

1 MICHAEL D. MAY
2 ATTORNEY AT LAW
3 BAR NO. 80384
4 250 WEST FIRST STREET, SUITE 256
5 CLAREMONT, CALIFORNIA 91711
6 (909) 398-1030

7 Attorney for Petitioner
8 Flameling Dairy, Inc.



9 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**
10 **OF THE STATE OF CALIFORNIA**

11 IN THE MATTER OF THE PETITION OF) SWRCB File No.
12)
13 FLAMELING DAIRY, INC.) PETITION FOR REVIEW AND
14) REQUEST FOR HEARING
15 FOR REVIEW OF CLEANUP AND)
16 ABATEMENT ORDER NO.)
17 R6V-2008-0034)
18) [TO BE HELD IN ABEYANCE]
19 California Regional Water)
20 Quality Control Board, Lahontan) (Cal. Water Code § 13320;
21 Region) Cal. Code Regs. §§ 2050 - 2068)
22)
23)
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29 **INTRODUCTION**

30 Flameling Dairy, Inc. ("FDI") hereby petitions for a review of
31 that certain Amended Cleanup and Abatement Order No. R6V-2008-0034A1
32 ("the Amended CAO") issued by the Executive Officer of the Lahontan
33 Regional Water Quality Control Board ("Regional Board") concerning
34 the property located at 37501 Mountain View Road, Hinkley, California
35 on June 16, 2009. This Petition for Review and Request for Hearing
36 (the "Petition") is brought pursuant to the provisions of California
37 Water Code section 13320 and Title 23 of the California Code of
38 Regulations (sections 2050 through 2068).

1 Pursuant to section 2050.5 of the California Code of
2 Regulations, FDI requests that the State Water Resources Control
3 Board ("State Board") hold the Petition in abeyance for the maximum
4 time period permitted under its procedures and policies or until such
5 time as it can be determined whether other parties affected by the
6 Amended CAO, including but not limited to Desert View Dairy ("DVD")
7 will fully comply with the Amended CAO thereby rendering FDI's
8 Petition moot. FDI submits this Petition to preserve its rights for
9 review of the Amended CAO by the State Board in the event that DVD
10 does not fully comply with the Amended CAO or in the further event
11 that FDI and the Regional Board are unable to reach a resolution of
12 the issues presented herein. Should it become necessary to activate
13 this Petition, FDI reserves the right to supplement the Petition with
14 such additional information, including evidence and legal argument,
15 as its deems appropriate.

16 **PETITION FOR REVIEW AND REQUEST FOR HEARING**

17 **I. NAME AND ADDRESS OF PETITIONER**

18 Flameling Dairy, Inc.
19 c/o Bert and Kathleen A. Flameling
20 2088 Candlewood Avenue
Twin Falls, Idaho 83301-8338

21 **II. SPECIFIC ACTION OF THE REGIONAL BOARD**

22 This Petition seeks the review of that certain Amended Cleanup
23 and Abatement Order No. R6V-2008-0034A1 issued by the Executive
24 Officer of the Regional Board on June 16, 2009, a true and correct
25 copy of which is attached hereto as Exhibit 1.

26 **III. DATE OF THE REGIONAL WATER BOARD ACTION**

27 The Regional Board's action was taken on Juune 16, 2009.

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1 IV. SUMMARY OF REASONS WHY THE ACTION WAS INAPPROPRIATE AND
2 IMPROPER

3 Set forth below is a summary of the reasons why the action
4 taken by the Regional Board was inappropriate and improper. However,
5 since FDI has requested that the Petition be held in abeyance, it
6 reserves the right to submit an additional statement of reasons as to
7 why the action taken by the Regional Board was inappropriate and
8 improper should this Petition be activated.

9 The issuance of the Amended CAO was beyond the authority of
10 the Regional Board and was inappropriate, improper and not supported
11 by the record for the following reasons:

- 12 a. The Amended CAO includes findings of fact that are not
13 supported by substantial evidence in the record;
- 14 b. The Amended CAO violates FDI's constitutional rights to
15 due process and equal protection under the constitutions
16 of the United States and the State of California;
- 17 c. The Amended CAO is based in part on a water quality plan
18 (the 1995 Water Quality Control Plan for the Lahontan
19 Region [Basin Plan]) which was established after FDI had
20 sold its interest in the property and ceased its opera-
21 tions thereon;
- 22 d. The Amended CAO appears to have been based on testing
23 which fails to distinguish between the levels of agricul-
24 tural operations conducted by FDI and those conducted
25 after FDI sold its interest in the property and ceased
26 its operations thereon;
- 27 e. The Amended CAO does not make any attempt to quantify the
28 levels of so-called harmful constituents which existed

1 prior to the date that FDI sold its interest in the
2 property and therefore improperly seeks to hold FDI
3 responsible for the actions of parties over whom it has
4 no control;

5 f. The Amended CAO does not take into consideration the fact
6 that any discharges by FDI which may have occurred during
7 its ownership of the property described therein were
8 pursuant to the consent of the Regional Board and its
9 waiver of any waste discharge requirements imposed by
10 law;

11 g. The Amended CAO fails to set forth any rational criteria
12 by which the Regional Board determined certain parties to
13 be primarily responsible while others were determined to
14 be secondarily responsible;

15 h. The Amended CAO purports to impose perpetual responsibil-
16 ity upon FDI to monitor the effects of ongoing business
17 operations of others without regard for the legal or
18 economic consequences of such an order;

19 i. Even assuming FDI's prior business operations on the
20 property contributed to the conditions which the Amended
21 CAO seeks to remedy, the Regional Board failed to make
22 any attempt to apportion liability and/or the costs of
23 remediation between all responsible parties.

24 **V. MANNER IN WHICH PETITIONER IS AGGRIEVED**

25 FDI is an aggrieved person within the meaning of Water Code
26 section 13320, because the Amended CAO characterizes FDI as a primary
27 responsible party and requires FDI to provide alternate sources of
28 drinking water to an indeterminate number of persons and to prepare

1 and submit reports and undertake cleanup and abatement actions
2 without regard for (i) FDI's actual responsibility (or lack thereof)
3 for the conditions described in the Amended CAO; (ii) the passage of
4 time since FDI last conducted business on the property; (iii) the
5 effect of substantially increased agricultural operations conducted
6 on the property since FDI's sale of same; (iv) the effect of
7 substantially increased agricultural operations conducted on
8 neighboring properties since FDI's sale of the property identified in
9 the Amended CAO; and, (v) the economic or operational feasibility of
10 the Amended CAO and its impact on FDI. The Amended CAO also imposes
11 duplicative and unnecessary requirements on FDI and subjects FDI to
12 the risk of penalties if the Regional Board believes that DVD or
13 other responsible parties have not complied with the order.

14 **VI. SPECIFIC ACTION REQUESTED BY PETITIONER**

15 FDI respectfully requests the State Board hold this Petition
16 in abeyance for the maximum time period permitted under its proce-
17 dures and policies or until FDI requests action on this Petition,
18 whichever is earlier. Alternatively, FDI respectfully requests that
19 the State Board rescind the Amended CAO as it relates to FDI.

20 FDI reserves the right to request any and all actions
21 authorized by California Water Code section 13320. FDI does not
22 request a stay of proceedings at this time, but reserves the right to
23 do so in the future.

24 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

25 FDI respectfully requests that this Petition be held in
26 abeyance pursuant to section 2050.5 of the California Code of
27 Regulations and reserves the right to submit a Statement of Points
28 and Authorities should this Petition become activated.

1 VIII. SERVICE ON INTERESTED PARTIES

2 A copy of this Petition has been served on the Regional Board
3 and on all interested persons identified within the Amended CAO by
4 first class mail (see attached proof of service).

5 IX. STATEMENT OF REASONS AS TO WHY CERTAIN ISSUES WERE NOT RAISED
6 BEFORE THE REGIONAL BOARD

7 Because the Amended CAO was issued without notice to FDI and
8 without allowing FDI an opportunity to appear and present evidence
9 before the Regional Board, FDI did not have the opportunity to submit
10 evidence or to present legal argument in support of its position.
11 Given that FDI has requested that this Petition be held in abeyance
12 coupled with the possibility that full compliance with the Amended
13 CAO may be achieved through the compliance efforts of DVD or others,
14 FDI has not yet requested the Regional Board to prepare an adminis-
15 trative record of the proceedings before it. However, in the event
16 that this Petition is activated, FDI reserves the right to present at
17 the hearing on its Petition such evidence that it deems appropriate
18 to challenge the Amended CAO, including, but not limited to, evidence
19 bearing on the following:

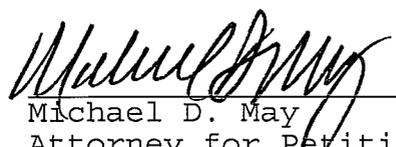
- 20 a. Legacy conditions, natural conditions, and conditions
21 associated with the property described in the Amended
22 CAO;
- 23 b. Legacy conditions, natural conditions, and conditions
24 associated with properties surrounding the property
25 described in the Amended CAO;
- 26 c. Any factual statement or assertion set forth in the
27 Amended CAO;
- 28 d. Economic harm to FDI as a result of the Amended CAO;

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- e. The scope and effect of agricultural operations conducted on the property described in the Amended CAO since FDI's sale thereof;
- f. The scope and effect of agricultural operations conducted on the properties surrounding the property described in the Amended CAO since FDI's sale thereof;
- g. The past actions of the Regional Board in permitting the operations of FDI and the issuance of certain waivers in connection therewith;
- h. The activities of FDI's successors in interest including, but not limited to DVD;
- i. The failure of the Regional Board to allow FDI to participate in whatever investigatory process preceded the issuance of the Amended CAO;
- j. Whether the Regional Board failed to take into consideration exculpatory evidence which would militate against FDI's inclusion within the Amended CAO; and,
- k. Whether the Regional Board failed to take into consideration exculpatory evidence which would have lead to a determination that even if FDI was properly named in the Amended CAO it should have been named as a secondarily responsible party.

FDI is unaware of whether there was a hearing before the Regional Board prior to the issuance of the Amended CAO that is the subject to this Petition.

Dated: July 9, 2009



Michael D. May
Attorney for Petitioner
Flameling Dairy, Inc.



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger
Governor

JUN 16 2009

Paul Ryken
Desert View Dairy
37501 Mountain View Road
Hinkley, CA 92347

Estate of Nick Van Vliet
c/o Gary B. Genske
1835 Newport Boulevard, Suite D-263
Costa Mesa, CA 92627

Flameling Dairy, Inc.
c/o Bert & Kathleen A. Flameling
2088 Candlewood Avenue
Twin Falls, ID 83301-8338

K&H Van Vliet Children LLC
c/o Nellie Ruisch
23925 Waalew Road
Apple Valley, CA 92307-6932

Robert Doss
Mail Code B16A
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105-1814

AMENDED CLEANUP AND ABATEMENT ORDER NO. R6V-2008-0034A1, DESERT VIEW DAIRY CONTAMINATION IN GROUNDWATER, HINKLEY, SAN BERNARDINO COUNTY, W DID NO. 6B36040900

Enclosed for your immediate attention is Amended Cleanup and Abatement Order No. R6V-2008-0034A1 (Order) to the operators, past operator, and owners of the Desert View Dairy. The Order modifies monitoring and reporting activities in Cleanup or Abatement Order No. R6V-2008-0034 to address nitrate pollution in the vicinity of and in the downgradient groundwater flow direction from the Dairy.

California Environmental Protection Agency



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Paul Ryken
Estate of Nick Van Vliet
Flameling Dairy, Inc.
K&H Van Vliet Children LLC
Robert Doss

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This letter also accepts the proposal for long-range replacement water workplan for private wells affected by pollution.

Background

CAO R6V-2008-0034 directs the owner and operator of the Desert View Dairy to, among other things, test all private wells affected or potentially affected by pollution four times per year and report the findings to the Water Board within 30 days of sampling.

To date, 33 private wells in the vicinity of and in the downgradient flow direction of the Dairy have been tested. Six of the 33 locations show nitrate in private wells at concentrations exceeding the primary Maximum Contaminant Level (MCL) of 45 milligrams per liter (mg/L) (December 2008 Sampling Results Report). These six locations are being provided alternate water supply by the Dairy. Seven other locations tested show salt compounds (chloride, sulfate, sodium, and total dissolved solids) at concentrations exceeding secondary MCLs.

The March 2009 supplemental sampling event has essentially defined all private wells in the area affected or potentially affected by pollution from the Dairy. Sampling results indicate that groundwater pollution extends between 3,000 to 6,000 feet north-northwest of the Dairy, with the unknown range being open space. No additional private wells affected by nitrates or other salt compounds have been identified.

A March 20, 2009 letter, submitted on behalf of Mr. Paul Ryken and the estate of Nick Van Vliet by Conestoga-Rovers and Associates, requests modifications in the Order to testing of private wells and reporting to the Water Board. Specifically, the letter requests that quarterly well sampling be reduced to an annual frequency and that the number of sample locations be reduced to ten wells affected or potentially affected by nitrates. The request is based upon water quality data generated during one to three quarters of sampling in the area. Furthermore, the letter proposes to implement long-term, uninterrupted, replacement water for private wells affected by nitrate pollution by continuing the supply of bottled water currently in place. Bottled water is being supplied weekly to affected residents by a local bottled water distributor.

Modifications to CAO R6V-2008-0034

Your request to reduce the sampling frequency and number of wells sampled as required in the Order is reasonable. However, since well sampling has been conducted for less than one year and the long-term trend of pollution in wells is unknown, I believe semi-annual sampling, rather than annual sampling, is appropriate at this time for wells that are threatened but currently below the MCL for nitrate.

California Environmental Protection Agency



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Paul Ryken
Estate of Nick Van Vliet
Flameling Dairy, Inc.
K&H Van Vliet Children LLC
Robert Doss

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I also agree with your recommendation that some supply wells can be removed from the monitoring program without compromising your ability to appropriately monitor nitrate pollution and the potential threat to supply wells. In addition to the ten wells proposed for sampling, I believe that two other well locations should be sampled. The two added well locations are 23203 Salinas Road and 22772 Sonoma Street. Even though the nitrate drinking water standard is not exceeded in these two wells, they are downgradient of the Dairy, their constituents are similar to those from the Dairy, and the wells immediately upgradient of them contain nitrates above the MCL.

The above changes to the monitoring and reporting requirements in Cleanup and Abatement Order No. R6V-2008-0034 are made in the Orders portion of the Amended Order. The enclosed Amended Order does not relieve the Dischargers from complying with requirements in the original Order that have not been changed.

Long-term, Replacement Water

Lastly, I am accepting your March 20, 2009 proposal to implement long-term, uninterrupted, replacement water for private wells affected by nitrate pollution by continuing the supply of bottled water currently in place. Board staff made attempts to contact the affected residents and did not hear any objections to your proposal from the residents with whom we spoke. The resident at 22619 Thompson Road, however, has a disconnected telephone and could not be contacted. And, the family that was renting the residence at 22875 Thompson Road has since moved from the property.

Responsible Parties

The Amended Order identifies primary and secondary responsible parties. The cleanup and abatement actions and technical report submittals listed in the Amended Order may be completed by one or all of the responsible parties. If primary responsible parties do not comply with the Amended Order's directives, the Water Board will notify the secondary responsible parties that they must comply with the directives. If none of the responsible parties comply with these directives, all parties will be subject to enforcement action by the Water Board. Such an action may include issuance of an assessment of an administrative civil liability for up to five thousand dollars (\$5,000) for each day of violation of a directive, or referral to the California Attorney General for appropriate action.



Paul Ryken
Estate of Nick Van Vliet
Flameling Dairy, Inc.
K&H Van Vliet Children LLC
Robert Doss

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I appreciate your cooperation in this matter. If you have any questions, please contact Lisa Dernbach at (530) 542-5424 (ldernbach@waterboards.ca.gov) or Chuck Curtis at (530) 542-5460 (ccurtis@waterboards.ca.gov).



HAROLD J. SINGER
EXECUTIVE OFFICER

Enclosures: CAO R6V-2008-0034A1
Water Code Section 13267 Fact Sheet

cc: Mailing list

LSD/adw/T:Desert View Dairy amended CAO 5-09
Send to file: WDID 6B36040900



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

AMENDED CLEANUP AND ABATEMENT ORDER NO. R6V-2008-0034A1

**REQUIRING PAUL RYKEN, THE ESTATE OF NICK VAN VLIET, FLAMELING
DAIRY, INC., K&H VAN VLIET CHILDREN LLC,
AND
THE PACIFIC GAS AND ELECTRIC COMPANY
TO CLEAN UP OR ABATE THE EFFECTS OF
CONTAMINANTS TO GROUNDWATERS OF
THE MOJAVE RIVER HYDROLOGIC UNIT,
DESERT VIEW DAIRY, HINKLEY,
WDID NO. 6B36040900**

San Bernardino County

The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

1. On November 10, 2008, the Water Board issued Cleanup and Abatement Order (Order) No. R6V-2008-0034 (attached) to Paul Ryken, the Estate of Nick Van Vliet, Flameling dairy, inc., K&H Van Vliet Children LLC, and the Pacific Gas and Electric Company. This amendment provides supplemental findings and modifies the well sampling requirements of the Order. All Findings and those requirements that are not amended in Cleanup and Abatement Order No. R6V-2008-0034 remain in effect.
2. On January 9, 2009, the Dischargers submitted to the Water Board a document titled, *Residential Well Sampling Results (Results)*, for sampling conducted in December 2008. Well monitoring data in the Results show that concentrations of nitrate as NO_3 were reported at 200 mg/L in a private domestic supply well located at 22839 Thompson Road. This result is greater than the primary drinking water standard of 45 mg/l for nitrate as NO_3 . The Results also show that the drinking water standard for nitrate as NO_3 was exceeded at five additional off-site well locations on four different properties. The Results did not show any new private supply wells with nitrate concentrations exceeding the standard beyond those listed in previous technical reports.
3. On March 20, 2009, the Water Board received a letter by Conestoga-Rovers and Associates, on behalf of Mr. Paul Ryken and the estate of Nick Van Vliet, requesting modifications to requirements in the Order. The letter recommended that residential well sampling be reduced in frequency and in the number of sampling locations. The request was based upon results from three residential well sampling events and evidence that all residential wells currently affected by nitrate pollution have been identified.

PAUL RYKEN, 2
THE ESTATE OF NICK VAN VLIET,
FLAMELING DAIRY, INCORPORATED,
K&H VAN VLIET CHILDREN LLC, AND
THE PACIFIC GAS & ELECTRIC COMPANY
San Bernardino County

CLEANUP & ABATEMENT
ORDER NO. R6V-2008-0034A1
WDID NO. 6B36040900

4. On March 30, 2009, the Dischargers submitted a letter report documenting the findings of additional residential well sampling at off-site locations downgradient of the Facility. Analytical results from three residential wells, located on Sonoma Street 6,000 feet to the north, show that the nitrates detected were well below the drinking water standard for nitrate as NO_3 . The information indicates that the downgradient boundary of the nitrate plume from the Facility extends in groundwater to less than 6,000 feet from the Facility.
5. This Amended Order requires monitoring and reporting pursuant to Water Code section 13267, subdivision (b). The monitoring required by this Amended Order is necessary to determine water supply sources adversely affected by pollution and threat to other potential water supply sources and to verify compliance with the Amended Order. This Amended Order lists well locations for semi-annual and annual monitoring and establishes a semi-annual reporting frequency.
6. The issuance of this Amended Order is an enforcement action taken by a regulatory agency and is exempt from the provision of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), pursuant to California Code of Regulations (CCR), title 14, section 15321, subdivision (a)(2). The implementation of this Amended Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), in accordance with CCR title 14, sections 15308 and 15330.

IT IS HEREBY ORDERED, pursuant to the Water Code sections 13267 and 13304, that Mr. Paul Ryken, the estate of Nick Van Vliet, and Flameling Dairy, Inc., are primarily responsible for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, and shall abate the effects of waste discharges at, near, and downgradient of the Facility as directed in Cleanup and Abatement Order No. R6V-2008-0034 and as amended below. As secondarily liable for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, the K&H Van Vliet Children LLC and PG&E shall abate the effects of waste discharges at, near, or downgradient of the Facility as directed in Cleanup and Abatement Order No. R6V-2008-0034 and as amended below, in the event that Mr. Paul Ryken, the estate of Nick Van Vliet, and Flameling Dairy, Inc., fail to comply with all or any portion of this Amended Order after being so notified by the Water Board to comply with this Amended Order.

Order Nos. 4 and 5 of Cleanup and Abatement Order No. R6V-2008-0034 are amended as follows:

4. Well Sampling

PAUL RYKEN, 3
 THE ESTATE OF NICK VAN VLIET,
 FLAMELING DAIRY, INCORPORATED,
 K&H VAN VLIET CHILDREN LLC, AND
 THE PACIFIC GAS & ELECTRIC COMPANY
 San Bernardino County

CLEANUP & ABATEMENT
 ORDER NO. R6V-2008-0034A1
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- A. **During the periods April 1, 2009 to June 30, 2009 and October 1, 2009 to December 31, 2009 and semi-annually (every six months) thereafter,** conduct sampling of the private domestic wells listed in the table below. Submit samples with chain of custody documentation to a California certified laboratory for analyses. Laboratory analyses must include general minerals and regulated inorganics. Nitrate as NO_3 must have a Method Detection Limit of 2 mg/L or less.

Well Location	Nitrate Status
37501 Mountain View Rd	Threatened
38080 Mountain View Rd	Threatened
38132 Mountain View Rd	Threatened
38423 Mountain View Rd	Threatened
23203 Salinas Rd	Threatened
22772 Sonoma St.	Threatened

- B. **During the period October 1 to December 30, 2009 and annually (every twelve months) thereafter,** conduct sampling of the private domestic wells listed in the table below. Submit samples with chain of custody documentation to a California certified laboratory for analyses. Laboratory analyses must include general minerals and regulated inorganics. Nitrate as NO_3 must have a Method Detection Limit of 2 mg/L or less.

22619 (1) Thompson Rd	Above MCL
22619 (2) Thompson Rd	Above MCL
22726 Thompson Rd	Above MCL
22839 Thompson Rd	Above MCL
22875 Thompson Rd	Above MCL
22698 Alcludia Rd	Above MCL

5. **By August 15, 2009 and semi-annually (every six months) thereafter,** but no later than 45 days after completing the well sampling required in Order 4 above, submit to the Water Board California-certified laboratory results and other quality assurance/control documentation from the semi-annual sampling event, and annual sampling event, if appropriate, for all potentially affected private domestic wells. If the results indicate that other constituents besides nitrate are detected above the MCL, the report must describe those wells affected. The report must contain a map showing the location of all wells that were sampled or were attempted to be sampled. List all attachments and figures in the report.

Failure to comply with the terms or conditions of this Order will result in additional enforcement action that may include the imposition of administrative civil liability pursuant to

PAUL RYKEN, 4
THE ESTATE OF NICK VAN VLIET,
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San Bernardino County

CLEANUP & ABATEMENT
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Water Code sections 13268 and 13350 or referral to the Attorney General of the State of California for appropriate legal action.

Any person aggrieved by this action of the Lahontan Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, of state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Ordered by:


HAROLD J. SINGER
EXECUTIVE OFFICER

Dated:

June 16, 2009

Attachment: Cleanup and Abatement Order No. R6V-2008-0034

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**CLEANUP AND ABATEMENT ORDER NO. R6V-2008-0034
REQUIRING PAUL RYKEN, THE ESTATE OF NICK VAN VLIET, FLAMELING
DAIRY, INCORPORATED, K&H VAN VLIET CHILDREN LLC, AND
THE PACIFIC GAS AND ELECTRIC COMPANY
TO CLEANUP OR ABATE THE EFFECTS OF
CONTAMINANTS TO GROUNDWATERS OF
THE MOJAVE RIVER HYDROLOGIC UNIT,
DESERT VIEW DAIRY, HINKLEY,
WDID NO. 6B36040900**

SAN BERNARDINO COUNTY

The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

FINDINGS

1. The Desert View Dairy (DVD) is located at 37501 Mountain View Road in Hinkley. The DVD is situated east of this unincorporated community in San Bernardino County, in the Harper Valley Subarea of the Mojave Hydrologic Unit. As described below, the Flameling Dairy operated at this location. Hereinafter, land upon which the Desert View Dairy is located and the Flameling Dairy was located will be referred to as the "Property" and the operations of the DVD and Flameling Dairy as "dairy operations."
2. From 1981 to 1992, the Property was owned by FD Farms and from 1981 to 1986 the dairy operations were controlled by Flameling Dairy, Inc. From 1986 to approximately 1992, no dairy operations were conducted at the Property.
3. The K&H Van Vliet Children LLC and various Van Vliet trusts owned the property from 1992 to 2002. Mr. Paul Ryken and Mr. Nick Van Vliet have conducted dairy operations on the Property since approximately 1992 under a general partnership known as the Desert View Dairy. Mr. Van Vliet is recently deceased. The Water Board understands that the estate of Mr. Van Vliet remains a partner in the dairy operation.
4. The Pacific Gas and Electric Company (PG&E) bought the property in 2002 and leases it to the Desert View Dairy partnership to operate as a dairy.
5. Mr. Ryken, the estate of Mr. Van Vliet, Flameling Dairy, Inc., the K&H Van Vliet Children LLC and PG&E are hereinafter referred to as "Dischargers." Additional dischargers may be named as additional information becomes available.
6. The Property consists of approximately 180 acres that include a dairy operation, two residences, crop fields, and a manure/wastewater storage pond. The current

PAUL RYKEN,
 THE ESTATE OF NICK VAN VLIET,
 FLAMELING DAIRY, INCORPORATED,
 K&H VAN VLIET CHILDREN LLC, AND
 THE PACIFIC GAS AND ELECTRIC COMPANY
 San Bernardino County

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CLEANUP & ABATEMENT
 ORDER NO. R6V-2008-0034
 WDID NO. 6B36040900

dairy operation includes approximately 1,500 dairy cows on the Property. In a July 30, 2008 letter report from Conestoga-Rovers and Associates on behalf of Mr. Ryken, it was estimated that approximately 43,000 gallons of wastewater containing nitrogen and total dissolved solids is generated each day by dairy operations. Liquid wastewater is stored in a storm water pond that was reportedly constructed with a clay liner in 1981, when Flameling Dairy, Inc. operated the dairy. The integrity of the clay liner is unknown. The wastewater is applied onto fields in the northern portion of the property. These discharges contributed to increased nitrate and other constituents in groundwater beneath and in the downgradient groundwater flow direction of the Property due to the nitrate and salts present in the wastewater.

7. From approximately 1992 to 1996, the Desert View Dairy partnership discharged manure solid waste to areas in the northern portion of the property. Between 1996 and 2001, manure was both spread on the site and exported to surrounding fields on other properties. Since 2002, manure has been trucked to an off-site facility for processing. No records were kept of the volume of manure applied at the Property each year when land disposal occurred. However, records from 2004 to 2007 show that the dairy operation produces an annual average of 5,314 tons of solid waste. These past discharges may have contributed to increased nitrate and other constituents in groundwater beneath and downgradient of the Property due to the nitrate and salts present in the manure.
8. As the current dairy operators, Mr. Paul Ryken and the estate of Mr. Nick Van Vliet, as the Desert View Dairy general partnership, are subject to this Order because they know or should know of the discharge of waste and have the ability to control it. As the former dairy operator, Flameling Dairy, Inc. are subject to this Order because it knew or should have known of the discharge of waste and had the ability to control it. As former owner of the property, the K&H Van Vliet Children LLC knew or should have known of the discharge of waste and had the ability to control it. Since it acquired the Property in 2002, PG&E knows or should know of the discharge of waste and has the ability to control it.
9. On January 31, 2008, Water Board staff collected a water sample from the domestic well at the residence located at 22858 Alcutia Road in Hinkley, at the owner's request. The well is situated approximately 200 feet north of the Property. Six measured constituents in the sample exceed either the primary or secondary drinking water standards (Maximum Contaminant Levels or MCLs) or a USEPA Health Advisory level. The detected concentrations for the six constituents are shown here:

Constituent	Concentration	Standard
Nitrate as NO ₃	81 mg/L	45 mg/L
Chloride	1200 mg/L	250-600 mg/L

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Sulfate as SO ₄	1400 mg/L	250-600 mg/L
Specific Conductance (EC)	5100 µmhos/cm	900-2200 µmhos/cm
Sodium	410 mg/L	20 mg/L
Total Dissolved Solids	4600 mg/L	500-1500 mg/L

10. On May 9, 2008, the Water Board ordered Mr. Ryken and PG&E to submit technical reports to investigate pollution in groundwater beneath and adjacent to the Property. The order was based on prior ground water samples collected at the Property showing concentrations of nitrates (as NO₃) up to 81 mg/L and total dissolved solids up to 3120 mg/L, which exceed MCLs. The order, issued pursuant to section 13267 of the Water Code, required the submittal of: a groundwater investigation workplan; description of all waste disposal actions for the past 15 years, and; a technical report describing the results of a groundwater investigation to evaluate the extent of pollution from dairy operations on the Property.
11. On August 11, 2008, the Water Board received a citizen letter complaining about high levels of nitrates detected in her residential well, located at 22726 Thompson Road in Hinkley. The residence is situated about 2,500 feet north of the Property, in the estimated downgradient groundwater flow direction from the Property. The letter included a copy of laboratory results showing that 96 mg/L nitrate (as NO₃) was detected in a water sample. The letter expressed concern about the source of nitrates, potential health affects, and actions that the Water Board is taking to address the problem. A reply letter by Water Board staff was issued on September 15, 2008.
12. As of October 31, Mr. Ryken has complied with the three directives in the Water Code section 13267 order issued on May 9, 2008. The Water Board received a workplan proposing a groundwater investigation at and in the vicinity of the Property and a letter report describing waste management practices during the past 15 years. The workplan states that based on historical database review, the general background concentration of nitrate as nitrogen in groundwater ranges from 1 to 15 mg/L (nitrate as NO₃ from 4.5 to 67.5 mg/L) on properties surrounding the Property. Mr. Ryken conducted the groundwater investigation, with off-site domestic well sampling in early-October 2008. The technical report describing the investigation results was submitted to the Water Board on October 31, 2008.
13. The 1995 *Water Quality Control Plan for the Lahontan Region* (Basin Plan) established water quality objectives (WQOs) for the protection of beneficial uses. WQOs include the following primary MCL established by the California Department of Public Health as a safe level to protect public drinking water supplies:

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Nitrate as NO₃

45 mg/L

The following secondary MCLs are established by the California Department of Public Health as consumer acceptance contaminant levels:

Constituent	Recommended	Upper	Short Term
Chloride (mg/L)	250	500	600
Sulfate as SO ₄ (mg/L)	250	500	600
Total Dissolved Solids (mg/L)	500	1000	1500
Specific Conductance (EC) (µmhos/cm)	900	1600	2200

The following U.S. EPA Health Advisory is established as a secondary drinking water standard for individuals on a 500 mg/day restricted sodium diet:

Sodium

20 mg/L

14. Dairy wastewater and solid manure are defined as wastes pursuant to Water Code section 13050, subdivision (d).
15. The Dischargers caused or allowed or threatened to cause nitrate-containing wastes and other wastes to be discharged to waters of the State underlying the Property.
16. Nitrate-containing wastes and other wastes have impacted groundwater beyond the boundaries of the Property. Water data from wells on the Property and off-site domestic wells as presented in Finding Nos. 9 - 12 indicate that the nitrate plume originating at the Property has migrated to at least Thompson Road, about 2,500 feet to the north. The lateral and vertical extent of the plume is not fully known but is under investigation. The required investigation report is the subject of another order of the Water Board.
17. Parcels within one mile to the north of the Property contain approximately 40 private and community domestic drinking supply wells, as indicated in a 2006 well survey report submitted by PG&E. Wastes from the Property either have adversely impacted or threaten to impact supply wells with nitrates and other wastes exceeding the drinking water MCLs.

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18. Water Code section 13050, subdivision (l) defines "pollution" as follows:

... an alteration of the water quality to a degree that unreasonably affects either beneficial uses or facilities that serve these beneficial uses.

19. Pursuant to Chapter 2 of the Basin Plan, present and potential beneficial uses of groundwater underlying and downgradient of the Property include domestic and municipal water supply, agricultural water supply, industrial water supply, freshwater replenishment, and aquaculture.
20. Because the discharges have caused or contributed to groundwater beneath and downgradient of the Property to exceed the drinking water standard for nitrate as NO_3 (45 mg/L), the affected ground water is no longer useable for drinking or domestic supply. This alteration is unreasonable because the aquifer is currently used for drinking water and the portion of the aquifer affected by the discharge is no longer suitable for this beneficial use. The discharges have, therefore, unreasonably affected the water for municipal and domestic supply beneficial use and caused a condition of pollution.
21. Mr. Paul Ryken, the estate of Mr. Nick Van Vliet, and Flameling Dairy, Inc., are primarily liable for complying with this Order. A regional board may make a distinction between primary and secondary liability. (See, e.g., *Alcoa et al.*, State Water Resources Control Board (State Water Board) WQ Order No. 93-09 at p. 12, fn. 8.) This distinction has been made primarily for equitable reasons.

In this case, Mr. Paul Ryken, the estate of Mr. Nick Van Vliet, and Flameling Dairy, Inc., are primarily liable for compliance with this cleanup order because Mr. Ryken and Mr. Van Vliet, as the Desert View Dairy general partnership, and the Flameling Dairy, Inc., as dairy operators initiated and contributed to the discharge of waste. More specifically, because Mr. Paul Ryken, Mr. Van Vliet and Flameling Dairy, Inc., caused waste to be discharged such that groundwater has been adversely affected by elevated concentrations of nitrate and salts, Mr. Paul Ryken, the estate of Nick Van Vliet, and Flameling Dairy, Inc., are primarily responsible for compliance with this Order.

22. The K&H Van Vliet Children LLC and PG&E are secondarily liable for complying with this Order. The State Water Board has also cited factors that are appropriate for regional boards to consider in determining whether a party should be held secondarily liable. These factors include making a distinction between those parties who were considered responsible parties solely due to their land ownership and whether or not the parties initiated or contributed to the discharge.

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In this case, Mr. Ryken, Mr. Van Vliet, and Flameling Dairy, Inc., rather than the K&H Van Vliet Children LLC and PG&E, initiated or contributed to the discharge, and the K&H Van Vliet Children LLC and PG&E are named as responsible parties due to their former or current ownership of the Property.

AUTHORITY – LEGAL REQUIREMENTS

23. Water Code section 13304, subdivision (a) states:

Any person . . . who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged to 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 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. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

24. Pursuant to Water Code section 13304, subdivision (f):

Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state, and local drinking water standards, and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste.

25. The conditions described in Findings No. 9 - 12 constitute violations of the Basin Plan. The conditions described in these Findings also identify discharges of wastes where it has been discharged or deposited into waters of the State (groundwater) or probably will be discharged into the waters of the State. The Dischargers are therefore subject to Water Code section 13304.

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26. Pursuant to Water Code section 13267, subdivision (b):

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the reports, and shall identify the evidence that supports requiring that person to provide the reports.

27. This Order requires monitoring, workplans and reports pursuant to Water Code section 13267, subdivision (b). The monitoring required by this Order is necessary to evaluate the extent of pollution in groundwater, determine affected well owners, and to protect human health. Workplan and technical reports required in this Order are essential to design a water replacement plan and implementation schedule and to determine compliance with this Order.
28. Pursuant to Water Code section 13304, the Water Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of wastes or to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action pursuant to this Order.
29. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provision of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), pursuant to California Code of Regulations (CCR), title 14, section 15321, subdivision (a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), in accordance with CCR, title 14, sections 15308 and 15330.

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ORDERS

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that Mr. Paul Ryken, the estate of Mr. Nick Van Vliet, and Flameling Dairy, Inc., as primarily responsible for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, shall abate the effects of waste discharges at, near, and downgradient of the Property as follows in paragraphs 1 through 9. As secondarily liable for the discharge of waste that has caused or threatens to cause a condition of pollution or nuisance, the K&H Van Vliet Children LLC and PG&E shall abate the effects of waste discharges, at, near, or downgradient of the Property as follows in paragraphs 1 through 9 in the event that Mr. Ryken, the estate of Mr. Van Vliet, and Flameling Dairy, Inc. fail to comply with all or any portion of this Order and the Water Board notifies the K&H Van Vliet Children LLC and PG&E of the failure of Mr. Ryken, the estate of Mr. Van Vliet, and Flameling Dairy, Inc. to comply with this Order.

1. **By November 19, 2008**, supply interim uninterrupted replacement water service (i.e., bottled water or equivalent), to residences or businesses served by private or community domestic wells in which nitrate has been detected at concentrations exceeding 45 mg/L nitrate as NO_3 (10 mg/L nitrate as nitrogen), based on data generated in the most recent sampling event for any domestic well in the Affected Area. The Affected Area is defined as the area that is bounded by Serra Road in the west, Santa Fe Road in the south, Summerset Road in the east and Salinas Road in the north. The Affected Area may be modified as additional information becomes available. Furthermore, the Dischargers shall supply interim uninterrupted replacement water service (i.e., bottled water or equivalent), to any residence or business served by a private or community domestic well within the Affected Area within 48 hours of determining that the domestic well exhibits a nitrate as NO_3 concentration greater than 45 mg/L (10 mg/L nitrate as nitrogen) for the first time.
2. **By November 26, 2008**, provide notification to all parcel owners and occupants in the Affected Area that nitrate as NO_3 concentrations in groundwater may exceed the MCL of 45 mg/L. The Dischargers shall also include notification that all potentially affected wells will need to be sampled on a quarterly basis, beginning December 10, 2008. A copy of the notification must be received by the Water Board.
3. **By December 1, 2008**, submit a technical report to the Water Board listing all residences and businesses that have been provided interim uninterrupted replacement water service. The report must include the method(s) that the Dischargers have implemented to provide interim uninterrupted replacement water service including how this service will be maintained. If a residence or

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business should have been provided interim uninterrupted replacement water service based on the requirement in Order No. 1 above and has not been provided interim uninterrupted replacement water service, the technical report must include actions the Dischargers have taken and will continue to take to provide interim uninterrupted replacement water service to the residence or business. If the reason that the Dischargers have failed to provide interim uninterrupted replacement water service is the refusal of the occupants of the residence or business to accept such service, the report must include a statement from the occupants of this refusal. The report must identify all other wells in the Affected Area that are threatened by the discharge and have yet to be sampled.

4. **By December 31, 2008 and quarterly thereafter (by March 31, June 30, September 30, and December 31)**, complete the quarterly sampling of all private and community domestic wells within the Affected Area and submit samples with chain of custody documentation to a California certified laboratory for nitrate analyses. Laboratory analyses must include general minerals and regulated inorganics. Nitrate as NO_3 analysis must have a Method Detection Limit of 2 mg/L or less (nitrate as nitrogen Method Detection Limit of 0.4 mg/L or less).
5. **By January 31, 2009, and quarterly thereafter** (April 30, July 31, October 31, and January 31) but no later than 30 days after completing the well sampling required in Order 4 above, submit to the Water Board California-certified laboratory results and other quality assurance/control documentation from the first quarterly sampling event (and subsequent quarterly sampling events) for all potentially affected private and community domestic wells and a list of residences with nitrate as NO_3 concentrations exceeding 45 mg/L in their supply water. If the results indicate that other constituents beside nitrate are detected exceeding the MCL, the report must describe those wells affected. The report must state how each parcel owner and occupant were notified of these results within the required 48 hour period if a new detection above the MCL or within 5 days if previously detected at levels above the MCL. The report must contain a map showing the location of all wells that were sampled or attempted to be sampled. If the results of this monitoring identify a well that exhibits a nitrate as NO_3 concentration exceeding 45 mg/L (10 mg/L nitrate as nitrogen) for the first time, the Dischargers must notify the Water Board of this information within 48 hours of the Dischargers receiving the monitoring information and state the alternate water supply to be given to the residence or occupants.
6. **By March 20, 2009**, submit a detailed Alternative Water Supply Implementation Workplan for long-term, uninterrupted, replacement water, for domestic and community supply wells with nitrate as NO_3 concentrations exceeding 45 mg/L

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(10 mg/L nitrate as nitrogen). The workplan must propose an implementation schedule. Include a report describing the volumes of interim uninterrupted water supplied to specific addresses up to February 28, 2009.

7. Following Executive Officer's concurrence with the detailed Alternate Water Supply Implementation Workplan for wells with nitrate as NO_3 concentrations exceeding 45 mg/L (10 mg/L nitrate as nitrogen), the Dischargers shall implement the plan according to a schedule approved by the Executive Officer.
8. The Dischargers shall be liable, pursuant to Water Code section 13304, to the Water Board for all reasonable costs incurred by the Water Board to investigate unauthorized discharges of waste, or to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, pursuant to this Order. The Dischargers shall reimburse the Water Board for all reasonable costs associated with site investigation, oversight, and cleanup. Failure to pay any invoice for the Water Board's investigation and oversight costs within the time stated in the invoice (or within thirty days after the date of invoice, if the invoice does not set forth a due date) shall be considered a violation of this Order. If the Property is enrolled in a State Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program.
9. All technical and monitoring plans and reports required in conjunction with this Order are required pursuant to Water Code section 13267 and shall include a statement by the Dischargers, or an authorized representative of the Dischargers, certifying (under penalty of perjury in conformance with the laws of the State of California) that the workplan and/or report is true, complete, and accurate. Hydrogeologic reports and plans shall be prepared or directly supervised by, and signed and stamped by a Professional Geologist or Professional Civil Engineer registered in California.

This Order in no way limits the authority of this Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

Compliance with the provisions of this Order by any one or more of the primary responsible parties will be considered as compliance by all primary and secondary responsible parties. If none of the primary responsible parties comply with this Order, all of the primary responsible parties will be considered in non-compliance with this Order and subject to additional enforcement action.

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Failure to comply with the terms or conditions of this Cleanup and Abatement Order will result in additional enforcement action, which may include the imposition of administrative civil liability pursuant to Water Code sections 13350 and 13268 or referral to the Attorney General of the State of California for such legal action as he or she may deem appropriate.

Any person aggrieved by this action of the Lahontan Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Ordered by: Harold J. Singer Dated: Nov 10, 2008
HAROLD J. SINGER
EXECUTIVE OFFICER

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California.
4 I am over the age of eighteen and not a party to the above-
captioned action. My business address is 250 W. First Street, Suite
5 256, Claremont, California.

6 On July 9, 2009, I served the following documents described
as:

7 PETITION FOR REVIEW AND REQUEST FOR HEARING

8 on all Interested Parties in this action by placing a true and
correct copy thereof in [a] sealed envelope[s] addressed as follows:

9 California Regional Water Quality Control Board
10 Lahontan Region
2501 Lake Tahoe Boulevard
11 South Lake Tahoe, California 96150

12 Mr. Paul Ryken
Desert View Dairy
13 37501 Mountain View Road
Hinkley, California 92347

14 Estate of Nick Van Vliet
15 Van Vliet Dairy
c/o Gary B. Genske
16 1835 Newport Blvd., Suite D-263
Costa Mesa, California 92627

17 K&H Van Vliet Children LLC
18 c/o Nellie Ruisch
23925 Waalew Road
19 Apple Valley, California 92307

20 Mr. Robert Doss
Mail Code B16A
21 Pacific Gas and Electric Company
77 Beale Street
22 San Francisco, California 94105

23 I then deposited such envelope[s], with postage thereon fully
24 prepaid, in the U.S. mail at Claremont, California.

25 Executed on July 9, 2009, at Claremont, California.

26 I declare, under penalty of perjury under the laws of the
State of California, that the foregoing is true and correct.

27
28 
Marilyn Mora