October 18, 2013

VIA ELECTRONIC MAIL AND U.S. MAIL

Neil and Mary De Vries
13025 Shasta Court
Rancho Cucamonga, CA 91739-1729

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THE ADVISORY TEAM'S REQUEST FOR RESPONSE TO COMMENTS MADE ON THE PROPOSED SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ORDER FOR THE N&M DAIRY AND NEIL AND MARY DE VRIES

The Lahontan Regional Water Quality Control Board (Water Board) Advisory Team requests that the Parties, which consists of N&M Dairy and the Water Board Prosecution Team, to respond to the comments and concerns provided by Jessica Culpepper and Deborah Rosenthal (enclosed) on behalf of Helendale and Barstow residents.

In addition to responding to those questions and concerns raised by the public, the Advisory Team would like the Parties to respond to these additional questions and comments:

1) Proposed Settlement Agreement and Stipulation for Entry of Order (R6V-2013-0075) Finding 12(g) - what are the "recent administrative considerations" referred to as the reasons staff costs are not being recovered as part of this settlement.

2) Who will be the holder of the conservation easement? Section 815.3 of the Civil Code sets out entities that are authorized to acquire and hold conservation easements. Naming the holder of the easement is important because that entity will be the one able to enforce the conditions of the conservation easement.

3) The SEP should provide an opportunity for the Executive Officer to approve the terms of the conservation easement before it is recorded. Please include this in Section 5 of the Schedule of Performance in Appendix B.

4) Appendix B, section 3, states that "the southern boundary of the conservation easement must be appropriately demarcated." Please explain what is meant by "appropriately demarcated."

5) What is the justification for the boundaries of the study area or affected area? It seems to be slightly expanded from the Revised Affected Area established in CAO 2011-0055A1. What information was relied upon to draw those boundaries and what assumptions, if any, were made in drawing those boundaries?

6) The Settlement Agreement requires replacement water in the future for those within the Affected Area, if their wells exceed limits for nitrate and TDS set in the Settlement Agreement; however, it does not address replacement water requirements for those outside of the Affected Area. What information are you basing the conclusion on that existing contamination will not cause TDS and nitrate limits in wells outside the Affected Area to exceed the limits in the Settlement Agreement that trigger the requirement for replacement water? Is the Settlement Agreement intended to limit replacement water supply only to those within the Affected Order even if existing contamination were to migrate to those outside the Affected Area?

7) Are the deadlines in the proposed Settlement Agreement and Stipulation for Entry of Order and the proposed Cleanup and Abatement Order appropriate and reasonable? If not, what should the deadlines be and the rationale for your suggested deadlines.

Please provide your responses to these additional questions and comments by noon on November 1, 2013.

Patty Z. Kouyoumdjian

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosure: Local Residents' Comments - October 4, 2013

ecc: Kim Niemeyer, State Water Resources Control Board kim.niemeyer@waterboards.ca.gov
Doug Smith, Lahontan Water Board dfsmith@waterboards.ca.gov
Richard Booth, Lahontan Water Board rbooth@waterboards.ca.gov

October 4, 2013

SENT VIA ELECTRONIC MAIL

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LOCAL RESIDENTS' COMMENTS ON LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD'S PROPOSED SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ORDER AND PROPOSED CLEANUP AND ABATEMENT ORDER FOR NEIL AND MARY DEVRIES, N & M DAIRY, HELENDALE

Helendale and Barstow residents Bernadette Blackwood, Christina Decker, Carlos Silva, James Ervin, Kathren Ervin, Ofelia Ervin, Vanessa Araujo, Jose E. Magaña, Bradley Morotaya, John Morrison, Lisa Morrison, Jose de Jesus Piña, Celia Piña, Eva Piña, Amir Paniagua, Shelby Ann Ratican, Ashley Romero, Felix Romero, Luis Romero, Wanda Romero, Garry Snell, Lisa Snell, Christopher G. Sprowl, Fred Charles Whitton, Dallas Whitton, as well as David Fritz and Lisa Fritz, on behalf of themselves and minor J.F. ("the Residents"), submit these comments on the Settlement Agreement and Stipulation for Entry of Order, Order No. R6V-2013-0075 (Proposed Settlement) re the Proposed Cleanup and Abatement Order (Proposed CAO) related to N & M Dairy ("the Dairy"). The Residents do not waive any fact, claim, or cause of action asserted in their Notice of Intent Sue N&M Dairy for violations of the Resource Conservation and Recovery Act and the Emergency Planning and Community Right-To-Know Act. Every

factual allegation, claim, and cause of action in the Residents' Notice of Intent to Sue are specifically incorporated herein by reference and attached as Exhibit A.

The Residents applaud the efforts of the Lahontan Water Board for finally, after years of requests from the community, taking meaningful action to deal with the odor and fly nuisances and the nitrate pollution that has kept the Residents fearful for their health and safety and unable to use and enjoy their property for many year. However, the Proposed Settlement and COA fail to provide adequate protections for the Residents' health and safety in its current state. In order to protect public health and safety, the Residents believe that the Proposed Settlement and COA must do the following:

(1) Remove the increase in the levels of Total Dissolved Solids in the monitoring requirements, reporting program, and replacement water requirements and continue to keep them at the current level of 500 mg/L;

(2) Keep the current Study Area without any reductions;

(3) Require N & M Dairy to remediate the soil on their property to remove nitrates and other contaminants;

(4) Require N & M Dairy to conduct a study to determine whether digging deeper wells would provide the Residents with a safe, independent source of water;

(5) In the event that the study concludes that deeper aquifers are not contaminated, require N & M Dairy to drill deeper wells for the Residents;

(6) Require N & M Dairy to provide a neutral contact for the Residents to address concerns with water delivery;

(7) Provide for a penalty if N & M Dairy violates the replacement water provisions in the

amount of $1,000 per day per violation; and

(8) Require N & M to compensate the Residents for water they purchase in the event that replacement water is not delivered in violation of the water replacement provisions;

(9) To deter violations and provide fair compensation to the Residents, the settlement should include provisions that address odors and vectors.

BACKGROUND

The Residents all live in close proximity to the N & M Dairy in Helendale. The Residents—and in fact, the entire residential community surrounding N & M Dairy—are completely dependent on well water as their only source of water. The Residents' wells draw from the Middle Mojave River Valley groundwater basin, the same basin in which the N & M Dairy and its waste disposal areas are located. N & M Dairy is located upgradient from Residents' properties by 1/8 mile to 1/2 mile. The groundwater is downgradient east on average. The Residents' homes and wells are located east of N & M Dairy, and some of the Residents' wells are a mere 300 feet downgradient from the fence line of the Dairy.

N & M Dairy has been polluting the groundwater and causing odor and vector nuisances for Respondents for many years. Leaching from N & M Dairy's waste dumping is primarily from (1) dumping waste into fields above agronomic rates, (2) dumping waste in unlined lagoons that leach into the groundwater, (3) allowing manure to pile up and sit in the corrals, and (4) leaving uncovered and untreated piles of manure randomly throughout the facility with no barriers to stop them from leaching into the soil below. The soil under N & M Dairy is primarily comprised of cobblestones, sand, and gravel, to a depth of at least 140 ft. These soils have high permeability and are considered by the State of California to be at a high risk for nitrate leaking. There is no

doubt, and as far as Residents are aware no dispute, that N & M Dairy is the cause of the contamination of the groundwater that feeds the Residents' wells.

The groundwater below the Residents' property is contaminated. The Residents consider the word "contaminated" to mean if a hazardous chemical is present in the wells above the federal or California Maximum Contaminant Level (MCL) set for that chemical. The MCLs are the proper basis for the Residents' position because the levels are set by the federal government and the State of California to protect public health.[1] For the purpose of these comments, the MCL that the Residents are concerned with is nitrates, set at 10 mg/L. 40 C.F.R. pt. 141 (2013); Cal. Code Regs. tit. 22, § 64431.

The Residents also use the word "contaminated" to mean if a substance in the water that could affect its taste or odor is present above the federal or California Secondary Maximum Contaminant Level (SMCL) set for that substance. The SMCLs are the proper basis for the Residents' position because if a substance is present above the SMCL for that substance, the water will not be usable due to bad taste or odor. For the purposes of these comments, the SMCL that the Residents are concerned about is Total Dissolved Solids (TDS), set at 500 mg/L as the "Recommended Level" in California. Cal. Code Regs. tit. 22, § 64449.

Water sampled by the Water Board from N & M Dairy and from neighboring properties has shown nitrates up to seven times the safe levels for drinking water for nitrates. TDS results were as high as 1800 mg/L. Samples taken upgradient from the Dairy showed no such contamination.

[1] Cal. Dep't of Pub. Health, Chemicals and Contaminants in Drinking Water, *available at* http://www.cdph.ca.gov/certlic/drinkingwater/pages/chemicalcontaminants.aspx (Mar. 1, 2013) ("Primary MCLs address health concerns").

COMMENTS ON THE PROPOSED SETTLEMENT

I. To protect health and safety, keep the levels of TDS in the monitoring requirements, reporting program, and replacement water requirements at 500 mg/L.

The Residents vigorously oppose modifying the monitoring requirements, reporting program, and replacement water trigger to allow an increase in TDS. The Proposed Settlement increases the TDS domestic well water replacement from 500 mg/L to 815 mg/L. The Proposed Settlement provides no rational basis for this change. The average TDS for groundwater in the Middle Mojave River Valley Basin is about 500/mg, and the EPA lists the Secondary Maximum Contaminant Level for TDS at 500 mg/L. California lists the same limit, 500 mg/L, as its "Recommended Range." Cal. Code Regs. tit. 22, § 64449. While the "Upper Range" is 1,000 mg/L, the Residents face chronic high levels of exposure because there is a single source of water for all of their drinking and cooking. Such a circumstance merits imposition of an MCL requirement at the lowest end of the range, not the highest.

The proposed level will cause the water to carry a bad taste and be unpalatable. According to the World Health Organization, the presence of the palatability of drinking water has been rated by panels of tasters in relation to its TDS level as follows: excellent, less than 300 mg/litre; good, between 300 and 600 mg/litre; fair, between 600 and 900 mg/litre; poor, between 900 and 1200 mg/litre; and unacceptable, greater than 1200 mg/litre. See World Health Org., Guidelines for drinking-water quality, 2nd ed. Vol. 2. Health criteria and other supporting info.,(1996) at 1. It is completely unfair to reduce the quality of the Residents' water from a level rated "good" to a level rated "fair" without any rationale provided. Unless there is substantial justification, the trigger should remain at 500 mg/L.

Given these arguments, Section II, Subsection 12 of the Proposed Settlement does not protect the Residents' needs because it raises the level for TDS to 815 mg/L in monitoring requirements, the reporting program, and replacement water requirements. The trigger for TDS in Subsection 12(c)(iv) should remain at 500 mg/L. Similarly, the Proposed Settlement says, subsection 12(c)(iv), to define the water replacement program by the terms of No. R6v-2011-0055, but then the COA rescinds No. R6v-2011-0055-A1 (p. 7). This is important because the original abatement order requires replacement water if TDS goes above 700 mg/L, but the Proposed Settlement increases it to 815 mg/L. The Residents believe the level should be set at 500 mg/L. To that end, Sections 13(c) and 16 of the COA should remove the reference to 815 mg/L TDS and replace it with 500 mg/L TDS in the replacement water triggers. Section A Orders Nos. 1, 4, and 6(a)-(b) should remove the reference to 815 mg/L TDS and replace it with 500 mg/L TDS in the replacement water and monitoring provisions respectively.

II. To protect health and safety, do not reduce the area for study for replacement water.

Subsection 12(d) of the Proposed Settlements states that the Lahontan Water Board will "consider a reduction of the area of study for replacement water." The residents vigorously oppose a reduction of the area of study for replacement water, otherwise known as the Revised Affected Area or Study Area. The Residents feel, in fact, that not enough wells are being tested and are concerned that there are members of the community who are not receiving water that should be. The Lahontan Water Board has not provided any rationale why the Study Area should not remain as large as possible to ensure that the Residents' health and safety is protected. The Proposed Settlement simply states "as appropriate;" instead, it should clearly define the rationale

and basis for any reduction. Proposed Settlement at II(12)(d). If a reduction is to take place, the Residents would like to know exactly what that reduction is and have an opportunity to meet and confer with the Lahontan Water Board and formally comment on the reduction itself. Furthermore, each Resident who would be removed from the Study Area should be notified, in writing, and with information on how they can appeal said removal.

The current Study Area defines the southern boundary 0.27 miles in A1, but the COA increases it to 0.35. The Residents generally encourage expanding the Study Area. However, if this reduction eliminates any homes from the replacement water or monitoring, the Respondents oppose the boundary change.

III. To protect health and safety, require N & M Dairy to remediate contaminated soil by removing nitrates and other contaminants

The existing Proposed Settlement and CAO focus only on the disposition of manure, wastewater, and sludge from the property; they do not address the removal of the subsoil plume. Simply removing the waste will not solve the contamination problem because the subsoil is saturated with nitrates and other contaminants. N & M Dairy has been dumping manure above agronomic rates at least since 2009, but likely much longer than that. See, e.g., Water Board Violation Report 7/1/2009 (noted over application of manure based on the Dairy's own self-monitoring report). The overapplication of manure results in bioaccumulation of contaminants such as nitrates and phosphorus in the soil, which can continue to leach into the groundwater for years after the application stops. Without soil remediation, the contaminated plumes at N & M Dairy will continue to leach nitrates and other contaminants for more than five decades. Volland, J. Zupancic, and J. Chappelle, Cost of Remediation of Nitrogen-Contaminated Soils Under CAFO Impoundments, *Journal of Hazardous Substance Research*, vol. 4, p. 3-10 (2003)

(discussing how even if a site were to plant deep-rooted trees, there would only be an impact over the course of 20-50 years to remove nitrates from a plume).

Unless the clean-up plan for the property includes soil remediation, it will not sufficiently remove the sources of the pollution. And while the Proposed Settlement takes into account nitrates, it does not account for the continued leaching from contaminated soil. Because N & M Dairy's manure and waste dumping have been on permeable ground, there are likely plumes beneath the lagoon as well as beneath the fields (from dumping above agronomic rates). In prior studies, plumes have been found beneath lagoons levels beyond five feet deep (1.5 m) that had been used for less than 11 years. N & M Dairy also has a long history of illegal dumping and thus is likely to have a large subsoil plume or plumes. *See* Miller, M. H., J .B. Robinson, and D.W. Gallagher, 1976. "Accumulation of Nutrients in Soil Beneath Hog Manure Lagoons." *J. Environ. Qual*. 5:279-282.

N & M Dairy has a large plume of ammonium saturated soil beneath its waste dumping sites that has built up during the life of the facility. Using an overall average seepage rate of 0.044 inch (1.13 mm) per day, for example, one study estimated that that about 9.1 kg/m2 or 81,200 lb of ammonium-N per acre of surface area would build up beneath a typical swine lagoon during the 25-year life of a facility. See Ham, J.M., "Seepage Losses from Animal Waste Lagoons: A Summary of a Four-Year Investigation in Kansas," in Kan. State Univ. Research and Extension, vol.1: pp. 16-38 (2001). While N & M Dairy does not house pigs, and its soil has a different permeability that the one in this study (in fact, likely more permeability than the study), this example illustrates the serious contamination that exists beneath the Dairy's lagoons, fields, and manure dump sites on the property. Another study determined that a confinement dairy, on

average, would have a plume depth of seven feet (2.1 meters) after 25 years of production. *See* C. Volland, J. at 3-3. If N & M Dairy is not required to remediate its soil, the Residents will bear the cost of the plume by drinking the contaminants in low levels over long periods of time, or by being reliant on bottled water delivery for decades. Either result is unacceptable.

I. To provide a meaningful remedy to the Residents, provide them with deeper wells if lower aquifers exist that are not contaminated

No enforcement action that keeps the Residents chained to bottled water or exposed to unsafe levels of contaminants such as nitrates can meaningfully address the health and safety concerns of the neighboring community. The only acceptable solution to protect the Residents from continued exposure to nitrates and other contaminants is to take action toward returning to the Residents their rightful independent water sources. In this case, that means not only remediating the soil to stop future leaching, but it also means determining whether deeper wells could provide the Residents with a clean and safe independent source of water.

Ceasing operations at N & M Dairy is not sufficient to remediate the groundwater, as nitrates can persist in groundwater for decades and accumulate to even higher levels, as years of soil build-up continues to leach into the aquifers. *See* B. Nolan et al., U.S. Geological Survey Nutrients National Synthesis Project, *A National Look at Nitrate Contamination of Ground Water*, Water Conditioning and Purification, January 1998, v. 39, no. 12, pages 76-79. As stated above, even if N & M Dairy's unlined ponds are completely scraped clean, the soil at the Dairy will likely continue to leach unacceptably high amounts of contaminants into the groundwater for decades. Therefore, it is unlikely that the Residents whose wells are contaminated will have usable water in the foreseeable future.

Nor does bottled water delivery eliminate exposure to contaminants. Well water is the Residents' only source of water outside of bottled water, and the bottled water they receive is only enough for drinking. This means that the Residents are using contaminated well water for food preparation, washing dishes, bathing (including children), cleaning the house and laundry, and watering food crops. Water with high levels of nitrates should not be used in food preparation, and yet the Residents are forced to do exactly that. The Residents who receive bottled water are particularly concerned about bathing and washing food and dishes in this water. Contaminated water used for drinking, food preparation, and irrigation of food crops poses the greatest threat to public health. In fact, eating food prepared with nitrate-contaminated water and eating food irrigated with nitrate-rich water can lead to chronic nitrate poisoning because the dietary intake of nitrate is usually much larger than that from drinking water. *See* G. Huang, Would Use of Contaminated Water for Irrigation Lead to More Accumulation of Nitrate in Crops?, *Env. and Pollution*, v. 2, No. 4 pp. 1-9 (2013). N & M Dairy cannot possibly provide all the water needed for the Residents' food preparation and food crop irrigation. Therefore, the only safe solution is to remediate the groundwater or dig deeper wells for the Residents whose wells have tested as contaminated.

The use of bottled water is not an acceptable substitution for remediated groundwater or deeper wells. As discussed above, bottled water is not reliable, and the Residents have experienced lapses in bottled water delivery. It is completely unacceptable for a family to lose its source of safe water simply because the responsible party did not take the necessary steps to ensure that family's well-being. This is especially true of families such as the Residents whose

wells are contaminated because they are households with young children and/or elderly—vulnerable populations. The *only* way to ensure that the Residents have unfettered access to safe water is to provide a source through their wells.

II. To protect the health and safety of the Residents, require N & M Dairy to provide the Residents with an efficient and effective method of communication regarding water delivery and contaminants in their water

To the extent that bottled water continues, the Residents request that the Proposed Settlement reflect the need to have more communication with the Residents. For example, the Residents feel that it is necessary for them to have a way to contact a neutral party to request additional water or report problems with water delivery. Those Residents with contaminated wells have had to ration their water during the summer months because of the increased temperature. An easy solution to this problem would be to increase the amount of water that is going to the households during the late spring and summer months.

But the Residents whose water is contaminated feel that no Settlement would adequately address their needs if it did not provide them with access to a neutral third party whom they can contact regarding problems with water delivery, as well as a way to hold N & M Dairy accountable for any interruption in water delivery service. COA Section A Orders Nos.6a and b require N & M Dairy to notify the owner/tenant before water delivery ceases, but the Residents feel they should also be provided with the testing results leading to the decision and the requirements that N & M Dairy submit a proof of notification so that the Residents are aware that their water is safe to drink again.

III. To deter violations and provide fair compensation to the Residents, the settlement should include a penalty against N & M Dairy and compensation to the Residents if N & M Dairy violates the replacement water provisions

The Residents have experienced lapses in bottled water delivery in the past. One resident reports that her household's bottled water delivery stopped for over a month. No explanation was given to the family. When asked, the water delivery person said that the Dairy had not renewed its contract.

When the Residents are suddenly left without safe water to drink and given no notice as to why, they are forced to go out and purchase bottled water. It is completely unacceptable for a family to bear this cost simply because the responsible party did not act to ensure their safety. The Proposed Settlement does not provide for a penalty if the Dairy fails to send replacement water. The Settlement should include a $1,000 per day penalty for violating the water replacement provisions. Furthermore, the Settlement should include a $10/per day, per household penalty paid directly to the Respondents to compensate them for the cost of their replacement water if N & M Dairy should cease sending bottled water in violation of the Settlement Order. Including this provision in the Settlement Order will deter any lapses in water delivery and provides the Residents with a remedy for unfair expenses.

IV. To deter violations and provide fair compensation to the Residents, the settlement should include provisions that address odors and vectors.

Although it is understandable that the Water Board would address only water contamination issues, the Residents' concerns regarding ammonia emissions, odors, and pest control remain. The Proposed Settlement and COA do not include, in the manure and lagoon clean-up sections, any measures to control odors or vectors. These problems have continued for the Residents despite discontinued active use of the Dairy.

The abandoned state of the Dairy not only continues to interfere with the Residents' use and enjoyment of their lives and their property; it also poses a serious hazard to the neighbors' health and property. For example, last month manure on the property ignited when, according to one news report,[2] workers used cutting torches to remove steel from the "abandoned dairy field" for scrap. According to the same news report, high winds, the remoteness of the area, and the lack of water supply proved challenging for firefighters. This is but one of many ways that the Helendale property poses a potential threat to the health and safety of the Residents, if adequate clean-up is not effectuated.

Thank you for your kind consideration of our comments.

Sincerely,

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DRR/rk

[2] See http://www.vvdailypress.com/articles/fire-42414-firefighters-water.html

ATTACHMENT A

September 6, 2013

SENT VIA CERTIFIED MAIL

Neil and Mary DeVries DBA N&M Dairy #1, N&M Dairy #2
13025 Shasta Court
Rancho Cucamonga CA 91739-1729

RE: NOTICE OF INTENT TO SUE PURSUANT TO RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(b)(2)(A) and EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT, 42 U.S.C. § 11046(a)(1)(A)(i).

Dear Neil and Mary:

Bernadette Blackwood, Christina Decker, Carlos Silva, James Ervin, Kathren Ervin, Ofelia Ervin, Vanessa Araujo, Jose E. Magaña, Bradley Morotaya, John Morrison, Lisa Morrison, Jose de Jesus Piña, Celia Piña, Eva Piña, Amir Paniagua, Shelby Ann Ratican, Ashley Romero, Felix Romero, Luis Romero, Wanda Romero, Garry Snell, Lisa Snell, Christopher G. Sprowl, Fred Charles Whitton, Dallas Whitton, as well as David Fritz and Lisa Fritz, on behalf of themselves and minor J.F.; and ("Plaintiffs"), pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b)(2)(A) and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046(a)(1)(A)(i) ("EPCRA"), hereby notify you that N&M Dairy #1 and N&M Dairy #2 DeVries Brothers Dairies (together "N&M Dairies" or "the Dairies") has violated RCRA by contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste in such a manner that may present an imminent and substantial endangerment to health and the environment and by operating an "open dump" in violation of the prohibitions of RCRA. Additionally, N&M Dairies have violated the mandatory reporting requirements of EPCRA by failing to inform the relevant emergency planning commissions of the release of reportable quantities of ammonia emanating from N&M Dairies.

By failing to comply with the RCRA and EPCRA, N&M Dairies have injured or threatened to injure, and will continue to injure or threaten to injure, the health, environmental, and economic interests of Plaintiffs and their members. These injuries or risks are traceable to N&M Dairies' violations on their property, and redressing those ongoing violations will redress the Plaintiffs injuries or risks. Plaintiffs will seek mandatory injunctive relief requiring N&M Dairies to abate and/or remediate the source(s) of the endangerment to health and the environment, an order requiring N&M Dairies to file the requisite reports under EPCRA, an order requiring N&M Dairies to pay

September 6, 2013

SENT VIA CERTIFIED MAIL

Randy DeVries
30586 Elmo Highway
McFarland, CA 93250-9610

RE: NOTICE OF INTENT TO SUE PURSUANT TO RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(b)(2)(A) and EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT, 42 U.S.C. § 11046(a)(1)(A)(i).

Dear Randy:

Bernadette Blackwood, Christina Decker, Carlos Silva, James Ervin, Kathren Ervin, Ofelia Ervin, Vanessa Araujo, Jose E. Magaña, Bradley Morotaya, John Morrison, Lisa Morrison, Jose de Jesus Piña, Celia Piña, Eva Piña, Amir Paniagua, Shelby Ann Ratican, Ashley Romero, Felix Romero, Luis Romero, Wanda Romero, Garry Snell, Lisa Snell, Christopher G. Sprowl, Fred Charles Whitton, Dallas Whitton, as well as David Fritz and Lisa Fritz, on behalf of themselves and minor J.F.; and ("Plaintiffs"), pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b)(2)(A) and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046(a)(1)(A)(i) ("EPCRA"), hereby notify you that N&M Dairy #1 and N&M Dairy #2 DeVries Brothers Dairies (together "N&M Dairies" or "the Dairies") has violated RCRA by contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste in such a manner that may present an imminent and substantial endangerment to health and the environment and by operating an "open dump" in violation of the prohibitions of RCRA. Additionally, N&M Dairies have violated the mandatory reporting requirements of EPCRA by failing to inform the relevant emergency planning commissions of the release of reportable quantities of ammonia emanating from N&M Dairies.

By failing to comply with the RCRA and EPCRA, N&M Dairies have injured or threatened to injure, and will continue to injure or threaten to injure, the health, environmental, and economic interests of Plaintiffs and their members. These injuries or risks are traceable to N&M Dairies' violations on their property, and redressing those ongoing violations will redress the Plaintiffs injuries or risks. Plaintiffs will seek mandatory injunctive relief requiring N&M Dairies to abate and/or remediate the source(s) of the endangerment to health and the environment, an order requiring N&M Dairies to file the requisite reports under EPCRA, an order requiring N&M Dairies to pay

September 6, 2013

SENT VIA CERTIFIED MAIL

James DeVries
18200 Lords Road
Helendale, CA 92342-9686

RE: NOTICE OF INTENT TO SUE PURSUANT TO RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6972(b)(2)(A) and EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT, 42 U.S.C. § 11046(a)(1)(A)(i).

Dear James:

Bernadette Blackwood, Christina Decker, Carlos Silva, James Ervin, Kathren Ervin, Ofelia Ervin, Vanessa Araujo, Jose E. Magaña, Bradley Morotaya, John Morrison, Lisa Morrison, Jose de Jesus Piña, Celia Piña, Eva Piña, Amir Paniagua, Shelby Ann Ratican, Ashley Romero, Felix Romero, Luis Romero, Wanda Romero, Garry Snell, Lisa Snell, Christopher G. Sprowl, Fred Charles Whitton, Dallas Whitton, as well as David Fritz and Lisa Fritz, on behalf of themselves and minor J.F.; and ("Plaintiffs"), pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b)(2)(A) and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046(a)(1)(A)(i) ("EPCRA"), hereby notify you that N&M Dairy #1 and N&M Dairy #2 DeVries Brothers Dairies (together "N&M Dairies" or "the Dairies") has violated RCRA by contributing to the past and present handling, storage, treatment, transportation, and/or disposal of solid and hazardous waste in such a manner that may present an imminent and substantial endangerment to health and the environment and by operating an "open dump" in violation of the prohibitions of RCRA. Additionally, N&M Dairies have violated the mandatory reporting requirements of EPCRA by failing to inform the relevant emergency planning commissions of the release of reportable quantities of ammonia emanating from N&M Dairies.

By failing to comply with the RCRA and EPCRA, N&M Dairies have injured or threatened to injure, and will continue to injure or threaten to injure, the health, environmental, and economic interests of Plaintiffs and their members. These injuries or risks are traceable to N&M Dairies' violations on their property, and redressing those ongoing violations will redress the Plaintiffs injuries or risks. Plaintiffs will seek mandatory injunctive relief requiring N&M Dairies to abate and/or remediate the source(s) of the endangerment to health and the environment, an order requiring N&M Dairies to file the requisite reports under EPCRA, an order requiring N&M Dairies to pay

the maximum civil penalties allowable under the law, and an order from the Court requiring N&M Dairies to pay the attorneys and expert witness fees and costs incurred in bringing this enforcement action. This letter serves to notify you that Plaintiffs intend to file suit in federal district court against N&M Dairies any time beginning ninety (90) days after the certified receipt of this letter. The suit may also include common law claims of negligence, nuisance, trespass, and unjust enrichment.

I. FACTUAL BACKGROUND

A. Site Description

Since at least April 7, 1992, until very recently, N&M Dairies operated a 904-acre, 2800-cow dairy at or near 36001 Lords Road and 18200 Lords Road, Helendale, California, in San Bernardino County. The site also includes San Bernardino County Assessor's parcel numbers 466-041-01, 466-041-17, 466-041-20, 466-041-21, 466-041-22, 466-041-23, 466-091-15, 466-091-17, 466-091-26, 466-101-05, 466-101-06, 466-111-02. The operations and disposal areas are owned by Neil DeVries and Mary DeVries. The facility is operated by Randy DeVries and James DeVries. They are permitted under the California Regional Water Board WDID No. 6B368010004.

N&M Dairies' operations consist of two adjacent facilities on scraped drylot systems. Manure is stored in dry stacks, and wash water flushes the milking facilities into storage ponds, or lagoons. Combined, the Dairies have confined up to 4,500 cows and heifers on the property. According to N&M Dairies' Nutrient Management Plan, Dairy #1 managed 1,700 milk cows plus support stock and had two adjacent fields, numerous sites for dry stacked manure, and contained approximately three unlined lagoons for storing the 76,967 daily gallons of wash water. Dairy #2 managed 1,100 milk cows plus support stock and consists of two adjacent fields, numerous sites for dry stacked manure, and contained approximately three unlined lagoons for storing the 26,505 gallons of daily wash water produced on site. Additionally, the Dairies consisted of three fields immediately west of the Mojave River where solid manure is applied. None of these fields have tiling. The Dairies store or have stored close to 100,000 tons of manure onsite and the combined lagoons have collected over 30 million gallons of waste wash water annually. Around 40,000 tons of manure have been moved off site, and the rest has been disposed of on the property. The facility no longer confines dairy cows but is currently windrowing manure onsite and has at least one operational lagoon.

Taken together, the dairy and waste disposal areas are located in the Middle Mojave River Valley groundwater basin in the Mojave River Hydrologic Unit. The facility is located upgradient from Plaintiffs' properties by 1/8 to 1/2 miles. The Dairies are located on soil that is primarily comprised of cobblestones, sand, and gravel, to a depth of at least 140 ft. These soils have high permeability and are considered by the State of California to be at a high risk for nitrate leaking. The water table at the Dairies ranges from 9 feet to 44 feet below ground surface. The groundwater is downgradient

east on average. Plaintiffs' homes and wells are located east of N&M Dairies, and some of the residents' wells are a mere 300 feet downgradient from the fence line of the Dairies. Attached as Exhibit A is a map of the Dairies with permanent marked dumping sites.[1]

VIOLATIONS OF THE RESOURCE CONSERVATION AND RECOVERY ACT: IMMINENT AND SUBSTANTIAL ENDANGERMENT

Under 42 U.S.C. § 6972(a)(1)(B), citizens are authorized to bring suit against any person who is the "past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." In this case, N&M Dairies and the listed entities above are the generators, transporters, and owners and/or operators of a treatment, storage, and disposal facility that is contributing to the past and present storage, treatment, transportation and/or disposal of solid and hazardous wastes, namely liquid and solid manure. The Dairies' liquid and solid manure constitute "solid wastes" under RCRA because they are "any...discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations..." 42 U.S.C. § 6903(27). N&M Dairies' practices in storing, treating, transporting, applying, and disposing of liquid and solid manure may, and do, present an imminent and substantial endangerment to the health of nearby residents and to the environment.

In particular, N&M Dairies and/or its agents have applied and continued to apply liquid and solid manure wastes to nearby agricultural fields in amounts that exceed agronomic rates. According to the Lahontan Regional Water Quality Control Board ("the Board"), N&M Dairies have 400 acres of cropland as dairy property. Based on the Board's calculated allowed agronomics application rate of 3.6 tons per acre, this area of cropland can only utilize 1,440 tons of manure every year. During 2010, for example, the dairy had approximately 4,500 cows and heifers. Based on the Board's rate of a cow producing 19 pounds of manure per day, the dairy generated 15,600 tons of manure per year. Clean Up and Abatement Order No. R6V-2010-0029 stated that "[t]his amount of manure is significantly more than what the Discharger can agronomically apply to crop land at the dairy area and the Discharger is storing excess manure at the Dairy site."

Manure application beyond that which the current crop can effectively utilize, causes nitrates to leach through soil and into groundwater. Once these nitrates enter the local water table, they migrate away from the N&M Dairies and into the wells of nearby residents. The over-application of manure also has resulted and will continue to result in

[1] From at least 1992 to present, the Dairies have also had temporary unpermitted dumping lagoons at various points in production. These are not represented on the map but are noted in violation charts below.

the ponding of manure when irrigation or precipitation occurs, which creates a direct pathway for manure and manure constituents to runoff into surface water and discharge into groundwater. The following chart lists some selected violations found by the Board regarding the over-application of manure above the agronomic rates:

Date	Violation
7/1/2009-12/31-2009	Water Board official noted that N&M Dairies have been over-applying manure based on their self-monitoring report
2/2/2010	Inspection report found over application of manure on the east side of the Dairies' fields.
7/2/2010	Clean Up and Abatement Order No. R6V-2010-0029 finding that the Dairies were applying manure above agronomic rates
7/28/2010	Enforcement action taken against N&M Dairies for over-application of manure on cropland
5/22/2012	Witnessed and photographed manure spread on bare land with no crops or vegetation.

Furthermore, N&M Dairies' storage of solid and/or liquid manure in unlined earthen lagoons and permeable surfaces has caused and is continuing to cause the discharge of untreated manure directly into groundwater. The ponds were first documented on May 19, 1994 and the first documentation of the ponds operating and accepting manure as N&M Dairy was on the same date. N&M Dairies' ponds are all 10 feet deep, which intersects the shallowest groundwater aquifer on the site (between 9- to 44-feet-deep). At Dairy #1, the three ponds on site have a combined storage capacity of 1,202,904 cubic feet and store over 8.5 million gallons of liquid manure at any given time. At Dairy #2, the site has a combined pond capacity of 968,346 cubic feet and stores almost 7 million gallons of liquid manure at any given time. At the present time, at least one of the ponds are continuing to store large amounts of liquid manure.

N&M Dairies' manure storage lagoons were found by the Board to be unlined, over permeable soils, and insufficient to contain and store the amount of liquid manure and wash water required by the Dairies. According to Clean Up and Abatement Order No. R6V-2010-0029, the Board found that "[w]ash water generated from the dairy milking barns contains high concentrations of nitrate and total dissolved solids and is discharged into unlined ponds located at the N&M Dairy. Soil below these ponds is very porous; and therefore, water in these ponds percolates directly to groundwater. The manure piles on the dairy property contain high concentrations of nitrate....Discharges from ponded wash water and excess manure have affected and threated to further affect groundwater beneath and downgradient of the site."

At Dairy #1, the three ponds on site have a combined storage capacity of 1,202,904 cubic feet. But they would require 3,149,645 cubic feet of capacity to properly

contain the liquid manure generated at the Dairy site. The inadequate size of the ponds violates RCRA because the excess waste from the ponds discharges onto the ground, where it then percolates into the groundwater. According to a July 7, 2011, inspection by the Board, "The dairy does not have adequate storage for generated wash water, and some of the ponds are discharging into the adjacent area, which is very permeable, thus creating nuisance conditions and a potential for groundwater degradation." The following chart lists some selected violations found by the Board regarding groundwater leaching from manure piles and unlined lagoons:

Date	**Violation**
3/26/2009	Inspection finding manure piles "all over the site" and uncovered dead animals.
6/23/2009	Inspection noting piles of manure dumped openly on the property and dead calves left for so long that they were decomposing to bones.
7/1/2009	Inspection noting manure piles "all over the site" along with uncovered dead animals.
1/7/2010	Inspection photographing temporary unlined ponds on the property, full of liquid manure, and noting a lack of drain system, indicating that the waste was percolating into the groundwater.
2/2/2010	Inspection finding waste water discharging onto the west adjacent property. Pools on both east and west sides were full, and excess flow from the ponds was pooling and percolating into the ground. Inspection also noting that the ponds have no engineering standards.
7/28/2010	Inspection noting a new pond constructed with no lining on the west side and on the southeast side of the site, and that one of the ponds was overfilled.

7/2/2010	Clean Up and Abatement Order No. R6V-2010-0029, finding pooling waste water on the property and manure piles with no measures to stop the manure from draining onto the ground
7/7/2011	Inspection report finding ponds overflowing onto permeable soil
7/7/2011	Inspection noting that the Dairies never complied with a requirement to line their ponds and that ponds remain unlined.
8/3/2012	Inspection finding that ponds were too full and an excess flow of waste water was percolating into the ground
9/12/2012	Inspection of both Dairies showed multiple unpermitted and unlined percolation ponds and breaches in storage ponds where water leaked out, unauthorized manure piles, and dead cows that had been present for at least 48 hours.
2/19/2013	Inspection showing new rows of manure piled openly on the ground with no measures to prevent runoff and percolation at Dairy #2. Dairy #1: excessive manure and ponding wash water leaking out of the sump. Ponds almost filled with manure.

From the date they began operating on October 24, 1983, and continuing to the present, untreated solid waste has seeped from manure piles and manure applied above agronomic rates into the underlying groundwater. From the first documented use of the lagoons on May 19, 1994 to the present, untreated solid waste has seeped from the lagoons into the underlying groundwater. The seeping of untreated solid waste from the lagoons has contributed and is contributing to the excessive contamination of the groundwater, posing an imminent and substantial endangerment to health and the environment. Furthermore, N&M Dairies' storage and/or composting of solid manure on permeable surfaces causes runoff and leachate from the solid manure to enter groundwater, contributing to the contamination of the local water table.

Upon information and belief, these practices and possibly others are responsible for groundwater contamination at levels beyond the Maximum Contaminant Level ("MCL") for specific chemicals. The MCLs are health-based standards that specify contaminants known to have an adverse effect on human health at levels beyond the parameters set forth by regulations. Every groundwater monitoring ever done by N&M

Dairies has resulted in an exceedance of the MCLs for nitrates in at least one of their monitoring wells. Samples taken by Board starting in February of 2004 indicate elevated levels of nitrate, barium, arsenic, chromium, copper, and mercury. In addition, testing revealed the violation of a number of Secondary MCLs, such as total dissolved solids, calcium, sodium, chloride, manganese, sulfate, specific conductance, and turbidity at N&M Dairies. Samples taken by the Board and by Plaintiffs at residential wells downgradient from N&M Dairies indicated elevated levels of nitrates, chromium, and arsenic. Testing by the Board indicated that upgradient test results were well below the MCL for Nitrate, but testing onsite and downgradient was far above the MCL for Nitrate. There are no agricultural properties or waste treatment facilities located between the N&M Dairy and the downgradient wells tested by the Board.

Attached as Exhibit B is a map showing the specific location of the wells and other areas that were sampled at N&M Dairies by the Board, the Dairies, and Plaintiffs. Observed levels for nitrate in wells located on of N&M Dairies (identified as MW1, MW2, MW3, and MW4) were as follows:

Date	**Location**	**Groundwater Results for Nitrate in mg/L**
2/4/2004	N&M Dairy	MW1: 18.1 MW2: 21.4 MW3: 22.2 MW4: 42.8
5/12/2004	N&M Dairy	MW1: 13.8 MW2: 37.7 MW3: 23.3 MW4: 39.0
12/10/2004	N&M Dairy	MW2: 52.8 MW3: 15.8 MW4: 26.2
05/04/2005	N&M Dairy	MW1: 14.4 MW 2: 10.0 MW 3: 20.6 MW 4: 17.3
5/27/2005	N&M Dairy	Onsite average ranged from 10-26
12/15/2005	N&M Dairy	MW 3: 16.9 MW 4: 20.2
12/27/2007	N&M dairy	MW1: 12.3 MW3: 26.2
12/22/2008	N&M Dairy	MW1: 15.0 MW4: 31.9

12/09/2009	N&M Dairy	MW1: 16.4 MW2: 15.1
1/18/2010	N&M Dairy #1 at well near the corrals	88
5/16/12	N&M Dairy	MW3: 20.3 MW4: 32.0
5/30/2012	2 residential wells downgradient 19456 National Trails Highway	14.8 and 66.0
9/28/2012	Downgradient residential wells and N&M Dairy	Sample 1: 186 Sample 2: 21.6 Sample 3: 119 Sample 4: 163 Sample 5: 332
12/4/2012	N&M Dairy	MW1:14.2 MW4 28.4
5/15/2013	Plaintiffs' properties	Sample 1: 30
7/16/2013	Plaintiffs' properties	Sample 1: 71 Sample 4: 32

These results are up to seven times higher than the MCL for nitrate (see 40 C.F.R. Part 141 and Appendix I) and were significantly higher than the nitrate results obtained from wells located upgradient of N&M Dairies, taken at 17950 Lords Road and 29442 Bullion Road, which had reported values of 1.6 mg/L and 0/23 mg/L nitrate respectively. Similarly, results from the Board and Plaintiffs' own testing revealed the following MCL exceedences at the Dairies in mg/L in August of 2009: Barium: 77, Arsenic: 1.6, Chromium: 5.3, Copper: 3.7, Mercury: 0.19. Plaintiffs' own testing of their wells in July 2013 revealed the following exceedences for Arsenic in mg/L: Sample 1: 2.4, Sample 2: 3.5, Sample 4: 2.6. These results are up to 350 times higher than the MCL for arsenic. See 40 C.F.R. Part 141 and Appendix I). These practices have been ongoing since N&M Dairies began its operations and have been continuous for at least the past nine years.

Plaintiffs rely on well water, and certain of the plaintiffs rely on well water that is downgradient from N&M Dairies. Even with bottled water being delivered by N&M Dairies to those families whose wells have been shown to be contaminated, Plaintiffs do not have enough safe water for their families, are concerned about sporadic delivery, cannot use the delivered water for all their needed uses, and continue to rely on well water for washing, bathing, watering food that is then consumed by the family, and other uses. Upon information and belief, and based on lab results and hydrology of the area, these wells are contaminated predominantly because of N&M Dairies' discharges into the

groundwater. Human consumption of water containing more than 10 mg/L of nitrate causes a variety of severe health problems, including but not limited to methemoglobinemia ("blue baby syndrome," a fatal condition that affects infants), some forms of cancer and autoimmune system dysfunction. The excessive nitrates and other contaminants contained in these nearby wells are directly attributable to the N&M Dairies' improper practices of storing, treating, transporting, and disposing (through application or otherwise) of liquid and solid manure wastes. As such, these practices may, and indeed do, present an imminent and substantial endangerment to health and the environment.

The plaintiffs whose water is contaminated are: Vanessa Araujo, Bradley Montoya, Celia Piña, Eva Piña, Jose de Jesus Piña, Amir Panaigua, Bradley Montoya, Ashley Romero, Felix Romero, Luis Romero, Wanda Romero, Jose E. Magaña, as well as David Fritz and Lisa Fritz, on behalf of themselves and minor J. Fritz. These plaintiffs, combined with the remaining plaintiffs, also face an imminent and substantial endangerment to health and the environment in the form of ammonia release into the ambient air, discussed further below.

42 U.S.C. § 6972(a) states that the District Courts of the United States shall have jurisdiction to order any person who "has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste" that presents an imminent and substantial endangerment to health or the environment, to take such action as may be necessary. Plaintiffs intend to seek legal and equitable relief in their lawsuit, including but not limited to an assessment of past, present, and future response, remediation, removal, and/or clean-up costs against N&M Dairies, their owners, and their operators, including particularly the remediation of the groundwater and/or soil remediation, providing new deeper wells for the Plaintiffs, temporary and/or permanent injunctive relief, as well as attorneys and expert witness fees and costs associated with the suit.

VIOLATION OF RESOURCE CONSERVATION AND RECOVERY ACT: OPEN DUMPING

In addition to presenting an imminent and substantial endangerment to health and the environment, N&M Dairies' improper manure management practices constitute "open dumping" in violation of RCRA. 42 U.S.C. § 6945(a) prohibits the operation of "any solid waste management practice or disposal of solid waste which constitutes the open dumping of solid waste." "Disposal" means "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste . . . into or on any land or water[.]" 42 U.S.C. § 6903(3). Enforcement of this prohibition is available through RCRA's citizen suit provision. *Id.* As required by statute, EPA has promulgated criteria under RCRA § 6907(a)(3), defining solid waste management practices that constitute open dumping. See 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These regulations prohibit the

contamination of any underground drinking water source beyond the solid waste boundary of a disposal site. 40 C.F.R. § 257.3-4(a).

The definition of "underground drinking water source" includes an aquifer supplying drinking water for human consumption or any aquifer in which the groundwater contains less than 10,000 mg/L total dissolved solids. 40 C.F.R. § 257.3-4(c)(4). "Contaminate" means to introduce a substance that would cause: (i) the concentration of that substance in the groundwater to exceed the maximum contaminant level specified in Appendix I, or (ii) an increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the MCLs specified in Appendix I. 40 C.F.R. § 257.3-4(c)(2).

Appendix I to 40 C.F.R. Part 257 lists the MCL for nitrate as 10 mg/L. Groundwater samples taken by the Board, the Dairies, and the Plaintiffs, onsite and from wells downgradient from N&M Dairies, revealed levels of nitrate in excess of the 10 mg/L MCL, as listed above. The lawsuit will allege that N&M Dairies' past and present waste disposal practices have caused nitrate contamination to travel beyond the facility boundaries, in violation of RCRA's open dumping prohibitions. Specifically, N&M Dairies have violated RCRA's open dumping provisions since it began operations from the date they began operating on October 24, 1983, and continuing to the present, by dumping untreated solid waste in manure piles and in manure applied above agronomic rates onto their fields. N&M Dairies have also violated RCRA's open dumping provisions from the first documented use of the lagoons on May 19, 1994 to the present, untreated solid waste has seeped from the lagoons into the underlying groundwater.

As charted above, the Board's inspection reports from 2012 have documented manure percolating into the groundwater, discharging onto adjacent properties, over-application of manure, and overfilling storage ponds, and allowing manure ponds to seep into the ground, and have measured elevated nitrate levels in the groundwater onsite and downgradient from N&M Dairies. Applications beyond that which the current crop can effectively utilize causes nitrates to leach through soil and into groundwater, which in turn causes nitrate levels in the groundwater to exceed the MCLs. Furthermore, N&M Dairies' storage of liquid and solid manure in unlined earthen lagoons and in piles on permeable surfaces has caused manure to seep into the groundwater and leave the boundaries of the site, also causing nitrate contamination of groundwater in excess of the MCL. These practices have been ongoing since N&M Dairies began its operations and have been continuous for at least the past nine years.

Pursuant to 42 U.S.C. § 6972(a), Plaintiffs intend to seek legal and equitable relief to remedy the N&M Dairies' practice of open dumping. The relief sought includes, but is not limited to, an assessment of past, present, and future response, remediation, particularly groundwater remediation and/or soil remediation, providing new deeper wells for the Plaintiffs, removal, and/or clean-up costs, a requirement that the extent of the contamination be fully investigated and remediated, other necessary temporary and/or

permanent injunctive relief, and an award of attorney and expert witness fees and costs incurred in bringing the enforcement action.

VIOLATIONS OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

The lawsuit also will allege that N&M Dairies has violated and continues to violate EPCRA, 42 U.S.C. § 11004, as well as the federal regulations implementing those statutes, by failing to adequately report to the relevant emergency response commissions the release of reportable quantities of certain hazardous chemicals, including but not limited to ammonia, which emanate from the dairy on a daily basis. Upon information and belief, Plaintiffs contend that N&M Dairies is releasing, among other substances, more than 100 lbs/day of ammonia into the air without adequately reporting those releases in accordance with the statutory requirements of EPCRA. Ammonia is a designated extremely hazardous substance under EPCRA with a threshold reporting quantity of 100 pounds per day. 40 C.F.R. Part 355, App. A. Ammonia is also designated an extremely hazardous substance under EPCRA with a threshold reporting quantity of 100 pounds per day. 40 C.F.R. Part 355, App. A. These releases have been ongoing since N&M Dairies began its operations on October 24, 1983 and have been continuous for at least the past nine years. Accordingly, N&M Dairies should have been reporting these releases to the requisite emergency response commissions.

The owners and operators of N&M Dairies knew or should have known that the facility was releasing over the reporting threshold of ammonia because N&M Dairies is a member of Milk Producers Council, a dairy trade group that has been active in issues concerning air emissions from dairies and EPCRA compliance. In fact, the National Milk Producers Federation has an entire section of its website devoted to EPCRA reporting requirements, including a link to an industry-accepted ammonia emissions estimator.[2] Based on that website, and because N&M Dairies maintained over 700 mature dairy cattle and currently maintains a large amount of windrowed manure onsite, the N&M Dairies is releasing more than the reportable quantity of ammonia on a daily basis. These releases have been ongoing since N&M Dairies began its operations, and for at least the past nine years.

Plaintiffs all live in proximity to N&M Dairies. They have tried to ascertain their potential exposure to hazardous chemicals from N&M Dairies and from the Board, but have been unable to do so, because of N&M Dairies' failure to report its releases. This lack of knowledge affects the individual parties' abilities to protect themselves, their friends and family, and their community from potential exposure to hazardous levels of ammonia.

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[2] *See* http://www.milkproducerscouncil.org/epcra.htm (last visited August 22, 2013).

EPCRA authorizes citizen suits for failure to comply with reporting requirements for releases of reportable quantities of hazardous substances. 42 U.S.C. ¶ 11046(a)(1)(A). N&M Dairies has been and remains in violation of these reporting provisions. Accordingly, Plaintiffs will seek civil penalties against N&M Dairies of up to $37,500 per day for each violation, declaratory relief, and injunctive relief from the court to remedy these violations, and an award of its attorney and expert witness fees and costs.

PARTIES GIVING NOTICE

The names, addresses, and phone numbers of the people giving this Notice of Intent to Sue are:

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The names, mailing and email addresses, and telephone and fax numbers of Counsel for the parties giving this Notice of Intent to Sue are:

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Attorneys for Plaintiffs. Please note that since plaintiffs are represented by counsel, they should not be contacted directly but rather through their counsel.

CONCLUSION

We will be available to discuss effective remedies and actions that will assure N&M Dairies' future compliance with the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act, and all other applicable state and federal environmental laws. If you wish to avail yourself to this opportunity, or if you have any questions regarding this letter, please contact Derek Brandt at the above listed address, telephone number, or email address.

Sincerely,

SIMMONS BROWDER GIANARIS
ANGELIDES & BARNERD LLC

Deborah R. Rosenthal

cc:

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McFarland, CA 93250-9610

EXHIBIT A

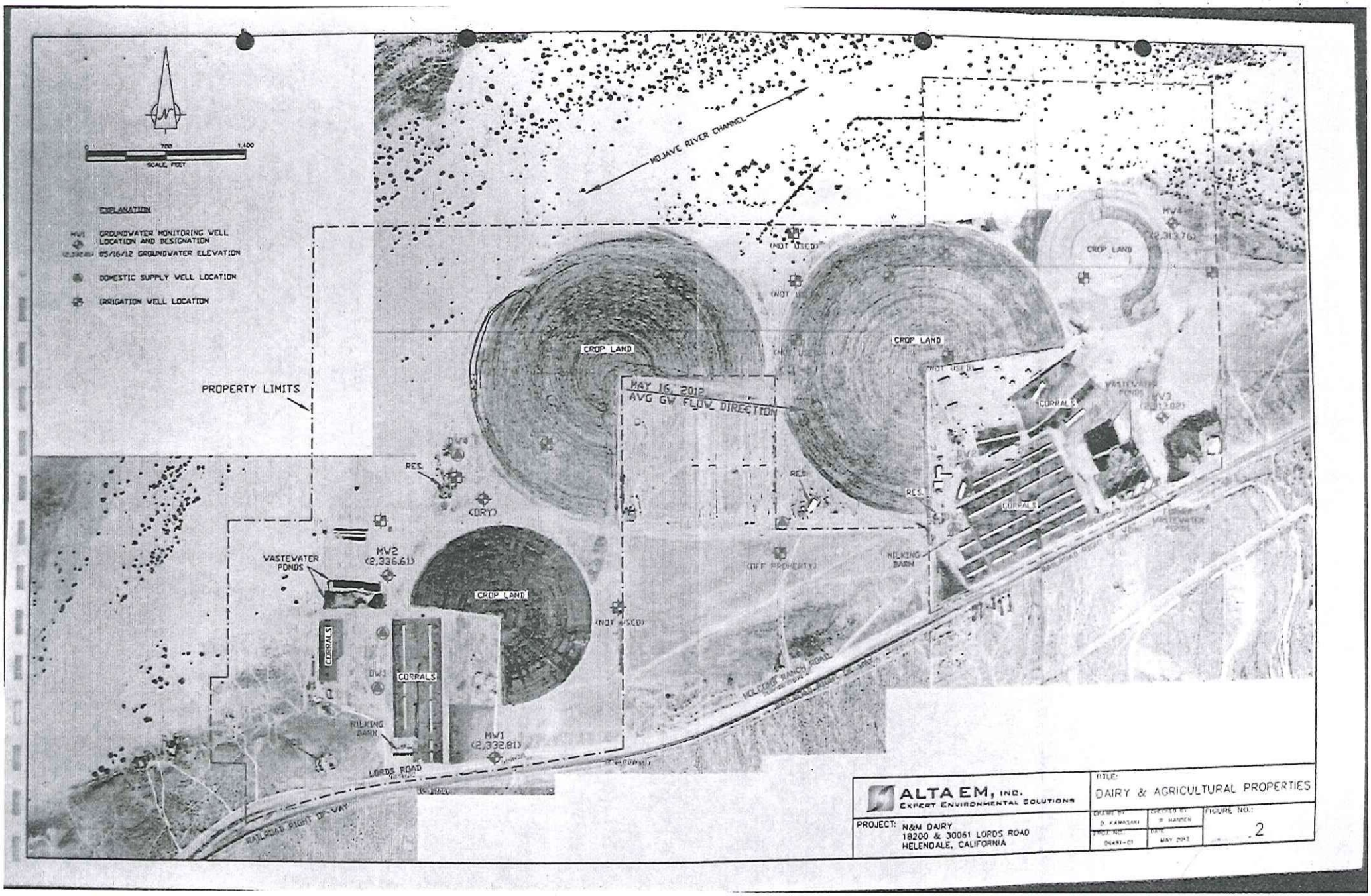
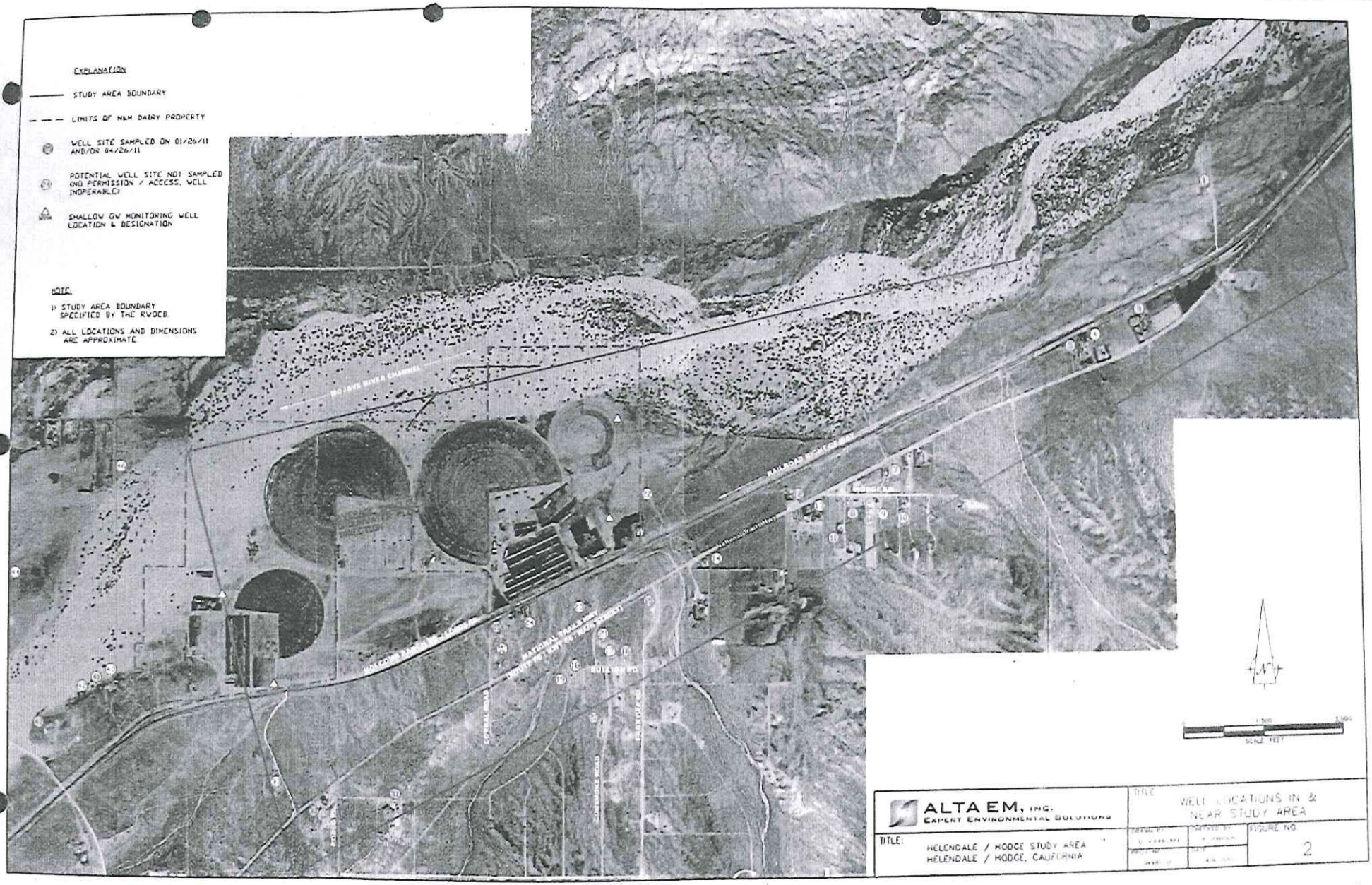
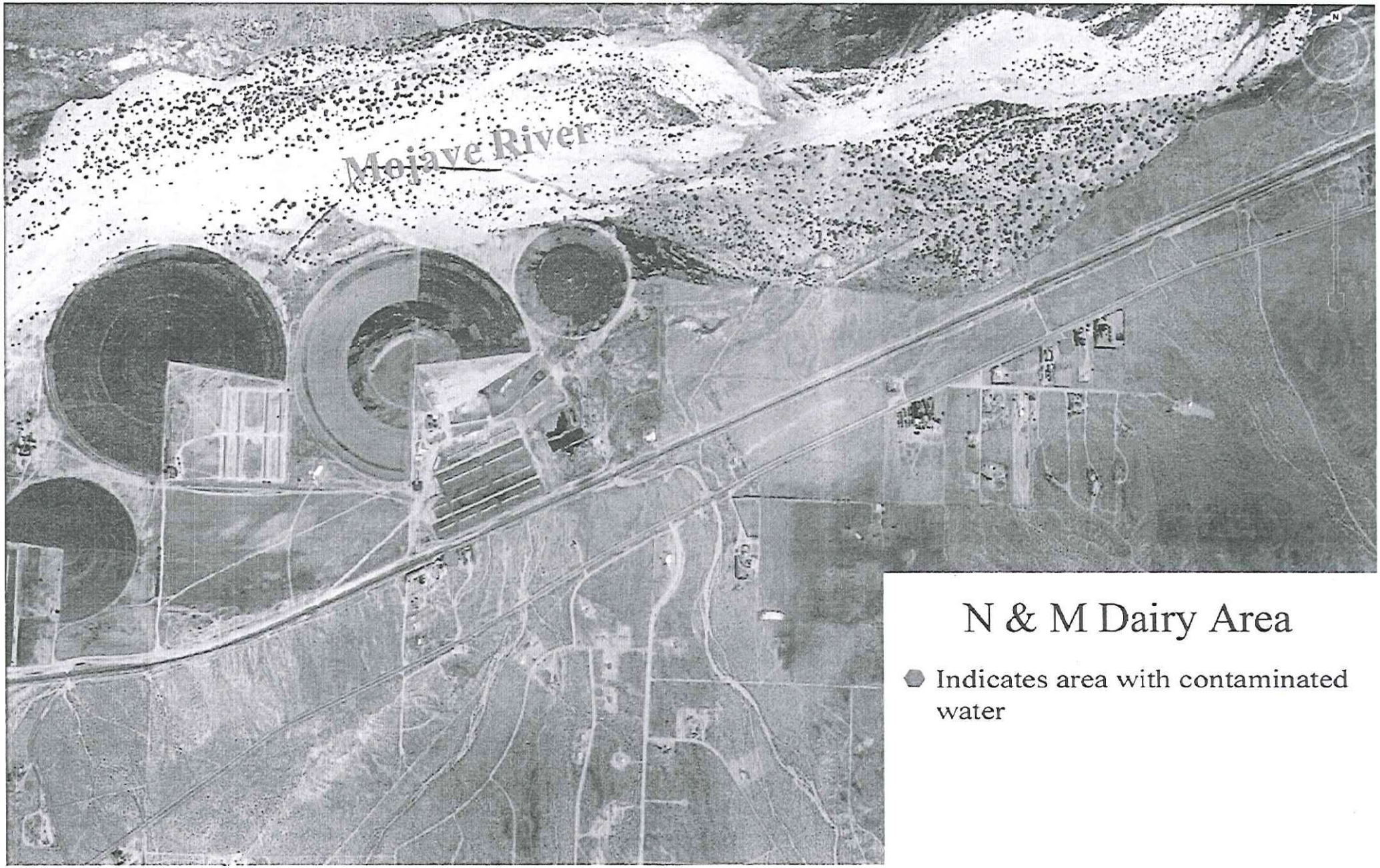

0
700
1,400
SCALE, FEET
EXPLANATION
MW1 GROUNDWATER MONITORING WELL LOCATION AND DESIGNATION
(2,332.81) 05/16/12 GROUNDWATER ELEVATION
DOMESTIC SUPPLY WELL LOCATION
IRRIGATION WELL LOCATION
PROPERTY LIMITS
MOJAVE RIVER CHANNEL
MAY 16, 2012
AVG GW FLOW DIRECTION
CROP LAND
CORRALS
WASTEWATER PONDS
MW1 (2,332.81)
MW2 (2,336.61)
MW3 (2,313.76)
RES.
(DRY)
(NOT USED)
(OFF PROPERTY)
MILKING BARN
LORDS ROAD
HELENDALE ROAD
RAILROAD RIGHT OF-WAY
ALTA EM, INC.
EXPERT ENVIRONMENTAL SOLUTIONS
PROJECT: N&M DAIRY
18200 & 30061 LORDS ROAD
HELENDALE, CALIFORNIA
TITLE: DAIRY & AGRICULTURAL PROPERTIES
DRAWN BY: D. KAWASAKI
CHECKED BY: D. HARDEN
PROJ. NO.: 0648-01
DATE: MAY 2012
FIGURE NO.: 2

EXHIBIT B

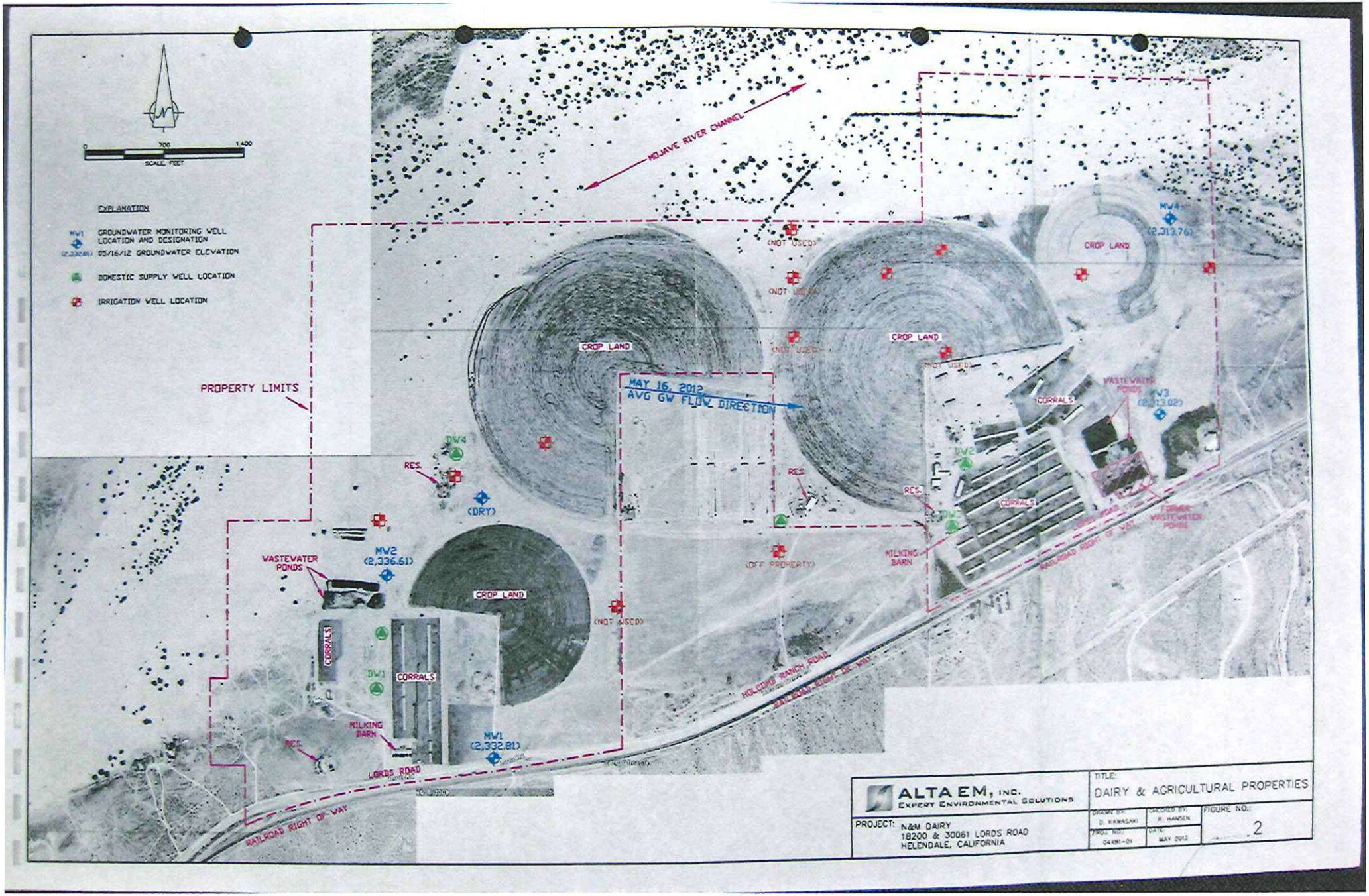

EXPLANATION
STUDY AREA BOUNDARY
LIMITS OF N&M DAIRY PROPERTY
WELL SITE SAMPLED ON 01/26/11 AND/OR 04/26/11
POTENTIAL WELL SITE NOT SAMPLED (NO PERMISSION / ACCESS, WELL INOPERABLE)
SHALLOW GW MONITORING WELL LOCATION & DESIGNATION
NOTE:
1) STUDY AREA BOUNDARY SPECIFIED BY THE RWQCB.
2) ALL LOCATIONS AND DIMENSIONS ARE APPROXIMATE.
MOJAVE RIVER CHANNEL
RAILROAD RIGHT OF WAY
NATIONAL TRAILS HWY
BULLION RD
CORRAL ROAD
SCALE FEET
ALTA EM, INC.
EXPERT ENVIRONMENTAL SOLUTIONS
TITLE: HELENDALE / HODGE STUDY AREA
HELENDALE / HODGE, CALIFORNIA
TITLE: WELL LOCATIONS IN & NEAR STUDY AREA
FIGURE NO. 2



N & M Dairy Area

- Indicates area with contaminated water

EXHIBIT A



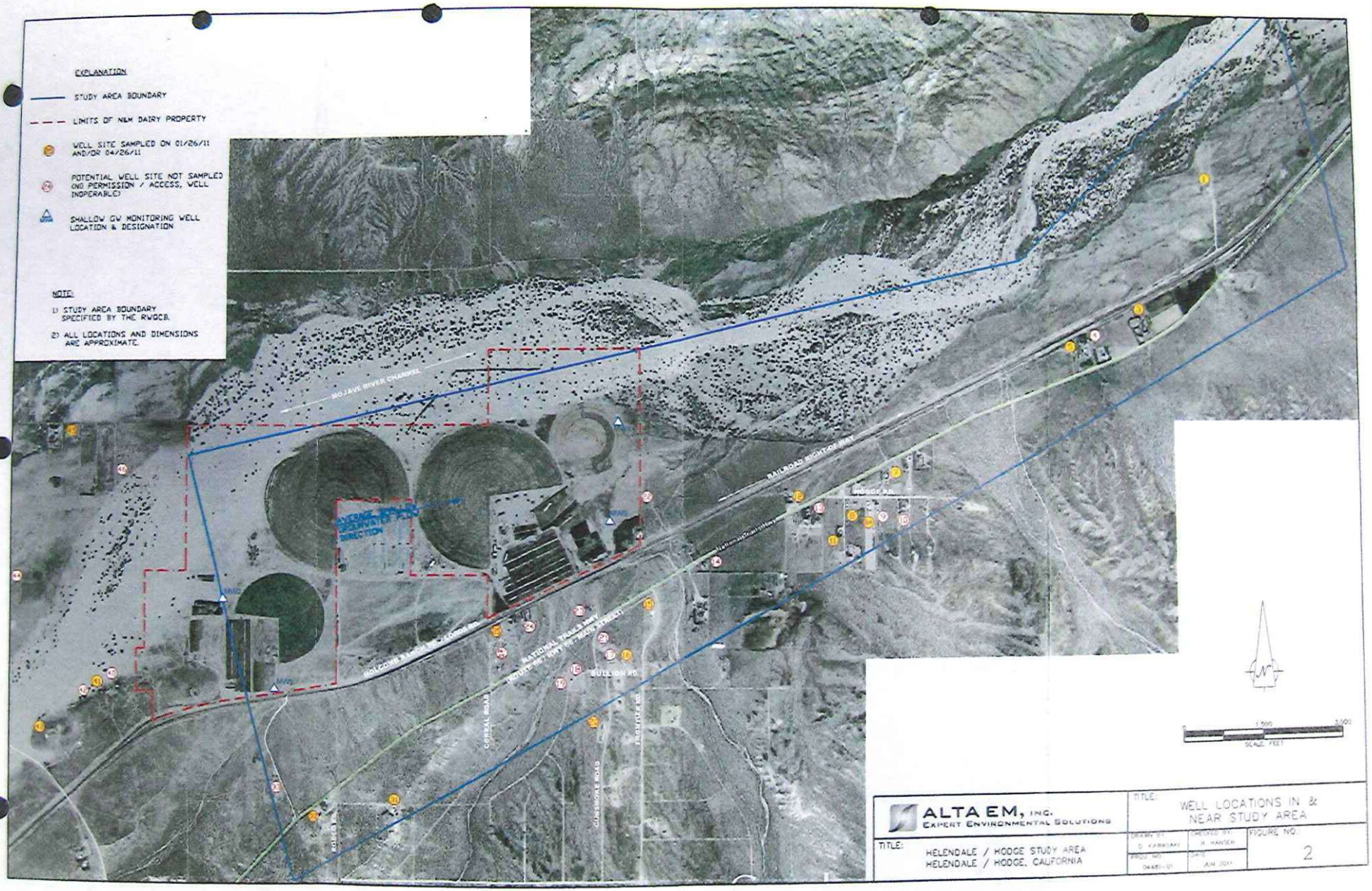
ALTA EM, INC.
EXPERT ENVIRONMENTAL SOLUTIONS

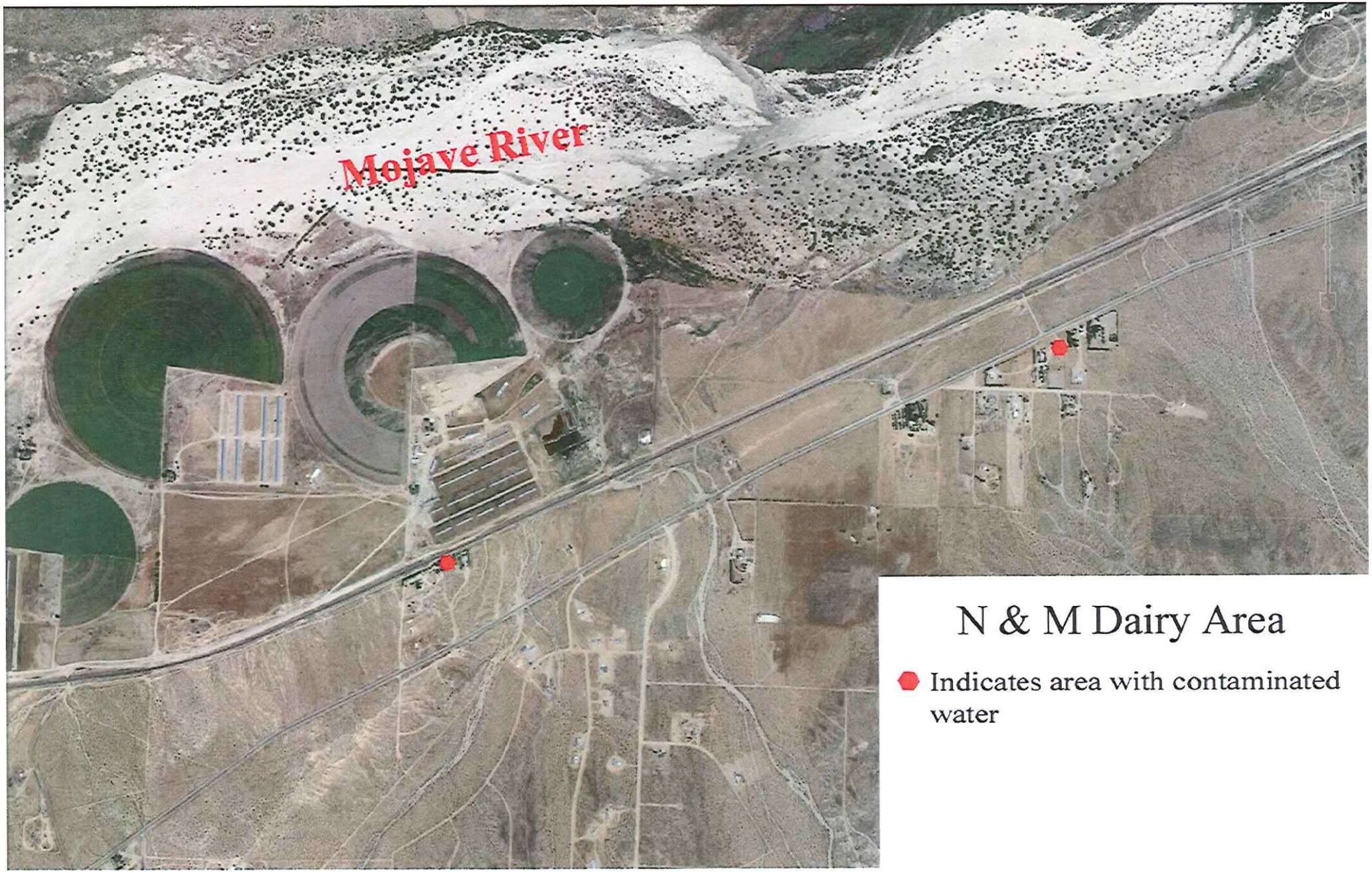
TITLE: DAIRY & AGRICULTURAL PROPERTIES

PROJECT: N&M DAIRY
18200 & 30061 LORDS ROAD
HELENDALE, CALIFORNIA

DRAWN BY:	CHECKED BY:	FIGURE NO.:
D. KAWASAKI	R. HANSEN	2
PROJ. NO.: 04481-01	DATE: MAY 2012	

EXHIBIT B


EXPLANATION
STUDY AREA BOUNDARY
LIMITS OF N&M DAIRY PROPERTY
WELL SITE SAMPLED ON 01/26/11 AND/OR 04/26/11
POTENTIAL WELL SITE NOT SAMPLED (NO PERMISSION / ACCESS, WELL INOPERABLE)
SHALLOW GW MONITORING WELL LOCATION & DESIGNATION
NOTE:
1) STUDY AREA BOUNDARY SPECIFIED BY THE RWQCB.
2) ALL LOCATIONS AND DIMENSIONS ARE APPROXIMATE.
MOJAVE RIVER CHANNEL
RAILROAD RIGHT-OF-WAY
BULLION RD.
CORRAL ROAD
CUSSMOKE ROAD
FRONTIER RD.
SCALE, FEET
ALTA EM, INC.
EXPERT ENVIRONMENTAL SOLUTIONS
TITLE: WELL LOCATIONS IN & NEAR STUDY AREA
TITLE: HELENDALE / HODGE STUDY AREA
HELENDALE / HODGE, CALIFORNIA
FIGURE NO. 2



N & M Dairy Area

- Indicates area with contaminated water