

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

In the matter of: )  
)  
**CLEANUP AND ABATEMENT ORDER** )  
**R5-2024-0704 (PROPOSED) ISSUED TO** )  
**JOHN AND TAMELA KISST REQUIRING** )  
**THE KISST DAIRY #1 TO ABATE THE** )  
**THREATENED DISCHARGE OF WASTE** )  
)  
)  
)  
\_\_\_\_\_ )

**STIPULATION FOR ENTRY OF A  
CLEAN UP AND ABATEMENT ORDER  
R5-2024-0704 (PROPOSED)**

**SECTION I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Cleanup and Abatement Order (Stipulated Order or 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 Team (“Prosecution Team”), and John and Tamela Kisst dba Kisst Dairy #1 (“Dairy” of “Discharger”) (collectively known as the “Parties”) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

**SECTION II: RECITALS**

1. John Kisst is the operator of Kisst Dairy #1 (WDID 5B39NC00144) which is located at 20000 Cedar Avenue in Tracy, San Joaquin County. John and Tamela Kisst are the owners of 20000 Cedar Avenue in Tracy, San Joaquin County.
2. The Dischargers are regulated by the Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order No. R5-2013-0122 (“Reissued General Order”) which was adopted by the Central Valley Water Board on 3 October 2013. As an enrolled facility, the Dischargers are subject to the requirements of the Reissued General Order and its associated Monitoring and Reporting Program.
3. Through the operation of Kisst Dairy #1, the Discharger has caused or threatened to cause waste to be discharged into waters of the United States, causing a condition of pollution or nuisance. This conduct is evidenced by the Discharger's alleged violations of the Reissued General Order, including the prohibition against the disposal of dairy waste to surface water, pond specifications, land application specifications, production area specifications, expansion requirements, and other general specifications present in the Reissued General Order. Further, the Discharger allegedly violated Water Code 13376 which prohibits the discharge of pollutants into waters of the United States. The specific alleged violations are

described in the Proposed CAO, which is attached hereto and incorporated by reference.

4. Water Code section 13304, subdivision (a), states, in part:

A person who ... threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts ....

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

### **SECTION III: STIPULATIONS**

The parties stipulate to the following:

6. **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 Stipulation.
7. **Waiver of Hearing:** The Discharger hereby waives any rights it may have to request a hearing before the Regional Water Board prior to the Regional Water Board's adoption of the Proposed CAO.
8. **Interpretation:** This Stipulation and Proposed CAO shall be construed as if the Parties prepared each jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
9. **Modification:** This Stipulation and Proposed CAO shall not be modified by any of the parties by oral representation made before or after its execution. All modifications must be in writing and signed by all Parties. The Parties acknowledge that the Regional Water Board or its delegate may make minor, non-substantive amendments to the Proposed CAO prior to adoption and without approval by the Parties, including assignment of a final order number. The Parties agree that any substantive revisions to the Proposed CAO must be agreed to by all Parties and approved by the Regional Water Board.
10. **If the Proposed CAO Does Not Take Effect:** Unless the parties agree otherwise, this Stipulation will be null and void should any of the following occur: (1) the Proposed CAO does not take effect because it is not approved by the Regional Water Board or its delegate; or (2) after the Regional Water Board adopts the proposed CAO, it is vacated in whole or in part by the State Water Board or a court. 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 any future proceeding.

11. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Proposed CAO 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.
12. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California Cleanup and Abatement Order their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation or Proposed CAO.
13. **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.
14. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
15. **Effective Date:** This Stipulation is effective and binding on the Parties upon full execution. The Proposed CAO, as may be modified in accordance with Paragraph 9, shall be effective upon issuance by the Central Valley Water Board.
16. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

**IT IS SO STIPULATED.**

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

Date: **11/12/2024**

By: **Original Signed by: John Kisst**

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**John Kisst  
Owner  
Kisst Dairy #1**

Date: 11/12/2024

*By: Original Digitally Signed by: John J. Baum on  
Date: 2024.11.12 09:36:01 -08:00'*

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**John J. Baum  
Assistant Executive Officer  
Central Valley Regional Water Quality Control  
Board**

Attachment 1: Proposed CAO