



Egoscue Law Group

October 31, 2013

Patty Z. Kouyoumdjian  
Executive Officer  
Lahontan Regional Water Quality Control Board  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

**Re: N&M Dairy's Response To The Advisory Team's Request for Response to Comments Made on the Proposed Settlement Agreement and Stipulation For Entry of Order For the N&M Dairy and Neil and Mary de Vries**

Dear Ms. Kouyoumdjian:

Egoscue Law Group respectfully submits the following answers in response to Lahontan Regional Water Quality Control Board's request, on behalf of N&M Dairy.

1. **Question/Comment #1:** Proposed Settlement Agreement and Stipulation for Entry of Order (R6V-2013-0075) Finding 12(g) – what are the “recent administrative considerations” referred to as the reasons staff costs are not being recovered as part of this settlement.

**Response:**

The Prosecution Team most appropriately provides this answer.

2. **Question /Comment #2:** Who will be the holder of conservation easement? Section 815.3 of the Civil Code sets out entities that are authorized to acquire and hold conservation easements. Naming the holder of the easement is important because that entity will be the one able to enforce the conditions of the conservation easement.



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**Response:**

Pursuant to Civil Code section 815.3 only three types of entities can hold title of a conservation easement; a tax-exempt nonprofit organization, a state or local governmental entity, or a federally or State recognized Native American tribe. Specifically the tax-exempt nonprofit organization must be “qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.” (Civ. Code § 815.3(a).) The governmental entity may be the state or any city, county, city and county, district, or other state or local governmental entity, if the entity is otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. “No local governmental entity may condition the issuance of an entitlement for use on the applicant's granting of a conservation easement pursuant to this chapter.” (Civ. Code § 815.3(b).) “A federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.” (Civ. Code § 815.3(c).) Once the Settlement Agreement and Stipulation for Entry of Order is final, the conservation easement will be developed naming an authorized entity as described in Civil Code section 815.3.

3. **Question / Comment #3:** The SEP should provide an opportunity for the Executive Officer to approve the terms of the conservation easement before it is recorded. Please include this in Section 5 of the Schedule for Performance in Appendix B.

**Response:** The schedule for completing the SEP is extremely ambitious and we are concerned that Executive Officer approval may cause a delay, which could render our client in violation of the Stipulated Order. Therefore, we request a modification to the deadlines and schedule in the Stipulated Order, to more practically implement the Conservation Easement related tasks, and to address your comments.

- a. Conservation Easement Boundary Demarcation Proposal due at the end of Month 1 (Month 1 to be determined by Executive Officer approval of Stipulated Order).
- b. Conservation Easement Boundary Survey due by the end of Month 3.
- c. Completion of Conservation Easement Demarcation & Request for Executive Officer Pre-Recording Approval due by the end of Month 5.



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- d. Recording the Conservation Easement due within 60 calendar days of Executive Officer approval.
- e. Monthly Progress Reports start by end of Month 1.

Section III, Item 15 (SEP Milestones) and Exhibit C, Item 5 (Schedule of Performance) of the Settlement Order should be amended as appropriate to reflect any of these proposed revisions.

4. **Question / Comment #4:** Appendix B, section 3 states “the southern boundary of the conservation easement must be appropriately demarcated.” Please explain what is meant by “appropriately demarcated.”

**Response:** Details of the method for demarcation will be provided in the Conservation Easement Boundary Demarcation Proposal. The exact method of demarcation has yet to be determined; however, fencing is not considered appropriate or desirable. Certain features will remain within the conservation easement that must be accessed (i.e. numerous irrigation wells, electrical power infrastructure, etc.). Additionally the site is located in a high wind area, and fencing will catch debris and dead brush potentially impeding natural movement of animals in the area.

5. **Question / Comment #5:** What is the justification for the boundaries of the study area or affected area? It seems to be slightly expanded from the Revised Affected Area established in CAO 2011-0055A1. What information is relied upon to draw those boundaries and what assumptions, if any, were made in drawing those boundaries?

**Response:** The Regional Board set the boundaries of the Study Area and revised Study Area (expanded down-gradient).

6. **Question / Comment #6:** The Settlement Agreement requires replacement water in the future for those within the Affected Area, if their wells exceed limits for nitrate and TDS set in the Settlement Agreement; however, it does not address replacement water requirements for those outside of the Affected Area. What information are you basing the conclusion on that existing contamination will not cause TDS and Nitrate limits in wells outside the Affected Area to exceed the limits in the Settlement Agreement that trigger the requirement for replacement water? Is the Settlement Agreement intended to limit replacement water supply only to those within the Affected Order even if existing contamination were to migrate to those outside the Affected Area?



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**Response:** Patterns of nitrate observed within the Study Area do not indicate N&M Dairy is the primary source of nitrate in large portions of the down gradient Study Area. Previously reported groundwater velocity information has also indicated that the Study Area may be substantially much larger than is necessary to assess nitrate conditions associated with N&M Dairy. Numerous other sources of nitrate exist within the study area (septic systems at each home/ranch, animals/livestock at the homes/ranches, domestic agricultural activities at many of the homes/ranches). Additionally, samples of neighborhood wells in very close proximity to the southern boundary of the Study Area have been collected and analyzed regardless of their specific location within or just outside of the interpreted study area boundary. It is noted that all samples from wells located on or just beyond the interpreted southern Study Area boundary have been reported to contain nitrate well below the alternative action level triggering water replacement (7 ug/L).

7. **Question / Comment #7:** Are the deadlines in the proposed Settlement Agreement and Stipulation for Entry of Order and the proposed Cleanup and Abatement Order appropriate and reasonable? If not, what should the deadlines be and the rationale for your suggested revisions.

**Response:** Due to the delay in Regional Board approval, the deadlines for Conservation Easement related tasks in the current Stipulated Order are no longer reasonable. A generic schedule for completion of these tasks has been proposed above in Response #3.

We very much appreciate the opportunity to provide responses to your questions.

Sincerely,

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