

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

In the matter of:

Carlos C. Lourenco Dairy

Order No. R5-2019-0505

Settlement Agreement and
Stipulation for Entry of Administrative
Civil Liability Order

INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) on behalf of the Central Valley Water Board Prosecution Staff (Prosecution Staff), and Carlos C. Lourenco Dairy (Dairy or Discharger) (collectively, Parties). This Order is presented to the Central Valley Water Board for adoption as an order by settlement pursuant to Government Code section 11415.60.

RECITALS

1. Carlos C. Lourenco owns and operates a dairy facility located at 6557 Oak Avenue, Merced, Merced County (Dairy). On information and belief, the Carlos C. Lourenco Dairy is a sole proprietorship whereby Carlos C. Lourenco is doing business as (dba) Carlos C. Lourenco Dairy.
2. The Dairy is currently regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2013-0122 (Reissued General Order) which was adopted by the Central Valley Water Board on 3 October 2013. The Reissued General Order replaces the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035. The Reissued General Order is a set of general waste discharge requirements that apply to owners and operators of existing milk cow dairies that (1) submitted a Report of Waste Discharge in response to the Central Valley Water Board's 8 August 2005 request and (2) have not expanded operations since 17 October 2005.
3. The Discharger submitted a Report of Waste Discharge on 12 October 2005 and enrolled the Dairy under the Reissued General Order. The Dairy is authorized to house a maximum of 1,300 mature dairy cows and currently houses approximately 1,400 cows. As an enrolled facility, the Dairy is subject to the requirements of the Reissued General Order for regulatory purposes.

4. Discharger's Dairy abuts the east side of Black Rascal Creek, to the South of Oak Avenue in Merced, California. Black Rascal Creek flows to Bear Creek. Bear Creek enters the San Joaquin River at the San Luis National Wildlife Refuge.
5. On 19 October 2017, Central Valley Water Board staff received a complaint alleging an active discharge of dairy wastewater into Black Rascal Creek from the Discharger's Dairy. That same day, Central Valley Water Board staff investigated and observed a large volume of lagoon wastewater discharging from Discharger's Dairy into Black Rascal Creek. During the 19 October 2017 inspection, Central Valley Water Board staff identified the following violation of the Reissued General Order.
6. Reissued Dairy General Order Prohibition A.4. states "The collection, treatment, storage, discharge or disposal of wastes at an existing milk cow dairy shall not result in the creation of a condition of pollution or nuisance".
7. Water Code section 13050 subdivision (l) defines pollution as an "alteration of the quality of waters of the state to a degree which unreasonably affects ... the waters beneficial uses," including "contamination."
8. On 19 October 2017, the Central Valley Water Board staff received a complaint from Merced Irrigation District of an active discharge of dairy wastewater from Discharger's Dairy into Black Rascal Creek, south of Oak Avenue. Merced Irrigation District's staff observed the discharge at approximately 10:40 a.m. on 19 October 2017. In response to this complaint, California Department of Fish and Wildlife (Fish and Wildlife) and Central Valley Water Board staff inspected the Dairy.
9. Central Valley Water Board staff arrived at the Dairy on 19 October 2017 and began to inspect the Dairy by driving around the western cropland perimeter. During the inspection, Central Valley Water Board staff observed a large volume of tailwater comprised of dairy lagoon wastewater blended with fresh irrigation water being discharged into Black Rascal Creek. Staff observed Field 1 (100 acres) and Field 3 (35 acres) draining tailwater into the pipeline flowing into Black Rascal Creek. Central Valley Water Board staff were told that irrigation of the fields had begun the previous day at approximately 6:00 a.m.. Discharger's employee explained to Fish and Wildlife wardens that an irrigation valve was mistakenly open during the irrigation and allowed water to flow from the Dairy's cropland into Black Rascal Creek.
10. On 19 October 2017, Central Valley Water Board staff conducted a field test for Total Ammonia and observed that it exceeded 6 parts per million (ppm) at the point of discharge into Black Rascal Creek. Central Valley Water Board staff took additional samples summarized in Table 1 of the 19 October 2017 Inspection

Report. According to the Discharger's Priority Reporting of Significant Event, no additional samples were taken by Discharger.

11. Merced Irrigation District employee's estimated that the flow rate of the discharge was approximately 448.8 gallons per minute.
12. On 19 October 2017 wardens from Fish and Wildlife measured the discharge flowrate into Black Rascal Creek to be approximately 5 gallons per second. Warden Nelson used a 10-gallon bucket to determine that the flow rate was approximately 300 gallons per minutes or 18,000 gallons per hour.
13. Central Valley Water Board staff observed that the wastewater level in Wastewater Storage Pond 1 had been lowered by approximately 10 feet.
14. At approximately, 15:50 p.m. on 19 October 2017, Central Valley Water Board staff observed that a series of valves along the discharging pipeline were closed by an employee of Discharger's Dairy. After the valves were closed, the discharge to Black Rascal Creek ceased. In addition, Central Valley Water Board staff observed the same employee redirect tailwater from the cropland to the wastewater lagoon instead of to Black Rascal Creek.
15. The alleged violation constitutes a violation of the California Water Code for which discretionary penalties may be assessed pursuant to California Water Code section 13350, subdivisions (a) and (e).
16. On 11 March 2019, the Assistant Executive Officer of the Central Valley Board issued Administrative Civil Liability (ACL) Complaint to Carlos C. Lourenco for the alleged violation seeking \$93,594.01 in liability.
17. The Parties have engaged in confidential settlement negotiations and agree to settle this matter without administrative or civil litigation by presenting this Order to the Central Valley Water Board, or its delegee, for adoption as an order pursuant to Government Code section 11415.60.
18. The Parties have agreed to settle the matter for a total liability of \$75,000. This reduction from the penalty as sought in the ACL Complaint and described in Attachment A is justified based on litigation risk associated with equitable factors and evidentiary issues.
19. Prosecution Staff asserts that the resolution of the alleged violations is fair, reasonable, and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A except as provided in this Order, and that this Order is in the best interest of the public.

STIPULATIONS

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to administrative civil liability totaling **SEVENTY FIVE THOUSAND DOLLARS (\$75,000)**. Within thirty (30) days of the effective date of this Order, Discharger agrees to remit, by check, **\$75,000**, payable to *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The Discharger shall send the original signed check referencing this Order number (R5-2019-0505) to the following address:

Division of Administrative Services
ATTN: Accounting, State Water Resources Control Board
1001 I Street 18th Floor
Sacramento, California 95814

and shall send a copy to the Prosecution Staff Party Contact at the address listed in Paragraph 3.

2. **Compliance with Applicable Laws:** The Discharger understands that the payment of administrative civil liability per the terms of this Order does not relieve the Discharger of its need to comply with applicable laws and that new violations of the type alleged in Attachment A may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
3. Party Contacts for Communications related to the Order:

For the Prosecution Staff:

Rob Busby
California Regional Water Quality Control Board, Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA, 95670
Robert.Busby@waterboards.ca.gov
916-464-4666

For the Discharger:

Carlos C. Lourenco
Carlos C. Lourenco Dairy
6557 Oak Avenue
Merced, CA 95340

4. **Attorney's Fees and Costs:** As between the parties, Discharger shall bear its own attorneys' fees and costs arising from its own counsel in connection with the matters set forth herein. The Central Valley Water Board shall not seek and shall bear its own fees and costs beyond the amounts paid pursuant to the Order. No staff costs calculated herein, either for prosecution of this matter or for Project oversight, represent attorneys' fees.
5. **Matters Addressed by Order:** Upon the Central Valley Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of alleged violations of the Dairy General Order as identified in Attachment A. The provisions of this Paragraph are expressly conditioned on the payment of the administrative civil liability.
6. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
7. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or the Central Valley Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.
8. **Procedural Objections:** The Parties agree that the procedure contemplated for adopting the Order by the Central Valley Water Board and review of this Order 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 and advisable.
9. **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.
10. **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 its delegee.

11. **If 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 is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board, on a future date after reasonable notice and opportunity for preparation, to determine whether to assess administrative civil liability 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 the settlement discussions will not be admissible as evidence in such a hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on a Complaint 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.
12. **Waiver of Hearing:** The Discharger has been informed of the rights provided by California Water Code section 13323(b), and subject to this Paragraph hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of this Order. This waiver will not apply if the Order does not take effect.
13. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition Central Valley Water Board's adoption of the Order as written for review by the State Water Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court. The waiver will not apply if the Order does not take effect.
14. **Covenant Not to Sue:** Upon adoption of the Order, the Discharger covenants not to sue or pursue any administrative civil claim(s) against any State Agency or the State of California its officers, board members, employees, representatives, agents or attorneys arising out of or relating to any Covered Matters, and the Central Valley Water Board covenants not to sue or pursue any administrative civil claims against the Discharger for the Covered Matters.
15. **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 the acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.

16. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
17. **No Third Party Beneficiaries:** Except as described in this Order, the Order is not intended to confer any rights or obligations 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.
18. **Effective Date:** This Order shall be effective and binding on the Parties on the date that the Central Valley Water Board enters the Order.
19. **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 counterpart shall together constitute one document.
20. **Severability:** The provisions of this Order are severable, and should any provision be found invalid, the remainder shall remain in full force and effect.

IT IS SO STIPULATED.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL VALLEY
REGION PROSECUTION STAFF

By: Original signed by Robert Busby for -
Andrew Altevogt, Assistant Executive Officer

Date: 9/25/2019

Settlement Agreement and Stipulated Order No. R5-2019-0505
Carlos C. Lourenco Dairy

CARLOS C. LOURENCO DAIRY

By: Original signed by
Carlos C. Lourenco

Date: 9/23/19

ATTACHMENT A: Penalty Methodology

FINDINGS OF THE CENTRAL VALLEY WATER BOARD

1. The Central Valley Water Board incorporates Paragraphs 1 through 20 by reference as it set forth fully herein.
2. In accepting this settlement, 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's staff in investigating the violations alleged herein or otherwise provided to the Central Valley Water Board.
3. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley 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, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. These findings by the Central Valley Water Board may be modified prior to the adoption of this Order without requiring amendment of the settlement agreement between the Parties.
5. The Central Valley Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.
6. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
7. The attached Agreement between the Assistant Executive Officer and the Carlos C. Lourenco Dairy is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.

I, Patrick Pulupa, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region.

Original signed by _____

PATRICK PULUPA
Executive Officer

Date: _____ 11/5/19