



VIA EMAIL TO acregan@waterboards.ca.gov
(Attachment A Delivered Separately via Disc)

September 9, 2013

Alan Cregan
Central Valley Regional Water Quality Control Board
1685 "E" Street
Fresno, CA 93706

Re: Reissuance of Waste Discharge Requirements General Order for Existing Milk Cow
Dairies – Support

Dear Mr. Cregan:

On behalf of Dairy Cares, thank you for the opportunity to submit the following comments regarding the Tentative General Waste Discharge Requirements for Existing Milk Cow Dairies (Tentative Order).

Dairy Cares is a coalition of California's dairy producer and processor organizations, including the state's largest producer trade associations (Western United Dairymen, California Dairy Campaign, Milk Producers Council and California Farm Bureau Federation) and the largest milk processing companies and cooperatives (including California Dairies, Inc., Dairy Farmers of America-Western Area Council, Hilmar Cheese Company, and Land O'Lakes, Inc.). Formed in 2001, Dairy Cares is dedicated to promoting the long-term sustainability of California dairies.

Dairy Cares supports the Central Valley Regional Water Quality Control Board's (Regional Board) adoption of the Tentative Order, although this letter contains suggested revisions in language for portions of the Proposed Order, mainly for the purpose of clarification.

SUMMARY OF COMMENTS

Dairy Cares' comments within this letter are summarized as follows:

- I. Since the original adoption of the dairy order in 2007, Central Valley dairies have implemented many measures to protect and improve surface and groundwater quality, investing millions of dollars in doing so.
- II. The Tentative Order complies with the Superior Court of Sacramento County's Writ of Mandate issued in *AGUA v. Regional Board* and specifically the State Water Resources Control Board's Resolution 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California."
- III. The Tentative Order appropriately identifies representative groundwater monitoring programs and individual groundwater monitoring programs as critical pathways for identifying a) whether management practices are protective of groundwater quality and b) identifying additional or more effective practices where needed.
- IV. The Tentative Order recognizes that time is needed to properly collect and evaluate monitoring data, to assess the effectiveness of existing practices in terms of their ability to protect water quality, and to identify new, improved or additional practices where needed. The Tentative Order allows for time necessary to perform these tasks but on a schedule that is as short as practicable.

With this comment letter, Dairy Cares also submits two attachments: Attachment A is a compact disc that includes significant technical information, and is being submitted under separate cover by Somach Simmons & Dunn to the Rancho Cordova office; and, Attachment B, which is attached hereto and is being submitted electronically along with this comment letter. The contents of the two attachments is further summarized here as follows:

Attachment A: Attachment A includes technical information that explains and supports the efficacy of the representative monitoring program, including pre-launch assessments, approved work plans for well installations, data analysis and practices assessment, well installation reports, reports of water quality data and analysis, and assessments of representativeness. Attachment A contains the following reports:

- Luhdorff and Scalmanini, Consulting Engineers. **2010.** *Report of Results – Delineation of an Area for the Design and Initiation of a Representative Groundwater Monitoring Network for Existing Milk Cow Dairies, Central Valley, CA.* August 31, 2010.
- Luhdorff and Scalmanini, Consulting Engineers. **2012.** *Monitoring and Reporting Workplan and Monitoring Well Installation and Sampling Plan Phase 1: Initiation of Representative Groundwater Monitoring Network Design & Monitoring Program, Existing Milk Cow Dairies – Stanislaus and Merced Counties, California.* Public Review Draft. June 16, 2011. Finalized without changes January 11, 2012.
- Luhdorff and Scalmanini, Consulting Engineers. **2012.** *Monitoring Well Installation Completion Report Phase 1 Representative Monitoring Program, Existing Milk Cow Dairies – Stanislaus and Merced Counties, California.* February 10, 2012.
- Luhdorff and Scalmanini, Consulting Engineers. **2012.** *Monitoring and Reporting Workplan and Monitoring Well Installation and Sampling Plan, Phase 2: Representative Groundwater Monitoring Network Design & Monitoring Program, Existing Milk Cow*

Dairies – Central Valley, California. Public Review Draft. June 6, 2012. Finalized without changes June 28, 2013.

- Luhdorff and Scalmanini, Consulting Engineers. **2012.** *Addendum Monitoring and Reporting Workplan and Monitoring Well Installation and Sampling Plan, Phase 2: Representative Groundwater Monitoring Network Design & Monitoring Program, Existing Milk Cow Dairies – Central Valley, California.* August 8, 2012.
- Luhdorff and Scalmanini, Consulting Engineers. **2013.** *Central Valley Dairy Representative Monitoring Program Year 1 Annual Report (2012), Phase 1.* April 1, 2013.
- Luhdorff and Scalmanini, Consulting Engineers. **2013.** *Central Valley Dairy Representative Monitoring Program – Evaluation of Representativeness.* May 15, 2013.

All reports included in Attachment A were previously submitted to the Regional Board. However, to ensure that all of the documents identified are part of the administrative record for adoption of the Tentative Order, Dairy Cares resubmits such documents here and at this time.

Attachment B: Attachment B is attached to this comment letter and includes specific comments and proposed clarifications with respect to the Tentative Order and the Tentative Information Sheet, Waste Discharge Requirements General Order for Existing Milk Cow Dairies (Tentative Information Sheet).

DETAILED COMMENTS

I. Central Valley Dairies Have Implemented Many Measures to Protect and Improve Surface and Groundwater Quality, Investing Millions of Dollars in Doing So.

It is essential to recognize that consideration of the Tentative Order occurs in the context of an ongoing, costly and robust regulatory program for Central Valley dairies. Originally adopted in May 2007, R5-2007-0035 “Waste Discharge Requirements General Order for Existing Milk Cow Dairies” (hereafter referred to as “R5-2007-0035” or “Dairy Order”) is widely recognized as the nation’s most comprehensive water quality regulatory program for dairy farms. The 128-page Dairy Order contains requirements for dairy operators that are so complex and extensive that its adoption necessitated the largest outreach and education effort in the history of the California dairy industry via the California Dairy Quality Assurance Program (CDQAP). More than 111 separate classes were held around the valley for more than 1,400 dairy owners and operators and an emerging network of dairy environmental compliance professionals. CDQAP – funded entirely by the dairy industry – created more than 100 educational tools (templates, report forms, instructional documents and videos, etc.) to assist dairy families and their compliance teams in understanding and implementing the Dairy Order.

The Dairy Order’s extensive requirements included preparation of an Engineered Waste Management Plan (WMP), a Nutrient Management Plan prepared by a certified professional, and extensive collection, testing, analysis and recording of environmental data, including soil, water, manure and plant tissue sampling. All dairies are required to monitor their existing supply wells. In addition, installation of monitoring wells is required, or alternatively, dairies may participate

in a Representative Monitoring Program (RMP). Preparation and submittal of annual monitoring reports to the Regional Board, and extensive record-keeping, are required; such records are subject to inspection during visits by Regional Board field inspectors.

Dairy Cares believes and asserts that these requirements have already resulted in substantial reduction in impacts to water quality and improved water quality protection. The requirements as adopted in 2007 were based on substantial evidence and expert guidance, including the University of California's Committee of Experts on Dairy Manure Management, technical standards developed by the U.S. Department of Agriculture-Natural Resources Conservation Service, and other reliable information and expert sources. The Dairy Order required more careful measurement of fertilizer and manure applications, accounting for nutrient application and harvested nutrient uptake, and established nutrient uptake performance standards. The Dairy Order also established standards for waste containment, storage and management intended to prevent uncontrolled discharges of waste from production areas and croplands, and excessive seepage to groundwater aquifers. It is not yet possible to quantify the total reduction in water quality impacts, or accurately measure water quality improvements as a result of implementation of these regulations. However, as described above, because of the reliable expert guidance used to develop the Dairy Order and its included process of verification that required practices have been implemented, it is reasonable to conclude that water quality improvements are in fact occurring.

To accomplish such improvements and to comply with the Dairy Order, costs have been (and continue to be) significant and burdensome to an economically challenged industry. To estimate such compliance costs, Dairy Cares surveyed compliance professionals, dairy farmers and other experts in 2013, and such costs vary from dairy to dairy depending on size and other factors. Based on this survey information and other information, Dairy Cares estimates that since adoption of the Dairy Order in 2007, the dairy industry as a whole has realized between \$120 million and \$239 million in compliance costs, with costs for individual dairies ranging between \$15,200 and \$29,159 per year. These costs have come at a time when many dairies have been economically devastated by rising business costs, including but not limited to rising energy and feed costs and regulatory compliance. More than 411 of the state's dairies ceased operating between the end of 2006 and the end of 2012, according to the California Department of Food and Agriculture. Interviews by Dairy Cares representatives with dairy operators, bankruptcy attorneys, dairy associations and livestock auction professionals suggest that this trend is continuing in 2013 and dozens more dairies have recently gone out of business.

Despite these significant costs and challenges, the Regional Board staff report that compliance rates among dairy operators have exceeded 95 percent. This suggests that a large majority of dairies understand the importance of compliance and that the extensive efforts of dairy organizations to assist dairies with compliance have been largely successful.

II. The Tentative Order Complies with the Superior Court's Writ of Mandate

Dairy Cares fully understands that the Regional Board is making the revisions contained in the Tentative Order to comply with the Writ of Mandate issued by the Honorable Timothy M.

Frawley on April 17, 2013. Specifically, the Writ of Mandate requires the Regional Board to revise the Tentative Order,

“...after application of, and compliance with, the State’s anti-degradation policy (Resolution No. 68-16), as interpreted by the Court of Appeal in its opinion, including without limitation, adequate findings that any allowed discharges to high quality water:

- a. Will be consistent with maximum benefit to the people of the State;
- b. Will not unreasonably affect present and anticipated beneficial use of the affected waters;
- c. Will not result in water quality less than that prescribed in applicable water quality objectives; and
- d. That waste-discharging activities will be required to use the best practicable treatment or control of the discharge necessary to assure that:
 - i. A pollution or nuisance will not occur, and
 - ii. The highest water quality consistent with the maximum benefit to the people of the State will be maintained.¹”

Further, the Regional Board is required to file a Return on the Writ of Mandate within 180 days, “setting forth what they have done to comply.”² For the reasons provided here, Dairy Cares believes that the Tentative Order issued on August 9, 2013, complies with the Writ of Mandate. Further, if the Regional Board adopts the Tentative Order at its scheduled October 3-4, 2013 public hearing, then the Regional Board will meet the 180 days specified in the Writ of Mandate.

As a preliminary matter, it is important to note that the Regional Board is required to make findings consistent with the Resolution 68-16 when the Board’s action will authorize degradation to high quality waters.³ When waters are not considered high quality (which is a constituent-by-constituent determination), the Regional Board must set limitations no higher than the objectives set forth in the Basin Plan.⁴ In both cases, the Regional Board retains discretion in adoption of waste discharge requirements to include a time schedule for compliance with the requirements therein.⁵ Thus, the Regional Board’s findings with respect to compliance with Resolution No. 68-16 and/or establishment of limitations no higher than Basin Plan objectives may incorporate time schedules contained in the Tentative Order. The Tentative Order includes such relevant time schedules.

Taking the Writ of Mandate elements in order, the Tentative Order’s compliance with such elements is satisfied in the following manner.

A. Discharges to High Quality Waters Allowed By The Tentative Order Are Consistent with the Maximum Benefit to the People of the State

¹ See Writ of Mandate issued by Superior Court of the State of California In and For the County of Sacramento (signed April 17, 2013), Case No. 34-2008-00003604-CU-WM-GDS (Writ of Mandate), p. 2:4-17.

² Id. at p. 2:18-19.

³ See, e.g., *Asociacion De Gente Unida Por El Agua et al., v. Central Valley Regional Water Quality Control Board* 210 Cal.App.4th 1255, 1278.

⁴ State Water Board Order, No. WQ 81-5.

⁵ Wat. Code, § 13263(c).

The Tentative Order, and accompanying documents, clearly support a finding by the Regional Board that any discharges to high quality waters authorized are consistent with the maximum benefit to the people of the state. First, finding 35 of the Tentative Order summarizes the evidence in the record with respect to the important role that the Central Valley dairy industry provides to the nation, the state and the Central Valley. The Tentative Information Sheet further provides evidence and information relative to the role that the Central Valley dairy industry plays with respect to the economy and jobs in the Central Valley.⁶ Considering the need to maintain a safe and reliable milk supply in California and the United States, and the economic role the industry plays in the Central Valley and in the state, the Tentative Order's finding with respect to maximum benefit to the people of the state is supported by the evidence in the record.

B. Discharges Will Not Unreasonably Affect Present and Anticipated Beneficial Use of the Affected Waters, Except Where the Discharger is Under a Time Schedule to Rectify Issues That Are Causing Pollution or Nuisance

Finding 32 of the Tentative Order states that "this Order will assure that pollution or nuisance will not occur outside of the time schedule for improvements set by this Order."⁷ This finding is implemented through Prohibition A.4, which is an explicit prohibition against the creation of a condition of pollution or nuisance from the "collection, treatment, storage, discharge or disposal of wastes at an existing milk cow dairy..."; and through Provision F - Groundwater Limitations.⁸ With respect to Prohibition A.4, the term pollution is defined in the Water Code to mean, "an alteration of quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses. (B) Facilities which serve these beneficial uses."⁹ Further, the Groundwater Limitations provision specifically states that the discharge of waste shall not cause underlying groundwater to "unreasonably affect beneficial uses, or cause a condition of nuisance."¹⁰ All existing milk cow dairies subject to the Tentative Order must comply with the prohibition and the groundwater limitations, unless the discharger is following a time schedule to rectify such issues. As indicated previously, the Regional Board has the discretion to include time schedules for meeting requirements. Accordingly, the Tentative Order includes adequate permit provisions to support the finding that discharges authorized under the Tentative Order will not unreasonably affect present and anticipated beneficial uses, except where there is a time schedule for rectifying such an issue. With respect to monitoring to assure compliance with this provision, see the discussion in Part III below.

C. Discharges Will Not Result in Water Quality Less Than That Prescribed in Applicable Water Quality Objectives, Except Where Dischargers Are in Compliance With Requirements In The Monitoring and Reporting Program and The Time Schedule for Compliance

⁶ See Tentative Information Sheet, p. IS-19 - IS-20.

⁷ Tentative Order, p. 9.

⁸ Tentative Order, pp. 12, 22.

⁹ Wat. Code, § 13050(1)(1).

¹⁰ Tentative Order, p. 22.

Through its prohibitions, groundwater limitations and time schedule for compliance provisions, the Tentative Order includes appropriate findings and provisions to assure that discharges will not result in water quality less than that required by applicable water quality objectives, except in accordance with approved time schedules for meeting such applicable water quality objectives.¹¹ Specifically, for surface water, Prohibition A.3 states that “the discharge of waste from existing milk cow dairies to surface waters which causes or contributes to an exceedance of any applicable water quality objective in the Basin Plans or any applicable state or federal water quality criteria, or a violation of any applicable state or federal policies or regulations is prohibited.”¹² Further, Prohibitions A.7 through A.12 support the Regional Board’s findings that discharges to surface water will not result in water quality less than water quality objectives because such discharges are explicitly prohibited. To assure compliance with these prohibitions, dischargers subject to the Tentative Order are required to monitor any surface water discharge of manure and/or process wastewater, storm water, and tailwater.¹³ Thus, for surface water there are appropriate discharge prohibitions and monitoring to support the Tentative Order’s findings¹⁴.

For groundwater, the Tentative Order includes groundwater limitations and time schedule provisions to support findings¹⁵ that the order “will not result in water quality less than that prescribed in applicable water quality objectives;...”, except as allowed/authorized pursuant to the included compliance schedules. Provision F - Groundwater Limitations of the Tentative Order states “Discharge of waste at existing milk cow dairies shall not cause the underlying groundwater to exceed water quality objectives, unreasonably affect beneficial uses, or cause a condition of pollution or nuisance.”¹⁶ The footnote to this provision recognizes time schedules associated with meeting such requirements. Further, Provision M of the Tentative Order requires that the time schedules put forward in an individual summary report, or Summary Representative Monitoring Report (SRMR) must be as short as practicable and cannot exceed 10 years from the date that the SRMR is approved by the Regional Board’s executive officer.¹⁷ The individual summary report and the SRMR require the identification of management practices that need to be implemented.¹⁸ The identified management practices in these reports will be those that have been found to be protective of groundwater quality, and will not result in water quality less than that prescribed in applicable water quality objectives. Existing milk cow dairies will then need to implement the identified management practices according to the time schedule provided with the individual summary report or with the SRMR.

To assure compliance with these provisions, existing milk cow dairy facilities must either conduct individual groundwater monitoring at their individual facility,¹⁹ or participate in a

¹¹ Tentative Order, p. 8, 12, 22, and 28.

¹² Tentative Order, p. 12.

¹³ Revised Monitoring and Reporting Program No. R5-2007-0035 (Revised MRP), pp. MRP-4 - MRP-6.

¹⁴ See, e.g., Tentative Order, pp. 7-9.

¹⁵ See Tentative Order, pp. 7-9.

¹⁶ Tentative Order, p. 22.

¹⁷ Tentative Order, p. 28.

¹⁸ Revised MRP, Attachment A, pp. 20-21, 23-24.

¹⁹ Id., pp. 17-21.

representative monitoring program.²⁰ The monitoring prescribed in Attachment A to the Revised Monitoring and Reporting Program is specifically designed to identify those management practices that are protective of groundwater quality (i.e., will not result in discharges from the various facility components that are less than those prescribed in applicable water quality objectives).²¹

Accordingly, taking into consideration the time schedules provided, the Tentative Order includes appropriate findings and provisions to assure that discharges to high quality waters (and discharges to waters that are not high quality) will not result in water quality less than that prescribed in applicable water quality objectives.

D. The Tentative Order Requires Existing Milk Cow Dairies to Use Best Practicable Treatment or Control

Finding 30 of the Tentative Order, which is supported by many provisions and extensive discussion in the Tentative Information Sheet, provides the general description for what would be considered best practicable treatment or control (BPTC) for the specified areas of the dairy operation. Again, taking into consideration the time schedule provisions contained in the Tentative Order, implementation of the identified BPTC provisions will assure that pollution or nuisance will not occur.

With respect to existing ponds, which was a specific area of concern in the *AGUA* case, the Tentative Information Sheet includes significant discussion to explain why the Tentative Order's provisions for New and Reconstructed Ponds²² are not practicable for existing ponds. Specifically, the cost of retrofitting such ponds is not practicable considering the net loss in dairy operations over the last five years. Because retrofitting ponds is not practicable, the Tentative Order and Tentative Information Sheet properly find that BPTC for existing ponds consists of an iterative process of evaluation that includes either individual groundwater monitoring, or participation in the representative monitoring program. From the data and information obtained in the monitoring summary reports, and where the data indicate that an existing pond is resulting in degradation beyond the level authorized, facilities will be required to upgrade existing ponds in a manner and on a time schedule as identified in the summary reports that are approved by the Executive Officer. Thus, compliance with the monitoring and reporting provisions, and upgrading facilities as necessary on an approved time schedule, constitutes BPTC for existing ponds.

Accordingly, Dairy Cares believes that the Tentative Order, including its time schedule provisions, along with the Revised Monitoring and Reporting Program and Tentative Information Sheet collectively comply with the Writ of Mandate as issued by the court.

III. The Tentative Order Appropriately Identifies Representative (and Individual) Groundwater Monitoring Programs as Critical Pathways Toward Assessing

²⁰ Id., pp. 21-24.

²¹ Revised MRP, Attachment A, pp. 20-21, 21-24.

²² Tentative Order, pp. 16-18.

Protectiveness of Management Practices and Identifying Additional or More Effective Practices Where Needed.

As noted above, all management practices included in the Dairy Order, and most of the practices identified in the Tentative Order, are already in place and are being implemented by Central Valley dairies. These practices were developed by experts or on the basis of expert recommendations and as stated above, it is reasonable to conclude that implementation of the practices has resulted in reduced impacts to groundwater quality, and over time, that water quality will further improve as a result. However, the Regional Board recognized that monitoring the effectiveness of these practices was needed to verify that water quality was adequately protected under the variety of conditions that exist among Central Valley dairies. Accordingly, both the Dairy Order and the Tentative Order (specifically the Revised MRP Attachment A) require additional groundwater monitoring.

Further, it was recognized by the Regional Board at the time of the adoption of the Dairy Order that individual dairy monitoring presented significant economic and logistical challenges. Evidence and testimony provided during public hearings prior to the Dairy Order's May 2007 adoption suggested that the additional groundwater monitoring requirements might account for more than half of the overall compliance cost for the order, or put another way, additional groundwater monitoring doubles the costs of compliance if conducted on an individual dairy basis. As a result, the Regional Board, concurrent with adoption of the Dairy Order, unanimously passed a resolution authorizing and directing the Executive Officer to explore alternative approaches to satisfying the requirement for additional groundwater monitoring.

After a series of public workshops and after submittal of technical documents commissioned by Dairy Cares (see, e.g., Attachment A, Luhdorff and Scalmanini, Consulting Engineers. **2010. Report of Results – Delineation of an Area for the Design and Initiation of a Representative Groundwater Monitoring Network for Existing Milk Cow Dairies, Central Valley, CA.** August 31, 2010), the Regional Board concluded that “representative monitoring” – conducting additional groundwater monitoring on a representative subset of dairies to assess performance under a variety of conditions – was a viable concept. Representative monitoring reduces the economic impact of the monitoring requirement by reducing the number of intensively monitored dairies (though all dairies continue to conduct groundwater testing for existing supply wells). More importantly, representative monitoring increases the effectiveness of the monitoring and outcomes by allowing a larger, more comprehensive, consistent and strategic approach to data collection and analysis. This larger approach also facilitates use of a broader group of multi-disciplinary experts (i.e. professionals from academia, private industry, non-governmental organizations, and the public/government sector such as the U.S. Geological Survey, Lawrence Livermore National Laboratory, U.S. Department of Agriculture-Natural Resources Conservation Service and University of California) who volunteer time and effort to guide not just data collection and analysis but also to formulate recommendations related to where, when and under what conditions improved management may be needed – and what specific management practices are recommended. This type of comprehensive data collection and

analysis would be nearly impossible for an individual dairy of any size to conduct, as it requires resources and expertise that go far beyond what is available to most if not all dairies.

Appropriately, the Executive Officer under her delegated authority revised Attachment A to the MRP in February 2011 to state that monitoring could continue to be conducted on an individual dairy basis or through Representative Monitoring Programs (RMPs) (i.e., Revised MRP Attachment A). The proposed Revised MRP Attachment A was posted and noticed for public comment prior to the Executive Officer's approval. Once approved, the Revised MRP Attachment A was not challenged. The Revised MRP Attachment A is being maintained as revised in February 2011 and is not being revised as part of the Regional Board's consideration of the Tentative Order.

Under the terms of the Tentative Order and Revised MRP Attachment A, all dairies subject to the terms of the Dairy Order must either conduct their own groundwater monitoring or actively participate in a RMP. Currently, most dairies subject to the Tentative Order (more than 98 percent) are members of an RMP.

Both the individual groundwater monitoring provisions and the RMP monitoring requirements are designed to measure water quality data over time in first-encountered (i.e., shallow) groundwater. An RMP is further required to conduct such monitoring on a variety of dairy farms that represent the overall range of conditions of dairies within the Central Valley. This means for an RMP that a sufficient number of dairy facilities representing a variety of physical site conditions and management practices must be monitored, such as varying soil types and depth to groundwater. Varying management conditions that must be measured include different types of crops, irrigation methods, waste storage structures and animal housing. The rationale and technical justification for the Central Valley Dairy Representative Monitoring Program (an RMP approved under the provisions of Revised MRP Attachment A), as well as the representative monitoring program itself are further described in the documents contained in Attachment A.

IV. The Tentative Order Recognizes Time is Needed to Properly Collect and Evaluate Monitoring Data, Assess Effectiveness of Existing Practices to Protect Water Quality, and Identify New, Improved or Additional Practices Where Needed. The Tentative Order Allows for Time Necessary to Perform these Tasks but on a Schedule that is as Short as Practicable.

A single set of monitoring data, or even monitoring data over a short period of months or years, may not be sufficient to determine the effectiveness of existing practices. It is recognized that in many cases, because of time lags of weeks, months or even years between performance of management practices on the surface and resulting effects in groundwater, that the effects of improved management practices will not be reflected immediately in monitoring wells. Evaluating results over time, in conjunction with data regarding surface practices and other data is necessary to determine whether water quality is protected or is unreasonably impacted.

In cases where water quality is not being sufficiently protected, additional time is needed to identify additional practices for the various dairy facility areas; such practices must both improve

water quality protection and be feasible and practical for dairy operators to implement. This is a chief goal of the RMP process and work is actively underway, to be completed no later than 2019, to identify and verify additional practices where necessary to protect beneficial uses of groundwater and to comply with applicable water quality objectives. This process includes ongoing monitoring and analysis, field studies of management alternatives, and more intensive evaluation of existing practices, including existing manure storage ponds and nutrient management plans.

Accordingly, the Tentative Order provides dairies participating in an RMP (and those with individual monitoring) an appropriate amount of time to determine if existing management practices assure that discharges from dairy facilities comply with groundwater limitations, and if necessary, provides sufficient time for dairy facilities to alter such practices to comply with such limitations. The time being provided in the Tentative Order is consistent with the time frames established in the Revised MRP Attachment A. Considering the complexity and challenge of implementing all the requirements of the RMPs, Dairy Cares believes that the timelines in the Tentative Order meet the requirements of being “as short as practicable.” Additionally, Dairy Cares notes that the Tentative Order requires RMPs when submitting (per the Revised MRP Attachment A requirements) SRMRs to further establish and provide evidence that recommended improvements in management practices represent BPTC and will be implemented in a time frame that is “as short as practicable.”

Conclusion

For the reasons stated above and because regulatory clarity and certainty is important to a stable business climate, Dairy Cares supports adoption of the Tentative Order along with adoption of the suggested clarifications and revisions to language as identified in Attachment B. Though Central Valley dairy families and the dairy professional community have continued to implement the Dairy Order during the uncertainty brought on by court challenges, we look forward to resolution of this matter and establishing a more stable and certain understanding of the obligations of dairies going forward.

Once again, thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.P. Cativiela', with a stylized flourish at the end.

J.P. Cativiela
Program Coordinator

C: Charles “Chuck” Ahlem, Chairman, Dairy Cares
Michael Boccadoro, Executive Director, Dairy Cares
Theresa “Tess” Dunham, Somach, Simmons and Dunn

Gary Carlton, Kennedy/Jenks Consultants

Paul Sousa, Environmental Services Director, Western United Dairymen

Kevin Abernathy, Director of Regulatory Affairs, Milk Producers Council

Denise Mullinax, Associate Director, California Dairy Quality Assurance Program

Lynne McBride, Executive Director, California Dairy Campaign

ATTACHMENT B

Dairy Cares Comments Regarding Tentative Reissued Dairy General Order R5-2007-0035 and Tentative Information Sheet

Below are suggested clarifications and/or revisions to findings and provisions contained in the above-referenced Tentative Order, as well as suggested revisions and supplementary comments with respect to the Tentative Information Sheet. The suggested revisions are provided in the order in which they occur within the Tentative Order and Tentative Information Sheet.

Tentative Order Clarifications/Revisions

Finding 2 - The term “expanded” has special meaning within the context of the Tentative Order. Accordingly, we recommend that the following statement be added immediately after the term expanded, (“expansion” is defined in Attachment E)”.

Finding 15 - Since adoption of the Dairy Order, dairy operators have made significant changes and improvements to their facilities. Accordingly, this finding needs to be modified to recognize that much has been done already. We recommend that Finding 15 be revised as follows:

This Order as originally issued was intended to enhance requirements on existing milk cow dairies, and recognized that this would mean that many Dischargers would need to make improvements at their facilities to meet the requirements. Because this is a re-issued Order, it is recognized that some of the necessary improvements may already have occurred. Improvements may include recycling flush water, grading, establishing setbacks, installing flow meters, exporting manure, leasing or purchasing land, etc. The Discharger may be able to make some of these improvements relatively quickly while some improvements may require more time to implement. It is reasonable to allow Dischargers time to phase in elements of the required Waste Management Plan and Nutrient Management Plan in order to adequately design and construct major infrastructure changes needed to comply with all the requirements of this Order. This Order requires Dischargers to make any necessary interim facility modifications first in order to prevent discharges to surface water, improve storage capacity, and improve the facility’s nitrogen balance before completing any necessary infrastructure changes.

Finding 23 - The information presented in this finding is confusing. To provide clarification and better identify the data referenced in this finding, we recommend that the finding be modified as follows:

Groundwater monitoring shows that many dairies in the Region have impacted groundwater quality. A University of California study of five dairies in a high-risk groundwater area in the Region during the 1990s found elevated salts and nitrates beneath the production area, wastewater retention ponds and land application areas. Data included in the first annual monitoring report of the Central Valley Dairy Representative Monitoring Program (CVDRMP) reported that groundwater beneath dairies that have begun implementation of practices required by the 2007 General Order continue to have

elevated levels of salts and nitrates beneath the production area, wastewater retention ponds, and land application areas. Representative monitoring programs (RMPs) began monitoring only in 2012, and some provisions of the 2007 General Order were only fully implemented by 2012, therefore, monitoring results may not be fully reflective of the effectiveness of current practices. Prior to the issuance of the 2007 General Order, the Central Valley Water Board requested monitoring at 80 dairies with poor waste management practices in the Tulare Lake Basin. This monitoring has also shown groundwater impacts under many of the dairies, including where groundwater is as deep as 120 feet and in areas underlain by fine-grained sediments.

Finding 27 - This finding should be revised to include reference to the time schedules that are included in the Tentative Order. Specifically, we recommend that the following sentence be added to the end of this finding: “This Order includes time schedules for compliance for dairy operators to implement improvements if groundwater data indicate that certain types of facilities/practices are not protective of groundwater quality.”

Finding 29 - This finding references the time schedule contained in the Tentative Order as a “timeline.” To better characterize the provision in question, we recommend that the last sentence of finding 29 be modified as follows:

Where immediate compliance with water quality objectives cannot be achieved, this Order ~~specifies a timeline~~ includes a time schedule for compliance for the implementation ~~construction and~~ or modification of waste management practices.

Finding 30 b. - To better clarify the water quality objectives being referenced within this finding, it should be modified as follows:

Discharges to surface waters from the land application areas must not cause or contribute to an exceedance of any applicable water quality objective or federal water quality criteria.

Finding 30 c. - The term “timeline” should be replaced with the term “time schedule.”

Finding 30 d. - The finding with respect to New and Expanded Wastewater Retention Ponds reads awkwardly and should be modified as follows:

This Order establishes requirements for new and expanded wastewater retention ponds that are ~~must~~ more stringent than the requirements in Title 27 in order to provide groundwater protection. New and expanded wastewater retention ponds must meet a strict performance standard ~~and~~ that only allows for a very conservative pond design unless there has been a demonstration that an alternative design meets the ~~e~~ same strict performance standard.

General Specification B.5. - The term “exceed” should be “exceedance.”

Pond Specifications C.4, footnote 5 - The footnote is missing a reference to the appropriate Provision of the Order, which should be Provision C.5.

Pond Specifications C.4.a. - The term “timeline” should be replaced with the term “time schedule.”

Pond Specifications C.4.b. - The word “in” preceding reference to 1 April 2019 should be “on.”

Pond Specifications C.4.c. - The term “timeline” should be replaced with the term “time schedule.”

Production Area Specifications D.7 - This provision is specific to individuals conducting groundwater monitoring rather than those participating in a representative monitoring program. Accordingly, this provision should be modified to clearly state that it applies to Dischargers conducting individual monitoring. We recommend the following modification:

For Dischargers conducting individual groundwater monitoring, if monitoring data in the Summary Report indicate that the Dischargers’ Production Area may have discharges that violate Groundwater Limitation F.1 of this Order or that discharges may cause degradation to high quality waters, ...”

Production Area Specifications D.8 - The term “timeline” should be replaced with the term “time schedule.”

Groundwater Limitations F.1, footnote 6 - Footnote 6 does not reference the time schedule provision contained in the Tentative Order. To ensure that dairy operators are subject to the groundwater limitations in accordance with the time schedule provision, footnote 6 should be modified as follows:

These limitations are effective immediately except where Dischargers are in compliance with Provision M of this Order and the requirements of Sections II or III of the Revised Monitoring and Reporting Program R5-2007-0035-R, Attachment A, and such Dischargers are implementing management practices/activities on a ~~timeline~~ time schedule that is as short as practicable. For Dischargers participating in the RMP, the implementation of management practices/activities must be implemented on a ~~timeline~~ time schedule that is as short as practicable and that is consistent with any ~~timeline or~~ schedule included in the SRMR that is approved by the Executive Officer.

Required Reports and Notices 1.a – The requirement for an Annual Dairy Facility Assessment (ADFA) was removed when the MRP was revised in February of 2011, therefore the last sentence should be removed from this paragraph.

Required Reports and Notices 1.b - The reference to General Specifications B.5 may be incorrect. Rather it should be General Specifications B.1 - B.3.

Enforcement Paragraph, p. 29 - This paragraph incorrectly references Water Code section 13385 as an applicable provision. This Water Code section applies only to those subject to federal national pollutant discharge elimination system permits. Accordingly, reference to section 13385 should be deleted from this paragraph.

Tentative Information Sheet

Page IS-4 – Third full paragraph references the State Water Board’s Industrial Stormwater Permit. It should reference the Central Valley Region’s NPDES CAFO permit instead.

Page IS-11, Step 3 - With respect to determining baseline, the Regional Board needs to determine baseline from the date that the policy in question became effective, which may not be 1968. For example, if a water quality objective was adopted after 1968, and thus became effective after such date, that would be the starting date for determining baseline. It is incorrect to state that 1968 is the date from which baseline should be determined.

Page IS-11, Step 5 - With respect to the Regional Board’s determination and comparison of data, the Tentative Information Sheet implies that the Regional Board only looks at a Dischargers’ report of waste discharge to make such evaluations. We believe this to be an incorrect statement in that the Regional Board looks to other data as well, and in situations such as this where there is a General Order, there is likely to be much more other data that may be evaluated.

Page IS-14 - The reference to §662 appears to be incorrect because this provision applies only to milk parlors and not feed storage areas in general.

Page IS-18 - The use of the term “timeline” should be changed to “time schedule.”

Page IS-19, Step 7 (Applied): - The Tentative Information Sheet references “sensitive populations.” Sensitive populations are not a recognized beneficial use onto themselves. The beneficial use in question here is the municipal (i.e., MUN) beneficial use. Thus, rather than using an undefined term such as “sensitive populations” in the Tentative Information Sheet, we recommend that it be modified to refer to the municipal beneficial use.

Page IS-21 - At the top of the page, the Tentative Information Sheet states that groundwater monitoring at existing dairies is necessary for a number of different reasons. We believe that the Tentative Information Sheet intended to state that “Groundwater monitoring at existing dairies (either through individual monitoring or a representative monitoring program) is necessary to...”

Page IS-27 – The last sentence in the paragraph that starts “Production Area Specifications” has a place holder for a number that should be replaced by the number “10.”