

Confidential Settlement Communication
Evidence Code §§ 1152, 1154

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the Matter of:

JG WESTSTEYN DAIRY, LP

ORDER R5-2021-0519

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Settlement Agreement and Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, Central Valley Region Prosecution Team (Prosecution Team), and JG Weststeyn Dairy, LP (the Discharger, and collectively the Parties), and is presented to the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), or its delegee, for adoption as an order by settlement, pursuant to California Water Code (Water Code) section 13323 and California Government Code (Government Code) section 11415.60.

Section II: RECITALS

1. JG Weststeyn Dairy, LP is the current owner and operator of the JG Weststeyn Dairy, located at 5745 County Road 65 near Willows in Glenn County (the Dairy).
2. On 13 August 2009, the Central Valley Water Board adopted Individual Waste Discharge Requirements (WDRs) Order R5-2009-0082 for Bert Weststeyn and Weststeyn Dairy Farms, dba Weststeyn Dairy. The WDRs prescribe requirements for the storage, treatment, and disposal of solid manure, liquid manure, and other wastes that could impact water quality, and establish monitoring and reporting requirements.
3. On 22 April 2021, the Central Valley Water Board adopted Name Change Order R5-2021-0033 to reflect current ownership and operation of the Dairy. Name Change Order R5-2021-0033 updated WDRs Order R5-2009-0082 to name JG Weststeyn Dairy, LP as the owner and operator of the Dairy.
4. WDRs Order R5-2009-0082 contain a Monitoring and Reporting Program, which requires the submittal of numerous reports, including but not limited to Annual Reports, Storm Water Reports, and Groundwater Reports. The WDRs also require

the submittal of technical reports. These monitoring and technical reports are required pursuant to Water Code section 13267.

5. WDRs Order R5-2009-0082 requires submittal of a Storm Water Report each year by 30 June, submittal of Annual Reports each year by 15 January, and submittal of two Groundwater Reports each year by 30 June and 30 December.
6. WDRs Order R5-2009-0082 also requires submittal of technical reports, including a Setback and Buffer Analysis and Irrigation Well Study, as well as a Composting Barn Soils Report.
7. On 22 March 2021, the Central Valley Water Board Prosecution Team issued Administrative Civil Liability Complaint R5-2021-0504 (ACL) to Jake aka Jakob and Stephen Weststeyn for failure to comply with various reporting requirements contained in WDRs Order R5-2009-0082. The ACL proposed \$30,000 in liability for five alleged violations. The ACL, and its respective attachments, are attached hereto as Attachment 1 and incorporated herein by reference. The ACL alleged the following violations:
 - a. Violation #1 alleges the Discharger violated WDRs Order R5-2009-0082 by failing to timely submit the 2020 Storm Water Report.
 - b. Violation #2 alleges the Discharger violated WDRs Order R5-2009-0082 by failing to timely submit the 2020 Annual Report.
 - c. Violation #3 alleges the Discharger violated WDRs Order R5-2009-0082 by failing to timely submit an adequate Second Semiannual 2020 Groundwater Report.
 - d. Violation #4 alleges the Discharger violated WDRs Order R5-2009-0082 by failing to timely submit an adequate Setback and Buffer Analysis and Irrigation Well Study.
 - e. Violation #5 alleges the Discharger violated WDRs Order R5-2009-0082 by failing to timely submit an adequate Composting Barns Soils Report.
8. Water Code section 13268 authorizes the Central Valley Water Board to administratively impose civil liability in an amount not to exceed one thousand dollars (\$1,000) for each day in which a discharger fails to submit an adequate report required by Water Code section 13267. The Discharger is subject to administrative civil liability per Water Code section 13268 for the alleged violations described above.
9. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to

the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

10. The *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy) was adopted on 4 April 2017 and became effective on 5 October 2017. The use of the Enforcement Policy's liability methodology addresses the factors required to be considered by Water Code section 13327 when imposing administrative civil liability.
11. The stipulated liability in this matter has been reduced from the Prosecution Team's initial proposal in the ACL, from thirty thousand dollars (\$30,000) to twenty-one thousand three hundred seventy-nine dollars (\$21,379), in light of settlement considerations as discussed by the Enforcement Policy.
12. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of **twenty-one thousand three hundred and seventy-nine dollars (\$21,379)**.
13. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

14. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Settlement Agreement and Stipulated Order.
15. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **twenty-one thousand three hundred and seventy-nine dollars (\$21,379)**.
16. To reflect current ownership and operation of the Dairy, and for purposes of settlement only, the parties have agreed to name JG Weststeyn Dairy, LP on this Order rather than Jake aka Jakob and Stephen Weststeyn, the dischargers originally named in the ACL. As noted above, as of 22 April 2021 JG Weststeyn Dairy, LP is the owner and operator of the Dairy.

17. **Payment:** The Discharger will make a payment of twenty-one thousand three hundred and seventy-nine dollars (\$21,379) made payable to the "State Water Resources Control Board Cleanup and Abatement Account" **within 30 days** of the Central Valley Water Board or Executive Officer issuing this Settlement Agreement and Stipulation for Order. The check or money order shall reference Administrative Civil Liability Order No. R5-2021-0519 and be submitted to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall email a copy of the check to Robert Busby at Robert.Busby@waterboards.ca.gov with the subject line "JG Weststeyn Dairy ACL R5-2021-0519."

18. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, or staff be held as parties to or guarantors of any contract entered into by the Discharger, its employees, agents, representatives, or contractors in carrying out activities pursuant to this Order. The Discharger covenants not to sue or pursue any administrative or civil claim or claims against any state agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Order.
19. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject the Discharger to further enforcement, including additional administrative civil liability.

20. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:

Robert Busby
Supervising Engineering Geologist
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4666
Robert.Busby@waterboards.ca.gov

For the Discharger:

Jake Weststeyn
5745 County Road 65
Glenn County, CA 95988
jgweststeyndairy@outlook.com

21. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
22. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board or the Executive Officer, this Order represents a final and binding resolution and settlement of the alleged violations identified in Paragraph 7 as of the effective date of this Order. The provisions of this paragraph are conditioned upon full payment of the administrative civil liability as discussed in this Order. The Central Valley Water Board does not waive its enforcement authority with regards to violations not alleged in the ACL or for violations which occur subsequent to the adoption of this Order.
23. **Public Notice:** The Discharger understands that this Order will be noticed for a 30-day public comment period prior to consideration by the Central Valley Water Board or the Executive Officer. If significant new information is received that reasonably affects the propriety of presenting this Order to the Central Valley Water Board for adoption, the Prosecution Team Lead may unilaterally declare it void and decide not to present it to the Central Valley Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Order.
24. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting this Order by the Central Valley Water Board or the Executive Officer and its review by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
25. **Interpretation:** This Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
26. **Modification:** This Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board or the Executive Officer. All approvals and decisions of the Central Valley Water Board and the Executive Officer under the terms of this Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions,

or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.

27. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Central Valley Water Board or its Executive Officer, or is vacated in whole or in part by the State Water Resources Control Board (State Water Board) or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive the following objections based on settlement communications in this matter:
- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
28. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of this Order.
29. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the Central Valley Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Central Valley Water Board, or its delegate related to this Order, including but not limited to time extensions and other terms contained in this Order.
30. **Covenant Not to Sue:** If the Order is approved by the Central Valley Water Board or its Executive Officer in a manner as agreed to by this Settlement Agreement and Stipulated Order, the Discharger covenants not to sue or pursue any administrative or civil claim(s) against any state agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter covered herein.

31. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute it on behalf of and to bind the entity on whose behalf he or she executes it.
32. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
33. **No Third Party Beneficiaries:** This Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Order for any cause whatsoever.
34. **Effective Date:** The obligations in this Order are effective and binding only upon the entry of an Order by the Central Valley Water Board or Executive Officer which incorporates the terms of this Order.
35. **Severability:** This Settlement Agreement and Stipulated Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
36. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: Original Digitally Signed by John J. Baum
John J. Baum,
Assistant Executive Officer

2021.07.12 14:38:59 -07'00'
Date

JG Weststeyn Dairy, LP
Glenn County

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Stipulated Order
No. R5-2021-0519

JG Weststeyn Dairy, LP

By: Original Signed by Jake Weststeyn
Jake Weststeyn

7/9/2021
Date

Order of the Central Valley Water Board

This Order incorporates the foregoing Settlement Agreement and Stipulated Order.

1. In accepting the foregoing Settlement Agreement and Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13327. The Central Valley Water Board's consideration of these factors is based upon information obtained by the Central Valley Water Board staff in investigating allegations or otherwise provided to the Central Valley Water Board.
2. Issuance of this Settlement Agreement and Stipulated Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Central Valley Water Board. As such, it is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, sections 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, and 15321.

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

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

Attachment 1: Administrative Civil Liability Complaint R5-2021-0504