

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION

CEASE AND DESIST ORDER R5-2023-XXXX FOR

**DAVID BARROSO
MARK BARROSO
JOE AND RENEE BARROSO DAIRY, LP
MERCED COUNTY**

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) finds that:

1. On 3 May 2007, the Central Valley Water Board adopted General Waste Discharge Requirements Order R5-2007-0035 (General Order) for several dairies including the Joe and Renee Barroso Dairy, LP. On 3 October 2013, the Central Valley Water Board adopted Reissued General Waste Discharge Requirements Order R5-2013-0122 (Reissued General Order) to replace the General Order. The Joe and Renee Barroso Dairy, LP facility is located at 6902 Le Grand Road, Merced, Merced County (Dairy). The Reissued General Order prescribes requirements for the storage, treatment, and disposal of solid manure, liquid manure, and other wastes which could impact water quality, and includes a Monitoring and Reporting Program (MRP).

OWNER AND OPERATOR

2. The Joe and Renee Barroso Dairy, LP is a limited partnership registered in California. Mark Barroso is a general partner in the Joe and Renee Barroso Dairy, LP.¹
3. David Barroso has identified himself as an operator of the Dairy.
4. The Joe and Renee Barroso Dairy, LP, Mark Barroso, and David Barroso are collectively referred to as “Dischargers.”

DESCRIPTION OF FACILITY

5. The Dairy is located at 6902 Le Grand Road in Merced, Merced County, California. The Dairy is comprised of five Merced County Assessor’s Parcel Numbers (APNs), consisting of x067-x110-x015-x000, x067-x110-x016-x000, x067-x160-x020-x000, x067-x160-x019-x000, and x067-x100-x054-x000. The production area is located on APN x067-x110-x015-x000 and the remainder of the parcels consist of cropland. The Dairy first began operations in 1960. As of February 2023, the Dischargers provided documentation showing that the Dairy houses 676 mature dairy cows.

¹ Mark Barroso is identified as an owner and operator of the Dairy in the 2011, 2012, 2013, and 2016 Annual Reports submitted pursuant to the General Order and Reissued General Order.

6. According to the Waste Management Plan (WMP), which the Dischargers submitted to the Central Valley Water Board on 1 July 2010, approximately 8,836,000 gallons of process wastewater are generated during the 120-day storage period by the Dairy.
7. As shown in Figure 1 to this Cease and Desist Order (Order), there are two wastewater lagoons at this Dairy. Additionally, there are two settling basins at this Dairy. Milk and dry cows are housed in freestall barns in the central and northern portions of the production area. It is unclear how and in what amount the generated wastewater is applied to the cropland associated with this Dairy because the Nutrient Management Plan (NMP), which was reviewed in 2019, contained inconsistencies and was incomplete, and recent Annual Reports have not been submitted.

HISTORY OF VIOLATIONS

8. An inspection was performed by Central Valley Water Board staff on 9 April 2013. During the inspection, Central Valley Water Board staff observed the following violations, which was summarized in a Notice of Violation (NOV) issued to the Dischargers on 10 May 2013: Excessive weeds were observed along the lagoon embankments and need to be cleared regularly so that the embankments can be observed. This is a violation of Reissued General Order, Pond Specification 2.b, which states “[p]onds shall be managed and maintained to prevent breeding of mosquitoes and other vectors. In particular . . . b. Weeds shall be minimized through control of water depth, harvesting, or other appropriate method.”
9. An inspection was performed on 23 May 2018. The following violations were observed during the inspection:
 - a. On 23 May 2018, both settling basins, as well as the primary wastewater storage pond, contained excess manure solids such that freeboard was less than two feet, and the wastewater storage capacity was compromised. This is a violation of Reissued General Order, Pond Specification C.1, which states “[t]he level of waste in the process wastewater retention ponds (ponds) shall be kept a minimum of two (2) feet from the top of each aboveground embankment and a minimum of one (1) foot from the ground surface of each belowground pond.”
 - b. On 23 May 2018, several animal bones were observed scattered across the surface of two soil stockpiles located adjacent to the southwest corral. The presence of animal bones indicated that a dead animal was disposed of at the Dairy. There is no indication that the disposal occurred during a State of Emergency, nor that other options for disposal were pursued. This is a violation of Reissued General Order, Prohibition A.6, which states “[t]he disposal of dead animals at a dairy facility is prohibited except when federal, state or local officials declare a State of Emergency, and where all other options for disposal have been pursued and failed, and the onsite disposal complies with all state and local policies for disposal of dead animals.”

- c. On 23 May 2018, two ponds not included in the Waste Management Plan were observed in the southern portion of the Dairy. The Executive Officer of the Central Valley Water Board had not and has not received a design report for either of these ponds. According to Central Valley Water Board Staff's review of historical to current aerial imagery, the western pond has been present since 1998, and appears to have been used to storage liquid waste. The eastern pond has been present since 2011 and also appears to have been used to store liquid waste. This is a violation of Reissued General Order, Pond Specification C.5.c.i, which states "*[p]rior to the enlargement of an existing pond (settling, storage, or retention) or the construction of any such new pond not associated with an expansion, the Discharger shall submit to the Executive Officer: For Tier 1 and 2 pond designs, a design report prepared by, or under the direct supervision of, and certified by, a Civil Engineer who is registered pursuant to California law or other person as may be permitted under the provisions of the California Business and Professions Code to assume responsible charge of such work.*"
 - d. The two newly constructed ponds discussed above need to be bermed to re-direct wastewater flow from the corrals and prevent wastewater from entering stormwater storage features. This is a violation of Reissued General Order, SPRR, Standard Provision B.17, which states "*[a]nimal waste storage areas and containment structures shall be designed, constructed, and maintained to limit, to the greatest extent possible, infiltration, inundation, erosion, slope failure, washout, overtopping, by-pass, and overflow.*"
 - e. Raw manure was observed on the cropland immediately south of the settling basin and appeared to have discharged from the settling basins due to lack of capacity. This is a violation of Reissued General Order, Prohibition 9, which states "*[t]he land application of manure or process wastewater to cropland for other than nutrient recycling is prohibited.*"
 - f. Information provided by the Dischargers indicated there are approximately 1,100 mature cows at the Dairy. The permitted maximum number plus the additional 15% is 920 mature cows. This is a violation of Reissued General Order, Prohibition 15, which states "*[u]nder this General Order, the expansion of the existing milk cow dairy beyond the level as defined under the term 'Expansion' is prohibited. Dischargers must submit a ROWD, document compliance with CEQA, and obtain coverage under individual waste discharge requirements before any material facility expansion.*"
10. These violations were summarized in a NOV dated 8 August 2018 and issued to the Dischargers. The NOV requested that the Dischargers develop a work plan to correct the deficiencies listed in the NOV and requested the work plan be developed by 7 September 2018. No such work plan was developed.
11. A follow-up inspection was performed by staff on 6 August 2019. The following violations were observed:

- a. The two settling basins and primary wastewater storage lagoon had less than two feet of freeboard and needed to be cleaned of excessive manure solids. This is a violation of Reissued General Order Pond Specification C.1, as described above.
 - b. The two ponds not included in the WMP in the southern portion of the property were still present. The Executive Officer of the Central Valley Water Board had not and has not received a design report for either of the ponds. This is a violation of the Reissued General Order, Pond Specification C.5.c.i, as described above. This is a violation of Reissued General Order, SPRR, Standard Provision B.17 as described above. These ponds must be bermed to prevent wastewater from the corrals from entering.
12. The violations observed at the 6 August 2019 inspection were summarized in a NOV dated 12 August 2019, which was issued to the Dischargers. The NOV requested that the Dischargers develop a work plan to correct the deficiencies listed in the NOV and requested the work plan be developed by 13 September 2019. No such work plan was developed.
13. Review of aerial imagery from 16 May 2018 indicates the settling basins and or lagoons in the southern portion of the property discharged to adjacent cropland. This is a violation of Prohibition A.9, which states "*[t]he land application of manure or process water to cropland for purposes other than nutrient recycling is prohibited.*"
14. Finally, during several inspections of the Dairy, inconsistencies were noted between available Annual Reports and the NMP and WMP. In particular, inconsistencies were noted concerning wastewater volume generated, wastewater application rates, and manure solids. As described in the Reissued General Order, the purpose of the WMP is to ensure that the production area of the Dairy is designed, constructed, operated, and maintained so that dairy wastes are managed to prevent adverse impacts to groundwater and surface water quality.
15. Similarly, as described in the Reissued General Order, the purpose of a NMP is to budget and manage the nutrients applied to the land application areas, considering all sources of nutrients, crop requirements, soil types, climate, and local conditions in order to prevent adverse impacts to surface water and groundwater quality. The NMP must take site-specific conditions into consideration in identifying steps that will minimize nutrient movement through surface runoff or leaching past the root zone. The Central Valley Water Board considers the implementation of an effective NMP to be best practicable treatment or control (BPTC) for land application areas. Therefore, these inconsistencies may evidence violations of the Order and/or Water Code that may merit additional investigation.
16. An inspection was performed 22 August 2022. The following violations were observed during the inspection:
 - a. On 22 August 2022, the south settling basin, as well as the primary wastewater storage pond, contained excess manure solids such that freeboard was less than two feet, and the wastewater storage capacity was compromised. This is a violation of Reissued General Order, Pond

Specification C.1, which states “[t]he level of waste in the process wastewater retention ponds (ponds) shall be kept a minimum of two (2) feet from the top of each aboveground embankment and a minimum of one (1) foot from the ground surface of each belowground pond.”

- b. On 22 August 2022, several animal bones were observed scattered across the surface of one soil stockpile located adjacent to the southwest corral. The presence of animal bones indicated that a dead animal was disposed of at the Dairy. There is no indication that the disposal occurred during a State of Emergency, nor that other options for disposal were pursued. This is a violation of Reissued General Order, Prohibition A.6, which states “[t]he disposal of dead animals at a dairy facility is prohibited except when federal, state or local officials declare a State of Emergency, and where all other options for disposal have been pursued and failed, and the onsite disposal complies with all state and local policies for disposal of dead animals.”
 - c. On 22 August 2022, two ponds not included in the Waste Management Plan were observed in the southern portion of the Dairy. The Executive Officer of Central Valley Water Board had not and has not received a design report for either of ponds. According to Staff’s review of historical to current aerial imagery, the western pond has been present since 1998, and appears to have been used to storage liquid waste. The eastern pond has been present since 2011 and also appears to have been used to store liquid waste. Samples were obtained from the manure solids in the base of the two ponds. Sample results indicate there are nutrient and salt contents similar to that of manure sampled on the property in 2016. This is a violation of Reissued General Order, Pond Specification C.5.c.i, which states “[p]rior to the enlargement of an existing pond (settling, storage, or retention) or the construction of any such new pond not associated with an expansion, the Discharger shall submit to the Executive Officer: For Tier 1 and 2 pond designs, a design report prepared by, or under the direct supervision of, and certified by, a Civil Engineer who is registered pursuant to California law or other person as may be permitted under the provisions of the California Business and Professions Code to assume responsible charge of such work.”
 - d. The two newly constructed ponds discussed above need to be bermed to re-direct wastewater flow from the corrals and prevent wastewater from entering stormwater storage features. This is a violation of Reissued General Order, SPRR, Standard Provision B.17, states “[a]nimal waste storage areas and containment structures shall be designed, constructed, and maintained to limit, to the greatest extent possible, infiltration, inundation, erosion, slope failure, washout, overtopping, by-pass, and overflow.”
17. On 5 December 2018, one of the Dischargers stated to Central Valley Water Board staff that the Dairy houses approximately 1,100 mature dairy cows. As stated above, this exceeds the maximum number of dairy cows permitted under the Reissued General Order. This violation, however, was determined to be resolved via conversations with one of the Dischargers and subsequent document submittal and review in March of 2023.

18. The Dischargers have not submitted Annual Reports for the 2017, 2018, 2019, and 2020 reporting periods, which were due respectively on July 1 of 2018, 2019, 2020, and 2021. The missing reports are a violation of Reissued General Order, section L.1 and Reissued General Order, Monitoring and Reporting Program (MRP), section C, Reporting Requirements, Annual Reporting, which require the submittal of annual reports by 1 July each year pursuant to Water Code section 13267.²
19. The most current WMP available to Central Valley Water Board staff is dated 20 December 2009. A review of the 2007 Existing Conditions Report and the 2009 WMP shows that there are two authorized settling basins and two authorized wastewater storage lagoons. Both documents show the western unauthorized pond in the southern portion of the Dairy. Review of aerial imagery indicates that the eastern unauthorized pond was constructed after September 2009 and before September 2010. The eastern unauthorized pond is also in the southern portion of the Dairy. Review of aerial imagery indicates the two unauthorized ponds are occasionally filled with runoff from the corrals. Although the WMP states that there is adequate storage capacity in the wastewater lagoon, inspections conducted in 2018 and 2019 show that either (a) the wastewater lagoon has not been managed as documented in the WMP or (b) there is not enough storage capacity.

REGULATORY CONSIDERATIONS

20. Groundwater beneath the Dairy is encountered at approximately 142 feet below ground surface (source: Department of Water Resources' Groundwater Information Center Interactive Map). The unauthorized ponds were not constructed in a manner intended to prevent or minimize wastewater infiltration, consistent with the minimum retention pond design requirements of the California Code of Regulations, title 27, section 22562, subdivision (d).
21. The Central Valley Water Board is charged with the protection of the beneficial uses of groundwater beneath the Dairy. The beneficial uses of the this groundwater are defined in the Water Quality Control Plan for the California Regional Water Quality Control Board, Central Valley Region ([Basin Plan](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf)) (https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf). The beneficial uses are municipal and domestic water supply, agricultural supply, and industrial supply. The failure to comply fully with the requirements of the Reissued General Order threatens these beneficial uses.
22. Water Code section 13301 states: "*[w]hen a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action.*"

² The imposition of administrative civil liability for some of these missing annual reports is being pursued through an administrative civil liability action. See Administrative Civil Liability [PROPOSED] Order No. R5-2023-0505.

23. The Central Valley Water Board finds that a discharge of waste is taking place in violation of the requirements and discharge prohibitions of the Reissued General Order, as described herein. This Order requires the Dischargers to take appropriate remedial action and to comply in accordance with the time schedule set forth below.
24. Water Code section 13267, subdivision (b) states, in part: *“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 person with a written explanation regarding the need for the reports and shall identify the evidence that supports requiring that person to provide the reports.”*
25. The Dischargers owns and/or operate the Dairy, which is subject to the Reissued General Order. To date, the Central Valley Water Board has not received required technical information to ensure prevention of groundwater degradation. The technical and monitoring reports required by this Order are necessary to make that determination and to determine compliance with the requirements of the Reissued General Order. The evidence provided herein supports the requirement for an investigation, as defined in section 13267, subdivision (b)(1) of the California Water Code.
26. As required by Water Code section 13267, the Central Valley Water Board has considered the burden and benefits of requiring these reports and has determined that the benefit to water quality and outweighs the costs of generating the required reports. Central Valley Water Board staff, in reliance on best professional judgement and current data, estimates that compliance with the Water Code section 13267 directives of this Order will cost approximately \$12,550 to \$18,510. If this site is a source of contamination to groundwater, and the contamination is allowed to continue to impact groundwater, the cost to remediate the contamination to groundwater caused by this site is likely to far exceed the costs of the investigation required by this order.
27. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).
28. After due notice to the Dischargers, and all other affected persons, the Central Valley Water Board conducted a public hearing at which evidence was received to consider this Order under Water Code section 13301 to establish a time schedule to achieve compliance with waste discharge requirements.

IT IS HEREBY ORDERED that, pursuant to sections 13301 and 13267 of the Water Code, the Dischargers shall implement the following measures to comply with the Reissued General Order:

1. The Dischargers shall immediately comply with all aspects of the Reissued General Order, or subsequent revisions, including the prohibition against disposing of dead animals, discharges of wastewater to surface waters, the prohibition against applying solid manure or wastewater to land for any purpose other than nutrient recycling, and the requirement that all process wastewater applied to land application areas infiltrate completely within 72 hours after application.
2. If the Dischargers do not comply with the terms of this Order, then pursuant to the Reissued General Order, Section I, Paragraph I, the Executive Officer may revoke coverage under the Reissued General Order and require the Dischargers to submit a Report of Waste Discharge and obtain individual waste discharge requirements.
3. **Within 30-days from the adoption of this Order**, the Dischargers shall submit a current year (2021), Annual report prepared by a certified professional describing:
 - a. How and where all solid manure that was generated during that year was recycled or exported, and whether any solid manure was applied to cropland.
 - b. The timing and volume of all nutrient applications to the pasture, including any wastewater or solid manure that was discharged to the pasture that was not part of an agronomic application (include the date, an estimate of the volume of wastewater or solid manure discharged, and the reason the discharge occurred), and
 - c. The volume of process wastewater that was exported from the Dairy and written agreements with the third parties that accepted the process wastewater.
4. The Dischargers shall prepare and implement the NMP.
 - a. **Within 30-days from the adoption of this Order**, the Dischargers shall submit a NMP that contains all items required by Attachment C of the Reissued General Order and is prepared by a specialist as described in Attachment C. In addition, the NMP shall:
 - I. Specifically address the potential overapplication of nitrogen and describe future practices to ensure that the nitrogen applied-to-removed ratio for any crop does not exceed 1.4;
 - II. Include the results of soil testing from the cropland to support the existing soil nutrient content portion of the crop nutrient budget;
 - III. If process wastewater is to be exported, then include written agreements containing the information in Land Application Specification E.3 of the Reissued General Order; and
 - IV. Describe how all manure solids generated at the Dairy will be recycled or exported.

- b. *Agronomic Need Report*. If the Dischargers determine that nutrients need to be applied to the cropland when it is saturated, then a specialist (as described in Attachment C of the Reissued General Order) must first conduct tissue and/or soil tests to show that there is an agronomic need for such application and that the threat of nitrate leaching is minimal. If such an application occurs, then **within 30 days of application**, the Dischargers shall submit an *Agronomic Need Report*, prepared by the specialist, documenting the tests, the volume of wastewater applied, and the amount of nitrogen applied.
 - c. **Within 45-days from the adoption of this Order**, the Dischargers shall submit documentation, including photographs, that they have installed a flow meter on the wastewater lagoon, such that the volume of wastewater used to irrigate the fields can be accurately measured. The wastewater flows to each field shall be documented and used to support the calculations in all *Annual Reports*.
 - d. **By 1 July 2024 and each subsequent 1 July (as long as this Order is in effect)**, the Dischargers shall submit an *Enhanced Annual Report*. The document shall contain all the information required by the Reissued General Order for an Annual Report. In addition, the *Enhanced Annual Report* shall:
 - I. Reflect the measured volumes of wastewater discharged to each field.
 - II. Document the volume and destination of all solid manure produced during the year.
 - III. Describe any deviations from the NMP.
 - IV. If any field, for any crop, had a nitrogen applied to removed ratio greater than 1.4, then the *Enhanced Annual Report* shall contain the information described in Attachment C, Technical Standard V. B.2.i-iv of the Reissued General Order.
 - V. If the Dischargers cannot meet the conditions listed in Attachment C, Technical Standard V.B.2.i-iv, or if any field, for any crop, had a nitrogen applied to removed ratio greater than 1.65, then the Dischargers shall also submit an *Updated Nutrient Management Plan* that describes different practices to prevent such exceedance.
5. Implement and Update the WMP
- a. **Within 30-days from the adoption of this Order**, the Dischargers shall submit a *Pond Sizing and Freeboard Marker Report*, prepared and certified by a California licensed surveyor, documenting the length, width and depth (from the lowest point of the berm to native soil at the bottom) of the wastewater lagoons. The report shall clearly describe the methods used to measure each dimension; these methods must be defensible and reproducible. The report shall also document that a freeboard marker has been installed into the lagoon. The freeboard marker shall have one-foot measurements from the lowest point on the berm to native soil at the bottom of the lagoon and shall be placed in a location and be large enough that the measurement marks are visible in the monitoring photographs. Finally, the report shall document the

practical minimum freeboard for each lagoon (i.e., depth to which the lagoon can be emptied, given physical constraints such as pump elevations and recirculation of wastewater to flush the freestalls).

- b. **Within 45-days from the adoption of this Order**, the Dischargers shall submit an *Updated Waste Management Plan* and associated *Operations and Maintenance Plan* (O&M Plan) that contains the information listed in Attachment B to the Reissued General Order. In particular, the *Updated WMP* shall consider wastewater flows for the maximum allowed herd (920 milk and dry cows), the volume of the wastewater lagoon as documented in the *Pond Sizing and Freeboard Marker Report*, the practical minimum freeboard, the removal of solids in the settling basins, and any constraints placed by the Nutrient Management Plan and the Reissued General Order's requirements regarding the application of dairy waste to cropland for nutrient recycling.
 - I. The *Updated WMP* shall include a contingency plan in the event that the freeboard targets are not met by 1 November of any year. The Contingency Plan will describe how the Dischargers will immediately reduce wastewater production (which could include a reduction in herd size or increased wastewater exports) until physical improvements can be made such that the Dairy has either reduced its wastewater generation or increased its capacity to store wastewater to ensure that it has adequate capacity (as defined in the Reissued General Order). The contingency plan shall include short-term and long-term improvements. If the Dischargers propose to expand or construct a wastewater pond, then the Plan must include the information in Attachment B, Part II.B of the Reissued General Order.
 - II. The *Operation and Maintenance Plan* shall specify the minimum freeboard necessary for the wastewater lagoons on 1 November of each year and provide information as to how that freeboard will be achieved. The plan shall include information describing how the lagoon, settling basins, and all corrals will be cleaned out prior to the winter, including how the semi-solid manure will be removed from the lagoon, where it will be staged and dried, how the manure leachate will be collected and directed to the wastewater lagoon, and where/when the solid manure will be ultimately recycled or exported. The plan shall also describe how the work will be completed in accordance with the conditions of the Reissued General Order the requirement to ensure that leachate is collected and diverted to a retention pond, and that infiltration of leachate is minimized (Attachment B, Item V.H).
 - III. The *Operation and Maintenance Plan* shall include methods for mortality management to meet the requirements of the Dairy General Order, MRP Section B.2.d.
- c. **By 15 May 2024, and each subsequent 15 May (as long as this Order is in effect)** the Dischargers shall submit an *Implementation of Operations and Maintenance Plan Report*. The report shall document that the wastewater

lagoon was drawn down to the level shown in the WMP by 1 November of each year. The report shall also document that the manure solids were dried and disposed of as proposed in the O&M Plan. It shall also document that excess solid manure was removed from all the corrals, and that the corrals were re-graded to drain to the lagoon. The report shall include text and dated photographs as documentation. If the lagoon does not have the freeboard levels required in the O&M Plan as of 1 November, then the report shall describe how the Dischargers will implement the *Contingency Plan* in the WMP to manage wastewater during the winter in conformance with the Reissued General Order.

6. The two unauthorized ponds in the southern portion of the production area shall be drained of liquids prior to **1 October 2023**. The ponds shall be cleaned of all solid manure, and the ponds shall be bermed or filled in with clean soil.³
7. The Central Valley Water Board has transitioned to a paperless office. Therefore, all technical reports required by this Order must be converted to a searchable pdf file and submitted to the [Geotracker database](https://www.waterboards.ca.gov/ust/electronic_submittal/index.html) (https://www.waterboards.ca.gov/ust/electronic_submittal/index.html). In addition, an email shall be sent to Daniel Gamon at Daniel.Gamon@waterboards.ca.gov stating that a document pertaining to this Order has been uploaded into Geotracker.
8. In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain workplans for investigations and studies, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Dischargers shall bear the professional's signature and stamp.
9. Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
10. The Executive Officer or his delegee may extend the deadlines contained in this Order if the Dischargers demonstrate that circumstances beyond the Dischargers'

³ The Dischargers submitted photographs on 31 August 2022 in response to Central Valley Water Board's Staff request showing that the ponds were drained, but not yet bermed.

control have created delays, provided that the Dischargers continue to undertake all appropriate measures to meet the deadlines. The Dischargers shall make any deadline extension request in writing at least 30 days prior to the deadline. The Dischargers must obtain written approval from the Executive Officer or his delegee for any departure from the time schedule shown above. Failure to obtain written approval for any departures may result in enforcement action.

11. If, in the opinion of the Executive Officer or his delegee, the Dischargers fail to comply with the provisions of this Order, the Executive Officer or his delegee may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the Reissued General Order may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.
12. Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Resources Control Board (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 that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final 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.

I, PATRICK PULUPA, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order issued by the California Regional Water Quality Control Board, Central Valley Region, on XX Month 2023.

PATRICK PULUPA, Executive Officer

Figure 1: Dairy Operations

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

In the matter of:

**CEASE AND DESIST ORDER
R5-2023-00XX
REQUIRING DAVID BARROSO, MARK BARROSO, AND JOE AND RENEE BARROSO
DAIRY, LP
MERCED COUNTY
TO CEASE AND DESIST FROM DISCHARGING WASTE CONTRARY TO REQUIREMENTS

STIPULATION FOR ENTRY OF CEASE AND DESIST ORDER
R5-2023-00XX**

Section I: INTRODUCTION

This Stipulation for Entry of Cease and Desist Order R5-2023-XXXX (PROPOSED) (Stipulation) and Cease and Desist Order R5-2023-XXXX (PROPOSED) (Proposed CDO) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), and David Barroso, Mark Barroso, and Joe and Renee Barroso Dairy, LP (collectively, Dischargers), as owners and operators of the Joe and Renee Barroso Dairy (Dairy), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team) and the Dischargers (together, the Parties).

Section II: RECITALS

1. The Dairy is located at 6902 Le Grand Road in Merced, Merced County, California. (Dairy) and is regulated by Reissued General Waste Discharge Requirements Order R5-2013-0122 (Reissued General Order).
2. The Dischargers are alleged to have violated the Reissued General Order. The specific alleged violations are described in the Proposed CDO, which is attached hereto and incorporated by reference.
3. Section 13301 of the California Water Code (Water Code) states, in relevant part, that: "When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action...Cease and desist orders may be issued directly by a board, after notice and hearing."
4. The Parties have engaged in settlement negotiations and agree to present this Stipulation and Proposed CDO to the Central Valley Water Board for adoption as decision by settlement, pursuant to Government Code section 11415.60.

Stipulation for Entry of Cease and Desist Order R5-2023-XXXX (PROPOSED)

Section III: STIPULATIONS

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
2. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13301, and hereby waives their right to a hearing before the Central Valley Water Board.
3. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
4. **Interpretation:** This Stipulation and Proposed CDO shall be construed as if the Parties prepared each jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
5. **Advocating for Adoption of the Proposed CDO:** The Parties expect the Central Valley Water Board to consider adoption of the Proposed CDO within 90 days of execution of this Stipulation. The Parties agree to advocate in support of the Proposed CDO to the Central Valley Water Board by having a representative appear before the Central Valley Water Board at a public meeting to consider adoption of the Proposed CDO, and to speak in support of the Proposed CDO.
6. **Matters Covered:** This Stipulation and Proposed CDO resolves only the issuance of a Cease and Desist Order pursuant to Water Code section 13301. This Stipulation and Proposed CDO does not preclude the Central Valley Water Board or any other state, local or federal agency from seeking to impose civil liability for any of the violations alleged in the Proposed CDO or any future violations. In addition, this Stipulation and Proposed CDO does not preclude the Central Valley Water Board or any other state, local or federal agency from requiring cleanup pursuant to Water Code section 13304, or from taking any other action to abate the effects of the discharge, as allowed by law.
7. **Modification:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing and signed by all Parties. The Parties acknowledge that the Central Valley Water Board may make minor, non-substantive amendments to the Proposed CDO prior to adoption and without approval by the Parties, including assignment of a final order number. The Parties agree that any substantive revisions to the Proposed CDO must be agreed to by all Parties and approved by the Central Valley Water Board.
8. **If the Proposed CDO Does Not Take Effect:** In the event that the Proposed CDO does not take effect because it is not approved by the Central Valley Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties agree that this Stipulation will be void and acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to issue a Cease and Desist Order, 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 any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that the Dischargers may object to members of the Prosecution Team serving as advisors to the Central Valley Water Board in any such subsequent administrative or judicial proceeding or hearing and may object to the Central Valley Water Board members or their advisors participation in contested evidentiary hearing on grounds not related to the settlement process addressed in this paragraph, 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.
9. **Waiver of Right to Petition:** The Dischargers hereby waive their right to petition the Central Valley Water Board's adoption of the Proposed CDO 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.
 10. **The Dischargers' Covenant Not to Sue:** The Dischargers covenant 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 expressly addressed by this Stipulation or Proposed CDO.
 11. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
 12. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
 13. **Effective Date:** This Stipulation is effective and binding on the Parties upon execution. The Proposed CDO, as may be modified in accordance with Paragraph 9, shall be effective upon issuance by the Central Valley Water Board.

IT IS SO STIPULATED.

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

Date: 4/13/2023 By: **Original Digitally Signed by John J. Baum on
Date: 2023.04.13 10:31:57 -07'00'**
John J. Baum
Assistant Executive Officer

Joe and Renee Barroso Dairy

Date: 4/6/2023 By: **Original Signed by**
David Barroso on behalf of self and Joe and
Renee Barroso Dairy, LP

Date: 4/7/2023 By: **Original Signed by**
Mark Barroso on behalf of self and Joe and
Renee Barroso Dairy, LP

Attachment 1: Proposed CDO No. R5-2023-XXXX