

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

CLEANUP AND ABATEMENT ORDER NO. R5-2018-0700

WDID NO. 5A11NC00055

**REQUIRING JAKE WESTSTEYN, DBA WESTSTEYN DAIRY, TO CLEAN UP AND
ABATE THE EFFECTS OF DISCHARGING WASTEWATER TO BAKER SLOUGH,
FUNKS CREEK SUBAREA, SACRAMENTO RIVER HYDROLOGIC REGION**

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

FINDINGS

1. Jake Weststeyn, DBA Weststeyn Dairy (“Weststeyn Dairy” or “Discharger”) owns and operates the facility located at 5747 County Road 65, Willows, in Glenn County (“Facility”). The Facility located at Glenn County Assessor’s parcel number 014-170-021-000.
2. The Facility was placed under Individual Waste Discharge Requirements for Milk Cow Dairies, Order No. R5-2009-0082 on 13 August 2009. The Facility is authorized to house a maximum of 2557 mature dairy cows, 1800 heifers, and 600 calves.
3. Individual Waste Discharge Requirements for Milk Cow Dairies, Order No. R5-2009-0082 (“Individual Waste Discharge Requirements”) regulates waste discharges from the Weststeyn Dairy. The Individual Waste Discharge Requirements, in part, requires the following:
 - a. Prohibition A.2 states:

“The direct or indirect discharge of waste and/or storm water from the production area to surface waters is prohibited.”
 - b. Prohibition A.3 states:

“The discharge of wastewater to surface water from a land application area is prohibited. Irrigation supply water that comes in contact or is blended with waste or wastewater shall be considered wastewater under this Prohibition.”
 - c. Prohibition A.7 states:

“The discharge of waste from the facility to surface waters which causes or contributes to an exceedance of any applicable water quality objective in the Basin Plan or any applicable state or federal water quality criteria, or a violation of any applicable state or federal policies or regulations is prohibited.”

- d. Specification B.1 states:
- “The collection, treatment, storage, discharge, or disposal of wastes at the facility shall not result in: (1) discharge of waste constituents in a manner which could cause degradation of surface water or groundwater, (2) contamination or pollution of surface water or groundwater, (3) a condition of nuisance, (4) exceedance of water quality objectives, or (5) unreasonably affect beneficial uses (as defined by the California Water Code Section 13050).”
- e. Specification B.6 states:
- “The facility shall have a lagoon and conveyance structures that are designed, constructed, operated, and maintained to retain all facility wastewater generated during the storage period (maximum period of time anticipated between land application of wastewater), together with all precipitation on and drainage through manured areas, up to and including during a 25-year, 24-hour storm.”
- f. Specification B.13 states:
- “The milk parlor, animal confinement area, and manure and feed storage areas shall be designed and maintained to convey all water that has contacted animal wastes or feed to the wastewater retention system and to minimize standing water and the infiltration of water into the underlying soils. The Discharger shall, at a minimum of once per year, backfill any slope loss with compacted, non-manured material to maintain pre-existing slopes.”
4. On 11 January 2018 and 25 January 2018 Central Valley Water Board staff inspected the Discharger’s waste management system at the Facility. On both days Staff observed the Facility’s tailwater return system pond discharging wastewater through subsurface pipes into Baker Slough at a rate of approximately seven gallons per minute. Baker Slough is considered Waters of the State and discharges into the Sacramento National Wildlife Refuge.
5. On 11 January 2018 Central Valley Water Board staff collected samples from Baker Slough at the point of the off-property discharge; from Baker Slough thirty-feet up-gradient from the off-property point of discharge ; from the east-end of the conveyance ditch west of Baker Slough (on-property); from the west-end of the conveyance ditch west of Baker Slough (on-property); from the tailwater pond outlet pipe at the east-end of the pond; from the ponded water just downgradient from the pond outlet pipes; and from the east-end of the Weststeyn Dairy tailwater return system pond (Attachment 1). The samples were submitted for analysis on 12 January 2018.
6. On 25 January 2018 Central Valley Water Board staff collected samples from Baker Slough at the point of the off-property discharge; from Baker Slough thirty-feet up-gradient from the point of the off-property discharge from the east-end of the

tailwater pond (on-property); and from the feeder ditch (on-property) that originates in the dairy production area and discharges to the west-end of the tailwater ditch (Attachment 1).

7. The US Environmental Protection Agency (EPA), as of 2013, has set the limits for acute and chronic toxicity of total ammonia nitrogen for aquatic life at 17 and 1.9 mg/l respectively. Acute criteria are intended to protect species from adverse effects caused by an exposure just once or multiple times in a short period of time. Chronic criteria are intended to protect species from adverse effects that build up over long-term exposure.¹
8. The concentration of total ammonia nitrogen at the point of discharge to Baker Slough, as measured in Sample 1 (18A0737-01) collected on 11 January 2018, and Sample 1 (18A0737-02) collected on 25 January 2018, exceeds the EPA criteria of 1.9 mg/l for chronic toxicity for aquatic life.

Date	Location	Ammonia as N (mg/L)
1/11/18	S1	4.8
1/11/18	S2	0.14
1/11/18	S3	5.9
1/11/18	S4	9.1
1/11/18	S5	8.6
1/11/18	S6	9.7
1/25/18	S1	7.9
1/25/18	S2	ND
1/25/18	S3	8.3
1/25/18	S4	6.2

AFFECTED BENEFICIAL USES

9. Pursuant to Chapter II of the Water Quality Control Plan for the Sacramento Basin (Basin Plan), surface water in Funks Creek Subarea adjacent to the Weststeyn Dairy and in surrounding areas include the following present and potential beneficial uses: agricultural water supply, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat.
10. The Basin Plan establishes water quality objectives for the protection of beneficial uses. Surface waters shall not contain chemical constituents in concentrations that adversely affect beneficial uses. All waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.

¹ Orr, Daniel. *Biological effects of organic waste to fish and aquatic life* [Memorandum]. California. 18 April 2017.

11. A significant volume of wastewater with elevated levels of total ammonia nitrogen discharged from the Weststeyn Dairy into Baker Slough, a water of the state.
12. The Discharger has caused or permitted the discharge of wastewater from the tailwater pond to waters of the state in violation of its Individual Waste Discharge Requirements. The discharges from the Facility affect or potentially affect beneficial uses by not supporting healthy aquatic life in surface waters designated as wildlife habitat and cold freshwater habitat. Furthermore, based on the Facility's design and operation, the Discharger continues to create, or threatens to create, a condition of pollution.

AUTHORITY - LEGAL REQUIREMENTS

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

“Any person ... who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup and abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
14. The conditions described in Findings 4 and 8 constitute violations of the Individual Waste Discharger Requirements and the Basin Plan. The Discharger has caused or permitted waste to be discharged or deposited where it has or probably will discharge into waters of the state creating or threatening to create a condition of pollution or nuisance. The Discharger is therefore subject to the Water Boards' authority as described in Water Code section 13304.
15. Pursuant to Water Code section 13267, subdivision (b):

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring

program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, the Discharger shall take action to abate the effects from the release of wastewater from the tailwater pond as follows:

A. ORDERS:

1. **Immediately** stop the discharge of wastewater from the Weststeyn Dairy to Baker Slough and comply with Order No. R5-2009-0082, Prohibitions A.2, A.3, and A.7.
2. **By Friday, 16 February 2018**, discontinue using the tailwater pond to store dairy generated wastewater; which includes run-off from the solid manure storage areas and/or the silage and commodity storage area.
3. **By Friday, 2 March 2018**, submit a work plan for the Central Valley Water Board’s approval outlining how the Discharger will manage cropland runoff without using the tailwater pond for storage. The pond can be used for collection and conveyance of tailwater only; the pond cannot be used for storage of dairy generated wastewater. The work plan must include specific timelines when each work item will be completed and operational.
4. **By Friday, 4 May 2018**, remove all wastewater and solid manure from the tailwater pond adjacent to Baker Slough. The removed manure shall either be exported off-site or land-applied to the land application area at agronomic rates in compliance with the Facility’s waste management plan.
5. All technical, monitoring plans, and reports required in conjunction with this Order are required pursuant to Water Code section 13267 and shall include a statement by the Discharger, or an authorized representative of the Discharger, certifying under penalty of perjury in conformance with the laws of the State of California that the work plan and/or report is true, complete, and accurate, as specified below.
6. This Order does not limit the authority of the Water Board to commence additional enforcement actions for past or continuing discharges of waste to surface waters in violation of waste discharge requirements or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised by the Executive Officer as additional information becomes available.
7. This Order does not affect the Discharger’s obligation to comply with its Individual Waste Discharge Requirements. The requirements and legal enforceability of the

Individual Waste Discharge Requirements is not superseded or affected upon issuance of this Order.

B. REPORTING REQUIREMENTS:

1. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger or by a duly authorized representative of the Discharger and submitted to the Central Valley Water Board staff. A person is a duly authorized representative of the Discharger only if: (1) the authorization is made in writing by the Discharger and (2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility of activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
2. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

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 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.

3. **Report Submittals.** All monitoring and technical reports required under this Order shall be submitted to:

Andrew Altevogt
Assistant Executive Officer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Attn: Charlene Herbst
Email: charlene.herbst@waterboards.ca.gov
Phone: (916) 464-4724

C. NOTIFICATIONS:

1. **Cost Recovery.** Pursuant to Water Code section 13304, the Water Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of wastes and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.

- 2. California Environmental Quality Act (CEQA) Compliance.** The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations (CCR), title 14, section 15321 subdivision (a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.), in accordance with CCR title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Discharger to submit plans for approval prior to implementation of remedial activities at the facility and adjacent properties. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed remedial activities and possible associated environmental impacts. If the Central Valley Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Discharger will bear the costs, including the Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Central Valley Water Board shall enter into a memorandum of understanding with the Board regarding such costs prior to undertaking any environmental review.
- 3. Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the Water Board that is subject to review as set forth in Water Code section 13320, subdivision (a), may petition the State Water Resources Control Board (State Water Board) to review the action. Any petition must be made in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition within 30 days of the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday, state holiday, or furlough day, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at: <http://www.waterboards.ca.gov/publicnotices/petitions/waterquality> or will be provided upon request.
- 4. Request for Extension of Time.** If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Assistant Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall

include justification for the delay. An extension may be granted only by revision of or amendment to this Order.

5. **Enforcement Notification.** Failure to comply with the terms or conditions of this Cleanup and Abatement Order may result in additional enforcement action, which may include the imposition of administrative civil liability pursuant to California Water Code section 13350 and/or section 13268, in an amount not to exceed \$5,000 for each day in which the violation occurs under Water Code section 13304 or 13350, or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability.

Ordered by: *ORIGINAL SIGNED BY* Dated: 2/1/2018

Andrew Altevogt
Assistant Executive Officer

ATTACHMENT 1

Weststeyn Dairy Sampling & Discharge Map

Blue text - samples collected 1/11/2018

Red text - samples collected 1/25/2018

Yellow dashed line - property boundary

Red dashed arrows - path of discharge



Sample 6 - on property
- tailwater pond
- east end near outlet pipes
- Ammonia as N = 9.7

tailwater pond

Sample 4 - on property
- tailwater pond outflow
- from pipe
- Ammonia as N = 9.1
Sample 3 - on property
- tailwater pond outflow
- from pipe
- Ammonia as N = 8.3

Sample 2 - off property
- upgradient in Baker Slough
- Ammonia as N = 0.14
- Ammonia as N = ND

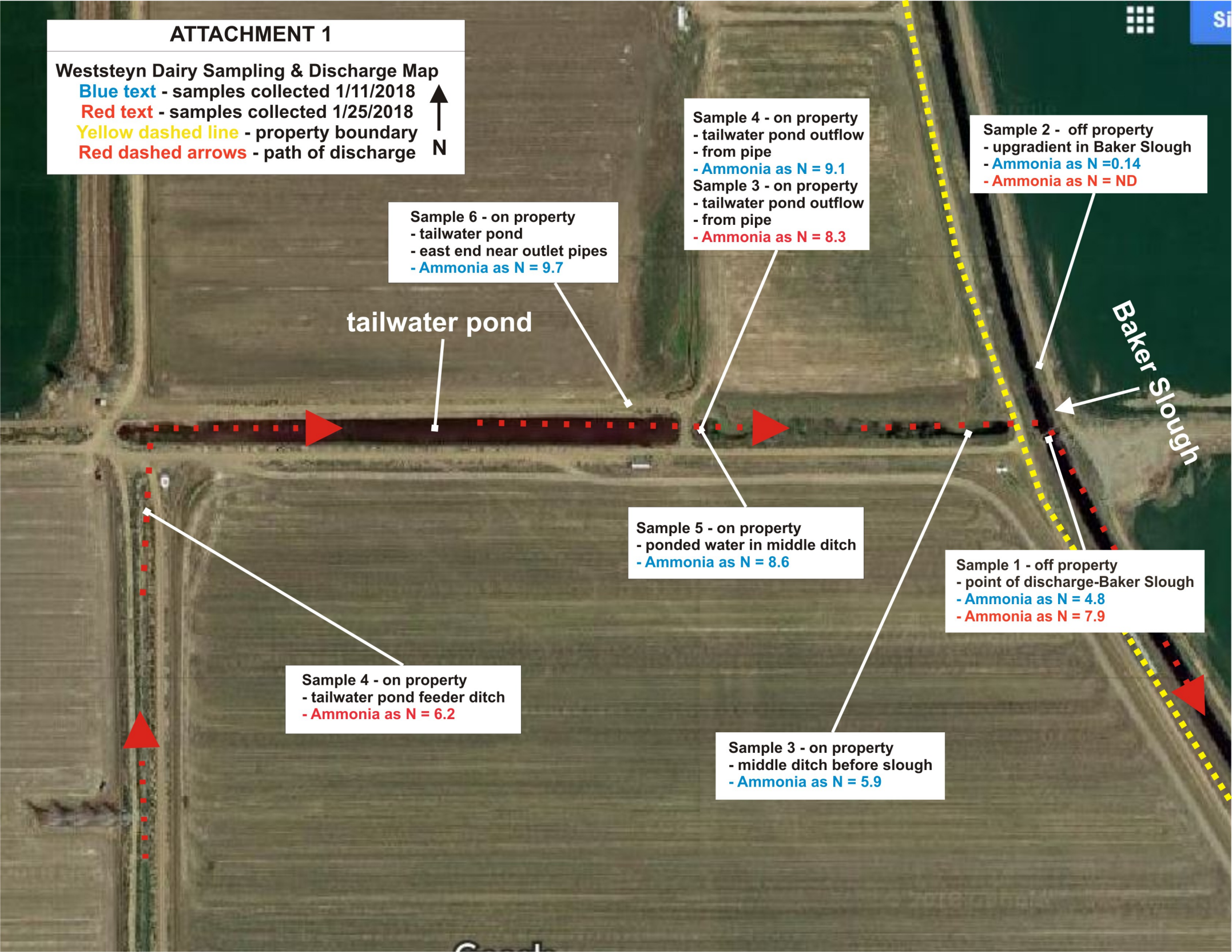
Sample 5 - on property
- ponded water in middle ditch
- Ammonia as N = 8.6

Sample 1 - off property
- point of discharge-Baker Slough
- Ammonia as N = 4.8
- Ammonia as N = 7.9

Sample 4 - on property
- tailwater pond feeder ditch
- Ammonia as N = 6.2

Sample 3 - on property
- middle ditch before slough
- Ammonia as N = 5.9

Baker Slough





EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

1 February 2018

Jake Weststeyn
Weststeyn Dairy
5747 County Road 65
Willows, CA 95988

**CERTIFIED MAIL NO.
7013 1090 0000 6372 4199**

**CLEANUP AND ABATEMENT ORDER NO. R5-2018-0700, WESTSTEYN DAIRY
DISCHARGE OF WASTEWATER TO SURFACE WATER, 5747 COUNTY ROAD 65,
WILLOWS, GLENN COUNTY**

Enclosed for your immediate attention is Cleanup and Abatement Order No. R5-2018-0700 (Order) to the owner and operator of the dairy located at 5747 County Road 65 in Willows. This Order requires the immediate cessation of discharge from the tailwater pond into Baker Slough. The Order requires you to discontinue the storage of dairy wastewater in the tailwater pond and to develop and submit for approval a workplan to manage cropland runoff without using the tailwater pond for storage; the tailwater pond can only be used for the collection and recirculation of tailwater from cropland. The Order also requires that all wastewater and solid manure be removed from the tailwater pond.

I appreciate your cooperation in this matter. If you have any questions, please contact Robert Busby at (916) 464-4666 or robert.busby@waterboards.ca.gov.

ORIGINAL SIGNED BY

Andrew Altevogt
Assistant Executive Officer

Enclosure: CAO R5-2018-0700

cc: Mayumi Okamoto, Esq., Office of Enforcement, State Water Resources Control Board
Catherine Hawe, Esq., Office of Enforcement, State Water Resources Control Board