

BERETTA DAIRY NUTRIENT OFFSET PROPOSAL – RESPONSE TO PUBLIC COMMENTS

Significant public comment was received regarding a proposal from the City of Santa Rosa to install Best Management Practices (BMPs) at the Beretta Dairy in Santa Rosa (Project). The following is the North Coast Regional Water Quality Control Board (Regional Water Board) staff response to significant comments, which were focused on the following issues:

- 1. COMMENT TOPIC: BMPs proposed for the Beretta Dairy are required under other state or regional permits or regulations and should have been employed long ago. Accordingly, these actions, now, are not eligible for offset credit for the City's nutrient discharge.**

Comment: *One commenter noted that the requirements in title 27, sections 22560-22565 of California Code of Regulations are minimum standards required of all dairy operations in California.*

Response: The standards enumerated in title 27 refer to confined areas, "manured" areas, detention ponds, and disposal/use fields. Regional Water Board staff has determined that the first three are components of the production area, as defined in Regional Water Board Order No. R1-2012-0003 (Conditional Waiver of Waste Discharge Requirements (WDRs) for Existing Cow Dairies, or Conditional Dairy Waiver) and Order No. R1-2012-0002 (General Waste Discharge Requirements for Existing Cow Dairies in the North Coast Region, or General Dairy WDR), and discharges from these areas are prohibited under the Conditional Dairy Waiver and General Dairy WDR. Accordingly, projects related to preventing discharges from defined production areas are not eligible for nutrient offset credits under the Conditional Dairy Waiver and General Dairy WDR. The "Disposal/Use Fields" are for dairy wastewater disposal through irrigation and must meet, in accordance with section 22563, requirements for soil application rate and runoff/percolation control. Areas irrigated with manure-enhanced water for the purpose of fertilization then must comply with title 27 requirements by preventing runoff from wastewater applications. Although the proposed BMPs may help prevent wastewater irrigation runoff, the City is not seeking offset credits for manure from irrigation water or manure that is land-applied as fertilizer.

Comment: *Commenters have indicated that they believe that the Project is not eligible for offset credits under the Nutrient Offset Program because the proposed projects are already required under the Conditional Waiver and/or General WDR.*

Response: Regional Water Board staff reviewed the Beretta Dairy Offset Proposal to assess the eligibility of the three proposed BMPs for offset credits under the City's Nutrient Offset Program. In consultation with US EPA, Regional Board staff determined that BMP No. 2 and BMP No. 3 of the Beretta proposal were eligible because the BMPs targeted potential nonpoint source pollution from nonproduction areas (high-use pasture). BMP No. 1 did not originally appear eligible as it was initially proposed, because the City appeared to seek nutrient offset credits for removing the threat of discharge of manure from a manure stacking area by constructing a concrete stacking pad and relocating the manure stacking area to another area of the dairy. The City submitted supplemental information that clarified that, although BMP No. 1 includes the construction of a new manure stacking pad in another site within the dairy, the City is only seeking nutrient reduction credit under BMP No. 1 for repurposing the existing manure stacking area as pasture. The City is not seeking credit in any way for the

removal or relocation of the manure to another location at the dairy, but is only seeking credit for sediment-attached nutrients that would be prevented from potentially entering surface water by converting the existing manure stacking area from a nonvegetated area to pasture. Consequently, Regional Water Board staff determined that BMP No. 1 is also eligible for offset credits under conditions of the Nutrient Offset Program.

The Beretta Dairy Offset Proposal satisfies requirements of the Nutrient Offset Program because the proposed BMPs are not required under terms of the Conditional Dairy Waiver. As determined by a third party assessment (EPA contractor, Voluntary Assessment Report for the Beretta Dairy), the proposed BMPs are recommendations that are over and above what is required for the Beretta Dairy to comply with the Conditional Dairy Waiver.

2. COMMENT TOPIC: If manure is discharging, the Regional Water Board should take enforcement action.

Comment: One commenter suggested that to obtain credit for preventing a discharge of manure means that a discharge is occurring and the Regional Water Board has an obligation to take enforcement action to correct the violations.

Response: The Regional Water Board has used its regulatory discretion to bring dairies into compliance with state and federal regulations and the Basin Plan through the recently adopted Conditional Dairy Waiver, GWDR, and associated NPDES permit. While these permits take major strides in controlling the discharge of pollutants from dairy operations, in accordance with federal and state laws and regulations, some nonpoint source discharge of pollutants may still occur even though individual dairies are in full compliance with the dairy regulatory program. Additional efforts to control nutrients from nonpoint sources will be undertaken to address these nonpoint sources, including through implementation of the nutrient Total Maximum Dairy Load (TMDL) for the Laguna de Santa Rosa, which is currently under development. The City's Nutrient Offset Program is important tool for identifying potential sources of nutrient discharges and prevent or reduce the potential for these sources to contribute to NPS pollution and impairment of the Laguna de Santa Rosa. Through these programs, the Regional Water Board anticipates to see measurable water quality improvement in the coming years.

3. COMMENT TOPIC: Projects other than dairy projects should be considered and given higher priority.

Comment: Some commenters have suggested that nutrient offset projects other than dairies are a more efficient use of scarce resources and actions are needed to address these pollutant sources in the Laguna. Commenters cite potential projects such as more effective storm water control, stream restoration, and Ludwigia removal, where the projects are not already required by state or federal permits.

Response: Regional Water Board staff acknowledges that the types of projects cited by commenters are options the City should consider as potential nutrient offset projects and Regional Water Board staff would certainly support approval of these projects if they are

proposed and where they are eligible for offset credits. That said, the Nutrient Offset Program does not favor one type of offset project over another; it only requires that the project is eligible under the conditions of the Offset Program. In addition, during development and Board adoption of the Offset Program, it was anticipated that some offset projects proposed by the City might include projects to prevent or reduce nonpoint source discharges from dairy operations.

4. COMMENT TOPIC: The Regional Water Board and/or the City of Santa Rosa have not adequately complied with the requirements of California Environmental Quality Act (CEQA) for this proposal.

Response: The City certified the Discharge Compliance Project Environmental Impact Report (DCP EIR) on October 8, 2008. The DCP EIR is a program-level EIR that evaluated activities related to street sweeping, manure management, and agricultural land management projects. The installation of BMPs to control nonpoint source discharges at the Beretta Dairy is within the scope of activities considered in the EIR. The DCP EIR evaluated the potential impacts from nutrient offset projects and found that the impacts from nutrient offset projects would be less than significant and no mitigations were required because the nutrient offset project, if effective, would reduce the nutrient loads from the Laguna Subregional Water Reclamation System to no net increase. In addition, given the nature of these offset projects, which are designed to be beneficial to water quality, it is expected that an offset project would be a net benefit to water quality, and ultimately, the environment.

The Regional Water Board has reviewed the City's DCP EIR and intends to rely on the DCP EIR and make a determination that there are no potentially significant impacts associated with the Project.

Comment: *Commenters have objected to a provision of the Nutrient Offset Program that grants automatic approval of offset projects 60 days after submission of a project if the Regional Water Board Executive Officer fails to approve or deny the project. Commenters claim that automatic project approval does not provide adequate time for Regional Water Board staff and public review and comment and circumvents the CEQA review process and, further, that any approvals given should be subjected to annual review with the requirement to be re-approved each year.*

Response: This provision was included in the Nutrient Offset Program to balance the public's ability to participate in the Regional Board's consideration of offset proposals with the City's right to know, in a timely manner, whether they could rely on various proposals for compliance with their permit. While the Regional Board understands that this provision does create a somewhat aggressive timeline for consideration of and action on offset proposals, in this instance, the public was provided adequate time and opportunity to comment on this particular proposal. Additionally, the requirement to reconsider approvals on an annual basis will create too much uncertainty in the process, and would not be an appropriate use of scarce agency resources. That said, Regional Board staff will monitor the implementation of all offset programs to determine if the goals of the various proposals are properly met.

Comment: *Please explain how approval of the Beretta Dairy Offset project is in compliance with the Resolution language on CEQA that says CEQA shall apply at the offset project level - not at the point of the Resolution allowing for such offsets.*

Response: Please see the response regarding CEQA compliance above. Consistent with state law, the Regional Board intends to rely on a program-level EIR that adequately evaluated potential environmental impacts associated with activities such as the ones included in the Project. Accordingly, we have fully complied with the Resolution language.

5. COMMENT TOPIC: Other Significant Issues

Comment: *One commenter requested a description of the process and methodology for verifying total nitrogen and total phosphorus reductions.*

Response: The offset credits were developed by the City's consultant, Keiser and Associates, using a nutrient offset tool known as the Pennsylvania Credit Calculator, which was modified for use for the Beretta Dairy Project. This offset calculating tool is well established in the Midwest and accepted there by the pertinent regulatory agencies. Keiser and Associates explained the crediting methodology in detail to Regional Water Board staff, and staff concluded that the assumptions were conservative and reasonable and determined that the final credit proposals were acceptable (provided the project components were eligible for offset credits).

Comment: *Some commenters noted that the Laguna Nutrient TMDL is underway and therefore, implementation of City's Nutrient Offset Program should wait until TMDL implementation for consistency.*

Response: The City's Nutrient Offset Program was designed to bridge the gap between the November 2011 compliance date for final effluent limitations for total nitrogen and total phosphorus and the date upon which final limits will be established based on the TMDL implementation plan. Regional Water Board staff anticipates that a watershed-wide Nutrient Trading Program will be developed as part of the implementation plan for the Laguna. However, there is no reason that the programs couldn't be made complementary or consistent in the future.

Comment: *One commenter noted that the City of Santa Rosa's NPDES permit contains a "zero, or no net loading" discharge limitation for which the City seeks relief. Because the City's discharge has the potential to add nitrogen and phosphorus to the Laguna de Santa Rosa, additional loading should be controlled under federal and state anti-degradation requirements.*

Response: The nutrient trading approach is consistent with the US EPA's Water Quality Trading Policy, which was established to encourage states, interstate agencies and tribes to develop and implement water quality trading programs for nutrients, sediments and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. The federal policy is intended to encourage voluntary trading programs that facilitate implementation of TMDLs, reduce the costs of compliance with Clean

Water Act regulations, establish incentives for voluntary reductions and promote watershed-based initiatives. In addition to serving as a means to comply with effluent limitations in the City's NPDES permit, the Nutrient Offset Program is an early TMDL implementation action for the Laguna TMDL for nitrogen and phosphorus undertaken by the Regional Water Board and the City of Santa Rosa.

Because the permit specifies nutrient offset programs as a means to comply with the no net loading effluent limitations, and the permit complies with all federal and state anti-degradation requirements, this comment is misplaced.