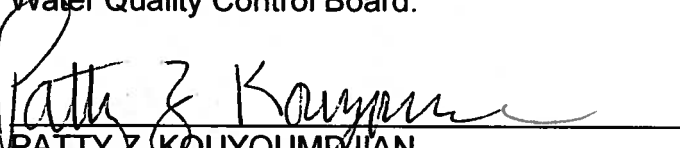
Date: \_\_\_\_\_

## Order of the Lahontan Water Board

This Order incorporates the foregoing Stipulation.

1. In accepting the foregoing Stipulation, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327. The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board staff in investigating Violation Nos. 1 through 3 or otherwise provided to the Lahontan Water Board.
2. This is an action to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.

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

  
PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

Date: Dec. 12, 2013

### Exhibits:

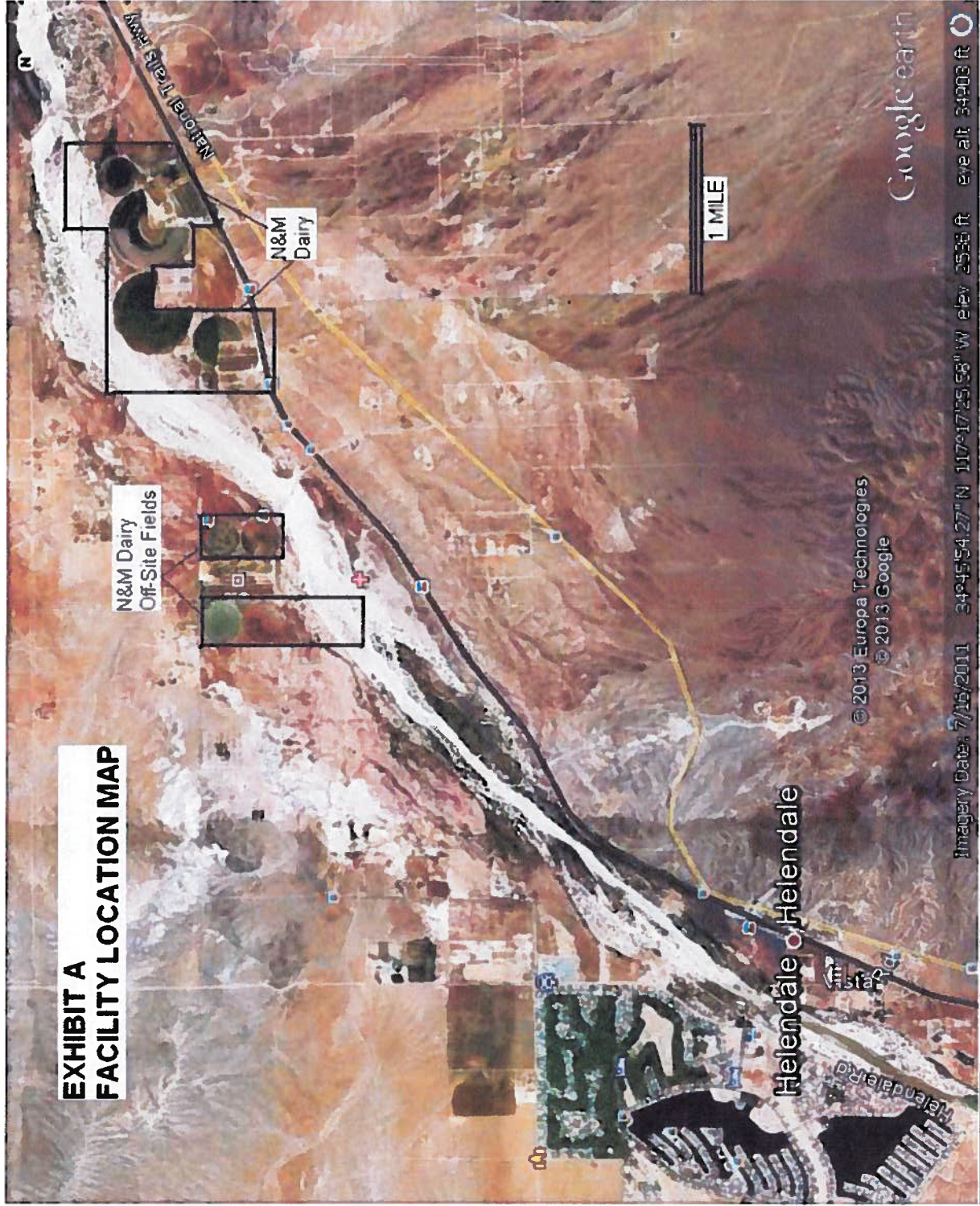
- A. Facility Map
- B. Administrative Civil Liability Methodology for Violation Nos. 1, 2, and 3
- C. SEP Description and Schedule for Performance

**EXHIBIT A**  
**FACILITY MAP**



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**EXHIBIT A  
FACILITY LOCATION MAP**



© 2013 Europa Technologies  
© 2013 Google

Google earth

Imagery Date: 7/16/2011 34°45'54.27" N 117°17'25.58" W elev. 2536 ft eye at 34903 ft

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**EXHIBIT B**

**ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY FOR VIOLATION NOS. 1, 2, AND 3**

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## EXHIBIT B

### ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY FOR VIOLATION NOS. 1, 2, AND 3 N&M DAIRY

On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy provides a methodology for determining administrative civil liability. The methodology includes an analysis of the factors in Water Code section 13327, and it enables fair and consistent implementation of the Water Code's liability provisions.

The Lahontan Water Board Prosecution Team alleges that the Discharger failed to comply with Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056 (CAOs). Below is a table listing the alleged violations of the CAOs.

<b>Violation No.</b>	<b>Description</b>	<b>CAO No.</b>	<b>Days of Violation</b>	<b>Proposed Base Liability</b>
<b>1</b>	Failure to remove all excess manure by January 17, 2012.	R6V-2010-0029A2	<b>349</b>	<b>\$230,340</b>
<b>2</b>	Failure to submit monthly manure progress reports for months of March through September, 2012.	R6V-2010-0029, R6V-2010-0029A2	<b>800</b>	<b>\$28,210</b>
<b>3</b>	Failure to complete drainage and corral grading, and eliminate storm water ponding in corrals.	R6V-2011-0056	<b>16</b>	<b>\$8,800</b>
			<b>TOTAL</b>	<b>\$267,350</b>

For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violations are non-discharge violations. Because the Complaint only alleges non-discharge violations, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not applicable.

Methodology Steps 3 through 5 are discussed relative to each violation. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all three violations, and these steps are discussed after the Total Base Liability amounts are discussed for each violation.

**Violation No. 1**  
**Remove Excess Manure by January 17, 2012**

**Step 3: Initial Liability Determination**

**1. Potential for Harm – Minor**

The excess manure was located where rainfall and storm water runoff could come into contact with the manure and discharge to ground and surface waters of the Middle Mojave River valley. After contact with the manure, the storm water runoff contains concentrations of bacteria, Total Dissolved Solids (TDS or salts), and nutrients. The failure to remove all excess manure by January 17, 2012 allowed waste containing bacteria, TDS, and nutrients to be discharged to the ground and surface waters of the Middle Mojave River Valley. Such discharges, should they occur, can potentially adversely impact aquatic habitat beneficial uses, in addition to contact and non-contact recreational beneficial uses. Such discharges can also introduce nutrients such as nitrogen and phosphorus and TDS, to the ground water. The shallow ground water is the drinking water supply for a number of nearby residents, and discharges of nutrients and TDS may have a deleterious impact on the drinking water supply.

Downgradient and cross-gradient water sampling results confirm nitrate and TDS in ground water are exceeding the Maximum Contaminant Level (MCL) and the Secondary Maximum Contaminant Level (SMCL), respectively. However, the excess manure is not the sole source contributing to the existing and ongoing nitrate and TDS pollution of local groundwater resources. Other potential sources include the agricultural fields and wastewater lagoons.

Although the excess manure poses a potential threat to the groundwater quality, the Discharger actively worked to remove the excess manure from the facility. As of January 17, 2012, less than 11 percent (4,100 tons) of the excess manure remained on site. Water Board staff observed that old stockpiles of manure were mostly gone during a May 22, 2012 inspection. The amount of excess manure remaining after the January 17, 2012 deadline was likely not a substantial threat to water quality, and the Potential for Harm for the violation is determined to be minor.

**2. Deviation from Requirement - Minor**

The Discharger identified approximately 40,250 tons of excess manure that had to be removed in order to comply with the January 17, 2012 deadline. They ultimately removed 36,149 tons by this date. Less than 11 percent of the excess manure remained on site until it was ultimately removed by the end of 2012. The Discharger was unable to remove the remaining portion of the excess manure by the deadline due to wet conditions and because of equipment failure. However, the Discharger displayed a general intent to comply with the requirement, and the Discharger substantially complied with the requirement by removing approximately 89 percent of

the excess manure by the deadline. The deviation from the requirement is determined to be minor.

Based upon a minor potential for harm and a minor deviation from the requirement, a per day factor of **0.1** was selected. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by statutory maximum daily penalty. For this violation, the statutory maximum penalty is \$5,000 (Water Code section 13350.e.1).

$$\begin{aligned}\text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.1) \times (349 \text{ days}) \times (\$5,000/\text{day}) \\ &= \$174,500\end{aligned}$$

#### **Step 4: Adjustment Factors**

##### **Multiple Day Violations**

The Enforcement Policy provides that, for violations lasting more than 30 days, the 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.

The Discharger has failed to comply with its cleanup and abatement order for 349 days. The continuance of this violation does result in an economic benefit that can be measured on a daily basis, the failure to remove all excess manure causes daily detrimental impacts to the environment, and the violation occurred with the knowledge and control of the Discharger. Because no express finding can be made justifying the reduction in the number of days of violations, the Discharger remains out of compliance for 349 days, and the revised initial liability remains at \$174,500.

##### **Adjustment for Culpability - 1.2**

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a Culpability multiplier of **1.2** has been selected.

The Facility's Waste Discharge Requirements issued in 2001 state that manure in excess of 3,100 dry tons per year (agronomic rate application for the Facility) must be removed from the Facility. The Discharger maintained approximately 4,300 cattle on the facility, which generated up to 40 tons per day of manure (14,600 tons per year of manure). Therefore, the Discharger should have been actively removing 11,500 tons per year of manure from the Facility. The Discharger's failure to comply with its permit condition and the requirement contained in Cleanup and Abatement Order No. R6V-



2010-0029A2 to remove all excess manure by January 17, 2012 resulted in accumulation of manure which posed a threat to groundwater.

Furthermore, the Water Board's Prosecution Team has exercised significant discretion in deciding whether to pursue administrative civil liability for violating the initial cleanup and abatement order (No. R6V-2010-0029). Doing so is consistent with the Prosecution Team's message to the Lahontan Water Board and to the Discharger that its primary interest is compliance. On July 2, 2010, the Assistant Executive Officer extended the deadline by a year, until October 19, 2011 (Order No. R6V-2010-0029A1). On October 12, 2011, the Discharger requested the Water Board amend the due date of October 19, 2011 stating that the removal was not achievable, and the Assistant Executive Officer again extended the deadline a second time to January 17, 2012 (Order No. R6V-2010-0029A2) with an additional stipulation that the Discharger is to remove a minimum amount of 2,000 tons per month of excess manure.

Although the Discharger is culpable in failing to comply with the requirement for removing the excess manure, a larger factor than 1.2 is not warranted. This is based upon the fact that the Discharger removed approximately 89 percent of the excess manure by the January 17, 2012 compliance date, thereby demonstrating a general intent to comply with the requirement.

#### Adjustment for Cleanup and Cooperation - 1.1

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is appropriate for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is appropriate for situations where cleanup and/or cooperation is minimal or absent. In this case, a Cleanup and Cooperation multiplier of **1.1** has been selected for the reasons described below:

The Discharger has shown a degree of cooperation by removing approximately 89 percent of excess manure by the January 17, 2012 deadline. However, the Discharger still failed to remove all of the excess manure by the deadline, even though the January 17, 2012 deadline was the second deadline extension allowed to the Discharger from the original October 22, 2010 deadline. The Discharger did not achieve compliance until December 2012, almost a year after the deadline. The Discharger's inability to achieve compliance warrants a cleanup and cooperation factor of at least 1.1, but the Discharger's ability to achieve significant compliance warrants not imposing a greater factor.

#### Adjustment for History of Violations - 1.0

The Enforcement Policy suggests that where there is a history of repeat violations, a **minimum** multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056. A

review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the Violation represents the first violation of all CAOs.

**Step 5: Determination of Total Base Liability Amount**

The Total Base Liability for Violation No. 1 is **\$230,340**. The Total Base Liability for the violation is determined by multiplying the Initial Liability (no revisions warranted for multi-day violation) by the multipliers associated with each of the Adjustment Factors discussed above.

$$\begin{aligned} \text{Base Liability} &= (\text{Revised Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) \\ &= (\$174,500) \times (1.2) \times (1.1) \times (1.0) \\ &= \$230,340 \end{aligned}$$

**Violation No. 2**

**Provide monthly manure progress reports beginning January 3, 2012**

**Step 3: Initial Liability Determination**

**1. Potential for Harm – Minor**

The failure to submit monthly progress reports does not directly or immediately impact beneficial uses. Even though beneficial uses may not be directly or immediately impacted by the alleged violation, the failure to submit the required monthly progress report has an ancillary effect on beneficial uses. The Lahontan Water Board lacks the necessary information to monitor and evaluate the cleanup activities related to the management of excess manure which poses a threat to surface or ground waters of the Middle Mojave River Valley. The failure to submit a summary report poses a minor threat to the beneficial uses of potential receiving waters. Therefore, the potential for harm to beneficial uses is determined to be minor.

**2. Deviation from Requirement - Moderate**

The Discharger failed to submit the Monthly Manure Removal Progress Reports for March 2012 through September 2012 by the required deadlines. On October 26, 2012, the Discharger submitted the reports for March through September 2012. Self-reporting is a necessary part of the Lahontan Water Board's effectiveness to regulate of water quality. Self-reporting is a means for the Discharger to demonstrate its compliance with Water Board requirements. In this case, the Discharger disregarded the requirement to timely submit reports, thereby depriving the Lahontan Water Board of the ability to timely evaluate the Discharger's progress, or lack thereof, related to cleanup activities. The Discharger submitted the Monthly Manure Removal Progress Reports in January and February 2012 but failed to submit the monthly reports from March through September. Therefore the requirement to submit monthly reports starting January 2012 was only partially achieved.

Based on a minor potential for harm and a moderate deviation from the requirement, a per day factor of **0.25** was selected. This value is to be multiplied by the days of violation (see following table) and the maximum per day penalty. Pursuant to Water Code section 13268, subdivision (b)(1), the statutory maximum penalty is \$1,000 for each day in which the violation occurs.

$$\begin{aligned} \text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.25) \times (800 \text{ days}) \times (\$1,000/\text{day}) \\ &= \$200,000 \end{aligned}$$

<b>Monthly Report</b>	<b>Days Submitted Late</b>
March, 2012	206
April, 2012	176
May, 2012	144
June, 2012	115
July, 2012	84
August, 2012	52
September, 2012	23
<b>Total Days</b>	<b>800</b>

**Step 4: Adjustment Factors**

**Multiple Day Violations**

The Enforcement Policy provides that, for violations lasting more than 30 days, the 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.

The Discharger has failed to comply with its cleanup and abatement order requirement. Below is a table providing the days of violation for each report. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of submitting the report to the Regional Board. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. The table below reflects the total number of collapsed days for each missing report.

Monthly Report	Days Submitted Late	Compressed Days
March, 2012	206	12
April, 2012	176	11
May, 2012	144	10
June, 2012	115	9
July, 2012	84	8
August, 2012	52	7
September, 2012	23	5
Total Days	800	62

The Revised Initial Liability is then recalculated based upon the revised number of days of violation from the table above.

$$\begin{aligned}
 \text{Revised Initial Liability} &= (\text{Per Day Factor}) \times (\text{Compressed Days}) \times (\text{Maximum Penalty}) \\
 &= (0.25) \times (62 \text{ days}) \times (\$1,000/\text{day}) \\
 &= \$15,500
 \end{aligned}$$

#### Adjustment for Culpability - 1.3

The Discharger was aware of the requirement to submit the monthly progress reports. Indeed, the Discharger demonstrated its disregard for the regulatory program by timely submitting its monthly progress reports for January and February, 2012 but then failing to submit reports for March through September until October 26, 2012. Therefore, a Culpability multiplier of **1.3** is appropriate.

#### Adjustment for Cleanup and Cooperation - 1.4

In this case, a Cleanup and Cooperation multiplier of **1.4** has been selected because of the lack of cooperation exhibited by the Discharger to return to compliance and submit the missing reports. The reports from March through September were not submitted until October 26, 2012, after Water Board staff initiated discussions of a forthcoming Administrative Civil Liability Complaint against the Discharger. Even though the Discharger submitted the missing reports in October 2012, the Discharger's voluntary cooperation had been absent.

### Adjustment for History of Violations – 1.0

In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the Violation represents the first violation of all CAOs.

### Step 5: Determination of Total Base Liability Amount

The Total Base Liability for Violation No. 1 is **\$28,210**. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

$$\begin{aligned}\text{Base Liability} &= (\text{Revised Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) \\ &= (\$15,500) \times (1.3) \times (1.4) \times (1.0) \\ &= \$28,210\end{aligned}$$

**Violation No. 3**  
**Re-grade Drainage Systems and Corrals to Eliminate Ponding**  
**by December 15, 2012**

**Step 3: Initial Liability Determination**

**1. Potential for Harm – Minor**

The Discharger's failure to re-grade drainage systems and corrals at the Facility potentially allows storm water to pond in areas throughout the corrals within the facility. The ponded water potentially creates fly breeding habitat and exacerbates ongoing fly nuisance issues throughout the surrounding community. Furthermore, the ponded water potentially creates a source of nutrients and TDS to the ground water, thereby exacerbating ongoing groundwater contamination issues.

However, the Discharger recently closed one of its two dairy corral operations. A Water Board staff inspection in February 2013 documented the presence of minimal areas of ponded storm water. Inspection results at the time found that storm water runoff from the corrals drained to onsite agricultural fields and did not leave the facility. Furthermore, the potential impacts to ground water from the few observed ponded areas are minimal due to the hardpack conditions found throughout the corral areas that restrict downward migration of pollutants. More recent inspection of the Facility indicates the second dairy operation is closing, with most cows removed from the Facility. Potential discharges are reduced accordingly. Therefore, the circumstances of the violation indicate a minor potential for harm.

**2. Deviation from Requirement - Minor**

While the Discharger failed to comply with the requirement by the December 15, 2012 deadline, the Discharger took steps prior to the December 15, 2012 deadline which achieved the same goal to contain runoff away from surface waters. Additionally, the Discharger regularly graded and stockpiled manure at the active dairy corral in a manner that minimized areas of ponded storm water, as observed in February 2013 during a Water Board staff inspection. The remaining operating dairy has been observed to have areas of ponded storm water, but these areas are minimal and do not pose a threat to surface waters. These actions indicate a general intent to comply with the requirement. The deviation from the requirement is determined to be minor.

Based on a minor potential for harm and a minor deviation from the requirement, a per day factor of 0.1 was selected. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by the statutory maximum penalty. Pursuant to Water Code section 13350, subdivision (e)(1), the statutory maximum penalty is \$5,000 for each day the violation occurs.

$$\begin{aligned}\text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.1) \times (16 \text{ days}) \times (\$5,000/\text{day}) \\ &= \$8,000\end{aligned}$$

#### **Step 4: Adjustment Factors**

##### **Multiple Day Violations**

The Discharger has failed to comply with its cleanup and abatement order for 16 days. The continuance of this violation does result in an economic benefit related to savings in survey and grading expenditures, the failure to completely re-grade the corrals and drainages potentially causes detrimental impacts to the environment, and the violation occurred with the knowledge and control of the Discharger. Because no express finding can be made justifying the reduction in the number of days of violations, the Discharger remained out of compliance for 16 days, and no reduction in the initial liability can be justified using the alternate approach for calculating multiday violations.

##### **Adjustment for Culpability - 1.1**

The Discharger failed to grade the corrals and drainages to prevent storm water ponding. However, the Discharger regularly graded and stockpiled manure at the active dairy corral in a manner that minimized areas of ponded storm water, as observed in February 2013 during a Water Board staff inspection. Overall, storm water runoff drains to onsite agricultural fields and does not leave the property site. Therefore, a Culpability multiplier of **1.1** is appropriate.

##### **Adjustment for Cleanup and Cooperation – 1.0**

The Discharger has hired a consultant who has worked diligently in the recent months to ensure the overall goal of no discharges to waters of the state, has been met. While the Discharger has continued to stockpile manure from its remaining dairy operation, the manure stockpiles have been created in a manner that is consistent with the permit for the facility, and the corral area has been graded in a manner that reduces the amount of storm water ponding. Moreover, the Discharger has closed one of its dairy operations, thereby eliminating one of the sources of the potential threats to water quality, and is in the process of closing the other dairy. The Discharger's efforts to achieve compliance warrant a neutral cooperation multiplier of **1.0**.

##### **Adjustment for History of Violations – 1.0**

In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cleanup and Abatement Order Nos. R6V-2010-0029, R6V-2010-0029A2, and R6V-2011-0056. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the Violation represents the first violation of all CAOs.



**Step 5: Determination of Total Base Liability Amount**

The Total Base Liability for the violation is **\$8,800**. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

$$\begin{aligned} \text{Base Liability} &= (\text{Revised Initial Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) \\ &= (\$8,000) \times (1.1) \times (1.0) \times (1.0) \\ &= \$8,800 \end{aligned}$$

## **Methodology Steps 6 through 10**

### **Step 6: Ability to Pay and Ability to Continue Business**

The Enforcement Policy provides that if the Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this case, the Lahontan Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability. To date, the Discharger has not provided information indicating the inability to pay the proposed liability. In the past few months, the Discharger notified Water Board staff that the dairy would be closing.

### **Step 7: Other Factors as Justice May Require**

The Enforcement Policy provides that if the Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. Additionally, the staff costs for investigating the violation and preparing the Complaint should be added to the liability amount.

Although the Lahontan Water Board has incurred **\$109,500** in investigative costs to date associated with all of the alleged violations, pursuant to Government Code 11415.60 and Page 22 of the Enforcement Policy, Regional Board staff is not seeking to recover these costs in this action.

### **Step 8: Economic Benefit**

The Enforcement Policy directs the Water Board to determine any Economic Benefit Amount of the violation based on the best available information. The Enforcement Policy suggests that the Water Board compare the Economic Benefit Amount to the Adjusted Total Base Liability and ensure that the Adjusted Total Base Liability is at a minimum, 10 percent greater than the Economic Benefit Amount. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business.

#### **Violation No. 1**

The economic benefit associated with Violation No. 1 is estimated to be \$243 based upon the interest savings for failing to remove the remaining 4,100 tons of manure by the January 17, 2012 deadline.

### Violation No. 2

The economic benefit associated with Violation No. 2 is close to zero. The Discharger's benefit from delinquenty submitting the monthly manure reports is negligible.

### Violation No. 3

The economic benefit associated with Violation No. 3 is estimated to be \$5,000 based upon the costs for surveying and grading the area associated with the remaining operating dairy.

The total economic benefit for all three violations is **\$5,243**.

## **Step 9: Maximum and Minimum Liability Amounts**

The Enforcement Policy directs the Water Board to consider and maximum or minimum liability amounts set forth in the applicable statutes.

### Violation No. 1

The Lahontan Water Board is authorized to impose an administrative civil liability of up to \$5,000 per day pursuant to Water Code section 13350(e)(1). However, Water Code section 13350(e)(1)(B) requires a minimum civil liability of \$100 per day when there is no discharge but an order of the Lahontan Water Board is violated. For the 349 days the Discharger failed to remove all the manure from the facility, the maximum potential civil liability is \$1,745,000, and the minimum required civil liability is \$34,900.

### Violation No. 2

The Lahontan Water Board is authorized to impose an administrative civil liability of up to \$1,000 per day pursuant to Water Code section 13268(b). There is no statutory minimum associated with this violation. For the 800 days the Discharger failed to submit the monthly manure progress reports, the maximum potential civil liability is \$800,000.

### Violation No. 3

The Lahontan Water Board is authorized to impose an administrative civil liability of up to \$5,000 per day pursuant to Water Code section 13350(e)(1). However, Water Code section 13350(e)(1)(B) requires a minimum civil liability of \$100 per day when there is no discharge but an order of the Lahontan Water Board is violated. For the 16 days the Discharger failed to grade the corrals and drainages at the facility, the maximum potential civil liability is \$80,000, and the minimum required civil liability is \$1,600.

The proposed liability falls within these maximum and minimum liability amounts.

The maximum potential liability for all three violations is **\$2,625,000**. The minimum required liability for all three violations is **\$36,500**.

**Step 10: Final Liability Amount**

The final liability amount for Violations Nos. 1 through 3 is \$376,850.

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**EXHIBIT C**

**SEP DESCRIPTION AND SCHEDULE FOR PERFORMANCE**

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## EXHIBIT C

### NEIL AND MARY DE VRIES (DBA N&M DAIRY) FLOODPLAIN AND HABITAT CONSERVATION EASEMENT

#### SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION AND SCHEDULE FOR PERFORMANCE

##### 1. Introduction

As part of the terms agreed upon in the Stipulation and Order between Neil and Mary de Vries (doing business as N&M Dairy) and the Prosecution Team of the Lahontan Regional Water Quality Control Board (Lahontan Water Board), a Supplemental Environmental Project (SEP) in the form of a Conservation Easement must be implemented and completed by Neil and Mary de Vries no later than the SEP Completion Date. The SEP would set aside land owned by the de Vries into a conservation easement, the goals of which would be to improve Mojave River floodplain function, restore floodplain and adjacent natural habitat within the easement, and improve water quality.

The N&M Dairy property is located on parcels within and adjacent to the Mojave River, approximately five miles northeast of the community of Helendale (Figure 1). Parcels comprising the Dairy include Assessor Parcel Numbers (APN) 466-041-01, -17, and -20 through -23; 466-101-06 and -07; and 466-111-02 (Figure 2). The Dairy includes irrigated fodder crop production, a portion of which is within the active channel and floodplain of the Mojave River. The Mojave River in this area is a broad, relatively flat channel that normally contains no surface water flow. However, during intense rainfall or sustained precipitation events, the Mojave River may fill the entire width of the active channel and portions of the floodplain in this area.

##### 2. SEP Boundary Description

The proposed conservation easement contains the following parcels or portions, consisting of approximately 310 acres (Figure 3):

- a. The northern three-quarters of APN 466-041-01, consisting of that portion north of a line from the southwestern corner of the parcel to a point midway along the eastern boundary of the parcel.
- b. The northern half of APN 466-041-17.
- c. The entirety of APNs 466-041-20, -21, and -22.
- d. The northern approximately 60 percent of APN 466-041-23, consisting of that portion north of a line from the midway point along the eastern boundary of APN



466-041-17 to a point on the eastern boundary of APN 466-041-23 approximately 2000 feet south of the northeastern corner of APN 466-041-23.

The SEP Area boundaries will be finalized by the conservation easement demarcation milestone and shall not deviate substantially from the proposed boundary description. Minor adjustments of the SEP Area boundaries described above may be accepted in writing by the Lahontan Water Board's Assistant Executive Officer.

### **3. SEP Conservation Easement Restrictions and Acceptable Uses**

As stated above, the goals of the conservation area are to improve the floodplain functions of the Mojave River, restore floodplain and adjacent natural habitat within the easement, and improve water quality. In order to achieve these goals, the following activities must be complied with:

#### **a. Prohibited Activities or Uses**

- i. Agricultural operations of any type, including, but not limited to, agricultural crop planting, irrigation, and harvest, and grazing by domestic or commercial livestock animals.
- ii. Land surface grading or disturbance, except to improve floodplain function (such as removing berms or other man-made channel restrictions), to assist restoration of floodplain and natural habitat, or to facilitate wetland creation and maintenance. Any river channel or floodplain grading activities conducted by the San Bernardino County Flood Control District within the easement must be in accordance with a Lahontan Water Board-approved plan and/or Clean Water Act section 401 Water Quality Certification.
- iii. Residential, commercial, or industrial structures or activities.
- iv. Vehicular access.

#### **b. Acceptable Activities or Uses**

- i. Natural river channel and floodplain functions.
- ii. River channel, floodplain, and adjacent upland wildlife habitat.
- iii. Constructed wetlands for wetland wildlife habitat.
- iv. Conservation banking, such as wildlife habitat or wetland mitigation banking.
- v. Ground water pumping from existing wells.

To promote the return of natural conditions, the southern boundary of the conservation easement must be appropriately demarcated.

#### **4. SEP Conservation Easement**

The SEP must be devised in conformance with the Conservation Easement Act (Civil Code sections 815-816), requiring, in part, that the conservation easement be an interest in real property and be perpetual in duration. As outlined in Section 3, above, the substantive restrictions and acceptable uses must be contained in the instrument creating the conservation easement.

#### **5. Schedule of Performance**

##### **a. Monthly Progress Reports**

Progress reports detailing the actions taken to complete the SEP shall be submitted monthly, with the **first report due on January 31, 2014**, until the SEP Completion Date. The progress reports must detail the actions the Discharger has taken to survey the Conservation Easement boundary, record the easement with the San Bernardino County Assessor-Recorder, and demarcate the boundaries of the easement. Documentation of survey, recordation, and easement demarcation must be provided. Progress reports are required until the Discharger provides the Final Completion Report required by the SEP Policy.

##### **b. Conservation Easement Boundary Demarcation Proposal**

A proposal and plan to identify on the land the boundaries of the Conservation Easement must be submitted by **January 31, 2014 for the Lahontan Water Board Executive Officer's approval**. The Lahontan Water Board recognizes that fencing and certain other permanent boundary demarcation structures within the one hundred year floodplain of the Mojave River is not appropriate and may adversely affect river function and habitat (e.g. wildlife access).

##### **c. Conservation Easement Boundary Survey**

Survey of the Conservation Easement boundary shall be performed by a California-licensed Land Surveyor. A report from the Surveyor including the maps, plats, descriptions or other documents necessary to legally describe the Conservation easement for purposes of recording the Easement with the County Assessor-Recorder shall be provided to the Lahontan Water Board by **March 31, 2014**.

**d. Demarcation of the Conservation Easement**

The Conservation Easement boundary shall be appropriately demarcated in accordance with the accepted Demarcation Proposal and documentation of proof of such demarcation shall be submitted to the Lahontan Water Board by **May 30, 2014**.

**e. Terms of Conservation Easement**

The terms of the conservation easement must be submitted for the Lahontan Water Board Executive Officer's approval by May 30, 2014. If the Lahontan Water Board Executive Officer does not approve the terms of the conservation easement by June 30, 2014, a request can be made to the Lahontan Water Board Executive Officer for consideration to extend the due date for the Conservation Easement.

**f. Recording the Conservation Easement**

Proof of the execution of the Conservation Easement must be provided by **July 31, 2014**. The Conservation Easement must be recorded with the County Recorder by **July 31, 2014**.

Attachment: Figure 1

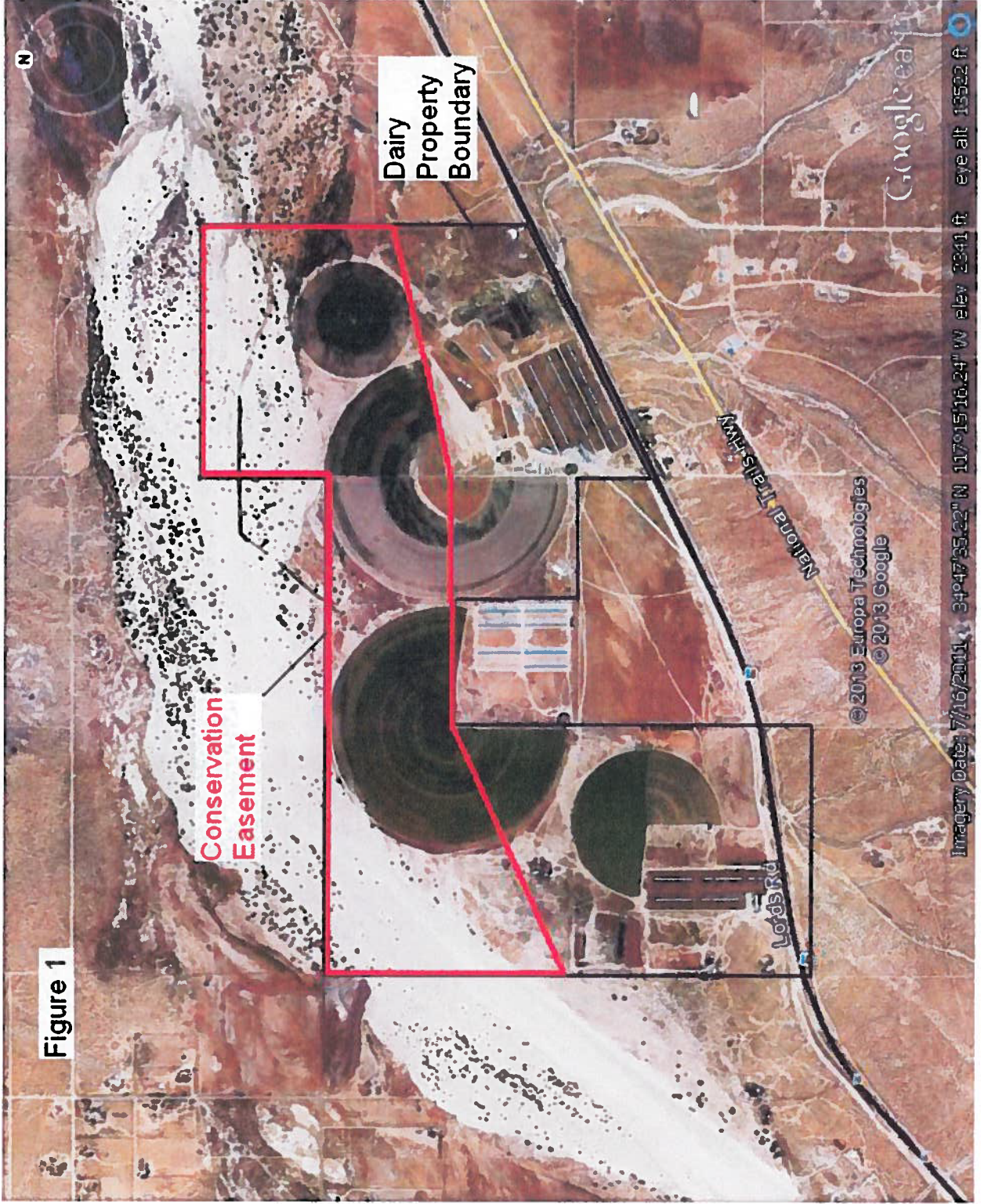


Figure 1