

Date: May 30, 2012

To: State Water Resources Control Board

Office of Chief Counsel

Jeanette L. Bashaw, Legal Analyst jbashaw@waterboards.ca.gov

P O Box 100

Sacramento, CA 95812-0100



Petition Under California Water Code Section 13320 for Review by the State Water Resources Control Board of Action by the Central Valley Regional Water Quality Control Board Regarding Sweeney Dairy and Groundwater Monitoring Wells.

A. Introduction.

We are James G. Sweeney and Amelia M. Sweeney, doing business as Sweeney Dairy. Our address is 30712 Road 170, Visalia, CA 93292. Our telephone number is (559) 280-8233 and our email address is japlus3@aol.com.

Pursuant to Section 13320 of the California Water Code, we hereby appeal to the State Water Resources Control Board (State Board) regarding the following decisions and actions of the Central Valley Regional Water Quality Control Board (Regional Board) and we petition the State Board to review the same and to grant us the relief we hereinafter request.

B. Statement of Facts.

1. We operate a small dairy at 30712 Road 170, Visalia, CA. We milk around 300 cows on a site where a dairy has continuously been conducted for over eighty years.
2. On May 4, 2012, the Regional Board mailed us by certified mail a "Groundwater Monitoring Directive" signed by Pamela C. Creedon, Executive Officer. Said Directive ordered us to install either (1) an individual groundwater monitoring system at our dairy, or (2) join a representative monitoring program that will monitor groundwater at a set of representative facilities.
3. There is a good deal of background leading up to this Groundwater Monitoring Directive. Considerable correspondence has been exchanged between the Regional Board and us regarding this matter, commencing with August 22, 2011. This correspondence is as follows, copies of which are attached hereto, and we hereby incorporate them and their contents herein by this reference:

- (a) Letter to us from Regional Board (Dale E. Essary) dated August 22, 2011 (Exhibit 1).
- (b) Letter from us to Regional Board (Dale E. Essary) dated September 30, 2011 (Exhibit 2).
- (c) Letter to us from Regional Board (Douglas K. Patteson) dated November 9, 2011 (Exhibit 3).
- (d) Letter from us to Regional Board (Dale E. Essary, Douglas K. Patteson, Clay Rodgers) dated November 29, 2011 (Exhibit 4).
- (e) Letter to us from Regional Board (Douglas K. Patteson) dated December 7, 2011 (Exhibit 5).
- (f) Letter from us to Regional Board (Douglas K. Patteson, Dale E. Essary, Clay Rodgers) dated January 17, 2012 (Exhibit 6).
- (g) Certified letter to us from Regional Board (Groundwater Monitoring Directive) (Pamela C. Creedon) dated May 4, 2012 (Exhibit 7).
- (h) Letter from us to Regional Board (Clay L. Rodgers) dated May 11, 2012 (Exhibit 8).
- (i) Letter to us from Regional Board (Douglas K. Patteson) dated May 23, 2012 (Exhibit 9).
- (j) Email from Clay Rodgers to us dated May 27, 2012 (Exhibit 10).
- (k) Webpage of Dairy Cares Central Valley Dairy Representative Monitoring Program and Fact Sheet (<http://www.dairycares.com/CVDRMP>) (Exhibit 11).
- (l) Letter from us to Regional Board (Douglas K. Patteson, Dale E. Essary) dated May 29, 2012 (Exhibit 12).
- (m) Email to us from J. P. Cativiela of the Central Valley Dairy Representative Monitoring Program, dated May 29, 2012 (Exhibit 13).

C. Legal Arguments and Analysis.

1. The Regional Board claims in most of its correspondence, including the Directive, that it has the authority under section 13267 of the Water Code and

under R5-2007-0035 (2007 Order) to order us to implement a groundwater monitoring well program.

The relevant language of section 13267 of the Water Code reads: “the regional board may require that any person ... who ... discharges ... within its region ... shall furnish ... monitoring program reports which the regional board requires. The burden, including costs, shall bear a reasonable relationship for the need for the report and the benefits to be obtained from the reports. In requiring these reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring the person to provide the reports.”

The Regional Board cites the following language found on page MRP-16 of the 2007 Order: “Pursuant to Section 13267, the Executive Officer will order Dischargers to install monitoring wells to comply with Monitoring and Reporting Program Order No. R5-2007-0035 based on an evaluation of the threat to water quality *at each dairy*. It is anticipated that this will occur in phases of 100 to 200 dairies per year.”

Both provisions indicate that the determination of whether to require a given dairy to provide monitoring well reports is to be made on a dairy-by-dairy, individual basis. Before a dairy can be required to implement a monitoring well program, the Regional Board must be aware of specific and compelling evidence that there is a need for such a costly program, and it must inform the dairyman of what specific evidence regarding his/her dairy supports the requiring of such reports.

Despite the foregoing, the Regional Board expresses the position in its May 23, 2012 letter (Exhibit 9) that the foregoing language in the 2007 Order gave it the right to require *all dairies*, in phases of “100 to 200 dairies,” to install monitoring well systems. Indeed, the letter states that the Regional Board has issued directives to 260 dairymen to implement monitoring well programs, and that 1000 dairies have already joined “Representative Monitoring Programs.” This statement implies that *all dairies* in the Central Valley region either already participate or are being ordered to do so, without any effort being made by the Regional Board to evaluate each dairy individually. Thus, it appears that the Regional Board has engaged in a direct violation of the plain language of section 13267 and the 2007 Order, and has flagrantly violated its duties and obligations under the applicable laws.

2. Section 13263 of the Water Code provides that a Regional Board may prescribe requirements for dischargers, which it did in adopting the 2007 Order. However, section 13269 states that the Regional Board can waive any of these requirements, including the monitoring requirements, as it applies to “an individual” by considering “relevant factors.” We have consistently provided the Regional Board with those “relevant factors,” but it refuses to consider or accept them.

We have consistently called to the Regional Board's attention that our dairy has continuously been the site of a dairy for over 80 years. We have pointed out the nitrate-nitrogen test results from our domestic and agricultural supply wells which we began submitting in 2003. The results have ranged between .2 and 3.4 mg/L, all incredibly low levels. But the Regional Board recently brushed off these results (Exhibit 9) by stating that "Groundwater supply wells are typically screened in deeper aquifer zones ... groundwater quality data collected from the Dairy's on-site supply wells do not necessarily represent the quality of first encountered groundwater beneath the Dairy."

The Regional Board has the audacity to say this after demanding for years that we test our supply wells and send them the results. Indeed, their 2007 Order, at page MRP-7, actually orders dairymen to "sample each domestic and agricultural supply well," and submit the laboratory analysis for nitrate-nitrogen to it on an annual basis. For nine years they have been demanding these costly reports and now tell us that they are meaningless. Absolutely outrageous!

It is actually worse than that. The Regional Board has been advising dairymen, including us, that as an alternative, they can join a "Representative Monitoring Program," and the results from monitoring wells that are not close to a dairy can be submitted and they will be treated as satisfying the monitoring well requirement. (See Exhibits-1,3,5, and 9) Indeed, I recently asked the Regional Board what representative monitoring program they would accept for my dairy, and I was told that I could join the Central Valley Dairy Representative Monitoring Program (CVDRMP) administered by Dairy Cares in Sacramento (Exhibit 10). I checked with Dairy Cares and was advised that they would accept my application to join the program. I also discovered that the nearest CVDRMP monitoring wells are many, many miles away from my dairy. And this will be treated by the Regional Board as meaningful information? This is insane.

3. Section 648 (a) of Title 23 of the California Code of Regulations defines an "adjudicative proceeding" as a proceeding by which facts are determined pursuant to which a regional board issues a decision. Clearly, the Regional Board's Directive to us was such a decision, and the deliberation leading up to the decision to issue the Directive comes under the purview of these adjudicative proceedings requirements. However, the Regional Board never afforded us these procedural rights. We were not provided with an opportunity to confront or cross-examine any witnesses, allegations and evidence, and we were not allowed to present direct or rebuttal evidence or argument during its deliberations.

Even if it is determined that the proceedings are not considered "adjudicative proceedings" under these regulations, the Regional Board's conduct in

E. Actions Requested of State Board.

1. We request that the State Board finds and declares that the issuance of the May 4th Directive against us constituted an adjudicative proceeding, and that we were denied the rights afforded us in connection with such adjudicative proceedings. Even if it is determined that the deliberations, decisions and actions leading up to and concluding with the issuance of the Directive were not considered adjudicative proceedings, these proceedings still denied us fundamental, constitutionally protected principals of due process.
2. We request that the State Board finds and declares that there was insufficient evidence relied upon by the Regional Board to support its issuance of the Directive against us.
3. We request that the State Board finds and declares that the Directive violates the provisions of Water Code section 13267, and the provisions of page MRP-16 of the 2007 Order.
4. For all of the foregoing reasons, we request that the State Board finds and declares that the Directive is illegal and unenforceable, and we request that the enforcement of the same against us be set aside pursuant to the powers granted to the State Board under Sections 13321 of the Water Code.
5. Finally, we think that the State Board should impose substantial punitive financial sanctions against the Regional Board in order to encourage it to comply with its legal obligations and not exceed its legal authority.

All of the issues and arguments raised herein have been presented by us to the Regional Board before the filing of this Petition. A copy of this Petition has been sent to the Regional Board.

Respectfully submitted,

James G. Sweeney

Amelia M. Sweeney

Cc: Central Valley Regional Water Quality Control Board



Central Valley Region
Katherine Hart, Chair



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Edmund G. Brown Jr
Governor

Matthew Rodriguez
Secretary for
Environmental Protection

22 August 2011

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

**GROUNDWATER MONITORING AT SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD
170, VISALIA, TULARE COUNTY**

The subject Dairy is regulated by Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) on 3 May 2007. Monitoring and Reporting Program R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing additional groundwater monitoring. Under the MRP, the Executive Officer has the authority pursuant to California Water Code (CWC) section (§) 13267 to order the installation of individual groundwater monitoring wells at the Dairy. **Based on results of site assessment and monitoring data reported to our office, your facility is on a list to receive a directive pursuant to CWC §13267 that requires the installation of an individual groundwater monitoring system.**

To satisfy the requirement for additional groundwater monitoring, you have two options. You may install an individual groundwater monitoring system at the Dairy, or you may elect to join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. Central Valley Water Board staff has been informed that the Central Valley Dairy Representative Monitoring Program intends to close membership by 1 November 2011. If an RMP is not available, your only option will be individual groundwater monitoring and the installation and sampling of groundwater monitoring wells on your Dairy.

If you intend to satisfy the groundwater monitoring requirement by joining an RMP, or if you have already joined an RMP, provide documentation that you have joined an RMP to the Central Valley Water Board **by 30 September 2011**. While participating in an approved RMP does not guarantee you will not be required to perform individual groundwater monitoring in the future, it will remove your name from the current list of dairy owners and operators to receive an order from the Executive Officer to implement individual groundwater monitoring.

If you have questions regarding this matter, please contact me at (559) 445-5093.

DALE E. ESSARY
Senior Engineer
Confined Animals Unit

September 30, 2011

To: Dale E. Essary, Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, CA 93706

Re: Sweeney Dairy, Groundwater Monitoring

Dear Mr. Essary:

This letter is in response to your letter of August 22, 2011. Your letter states that "Based on the results of site assessment and monitoring data reported to our office, your facility is on a list to receive a directive pursuant to CWC section 13267 that requires the installation of an individual monitoring system."

We have read CWC section 13267 in its entirety. While it is true that it gives the regional board authority to require monitoring program reports, you neglected to point out that the section also goes on to say that "The burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring these reports the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

We notice that your letter fails to comply with the foregoing. In order to comply, we think you need to provide us with a written explanation of the need for us putting in a monitoring well system, while specifically citing the evidence or other basis on which you have determined that we now need to install monitoring wells. Further, could you please inform us what it will cost us to install a monitoring well system, or to join a "representative monitoring program," both as to initial and recurring annual costs? Could you then also explain how these costs are reasonable in light of the benefits that you hope to obtain from the reports?

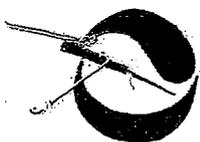
We find it curious that we have done everything in the past to comply with your Title 27 requirements. During your previous inspections of our dairy you have never asserted that our facility was in violation of any of your requirements. For many years, your agency has required certain dairies to install monitoring well systems, but never us. Why now? What has changed?

You specifically named the Central Valley Dairy Representative Monitoring Program as an acceptable "representative monitoring program." Could you please inform us why you think their program would provide you with meaningful information as to my facility? Where are their monitoring wells located that would serve as the basis of information for our site?

We will certainly look forward to your response.

Sincerely,

Jim Sweeney



California Regional Water Quality Control Board
Central Valley Region
Katherine Hart, Chair



Matthew Rodriguez
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Edmund G. Brown Jr.
Governor

9 November 2011

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

**RESPONSE TO GROUNDWATER MONITORING AT SWEENEY DAIRY, WDID
5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY**

The subject Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program (MRP) R5-2007-0035, revised 23 February 2011, accompanies the General Order and contains requirements for implementing groundwater monitoring. Under the MRP, the Executive Officer has the authority pursuant to California Water Code (CWC) section 13267 to order the installation of individual groundwater monitoring wells at the Dairy.

Groundwater monitoring is being required of all dairies covered by the General Order in accordance with the MRP. We sent you a letter dated 22 August 2011 to inform you that to satisfy the requirement for additional groundwater monitoring, you had two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. The letter also informed you that the Central Valley Dairy Representative Monitoring Program intends to close membership. The letter was sent as a courtesy so that dairy owners and operators would be aware of this option to avoid having to install and monitor an individual groundwater monitoring system at their facility. If an RMP is not available, the only option would be individual groundwater monitoring and the installation and sampling of groundwater monitoring wells on the Dairy. The letter was not an order to initiate individual groundwater monitoring.

Subsequent to the issuance of the 22 August 2011 letter, Central Valley Water Board staff received your 30 September 2011 response via email requesting clarification. Specifically, your letter requests that staff provide you with a written explanation of the need for putting in a monitoring well system.

The General Order and accompanying MRP were issued pursuant to California Water Code section 13267, which states, in relevant part:

- (a) A regional board ... may investigate the quality of any waters of the state within its region.

California Environmental Protection Agency

(b)(1) 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 ... 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 with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

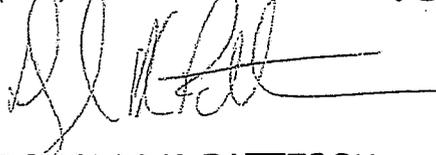
A cost/benefit evaluation of the burden associated with the submission of technical reports required by the General Order, including those associated with the implementation of groundwater monitoring at dairy facilities, was performed during the process of adoption and issuance of the General Order.

The Board adopted the Water Quality Control Plan for the Tulare Lake Basin, Second Edition, revised January 2004, which designates beneficial uses of water. Groundwater within the vicinity of the Dairy is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR). Dairy waste constituents (particularly nitrogen and salts), when released to groundwater, are a significant threat to the beneficial uses of MUN and AGR. An investigation to assess whether the Dairy has impacted groundwater quality is reasonable and appropriate. The cost of the technical reports is justified by the fact that these reports will allow the Central Valley Water Board to assess whether current management practices are protective of groundwater beneath your Dairy.

Attachment A of the MRP explains that the Executive Officer will order all dischargers covered under the General Order to install monitoring wells to comply with the MRP. It was anticipated that this effort would occur in phases of approximately 100 to 200 dairies per year. The first group of dairies ordered to install wells included those dairies where nitrate was detected above water quality objectives in any one production well or subsurface (tile) drain in the vicinity of the dairy. The remaining dairies (including yours) have been approached in order of a ranking system that prioritized dairies based on the factors in Table 5 of Attachment A.

If you choose not to participate in an RMP, the Executive Officer will issue an order pursuant to CWC 13267 (13267 Order) that will require you to perform individual groundwater monitoring and that will include a formal explanation for the 13267 Order's justification.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

November 29, 2011

To: Dale Essary, Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Sweeney Dairy, Groundwater Monitoring

Dear Mr. Eassry:

We received Mr. Patteson's letter dated November 9, 2011, which was a response to our letter to you dated September 30, 2011. While our letter posed a number of questions, Mr. Patteson's letter either failed to answer them satisfactorily or ignored them altogether. These questions were:

1. What is your explanation for the need to put in monitoring wells?

Patteson's letter stated that you need monitoring well sample results to "assess whether current management practices are protective of groundwater beneath your dairy." This is odd in light of the fact that your agency has been prescribing management practices for dairies for over thirty years (Title 27 of Calif. Code of Regulations and other agency requirements). We have followed all of your requirements while operating our dairy. Your staff inspected us in 1998 and in 2003, and after each visit, you sent us letters confirming that our dairy was in full compliance with your groundwater protection requirements.

Your agency has been collecting monitoring well data from a large number of dairies for at least fifteen years. I should hope by now that your agency has been able to assess whether your required management practices are useful and effective. You have never informed us that, on the basis of this collected data, you have found your required practices to be inadequate, flawed, or needed to be changed.

While your agency has required other dairies to put in monitoring well systems in the past, you had never required us to do so until now. Please explain what specific information you have regarding our dairy that has prompted you to impose them on us now.

Mr. Patteson's letter pointed out that Water Code section 13267 provides that "In requiring these [monitoring program] reports, the regional boards shall provide the person

with a written explanation with regard to the need for the reports, ..." While Mr. Patterson made the general assertion that "An investigation to assess whether the dairy has impacted groundwater quality is reasonable and appropriate," he did not cite any specific facts that would give support a concern that our dairy was causing a problem.

Water Code section 13267 goes on to say that "these reports shall bear a reasonable relationship to the need for the reports," and that the regional boards "shall identify the evidence that supports requiring that person to provide the reports." Mr. Patteson failed to provide us with any specific evidence about our dairy that supports the need for us to install monitoring wells and to submit reports of test results from them.

Indeed, as you should know, our dairy has provided your agency with a number of well water test results in 2003 and 2007. The results showed nitrate-nitrogen levels ranging from 1.1 to 3.4 mg/l, which are remarkably low. We had these same wells tested again in 2010 and the nitrate-nitrogen ranged from .2 to 1.4 mg/l, our lowest yet (If you want copies of these results, let us know). All of the 2003, 2007 and 2010 well test results come from a dairy site that has had a dairy operating on it for over eighty years.

Mr. Patteson mentioned that Attachment A of the MRP of the General Order provides that "the Executive Officer will order all dischargers covered under the General Order to install monitoring wells." He went on to explain that "It was anticipated that this effort would occur in phases of approximately 100 to 200 dairies per year. The first group of dairies ordered to install wells included those dairies where nitrate was detected above water quality objectives in any one production well in the vicinity of the dairy. The remaining dairies (including yours) have been approached in order of a ranking system that prioritized dairies based on the factors in Table 5 of Attachment A."

We noticed that Attachment A also sets forth a score card that is to be used to rank the priority for a dairy. Please send us a copy of the scorecard you used to score our dairy and tell us where our dairy ranked with respect to other dairies. In comparison to the other approximately 1500 dairies in your jurisdiction, where does our dairy's nitrate levels rank? What other information did you rely on to conclude that our dairy needed to spend considerable money to install one of these systems and to pay the engineers and laboratories to pull and test water sample on an ongoing basis?

- 2. What would an individual monitoring well system on our dairy cost, both as to initial and recurring costs?**

Since the costs would depend on the number of wells you would require, their depth, their location, the frequency that samples would have to be taken, who would take them

and how many different components would have to be tested for, you need to provide us with answers to these questions so that we can contact some firms to get cost estimates.

- 3. Where are the monitoring wells at "representative facilities" located in reference to our dairy? Why do you feel information from these remote wells would be meaningful? Executive Secretary**

Your original letter mentioned that we had the option to enroll in the Central Valley Representative Monitoring Program as an acceptable "representative monitoring program." When we asked where these monitoring wells were located with reference to our dairy, and why you would feel that test results from these wells would be meaningful, Mr. Patteson entirely failed to respond.

We look forward to you satisfactorily responding to our questions and requests.

Sincerely,

Jim Sweeney

Cc: Douglas K. Patteson
Clay Rogers



Matthew Rodriguez
Secretary for
Environmental Protection

California Regional Water Quality Control Board
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Edmund G. Brown Jr.
Governor

7 December 2011

James G. and Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

RESPONSE TO LETTER REGARDING GROUNDWATER MONITORING AT SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

Central Valley Water Board staff issued you a courtesy letter dated 22 August 2011 to inform you that to satisfy the requirement for additional groundwater monitoring, you had two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities. Subsequent to the issuance of the 22 August 2011 letter, staff received your 30 September 2011 response via email requesting clarification. Staff's letter dated 9 November 2011 provided the requested clarification.

Subsequent to the 9 November 2011 letter, staff received your 29 November 2011 response via email requesting further clarification. Specifically, your letter requested an explanation for the need to install wells at the Dairy and an estimate for the cost of installing the wells, and contained questions regarding the representativeness of the Central Valley Representative Monitoring Program (CVDRMP).

A completed Table 5 for the Dairy, which is a tool contained in the MRP that is used by staff to assess the threat that a dairy poses to groundwater, is enclosed, along with the ranking priority scores.

As stated in staff's 22 August 2011 letter, if you choose not to participate in an RMP, the Executive Officer will issue an order pursuant to California Water Code (CWC) section 13267 that will require you to perform individual groundwater monitoring. This order will contain an explanation of how the 13267 Order's burden, including costs, is justified.

The CVDRMP developed a work plan for the first phase of representative monitoring, which involves the installation of wells in areas of Merced and Stanislaus counties that exhibit shallow groundwater and relatively permeable soils. Phase II of the program, which has yet to be submitted, will need to include sites that represent a cross-section of site conditions and management practices for member dairies located in all San Joaquin Valley Counties and selected counties in the Sacramento Valley. The burden is on the CVDRMP to demonstrate that the representative monitoring program is applicable to all its members. If a dairy is in such a unique situation that it cannot be represented by the CVDRMP, that dairy will need to implement individual groundwater monitoring. Details regarding the locations of the proposed

wells, the rationale for representative monitoring, and the drilling schedule are included in the approved Phase I work plan, which is available at

http://www.waterboards.ca.gov/centralvalley/water_issues/dairies/general_order_guidance/represent_monitoring/cafo_ph_1_rmp_wrkpln.pdf.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



DOUGLAS K. PATTESON
Supervising Engineer

Sweeney Dairy, 30712 Rd. 170, Visalia

TABLE 5. GROUNDWATER MONITORING FACTORS FOR RANKING PRIORITY ¹			
FACTOR	SITE CONDITION	POINTS	SCORE
Highest nitrate concentration (nitrate-nitrogen in mg/l) in any existing domestic well, agricultural supply well, or subsurface (tile) drainage system at the dairy or associated land application area.*	< 10	0	0
	10 - 20	10	
	> 20	20	
Location of production area or land application area relative to a Department of Pesticide Groundwater Protection Area ² (GWPA).	Outside GWPA	0	0
	In GWPA	20	
Distance (feet) of production area or land application area from an artificial recharge area ³ as identified in the California Department of Water Resources Bulletin 118 or by the Executive Officer.	> 1,500	0	0
	601 to 1,500	10	
	0 to 600	20	
Nitrate concentration (nitrate-nitrogen in mg/l) in domestic well on property adjacent to the dairy production area or land application area (detected two or more times).	< 10 or unknown	0	0
	10 or greater	20	
Distance (feet) from dairy production area or land application area and the nearest off-property domestic well.*	> 600	0	10
	301 to 600	10	
	0 to 300	20	
Distance (feet) from dairy production area or land application area and the nearest off-property municipal well.*	> 1,500	0	0
	601 to 1,500	10	
	0 to 600	20	
Number of crops grown per year per field.*	1	5	10
	2	10	
	3	15	
Nutrient Management Plan completed by 1 July 2009*	Yes	0	0
	No	100	
Whole Farm Nitrogen Balance. ⁴ *	< 1.65	0	0
	1.65 to 3	10	
	> 3	20	

Total Score: 20

*This information will be provided by the Discharger. All other information will be obtained by the Executive Officer.

1 Information on each factor may not be available for each facility. Total scores will be the ratio of the points accumulated to the total points possible for each facility. Dairies with higher total scores will be directed to install monitoring wells first.

2 The Department of Pesticide Regulation (DPR) defines a Groundwater Protection Area (GWPA) as an area of land that is vulnerable to the movement of pesticides to groundwater according to either leaching or runoff processes. These areas include areas where the depth to groundwater is 70 feet or less. The DPR GWPA's can be seen on DPR's website at <http://www.cdpr.ca.gov/docs/gwp/gwpmaps.htm>.

3 An artificial recharge area is defined as an area where the addition of water to an aquifer is by human activity, such as putting surface water into dug or constructed spreading basins or injecting water through wells.

4 The Whole Farm Nitrogen Balance is to be determined as the ratio of (total nitrogen in storage - total nitrogen exported + nitrogen imported + irrigation nitrogen + atmospheric nitrogen)/(total nitrogen removed by crops) as reported in the Preliminary Dairy Facility Assessment in the Existing Conditions Report (Attachment A).

January 17, 2012

To: Douglas K. Patteson, Supervising Engineer

Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Sweeney Dairy, Groundwater Monitoring

Dear Mr. Patteson:

I am responding to your letter of December 7, 2011.

In our letter of November 29, 2011, I asked what specific information caused you to require our dairy to install monitoring wells. Other than sending me a copy of our scorecard (which doesn't provide specific, relevant facts), you never directly answered my question.

You never compared our score with other dairies to show where we ranked. Moreover, your scorecard represents a simplistic preoccupation with assigning numbers to risk factors, while you ignore the more relevant facts. In our case, those relevant facts are: (1) a dairy has been conducted on the site for over eighty years, and (2) the groundwater nitrate levels are extraordinarily low.

Where I had asked what facts justified the burden of installing monitoring wells, you responded by saying that if you were forced to issue an order compelling us install these wells, the order would set forth facts justifying the burden, including the costs. Why can't you provide those facts now?

Given the facts as we currently know them, coupled with what you have shown so far, we do not think you can make a compelling argument that there is a need for us to install monitoring wells at our dairy.

As you probably know, we have recently gained a great deal of experience in challenging your agency when your positions become unreasonable and unjustified, and it should come as no surprise to you that we are prepared to go through this process again if it becomes necessary.

Sincerely,

Jim Sweeney

Cc: Dale Essary

Clay Rogers



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

4 May 2012

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

CERTIFIED MAIL
7011 2000 0001 1769 1428

GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO REVISED MONITORING AND REPORTING PROGRAM NO. R5-2007-0035, SWEENEY DAIRY, WDID 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

You are legally obligated to respond to this directive. Please read this letter carefully.

The subject facility (Dairy) is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), which was adopted by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing individual groundwater monitoring at the Dairy. Under the MRP, the Executive Officer has the authority to prioritize the order that dairies must comply with the individual monitoring requirements of the MRP. Prioritization is done as necessary based on ranking scheme found in Table 5 of Attachment A of the MRP.

As the owner and/or operator of a dairy, you are being notified that, based on the factors listed in the MRP, Attachment A (Groundwater Monitoring, Monitoring Well Installation and Sampling Plan and Monitoring Well Installation Completion Report for Existing Milk Cow Dairies), Table 5 (Groundwater Monitoring Factors for Ranking Priority), it is now a priority for your Dairy to obtain compliance with the Monitoring Requirements of the MRP. The information required by this letter is required by section 13267 of the Water Code.

The Executive Officer finds that:

1. You are the owner and/or operator of a dairy regulated under the General Order.
2. The MRP, and this subsequent directive, are issued pursuant to California Water Code (CWC) section 13267, which states, in relevant part:

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

1665 E Street, Fresno, CA 93706 | www.waterboards.ca.gov/centralvalley

(a) A regional board ... may investigate the quality of any waters of the state within its region.

(b)(1) 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 ... 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 with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

3. The Central Valley Water Board adopted the Water Quality Control Plans for the Tulare Lake Basin, Second Edition, revised January 2004, and the Sacramento River and San Joaquin River Basins, Fourth Edition, revised October 2011, which designate beneficial uses of water. All groundwater within the vicinity of the site is designated as having a beneficial use of municipal and domestic water supply (MUN) and agricultural supply (AGR).
4. Groundwater monitoring shows that many dairies in the Central Valley Region have impacted groundwater quality. A study of several dairies in a high-risk groundwater area in the Region found that groundwater beneath dairies that were thought to have good waste management and land application practices had elevated levels of salts and nitrates beneath the production and land application areas. Groundwater monitoring has also shown groundwater pollution under many of the dairies, including where groundwater is as deep as 120 feet and in areas underlain by fine-grained sediments. Dairy waste constituents (primarily nitrogen and salts), when released to groundwater, are a significant threat to the beneficial uses of MUN and AGR.
5. No set of waste management practices has been demonstrated to be protective of groundwater quality in all circumstances. Since groundwater monitoring is the most direct way to determine if management practices at a dairy are protective of groundwater, the MRP requires groundwater monitoring to determine if a dairy is in compliance with the groundwater limitations of the General Order.
6. Attachment A to the MRP informs dairy owners/operators of the ongoing monitoring well installation and sampling plan (MWISP) process at existing milk cow dairies in the Central Valley. It specifies, "Dischargers choosing not to participate in a Representative Monitoring Program or those failing to notify the Central Valley Water Board of their decision to participate in a Representative Monitoring Program, will continue to be subject to the groundwater monitoring requirements of the Order and Monitoring and Reporting Program No. R5-2007-0035 (MRP). If necessary, the Executive Officer will prioritize these groundwater monitoring requirements based on the factors in Table 5 below."

7. The Central Valley Water Board has prioritized the order that these groundwater monitoring requirements are imposed based on the factors in Table 5 of Attachment A, titled "Groundwater Monitoring Factors for Ranking Priority." Groundwater monitoring directives have been issued to dairy farmers in phases of 100-200 dairies each year. To date, the Board has issued approximately 260 directives requiring installation of Monitoring Well Installation and Sampling Plans in six Rounds. Most of the dairies that received directives have joined a Representative Monitoring Program. In addition, approximately 1,000 other dairies have voluntarily joined a Representative Monitoring Program (see Finding 8, below). This is the final round of directives being issued by the Board. The dairy farms receiving directives in Round 6 all received comparable total scores based on the factors described in Table 5.
8. On 23 February 2011, the Central Valley Water Board issued a Revised MRP to allow dairymen to enroll in a Representative Monitoring Program as an alternative to submitting a site-specific MWISP. Membership in a Representative Monitoring Program is an alternative to achieve compliance with this directive without installing monitoring wells on an individual basis. The Central Valley Dairy Representative Monitoring Program is currently available to dairy farmers at a cost of \$1,500 plus \$81 per month.
9. In revising the MRP in 2011, the Central Valley Water Board concluded that it is reasonable and appropriate to require all existing milk cow dairies regulated by the General Order to enroll in a representative monitoring program or be subject to the individual monitoring requirements specified in the MRP.
10. The MRP states, in relevant part, the following:

II: Individual Monitoring Program Requirements

1. The Discharger shall install sufficient monitoring wells to:
 - a. Characterize groundwater flow direction and gradient beneath the site;
 - b. Characterize natural background (unaffected by the Discharger or others) groundwater quality upgradient of the facility; and
 - c. Characterize groundwater quality downgradient of the corrals, downgradient of the wastewater retention ponds, and downgradient of the land application areas.
3. Prior to installation of wells, the Discharger shall submit to the Executive Officer a Monitoring Well Installation and Sampling Plan (MWISP) (see [MRP Attachment A, Subsection IV: Monitoring Well Installation and Sampling Plan]) and schedule prepared by, or under the direct supervision of, and certified by, a California registered civil engineer or a California registered geologist with experience in hydrogeology. Installation of monitoring wells

shall not begin until the Executive Officer notifies the Discharger in writing that the MWISP is acceptable.

7. Within 45 days after completion of any monitoring well, the Discharger shall submit to the Executive Officer a Monitoring Well Installation Completion Report (MWICR) (see [MRP Attachment A, Subsection V: Monitoring Well Installation Completion Report]) prepared by, or under the direct supervision of, and certified by, a California registered civil engineer or a California registered geologist with experience in hydrogeology.

11. Following installation of the groundwater monitoring wells, groundwater data must be collected and groundwater monitoring reports submitted in accordance with the MRP.

You are hereby notified that, pursuant to CWC section 13267,

You are required to comply with the MRP according to the time schedule listed below. If you do not enroll in a representative monitoring program, you must submit a Monitoring Well Installation Completion Report (MWICR). The MWICR must contain the information required by Attachment A of the MRP.

In order to submit an MWICR that meets the requirements of this Order, there are a number of preliminary steps that are required.

You must submit an acceptable Monitoring Well Installation and Sampling Plan (MWISP) that contains the minimum information required by Section IV, Attachment A of the MRP to allow the collection of data that will identify whether the Dairy is impacting groundwater quality. Installation of the monitoring wells shall not begin until the Executive Officer notifies you in writing that the MWISP is acceptable.

Compliance with the MRP may be satisfied in accordance with either of the following schedules:

1. **By 25 May 2012**, provide written notification to the Central Valley Water Board that you have joined a coalition group that has developed or will develop a representative groundwater monitoring program pursuant to the General Order. Such notification must include a copy of your letter of intent to join a coalition or other certification of your participation and intent to comply with the conditions and terms of the coalition's efforts; **or**,
2. **By 29 June 2012**, submit an acceptable site-specific MWISP.
 - A.) An acceptable MWISP must include a schedule designed to result in submittal of an acceptable MWICR within **135 calendar days** after notification that the site-specific MWISP is acceptable. The MWICR must confirm that you have installed the accepted monitoring well system,

which must contain, at a minimum, the information required by Section V in Attachment A of the MRP.

- B.) Each well within the monitoring well system must be sampled semi-annually (twice per year) for field measurements of electrical conductivity, temperature, and pH, and laboratory analysis must be conducted for nitrate and ammonia. Depth to groundwater is to be measured in each monitoring well quarterly (four times per year) and prior to purging the well for each sampling event. During the first semi-annual event, and every two years thereafter, groundwater samples from each well shall also be analyzed in the laboratory for calcium, magnesium, sodium, potassium, bicarbonate, carbonate, sulfate, and chloride. As specified in Attachment A of the MRP, groundwater monitoring reports are submitted annually by 1 July of each year. The groundwater monitoring reports are to contain a detailed description of how the data were collected, copies of laboratory reports, a tabulated summary of the data, and an evaluation of whether the Dairy has impacted groundwater.
- C.) All technical reports are to be signed and stamped by a California Professional Engineer (Registered as a Civil Engineer) or Professional Geologist experienced in performing groundwater assessments. All laboratory analyses are to be performed by an analytical laboratory certified by the State of California for the analyses performed.

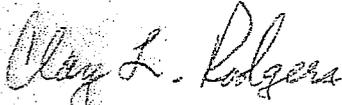
The failure to furnish any of the required reports, or the submittal of substantially incomplete reports or false information, is a misdemeanor, and may result in additional enforcement actions being taken against you, including issuance of an Administrative Civil Liability (ACL) Complaint pursuant to CWC section 13268. **Liability may be imposed pursuant to CWC section 13268 in an amount not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.**

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 CWC 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., within 30 days after the date of this Order, except that if the thirtieth day following the date of this Order 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:

www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

If you have questions regarding this matter, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.



for Pamela C. Creedon
Executive Officer

cc: Mr. John Menke, State Water Resources Control Board, Sacramento
Tulare County Health & Human Services Agency, Environmental Health, Visalia
Tulare County Resource Management Agency, Code Compliance, Visalia

May 11, 2012

Clay L. Rodgers

Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Sweeney Dairy

30712 Road 170

Visalia, CA 93292

Dear Mr. Rodgers:

This letter is in response to your letter of May 4, 2012, which orders us to (1) submit to you a Monitoring Well Installation and Sampling Plan, (2) to install monitoring wells, (3) to submit to you a Monitoring Well Installation Completion Report, and (4) to submit reports from these wells in accordance with your various requirements.

As you know our appeal is pending with the State Water Resources Board and this is a form of intimidation. Until our appeal is decided we are under no legal obligation to comply with this order. Our dairy has a history of excellent water quality. We are members of the Kaweah River Sub Watershed and they have a series of monitoring wells. The information provided by these wells would more adequately reflect the water quality in our area rather than depending on wells provided by some coalition of dairymen in other areas.

You claim that "the Executive Officer has the authority to order the installation of monitoring wells based upon the threat that individual dairies pose to water quality," yet you fail to explain how you concluded that our dairy posed such a threat. This appears to be part of a continuing quest in which the Central Valley Regional Water Quality Control Board is driving the small dairies out of business. You already have access to the results of the test wells. How would our joining a coalition add any valuable information? This is just an unnecessary expense.

Your letter points out that Water Code section 13267 (a) requires you to "provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

You fail in your own obligation in that you have no evidence that would justify the need for monitoring wells. A dairy has been in existence at this site for over eighty years and if it has not contaminated the groundwater up to this point, how can you conclude that it will in the future?

The staff of the CVRWQB has failed to inform the regional board as to the real "potential threat" that small dairies pose. According to data provided by DHIA only .27% of the cows in Tulare County reside on dairies less than 300 cows while an additional 2.23% reside on dairies milking between 300-700 cows. In fact, according to the US Department of Agriculture, 2.9% of the nation's dairies produce over half of the nation's milk. It could be concluded that these same dairies produce over half of the waste as well.

Both the Bay Area Water Board and the North Coast Regional Water Quality Control Board chose to exempt the dairies which milk less than 700 cows. These dairies contain the majority of animals within their respective regions. I welcome the opportunity to testify before the regional board to make them aware of these facts. In our previous hearing the staff claimed that we received an "economic advantage" by not filing required reports but in fact the CVRWQCB has violated our civil rights by not guaranteeing us equal protection under the law.

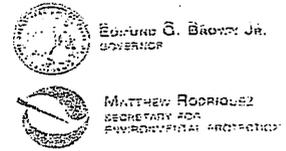
As I testified at our earlier hearing, the CVRWQCB makes the rules, picks the jury, and changes the rules when it meets their needs. I intend to show that the board has no ACCOUNTABILITY. They have never done the economic studies required by law.

You adopted this Order without notifying us in advance of your intentions or of your evidence. It seems like standard procedure that you do not give us an opportunity to rebut your evidence and to submit our own evidence. The CVRWQB continues to deny us due process.

Therefore, we will do nothing until you have first satisfied your obligations under section 13267 (a). We welcome the opportunity to have our case heard before the Regional Board as we will be much more prepared this time. The board's decision may have to be appealed to the State Water Resources Control Board and ultimately a judge may have to rule on this matter.

Sincerely,

Jim Sweeney



Central Valley Regional Water Quality Control Board

James G. & Amelia M. Sweeney
Sweeney Dairy (owner/operator)
30712 Road 170
Visalia, CA 93292

23 May 2012

RESPONSE TO GROUNDWATER MONITORING DIRECTIVE, ISSUED PURSUANT TO REVISED MONITORING AND REPORTING PROGRAM NO. R5-2007-0035, SWEENEY DAIRY, WDID: 5D545155N01, 30712 ROAD 170, VISALIA, TULARE COUNTY

The subject Dairy is regulated by the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (General Order), issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) on 3 May 2007. Monitoring and Reporting Program Order R5-2007-0035, revised 23 February 2011 (MRP), accompanies the General Order and contains requirements for implementing groundwater monitoring. Under the MRP, the Executive Officer has the authority to order the installation of individual groundwater monitoring wells at the Dairy.

On 4 May 2012, the Executive Officer issued you a groundwater monitoring directive (the directive) pursuant to the MRP. The directive notifies you that your Dairy is now required to obtain compliance with the groundwater monitoring requirements of the MRP. The directive informs you that to satisfy the requirement for additional groundwater monitoring, you have two options: 1) install an individual groundwater monitoring system at the Dairy; or, 2) join a representative monitoring program (RMP) that will monitor groundwater at a set of representative facilities.

Subsequent to the issuance of the directive, staff received a letter from you via email dated 11 May 2012 in response to the directive. Specifically, the letter requested an explanation for the need to install wells at the Dairy.

The directive issued to you on 4 May 2012 provides you with an explanation of the need for conducting a water quality investigation, and identifies the evidence that supports requiring the investigation. It also explains how the burden of implementing the MRP, including costs, is justified. The directive also informs you of your right to petition the directive to the State Water Resources Control Board within 30 days of its issuance to review the action in accordance with California Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following.

Attachment A to the MRP informs dairy owners/operators of the ongoing monitoring well installation and sampling plan (MWISP) process at existing milk cow dairies in the Central Valley. It specifies, "Dischargers choosing not to participate in a Representative Monitoring Program or those failing to notify the Central Valley Water Board of their decision to participate in a Representative Monitoring Program, will continue to be subject to the groundwater monitoring requirements of the Order and Monitoring and Reporting Program No. R5-2007-0035

KARL E. LONGLEY SCD, P.E., CHAIR | PAMELA C. CREEDON P.E., BOCEE, EXECUTIVE OFFICER

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(MRP). If necessary, the Executive Officer will prioritize these groundwater monitoring requirements based on the factors in Table 5 below."

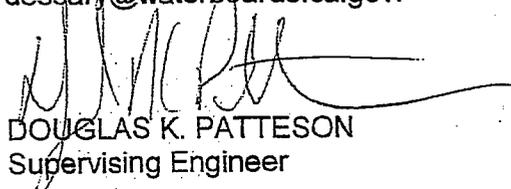
The Central Valley Water Board has prioritized the order that these groundwater monitoring requirements are imposed based on the factors in Table 5 of Attachment A, titled "Groundwater Monitoring Factors for Ranking Priority." Groundwater monitoring directives have been issued to dairy farmers in phases of 100-200 dairies each year. To date, the Board has issued approximately 260 directives requiring installation of Monitoring Well Installation and Sampling Plans in six rounds. Most of the dairies that received directives have joined an approved Representative Monitoring Program. In addition, approximately 1,000 other dairies have voluntarily joined a Representative Monitoring Program. This was the final round of directives being issued by the Board. The dairy farms receiving directives in Round 6 all received comparable total scores based on the factors described in Table 5.

On 23 February 2011, the Central Valley Water Board issued a Revised MRP to allow dairymen to enroll in a Representative Monitoring Program as an alternative to submitting a site-specific MWISP. Membership in a Representative Monitoring Program is an alternative to achieve compliance with this directive without installing monitoring wells on an individual basis. The Central Valley Dairy Representative Monitoring Program is currently available to dairy farmers at a cost of \$1,500 plus \$81 per month.

The purpose of implementing groundwater monitoring at the subject Dairy is to monitor first encountered groundwater beneath the facility to determine whether the facility's waste management practices have impacted groundwater quality. Groundwater supply wells are typically screened in deeper aquifer zones and do not necessarily reflect conditions in shallower zones. In particular, and as mentioned in your 11 May 2012 letter, any supply wells used by the Kaweah River Sub-Watershed for the purpose of monitoring groundwater quality may not be reflective of first encountered groundwater within the study area. In fact, the Kaweah River Sub-Watershed has not applied for or received approval to implement an RMP pursuant to the terms of the MRP. Likewise, groundwater quality data collected from the Dairy's on-site supply wells do not necessarily represent the quality of first encountered groundwater beneath the Dairy.

Central Valley Water Board staff acknowledges that you have petitioned the State Water Resources Control Board to invalidate Administrative Civil Liability Order R5-2011-0068 that was adopted by the Central Valley Water Board and issued to you on 13 October 2011 for your failure to submit past due technical reports. However, your petition was not a factor in issuance of the 13267 Order and does not absolve you from continued compliance with the General Order or from potential liability for failure to do so.

If you have questions regarding this matter or would like to schedule a meeting to discuss the matter further, please contact Dale Essary of this office at (559) 445-5093 or at dessary@waterboards.ca.gov.


DOUGLAS K. PATTESON
Supervising Engineer

cc: Alex Mayer, Office of Chief Counsel, State Water Resources Control Board, Sacramento
(via email)

From: Clay Rodgers <CRodgers@waterboards.ca.gov>

To: Japlus3 <japlus3@aol.com>

Cc: jpc <jpc@dolphingroup.org>; Alex Mayer <AMayer@waterboards.ca.gov>; Doug Patteson <dpatteson@waterboards.ca.gov>

Subject: Re: Sweeney Dairy

Date: Sun, May 27, 2012 9:04 am

Dear Mr. Sweeney:

The approved representative monitoring program that covers Tulare County is the Central Valley Dairy Representative monitoring program. Their address is

CVDRMP
915 L Street, C-431
Sacramento, CA 95814

Detailed information can be viewed on the Dairy CARES website at <http://www.dairycares.com/CVDRMP/>. I have copied this e-mail to J. P. Cataviela of Dairy CARES, who can provide additional assistance if needed.

If you have any questions or need additional information, please contact me or Doug Patteson.

>>> Japlus3 <japlus3@aol.com> 5/26/2012 4:48 PM >>>

May 27, 2012

To: Douglas K. Patteson

dpatteson@waterboards.ca.gov

Dale Essary

dessary@waterboards.ca.gov

Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Jim and Amelia Sweeney, dba Sweeney Dairy

30712 Road 170

Visalia, CA 93292

Dear Mr. Patteson:

Your letter of May 23, 2012 says that we may comply with your directive if we join a "representative monitoring program (RMP) to monitor groundwater at a set of representative facilities." Since we are facing a short deadline, please provide us by May 30, 2012 with the name(s) and contact information of those RMPs whose results your agency would accept as meeting your requirements for our dairy.

We await your prompt reply.

Sincerely,

Jim Sweeny



Milestones in Sustainability

Environmental stewardship — Responsible animal care — Family and community values

HOME

FOCUS ON DAIRY ISSUES

MISSION STATEMENT

MESSAGE FROM THE PRESIDENT

REUSE AND RENEWAL

OUTREACH AND EDUCATION

SCIENCE STRATEGIES

VIDEO ARCHIVES

MEET OUR DAIRY FAMILIES

REPRESENTATIVE MONITORING PROGRAM

IMPORTANT LINKS

CONTACT US

Monthly Columns

April, 2012

Last chance to sign up for monitoring coalition prior to sharp increase in membership fees

March, 2012

California agriculture can be a bright spot, solid investment for state's economy

[More columns.](#)

Latest News

March, 2012

California dairy families award over \$1.4 million in cash and prizes to struggling southern California elementary schools

February, 2012

SMUD assists two Calif. dairy farms with AD projects

[More news.](#)

Central Valley Dairy Representative Monitoring Program

For the benefit of dairy producers and water quality across our valley

The Central Valley Dairy Representative Monitoring Program is a not-for-profit group, organized and overseen by Central Valley dairy operators. The group's purpose is to reduce regulatory costs for member dairies by administering a representative groundwater monitoring program for dairies. A dairy's membership in good standing in CVDRMP can substitute for the current regulatory requirement to install monitoring wells, and is a lower-cost alternative.

All Central Valley dairy landowners and dairy operators were mailed an informational packet about the program in late October 2010. Applications for the program are still being accepted, however there is a \$1,000 late fee for applications mailed after January 12, 2011. Monthly membership dues are retroactive to July 1, 2011. All of the information in the mailing can also be downloaded here (see links below).

If using this web page only, be sure to do ALL of the following steps.

1. Download and print out all three of the following documents:
 - a. Participation Agreement
 - b. Letter of Intent
 - c. Consent to Milk Check Deduction and Assignment
2. Read all of the documents carefully.
3. Sign all three of the documents. The Participation Agreement and the Letter of Intent must be signed by both the Dairy Landowner and the Dairy Operator if these are not the same person.
4. Return all three of the signed documents, postmarked no later than December 27, 2010, to:

CVDRMP
915 L Street, C-431
Sacramento, CA 95814

LINKS:

[Invitation letter](#) (Your invitation to join the CVDRMP, from the Chairman of the CVDRMP Board of Directors)

[Fact Sheet](#) (Includes "frequently asked questions" about the program, additional helpful information, a schedule of free informational meetings and a phone bank of volunteers who can answer questions about the program)

[Participation Agreement](#) (One of three documents you must sign and return to CVDRMP to become a member of the program. Read it carefully!)

[Letter of Intent](#) (Another document you must sign and return to CVDRMP to become a member of the program. This letter will be delivered to the Regional Water Quality Control Board on your behalf when you are accepted into the program)

[Consent to Milk Check Deduction and Assignment](#) (This form must be signed and returned to CVDRMP; it is your payment form).

If you have any questions about this web page or require further assistance, e-mail us.

STILL HAVE QUESTIONS? GET ANSWERS HERE!

Here are three ways to get more information quickly and easily:

- Check out the 'frequently asked questions' below, or
- Attend one of the free informational meetings near you, or
- Call someone from the list of knowledgeable volunteers to learn more! (see reverse side)

FREQUENTLY ASKED QUESTIONS

HOW LONG DO I HAVE TO SIGN UP ?

Return your application postmarked no later than Dec. 27, 2010. Earlier is preferred to speed processing. While CVDRMP has tried to give dairy owners and operators adequate time to consider this opportunity, we encourage you not to wait until the last minute to make your decision. Should you decide to join, be sure to include your completed payment form (**Consent to Milk Check Deduction**), signed **Participation Agreement** and signed **Letter of Intent**.

WHAT IF I MISS THE DEADLINE OR WANT TO JOIN LATER?

Late applicants risk not being admitted to the program. If you are admitted late, the CVDRMP Board will charge a minimum \$1,000 penalty plus back dues to the beginning of the program.

AM I REQUIRED TO JOIN THIS PROGRAM?

This program is absolutely voluntary. It is intended to provide a lower cost alternative to the current regulatory requirement that all Central Valley dairies install monitoring wells at their own costs (and also draw and analyze samples and submit reports on the results at their own costs). You are not required to pursue this alternative. However, if you choose not to participate in this program you will still need to install wells.

SO WHAT'S THE BENEFIT TO ME?

The major benefit for participants is significant cost savings and reduced record-keeping. Instead of installing your own monitoring wells (costs estimated to average about \$42,000 across the industry) and then pay hundreds or thousands of dollars per year for ongoing sampling and reporting, you will participate in a program that shares costs among participating dairymen.

(Continued on page 2)

WORKSHOP SCHEDULE

Kern County: Friday, November 12, 10-11 a.m. UC Cooperative Extension, 1031 S. Mt. Vernon Avenue, Bakersfield

Kings County: Monday, November 15, 10-11 a.m. Kings County Ag Center Multi Purpose Room, UC Cooperative Extension, 680 Campus Drive, Hanford

Tulare County (two meetings):
Monday, November 15, 1:30 p.m.
Tuesday, November 16, 1:30 p.m.
Tulare County Ag Center auditorium, 4437 S. Laspina, Tulare

San Joaquin County: Wednesday, November 17, 10 a.m., Robert J. Cabral Ag Center Conference Room, 2101 E. Earhart Ave., Stockton

Stanislaus County (two meetings):
Wednesday, November 17, 1:30 p.m., Stanislaus Building, Room "H", Stanislaus County Ag Center, 3800 Cornucopia Way, Modesto

Thursday, November 18, 10 a.m., Harvest Hall, Room ABC, Stanislaus County Ag Center, 3800 Cornucopia Way, Modesto

Fresno County (two meetings):
Thursday, November 18, 1:30 p.m.
Tuesday, November 23, 1:30 p.m.
Conference Room, Fresno County Farm Bureau, 1274 W. Hedges Ave., Fresno

Sacramento County: Friday, November 19, 10 a.m., Conference Room, Sacramento County Farm Bureau, 8970 Elk Grove Blvd., Elk Grove

Glenn County: Monday, November 22, 10 a.m., UC Cooperative Extension Office, 821 E. South Street, Orland

Merced County: Tuesday, November 23, 10 a.m., Merced County Farm Bureau, 646 S. State Highway 59, Merced

District 3, Kern/Kings/Fresno (counties)

Rodney Kamper 559-260-9712

Stephen Brown 559-867-0614

District 4 (Stanislaus County):

Justin Gioletti 209-602-9110

Tony Ott 209-480-3042

District 5 (all other Central Valley counties)

Arlan Van Leeuwen 916-600-1488

California Dairy Campaign:

Kevin Abernathy 209-678-0666

California Dairies Inc.:

Eric Erba 559-625-2200 ext. 114

Hilmar Cheese Company:

Ana Dyrland 209-656-1148

McKenzie Klein 209-656-2804

Land O' Lakes:

Larry Serpa 559-799-0729

Milk Producers Council:

Betsy Hunter 661-205-6721

Western United Dairymen:

Tessa Curti Hall, 559-679-2976, Paul Sousa 209-527-6453,

Jake Oosterman 209-535-1929, Leslie Corp 530-354-4981,

Jimmy Griffin 661-487-9195, Dennis Miguel 209-262-5340,

Paul Martin 707-763-8874

(Continued from page 1)

DOES MEMBERSHIP IN THIS PROGRAM GUARANTEE I WILL NEVER BE ORDERED TO INSTALL WELLS?

No. Your membership is intended to meet the current requirement that all dairies install wells. The Regional Water Quality Control Board retains authority now and in the future to require that any dairy install monitoring wells. In other words, membership in the Central Valley Dairy Representative Monitoring Program (CVDRMP) removes the automatic requirement to install wells, but the Regional Board could still order well installation on a case-by-case basis if the Regional Board deems it is necessary to do so. For example, a dairy in an especially sensitive groundwater area, or a dairy with regulatory violations, might be ordered to install wells even after it has joined the CVDRMP. Any dairies that receive individual orders to install wells after joining CVDRMP would be allowed to exit the program and would not be responsible for further dues.

HOW WILL I KNOW IF I'M ACCEPTED?

CVDRMP will notify you by e-mail as soon as your application is accepted (if you have no email we will contact you via regular mail, however this may take longer). Incomplete applications may not be accepted and we will notify you if your application is incomplete. If you have not been notified of your acceptance within three weeks of your application, you can check

your status online at www.dairycares.com/CVDRMP/

DOES THE PROGRAM ACCEPT CHECKS AS PAYMENT?

Checks are discouraged; please use the Consent to Milk Check Deduction form in your packet. If you are not currently milking cows, but wish to join the program you may enclose your initial payment of \$500 with your application. Those choosing to pay by check will be invoiced for dues quarterly and will be charged a fee of \$5.00 per invoice.

CAN I STOP SAMPLING MY WELLS ONCE I'VE JOINED?

No. All dairies under the General Order (Waste Discharge Requirements for Existing Milk Cow Dairies) must continue to sample production wells (irrigation and domestic supply wells). You must also comply with all other requirements of the General Order. The CVDRMP only covers the portion of the order related to installing monitoring wells.

WHAT IF I QUIT CVDRMP OR STOP PAYING MY DUES?

You can quit the program any time with written notice (see your Participation Agreement). Your membership in the CVDRMP will be revoked if you stop paying dues. If you leave the program, you will be required by the Regional Water Quality Control Board (Central Valley Region) to comply with the monitoring well requirement. If you quit the program without properly notifying the Regional Board or without complying with the monitoring requirement as described in the General Order, you may face enforcement action (see your Letter of Intent).

May 29, 2012

To: Douglas K. Patteson

dpatteson@waterboards.ca.gov

Dale Essary

dessary@waterboards.ca.gov

Central Valley Regional Water Quality Control Board

1685 E. Street

Fresno, CA 93706

Re: Jim and Amelia Sweeney, dba Sweeney Dairy

30712 Road 170

Visalia, CA 93292

Dear Mr. Patteson and Essary:

This letter responds to your May 23, 2012 letter. We have carefully read Water Code section 13267 and page MRP-16 of the 2007 Order. We have concluded that they require you to evaluate each dairy individually and on a dairy-by-dairy basis, and that before you can order a dairy to implement a monitoring well program, you must cite specific evidence about that dairy that leads you to conclude that a need for such a program exists.

We stand by what we said in our January 17 letter: Despite your claims to the contrary, you have still not provided us with specific facts about our individual dairy that would justify ordering us to install monitoring wells. You have failed to cite one shred of evidence suggesting that our individual dairy facility is contaminating the underground water or that it is in danger of doing so.

On more than one occasion we have called to your attention our irrigation and domestic well test results from 2003 through 2010, in which they show nitrate- nitrogen results ranging from .2 to 3.4 mg/L, all phenomenally low levels.

Nevertheless, your May 23 letter rejects these well test results on grounds that they "do not necessarily reflect conditions in shallower zones." Your statement is outrageous. Do we need to remind you that for years you and your agency demanded that that we test our irrigation and domestic supply wells and that we send the results to you? Indeed, page MRP-7 of your 2007 Order orders dairies to "sample each domestic and agricultural supply well," and that laboratory analyses for nitrate-nitrogen must be submitted to you annually. I believe that provision remains

unamended or repealed. And you now tell us that testing these wells has no value. Would you like to reimburse us for the costs we had to incur as a result of your demand for information that you now say is not meaningful?

What is even more ludicrous is that you now say that we can meet our monitoring well requirements by joining an approved representative monitoring program whereby you would accept test results from monitoring wells that are perhaps miles away from our dairy. The fact that you would accept these as meaningful, while rejecting the well tests that you have ordered us to do on our own dairy site represents absurdity of the highest degree.

The cost of monitoring well programs, both installation and reporting costs, are for the most part the same for large dairies as they are for small dairies. This means that the costs, on a per cow basis, are dramatically higher for small dairies, and contribute to small dairies being at a competitive disadvantage. Section 13241 of the Water Code requires the Regional Boards to take into account "economic considerations" in connection with its water quality objectives.

The North Coast Regional Board and the San Francisco Bay Regional Board have recognized that fact and incorporated special performance and reporting relief for dairies under 700 cows (R1-2012-003, R2-2003-0094, respectively). California DHIA data shows that DHIA dairies in the San Joaquin Valley that are of our size or smaller represent less than 1/10 of 1% (.09%) of all DHIA cows in the San Joaquin Valley. Yet, the Central Valley Regional Board refused to make any special provisions for or grant any relief to smaller dairies in its 2007 Order. This refusal by the Regional Board has put small dairies in the Central Valley region not only at a competitive disadvantage with larger dairies in the Central Valley, but it puts them at a competitive disadvantage with small dairies in the North Coast and San Francisco Bay regions.

In conclusion, we have concluded that your positions and persistence in this matter conflict with the applicable law and defy all sense. They are also abusive and capricious. Somehow, your agency and its staff need to be held accountable for this.

Sincerely,

Jim Sweeney

From: J.P. Cativiela <jpc@dolphingroup.org>
To: japlus3 <japlus3@aol.com>
Cc: Laura Kistner <laurak@dolphingroup.org>
Subject: RE: Sweeney Dairy
Date: Tue, May 29, 2012 10:39 am
Attachments: 4.Letterof_Intent.pdf (35K), 5.CVDRMP.Deduction.assignment.REVISED.12.13.11.pdf (28K), 3.Participation_Agmnt.pdf (182K)

Dear Mr. Sweeney:

To join the Central Valley Dairy Representative Dairy Monitoring Program (CVDRMP), please submit a completed participation agreement and letter of intent (attached and also available at www.dairycares.com/CVDRMP)

Both of these documents need to be signed by the landowner and dairy operator if they are not the same person. A check for \$2,472 must be enclosed with the application. This covers the \$1,500 application fee and \$81/month dues from July 1, 2011 to June 30, 2012 (the deadline for joining the program was January 2011, and all late joiners are required to pay dues back to the first month of collection).

Both the Participation Agreement and Letter of Intent and payment should be mailed to:

CVDRMP
915 L Street C-438
Sacramento, CA 95814

Once your application is complete, we will notify the Central Valley Regional Water Quality Control Board that you are a CVDRMP member. To continue as a member you agree to pay monthly fees of \$81 after July 1, 2012. You have the option to be invoiced for these quarterly or to pay by Milk Check Deduction if your creamery participates in that. CDI, DFA and LOL all participate – if you ship milk elsewhere and want to check if they participate, let me know.

I strongly advise you to act promptly as the CVDRMP Board has raised the application fee as of July 1, 2012 to \$6,500.

-J.P. Cativiela
For CVDRMP
(916) 441-3318

From: dairycares@aol.com [mailto:dairycares@aol.com]
Sent: Tuesday, May 29, 2012 10:23 AM
To: jpc@dolphingroup.org
Subject: Fwd: Sweeney Dairy

-----Original Message-----

From: Japlus3 <japlus3@aol.com>
To: dairycares <dairycares@aol.com>
Sent: Mon, May 28, 2012 4:13 pm
Subject: Sweeney Dairy

Please forward this to JP. I need a response ASAP as we need to satisfy the CVRWQCB.
Thanks,
Jim

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2171 / Virus Database: 2425/5030 - Release Date: 05/29/12