

PARTICIPATION AGREEMENT

FILE UPDATE

**Participation Agreement Between
Central Valley Dairy Representative Monitoring Program
And
Central Valley Existing Milk Cow Dairy Operator¹ and/or Dairy Landowner²
For
Participation in the CVDRMP to Comply With the Terms of the Additional
Groundwater Monitoring Requirements in Order R5-2013-0122**

This Agreement is entered into and effective on this ____ day of _____, by and between _____ and the Central Valley Dairy Representative Monitoring Program (CVDRMP). For the purposes of this Agreement, "CVDRMP" means the Central Valley Dairy Representative Monitoring Program and its designees; and, "Participant" means I, _____ (Dairy Operator), and I, _____ (Landowner [if two different entities]) the undersigned. The CVDRMP is being formed to assist dairy operators and/or landowners in the Central Valley in meeting the requirements of *Monitoring and Reporting Program Order No. R5-2013-0122 Attachment A (as amended)*, as an eligible Representative Monitoring Program. By signing this Agreement as specified below, the Participant(s) agrees to all of the provisions contained herein.

SECTION I

Recitals

A. On October 3, 2013, the Central Valley Water Quality Control Board ("Central Valley Water Board") adopted *Order No. R5-2013-0122 Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies (General Order), Monitoring and Reporting Program No. R5-2013-0122 (MRP), and Attachment A to Monitoring and Reporting Program No. R5-2013-0122.*

B. The goal of the General Order is to improve and protect water quality and attain water quality objectives in waters of the state by providing waste discharge requirements for existing milk cow dairies in the Central Valley.

C. The goal of Attachment A to the MRP is to ensure that dairy operators are able to characterize groundwater quality at or near dairy facilities, and to determine if dairy facilities are impacting groundwater quality.

¹ Throughout this Participation Agreement, "Dairy Operator" or "Operator" is the person who has authority to sign on behalf of the business entity that is milking cows and conducting dairy business at the facility location.

² Throughout this Participation Agreement, "Dairy Landowner" or "Landowner" is the person who has authority to sign on behalf of the business entity that owns the land on which the dairy facility is located (e.g. barns, corrals, etc.) If the "Dairy Operator" and "Dairy Landowner" are not the same person, BOTH must sign this Participation Agreement and the accompanying Letter of Intent.

D. The Central Valley Water Board adopted Attachment A to the Monitoring and Reporting Program No. R5-2013-0122 in part to allow Dischargers to participate in an eligible Representative Monitoring Program. An eligible Representative Monitoring Program is a Representative Monitoring Program that has submitted a proposed Monitoring and Reporting Workplan (MRP) to the Executive Officer of the Central Valley Water Board for review and approval, and has received approval of the submitted MRP.

E. The CVDRMP was officially formed on May 17, 2010, to assist Central Valley dairy operators in meeting the requirements of Attachment A to the MRP, as adopted by the Central Valley Water Board. The CVDRMP is not part or agent of the Central Valley Water Board.

F. The CVDRMP is an eligible Representative Monitoring Program pursuant to the requirements contained in Attachment A to the MRP.

G. The CVDRMP comprises dairy operators and/or landowners located within the Central Valley region, as defined in Water Code section 13200(g).

H. The CVDRMP is governed by a Board of Directors of dairy operators/landowners that represent dairy operations in the Central Valley. The Board of Directors shall include: two (2) members from Tulare County; two (2) members from Merced or Madera County; two (2) members from Kern, Fresno, or Kings County; two (2) members from Stanislaus County; two (2) members from a Central Valley county other than Tulare, Merced, Madera, Kern, Fresno, Kings, or Stanislaus; and two (2) at-large members from any Central Valley county. Members of the Board of Directors must be a dairy landowner or dairy operator or an employee of a dairy landowner or employee of a dairy operator. Board of Director terms shall be for two (2) years, except one (1) Director's position from each category shall have an initial term set at three (3) years.

I. The CVDRMP is a nonprofit Mutual Benefit Corporation, organized under the Nonprofit Mutual Benefit Corporation Law. The CVDRMP has obtained tax-exempt status as a 501(c)(5), under the federal Internal Revenue Code.

J. The Participant understands that participation in the CVDRMP is voluntary.

K. The Participant also understands that compliance with Attachment A may be obtained by acting as an individual, and by being subject to an individual order issued by the Executive Officer. Individual orders shall be issued by the Executive Officer in the manner as specified in Attachment A. Participation in the CVDRMP is not required by Attachment A, but is an option for compliance.

L. On January 15, 2020, the Salt and Nitrate Control Program that was adopted by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) in May 2018 and approved by the State Water Resources Control Board

in October 2019 became effective. The control program requires dischargers, including regulated dairy operations, to select compliance pathways for both salt and nitrate control.

M. The Salt Control Program requires dischargers to select either a “conservative” compliance pathway (Pathway A) or an alternative compliance pathway (Pathway B). In the case of the salt program, for CVDRMP members, Pathway A is not viable because 1) evidence from monitoring shows that most members cannot meet the requirements of Pathway A, and 2) meeting Pathway A requirements would likely include extensive individual site monitoring that CVDRMP cannot provide.

N. The Nitrate Control Program includes two options, which include a Pathway A that applies to those seeking individual permitting (which is likely to be more conservative), and an alternative compliance pathway (Pathway B) that involves participating in a Management Zone. Pathway A for the nitrate program is not a viable option for most dairy operators because monitoring evidence shows that members cannot meet the requirements of Pathway A, and meeting Pathway A would involve extensive individual site monitoring that CVDRMP cannot provide.

O. For the reasons expressed in Recitals M and N, the CVDRMP concludes that Pathway B is in the best interest of its members for both the Salt Control Program and Nitrate Control Program. CVDRMP has also concluded that it is best to have all its members comply with Pathway B as a group to avoid confusion and to ensure streamlined, equitable costs for its members.

SECTION II

Agreements

CVDRMP

A. The CVDRMP submitted a MRP workplan to the Central Valley Water Board on August 4, 2010, and has since been approved by the Executive Officer as an eligible Representative Monitoring Program.

B. The CVDRMP agrees to implement the MRP as approved by the Executive Officer of the Central Valley Water Board in a timely manner.

C. The CVDRMP agrees to submit Annual Representative Monitoring Reports (ARMRs) to the Central Valley Water Board in a timely manner as required by Attachment A.

D. The CVDRMP agrees to submit timely Participant lists to the Central Valley Water Board of Participants that are participating in good faith and complying with the terms of this Agreement, as necessary. Further, the CVDRMP agrees to provide the Central Valley Water Board with notification of a Participant’s failure to

participate in the CVDRMP. Attachment A requires the CVDRMP to notify the Central Valley Water Board of a Participant's failure to participate within 45 days of the event that is considered to constitute a failure to participate.

E. The CVDRMP agrees to evaluate groundwater monitoring data to identify the management practices that are protective of water quality at dairies under the range of conditions present at facilities covered by the CVDRMP. Such evaluation shall be included in each ARMR to the extent feasible as is required by Attachment A.

F. The CVDRMP agrees to submit no later than six (6) years following the first ARMR a Summary Representative Monitoring Report (SRMR) that identifies management practices that are protective of groundwater quality for the range of conditions found at facilities covered by the CVDRMP. The SRMP is subject to approval by the Executive Officer of the Central Valley Water Board.

G. The CVDRMP agrees to hold at least one annual Participant meeting. The purpose of the annual Participant meeting is to report on activities undertaken by the CVDRMP, report on the financial status of the CVDRMP, elect members to the Board of Directors as necessary, and report on any other information the Board of Directors determines is of interest to the Participants.

H. The CVDRMP intends to remain in existence and operate as long as the terms of Attachment A allow Participants to comply with Attachment A through participation in a representative monitoring program, or until the Board of Directors and Participants feel that the CVDRMP is no longer necessary or needed. If the CVDRMP is dissolved, the Board of Directors shall determine how to distribute any remaining funds available at the time of dissolution to the membership and/or to another nonprofit organization that benefits the dairy industry.

I. It is the policy of CVDRMP that all its members who receive a Notice to Comply with the Nitrate Control Program shall follow Pathway B (alternative compliance via Local Management Zones) – unless no Local Management Zone exists³.

J. CVDRMP will assist its members in achieving compliance with Pathway B of the Nitrate Control Program by:

- Providing each Local Management Zone a list of CVDRMP members;
- Negotiating a fair and equitable fee schedule with the governance group of each Local Management Zone, and paying that fee on behalf of its members;

³ The CVDRMP anticipates that almost all areas of the Central Valley will be covered by a functioning local Management Zone. However, there may be some very limited exceptions in parts of the Central Valley, where a local management zone may not form. In such cases, the CVDRMP maintains the discretion to allow a member to continue in the CVDRMP while also pursuing Pathway A for compliance with the Nitrate Control Program.

- Allocating and collecting the increased costs from members by Local Management Zone during annual (or if needed, periodic or special) invoicing; and
- Informing CVDRMP members of other requirements as these develop.

K. CVDRMP will participate in development of Local Management Zones and plans for compliance with the Nitrate Control Program to provide due diligence and cost control for CVDRMP members.

L. It is the policy of CVDRMP that all its members shall comply with the Salt Control Program by following Pathway B (alternative compliance via contributing to the Salinity Prioritization and Optimization “P&O” Study).

M. CVDRMP will assist its members in achieving compliance with Pathway B of the Salt Control Program by:

- Providing the Central Valley Water Board a list of CVDRMP members;
- Negotiating a fair and equitable fee schedule with the governance group of the P&O Study, and paying that fee on behalf of its members;
- Allocating and collecting the increased costs from members during annual (or if needed, periodic or special) invoicing; and
- Informing CVDRMP members of other requirements as these develop.

N. CVDRMP will also participate in governance of the P&O Study for compliance with the Salt Control Program to provide due diligence and cost control on behalf of CVDRMP members.

O. It is CVDRMP’s policy that all members automatically receive the services described in paragraphs J – N of this Section. Members may not opt to receive only a subset of the services provided.

P. It is the policy and goal of CVDRMP to control costs and do everything possible to remain the least-cost compliance option for members. CVDRMP will use the organization’s scale and buying power to achieve savings for its members whenever possible.

Q. In the event that CVDRMP learns that any member has the same acreage enrolled in more than one regulatory program (e.g. an acre of cropland is enrolled in both the Irrigated Lands Regulatory Program and also under the Dairy Order), CVDRMP will act in good faith to avoid double payment/double collection.

Participant

A. The Participant agrees to provide necessary information as requested by the CVDRMP in a timely manner so that the CVDRMP may prepare any and all reports as required by the Central Valley Water Board.

B. The Participant agrees to participate in the CVDRMP in good faith and work towards improving and enhancing water quality in the Central Valley.

C. The Participant agrees to allow the installation of groundwater monitoring wells on his/her property if his/her property is selected as an appropriate site for the CVDRMP.

D. The Participant agrees to allow CVDRMP consultants access to property to install groundwater monitoring wells, and to collect groundwater monitoring data, as necessary.

E. The Participant agrees that if groundwater wells are installed on his/her property, the Participant will work in good faith with the CVDRMP to enter into a separate agreement with the CVDRMP that provides the CVDRMP with proper easements and access to the groundwater wells for as long as it is necessary for the CVDRMP to obtain groundwater monitoring information from the well or wells in question.

F. The Participant understands that all information submitted to the CVDRMP may be used by the CVDRMP to prepare reports as required by Attachment A to the MRP, and, that information submitted by the CVDRMP to the Central Valley Water Board may be considered public information and subject to the provisions of the state's Public Record Act laws, as determined by the Central Valley Water Board.

G. The Participant understands that the water quality monitoring data collected by the CVDRMP will be submitted to the Central Valley Water Board, and that the Central Valley Water Board will evaluate the monitoring data to determine if certain types of dairy facilities under certain conditions are impacting groundwater quality in the Central Valley.

H. The Participant understands that Attachment A to the MRP may require each participant covered by the CVDRMP to include in their annual report, following Executive Officer approval of the SRMR, a description of management practices currently being implemented at their wastewater retention system(s), land application area(s), and animal confinement area(s). If these management practices are not confirmed to be protective of groundwater quality based on the SRMR, the Participant understands that his/her annual report shall identify which alternative management practices the participant intends to implement at its dairy facility (based on the findings in the SRMR). The Participant also understands that subsequent annual reports shall

include an update with respect to implementation of additional or alternative management practices employed to protect groundwater quality.

The Participant understands that Attachment A to the MRP requires each Participant to submit a letter to the Central Valley Water Board within three (3) months of joining the CVDRMP that indicates the Participant's understanding of the requirements for participating in a representative monitoring program and of their full intent to comply accordingly.

I. The Participant understands that failure to provide the information as described in provision H. above shall be grounds for termination from the CVDRMP.

J. The Participant understands that the Central Valley Water Board may use the data submitted by the CVDRMP to issue new or additional waste discharge requirements or orders to dairy operators that may result in dairy operators/landowners needing to change certain practices and/or operations at the dairy facility.

K. The Participant understands that the Central Valley Water Board reserves the right to issue an order pursuant to its authority under Water Code section 13267 to an individual dairy operator participating in the CVDRMP, which requires the Participant to install groundwater monitoring wells at its facility regardless of the Participant's good faith participation in the CVDRMP.

L. By signing this Agreement and an appropriate assignment form, the Participant authorizes his/her milk processor to deduct the Participant's fair share of costs on a monthly basis from Participant's milk check, and have the milk processor transmit Participant's payment to the CVDRMP. If the Participant's milk processor decides not to assist in transmitting payments to the CVDRMP, the Participant agrees to pay the Participant's fair share of the costs in a timely manner as determined by the CVDRMP Board of Directors in accordance with the cost allocation provisions provided below in Section III.

M. The Participant agrees to comply with and abide by all of the terms of this Agreement, and understands that failure to abide by the terms of the Agreement may result in termination from the CVDRMP pursuant to the provisions provided in Section IV below.

N. The Participant understands that by agreeing to participate in the CVDRMP in good faith, the Participant is also agreeing to comply with the Salt and Nitrate Control Program as adopted into the Water Quality Control Plans for the Sacramento and San Joaquin River and Tulare Lake Basins in a manner that is consistent with CVDRMP Policy as expressed in paragraphs I-Q in Section II under CVDRMP.

O. The Participant understands that once a Notice to Comply with the Nitrate Control Program is received by the Participant that the Participant is agreeing to follow

Pathway B (alternative compliance via Local Management Zones) – unless no Local Management Zone exists⁴. Failure to abide by this term of the Agreement may result in termination from the CVDRMP pursuant to the provisions provide in Section IV below.

P. The Participant understands that to comply with the Salt Control Program the Participant is agreeing to follow Pathway B (alternative compliance via contributing to the Salinity Prioritization and Optimization “P&O” Study). Failure to abide by this term of the Agreement may result in termination from the CVDRMP pursuant to the provisions provide in Section IV below.

Q. The Participant agrees to be bound by, and promises and agrees to fully comply with, CVDRMP’s Bylaws and any other policies and procedures adopted by CVDRMP’s Board of Directors which are now in effect and as they may be amended from time to time.

SECTION III

Cost Allocations

A. The CVDRMP developed an appropriate financing mechanism to generate revenue sufficient to cover the expenses associated with the administration and implementation of the CVDRMP. The CVDRMP does not intend to duplicate general activities and efforts currently underway by existing dairy organizations.

B. The CVDRMP will apportion costs associated with the CVDRMP in a fair and equitable manner, which may include, but is not limited to costs apportioned on a per dairy, per acre, and/or per head basis, depending on the costs in question.

C. The CVDRMP has received grant funding to help defer costs of the program, and will continue to seek grant funding as available and appropriate. However, due to the inherent uncertainty associated with grant funding, the CVDRMP makes no guarantees that future costs will be offset by grant funding.

SECTION IV

Termination from Participation in Discharger Group

A. The Participant understands that participation in the CVDRMP is voluntary.

B. The Participant understands that he/she may voluntarily withdraw from the CVDRMP by completing a “Notice of Termination.” The Participant understands that

⁴ The CVDRMP anticipates that almost all areas of the Central Valley will be covered by a functioning local Management Zone. However, there may be some very limited exceptions in parts of the Central Valley, where a local management zone may not form. In such cases, the CVDRMP maintains the discretion to allow a member to continue in the CVDRMP while also pursuing Pathway A for compliance with the Nitrate Control Program.

under the provisions of Attachment A to the MRP, the signed Notice of Termination must be sent directly to the Executive Officer of the Central Valley Water Board. In addition, the Participant agrees to send a copy of the Notice of Termination to the CVDRMP to the address below. The Participant understands that termination from coverage will occur on the date specified in the Notice of Termination.

CVDRMP
P.O. Box 227
Sacramento, CA 95812

C. The Participant understands that failure to participate in the CVDRMP in good faith, provide necessary information in a timely manner, pay cost assessments in a timely manner, and comply with other provisions of this Agreement and Attachment A to the MRP is cause for the Participant's termination from the CVDRMP. If the CVDRMP determines that a Participant is terminated from the CVDRMP, the CVDRMP is required by Attachment A to the MRP to notify the Executive Officer of the Central Valley Water Board within 45 days of the Participant's failure to participate in the CVDRMP.

D. The CVDRMP agrees to provide the Participant who the CVDRMP determines is not participating in good faith at least 30 days notice of its intent to notify the Executive Officer of the Central Valley Water Board of the Participant's failure to participate.

E. The Participant understands that withdrawal or termination from the CVDRMP means that the Participant is no longer complying with the terms of Attachment A to the MRP through the CVDRMP, the Salt Control Program and the Nitrate Control Program, as applicable. In the event that such withdrawal or termination occurs, the Participant understands that the Participant will then be subject to the Central Valley Water Board Executive Officer's process for issuing individual orders as further specified in Attachment A to the MRP, or potentially be subject to enforcement by the Central Valley Water Board for failing to comply with the Salt and Nitrate Control Program. Further, the Participant understands that once the Participant withdraws or is terminated from the CVDRMP, the Participant is not eligible to rejoin the CVDRMP unless otherwise approved by the CVDRMP Board of Directors and the Executive Officer of the Central Valley Water Board.

SECTION V

General Provisions

A. *Liability for Compliance.* The CVDRMP is not responsible or liable for determining individual compliance with the terms of Attachment A, the Salt Control Program, the Nitrate Control Program, or the Water Code in general. The CVDRMP is only responsible for conveying information to the Central Valley Water Board related to an individual's participation in the CVDRMP for the purposes of implementing the

monitoring and reporting provisions as contained in Attachment A (amended), and for complying with the Salt Control Program and Nitrate Control Program, as applicable.

The Participant does not assume any legal obligation or liability for any other participant of the CVDRMP.

B. *Hold Harmless and Indemnification.* Except for damage or loss resulting from willful misconduct, gross negligence, or breach of fiduciary obligation in connection with this Agreement, the CVDRMP and its respective members, directors, officers, associations, contractors or employees shall not be liable to the Participant for any loss or damage in connection with this Agreement. The CVDRMP and the Participant shall bear responsibility for the consequence of its own willful misconduct, gross negligence and breach of fiduciary obligation in connection with this Agreement, and in connection with any work undertaken in accordance with this Agreement. The Participant shall indemnify, defend and hold harmless the CVDRMP, and its respective members, directors, officers, associations, contractors and employees, from the consequences of any such willful misconduct, gross negligence and breach of fiduciary obligation, to the extent allowed by law.

C. *Amendment.* This Agreement may only be amended or modified by a written instrument executed by the CVDRMP. The Participant will be given prior notice of any amendments to the Agreement.

D. *Entire Agreement.* This Agreement constitutes the entire Agreement of the parties with respect to the subject matter of this Agreement and supersedes any prior oral or written Agreement, understanding, or representation relating to the subject matter of this Agreement.

E. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

F. *Choice of Laws.* This Agreement shall be interpreted according to the laws and regulations of the State of California (not including California's choice-of-law rules) and any applicable Federal laws or regulations. The proper venue for any action brought under this Agreement must be brought in Sacramento County, California.

G. *Compliance with Law.* In performing their respective obligations under this Agreement, the parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

H. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this

Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served via facsimile transmission on the party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as listed below.

I. *Dispute Resolution.* If a dispute arises between the Participant and the CVDRMP with reference to the Participant's performance under the Agreement, the CVDRMP and the Participant will make all good-faith efforts to resolve the dispute before the CVDRMP notifies the Executive Officer of the Central Valley Water Board of the Participant's failure to participate in the group. The Participant further agrees that should there arise a dispute between the Participant and the CVDRMP with reference to the proper interpretation of the terms of this Agreement, Participant agrees to submit such matter to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Participant and CVDRMP agree to share equally the cost of the arbitration. However, each party will be responsible for their own attorney's fees and costs of presentation of their respective case.

J. *Addresses for Notification.* All written communications to the CVDRMP, **except for service of process**, shall be sent to the CVDRMP as follows:

**CVDRMP
P.O. Box 227
Sacramento, CA 95812**

Service of process shall be to the CVDRMP's Agent for Service of Process as follows:

CVDRMP: Attention J.P. Cativiela
1225 8th Street, Suite 230
Sacramento, CA 95814

I, _____ (Dairy Operator) and _____ (Landowner [if different entity]), understand and certify that I have voluntarily entered into participation with this program and agree to abide by the terms and provisions of this program as outlined within this Agreement. By signing this statement, I also certify that I am the rightful Dairy Operator and/or landowner subject to the provisions of Order No. R5-2007-0035, or I am an authorized representative of the corporation or partnership that owns and/or leases the property.

Signature (Dairy Operator)⁵

Signature (Dairy Landowner)⁶

(If “Dairy Operator” and “Dairy Landowner” are not the same person, BOTH must sign. If the same person, please sign both lines or write the word “same” on the unsigned line.)

⁵ Throughout this Participation Agreement, “Dairy Operator” or “Operator” is the person who has authority to sign on behalf of the business entity that is milking cows and conducting dairy business at the facility location.

⁶ Throughout this Participation Agreement, “Dairy Landowner” or “Landowner” is the person who has authority to sign on behalf of the business entity that owns the land on which the dairy facility is located (e.g. barns, corrals, etc.) If the “Dairy Operator” and “Dairy Landowner” are not the same person, BOTH must sign this Participation Agreement and the accompanying Letter of Intent.

FACILITY INFORMATION

Member number: _____

Facility Name and Address:	Dairy Operator Name & Mailing Address (if different from Facility Address):	Dairy Landowner Mailing Address (if different from other Addresses):
(formerly _____) New Dairy Name: _____		
Phone:	Phone:	Phone:
Fax:	Mobile:	Mobile:
Email:	Fax:	Fax:
	Email:	Email:

Date of Operator/Ownership change: _____