

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY  
BOND FINANCING PROGRAM**

**Meeting Date: July 21, 2015**

***Request for Authority Consent to Amendments to Bond Documents***

Prepared by: *Deanna Hamelin*

<b>Applicant:</b> Cornelius A. and Eleanor Jane Vanderham Family Trust and/or its Affiliates and Koetsier & Son Dairy, a general partnership and/or its Affiliates	<b>Bond Series:</b> 2003A
<b>Project Location:</b> Riverdale (Fresno County)	<b>Total Outstanding Amount:</b> \$2,000,000

**Summary.** The Cornelius A. and Eleanor Jane Vanderham Family Trust (the Borrower) and/or its Affiliates requests CPCFA consent to the following:

- i. Transfer of the Project and assignment of the Loan Agreement from Cornelius A. and Eleanor Jane Vanderham Family Trust (Borrower) to L & J Vanderham Dairy (formerly Koetsier & Son Dairy);
- ii. Termination of the Lease Agreement between the Borrower and L & J Vanderham Dairy; and
- iii. Termination of the Inducement Agreement between CPCFA and L & J Vanderham Dairy.

**Background.** On May 9, 2003, CPCFA issued Variable Rate Demand Solid Waste Revenue Bonds Series 2003A in the amount of \$2,000,000 for the Cornelius A. and Eleanor Jane Vanderham Family Trust as Borrower (the “Borrower”) and Koetsier & Son Dairy (“K & S”) as Operator, a general partnership Project. The dairy, including the Project financed with the Bonds, as leased from the Borrower to K & S, were both deemed a joint participating party for purposes of the CPCFA Act. Accordingly, CPCFA entered into a Loan Agreement with the Borrower and an Inducement Agreement with K & S.

The Project consisted of the construction of a new dairy facility in Riverdale supporting 3,500 milking cows<sup>1</sup> and 640 dry cows<sup>2</sup> and 2,860 heifers<sup>3</sup> for a total herd size of 7,000 cattle. The milking cows are housed in freestall barns<sup>4</sup> with the remaining herd housed in open corrals which are open air enclosures for holding cattle. Estimated total cost of the new dairy was \$8,705,000 of which approximately 23% of this cost relates to facilities and equipment being installed to collect, treat, store and dispose of solid waste.

**Current Request.** The original Operator was a family consisting of the daughter and son-in-law of the Borrower family. In recent years, the Koetsiers gave up their lease and operation of the

<sup>1</sup> A milking or dairy cow is a cow that produces milk.

<sup>2</sup> A dry cow is a milking cow that has been taken out of production and is currently not producing milk.

<sup>3</sup> A heifer is a young cow that has not had a calf.

<sup>4</sup> A freestall barn is a barn that has milking cows confined in stall partitions for milk production.

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dairy and transferred the dairy to a son and grandson of the Borrower, Luke and Dennis Vanderham, who took over the Operator Partnership and renamed it as L & J Vanderham Dairy ("L & J"). More recently, the family has decided to consolidate the ownership and operation of the dairy into L & J. In 2012, the dairy was deeded over to L & J and the lease was terminated. The parties inadvertently failed to notice that the termination of the lease and the transfer of ownership of the dairy required consent of CPCFA, which they are now seeking on a retroactive basis. After transferring ownership of the dairy, the Borrower continued to make the payments on the Loan Agreement (supported by payments from L & J as previously when it was the lessee).

As a second step in the consolidation, the Borrower is in the process of assigning the Loan Agreement to L & J. The Borrower is requesting CPCFA's consent to (i) waive a 30-day prior notice before such assignment is effective, and (ii) allow the Borrower not to retain any obligations under the Loan Agreement. Under this assignment, L & J will assume all of the rights and responsibilities of the Borrower under the Loan Agreement, including compliance with the Tax Certificate.

Finally, once L & J as owner and operator of the dairy is also the borrower under the Loan Agreement, there is no further need for the Inducement Agreement. As such, the parties request CPCFA to consent to terminate the Inducement Agreement.

**Staff Recommendation.** Staff recommends Board approval of the consents to the aforementioned actions and modifications of the bond documents for the L & J Vanderham Dairy Project.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY CONSENTING TO BOND DOCUMENT MODIFICATIONS AND RELATED ACTIONS IN CONNECTION WITH THE AUTHORITY'S VARIABLE RATE DEMAND SOLID WASTE DISPOSAL REVENUE BONDS (VANDERHAM FAMILY TRUST – KOETSIER & SON DAIRY PROJECT) SERIES 2003**

**JULY 21, 2015**

**WHEREAS**, the California Pollution Control Financing Authority (the "Authority") issued \$2,000,000 California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Refunding Revenue Bonds, Series 2003 (the "Bonds") for financial assistance to acquire, construct, install and equip certain solid waste disposal facilities in Fresno County, California ("the Project"), to be owned by Cornelius A. and Eleanor Jane Vanderham Family Trust, a trust organized and existing under California law (the "Borrower"), and leased to and operated by Koetsier & Son Dairy; and

**WHEREAS**, simultaneously with the issuance of the Bonds the Authority entered into a Loan Agreement, dated as of May 1, 2003, by and between the Authority and the Borrower (the "Loan Agreement"); and

**WHEREAS**, the Loan Agreement requires the Borrower to obtain the consent of the Authority for any transfer or sale of any portion of the Project financed with the Bonds and for the assignment of rights and obligations under the Loan Agreement to another party whereby the Borrower will be relieved of its obligations under the Loan Agreement; and

**WHEREAS**, Koetsier & Son Dairy was formed as a general partnership, and the partners entered into a Partnership Agreement on January, 1, 2003; and

**WHEREAS**, the Borrower and Koetsier & Son Dairy entered into a Lease Agreement, dated May 1, 2003, ("Lease Agreement"), whereby the Borrower, as lessor, leased the Project to Koetsier & Son Dairy, as lessee; and

**WHEREAS**, the Authority and Koetsier & Son Dairy entered into an Inducement Agreement, dated as of May 1, 2003, relating to the Bonds ("Inducement Agreement"); and

**WHEREAS**, the Inducement Agreement requires the Borrower to obtain the consent of the Authority for the termination of or any amendment to the Lease Agreement; and

**WHEREAS**, the partners of Koetsier & Son Dairy amended and restated the Partnership Agreement effective January 1, 2011, providing that the partnership interest of John Koetsier and Dana Koetsier was terminated on January 1, 2011, and the partnership interest of Cornelius Vanderham and Eleanor Jane Vanderham, trustees of the Vanderham Family Trust, was terminated on December 31, 2011, and Luke and Dennis Vanderham became the partners of the Lessee and took over its operation, and the name of the partnership was changed to L & J Vanderham Dairy; and

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**WHEREAS**, the 2012 Amended and Restated Partnership Agreement for L & J Vanderham Dairy assigned the partnership interest held by Luke Vanderham to Luke Vanderham and Jodi Vanderham, in their capacities as trustees of the Vanderham Family Revocable Trust of May 2, 2012, and the partnership interest held by Dennis Vanderham was assigned to Dennis Vanderham and Yvonne Vanderham, in their capacities as trustees of the Vanderham Family Revocable Trust of August 22, 2005; and

**WHEREAS**, in 2012, the Lease Agreement was terminated, and the Project was deeded to L & J Vanderham Dairy; and

**WHEREAS**, the original Borrower now desires to assign its rights and obligations under the Loan Agreement to L & J Vanderham Dairy, and L & J Vanderham Dairy has entered into an assignment agreement by which it agrees to assume all of the rights and obligations of the Borrower under the Loan Agreement; and

**WHEREAS**, CoBank ACB as issuer of the Letter of Credit supporting the Bonds will consent to the actions recited above to the extent required by the Loan Agreement and Inducement Agreement; and

**WHEREAS**, the Bank of New York Mellon Trust Company, N.A., as successor trustee for the Bonds (the "Trustee"), will, as required by Section 6.4 of the Inducement Agreement, consent to the termination of the Inducement Agreement; and

**WHEREAS**, the Authority will receive an opinion of Bond Counsel as required by the Loan Agreement and the Inducement Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the California Pollution Control Financing Authority, as follows:

**Section 1.** Pursuant to Section 5.2(a)(3) of the Loan Agreement, the Authority hereby consents to the transfer of the Project to L & J Vanderham Dairy.

**Section 2.** Pursuant to Section 3.2(a)(2) of the Inducement Agreement, the Authority hereby consents to the termination of the lease agreement between the Borrower and Koetsier & Son Dairy (now known as L & J Vanderham Dairy), dated May 1, 2003.

**Section 3.** The Authority hereby waives the period of prior notice otherwise required by Section 5.2(b) of the Loan Agreement for the assignment by the Borrower of the rights and obligations under the Loan Agreement to L & J Vanderham Dairy, and accepts and consents to said assignment without recourse to the Borrower.

**Section 4.** In light of the termination of the lease of the Project and the assumption of all of the rights and obligations of the Loan Agreement by L & J Vanderham Dairy coupled with its ownership and operation of the Project, there is no longer any need for an Inducement Agreement, and the Authority hereby consents to the termination of said agreement upon the effectiveness of the assumption by L & J Vanderham Dairy of the Loan Agreement.

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**Section 5.** This resolution shall take effect upon its adoption, or if later, upon receipt by the Executive Director of the executed assignment and assumption agreement, the consents of CoBank ACB and the Trustee, and the opinion of Bond Counsel, all as referred to in the last four recital paragraphs.