

April 6, 2017

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Transmitted via Electronic Mail

**Re: Draft Waste Discharge Requirements for Confined Bovine Feeding Operations
R5-2017-0000**

Dear Ms. Herbst,

On behalf of San Francisco Baykeeper (“Baykeeper”) and our more than five thousand members and supporters who use and enjoy the environmental, recreational, and aesthetic qualities of San Francisco Bay and its surrounding tributaries and ecosystems, I respectfully submit these comments for consideration by the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”) regarding the WDR for Bovine Feeding Operations (“CAFO Permit” or “Permit”).

Baykeeper appreciates the time and effort that Regional Board staff have committed to drafting the Permit and to controlling harmful discharges from CAFOs. However, as currently drafted, the Permit fails to comply with California’s Antidegradation Policy, and thus fails to protect the waters and the citizens of the State.

Staff Has Failed to Conduct a Legally Adequate Anti-Degradation Analysis

SFB 1

State anti-degradation policies prohibit the approval of discharges that will degrade water quality unless the state finds that such degradation is necessary to accommodate important economic or social development. When conducting its anti-degradation analysis, the agency must analyze each pollutant and take into account specific factors in its socioeconomic analysis. (Resolution No. 68-16; APU 90-004.)

While conceding that the Permit will result in degradation of high quality waters, (Permit at ¶ 38), Regional Board Staff failed to conduct the required anti-degradation analysis. Staff’s analysis violates anti-degradation requirements in at least four ways.

First, Staff has created a “baseline” inconsistent with APU 90-004. APU 90-004 applies to non-NPDES, or WDR only permits, where “an existing discharge has reduced water quality, since the facility was last permitted and the reduction is not authorized by the permit.” APU-90-004 at p.3. The Permit includes no analysis that would demonstrate why a “simple” anti-degradation analysis

would be allowed, and given that the continued expansion of CAFOs envisioned by the Permit will increase mass emissions to surface and groundwater, a full anti-degradation analysis is required. APU 90-004 at p.3. APU 90-004 sets the baseline for purposes of the antidegradation analysis as “the best water quality to of the receiving water that has existed since 1968 when considering Resolution No. 68-16...” *Id* at 4. Despite this requirement, Staff sets the “environmental baseline” for the Permit as 2014. Permit at ¶ 22. This failure to comply with State Board policy inappropriately discounts decades of pollution from the permittee CAFOs, and renders the antidegradation analysis inadequate and illegal.

SFB 2

Second, Staff failed to identify baseline water quality for each of the pollutants in the discharge that are likely to degrade water quality. APU 90-004 specifically requires the Boards to compare the baseline water quality—which is “the best quality of the receiving water that has existed since 1968”—to the water quality standards for *each* pollutant. *Id.* at p. 4; *See also Information Sheet* at IS-16. Where the receiving water is at or worse than water quality objectives, the permit must ensure those standards are met. Where water quality is better than water quality objectives, that high quality water must be maintained unless degradation is demonstrated to be of maximum benefit to the people of the State. *Id.* Yet the Permit includes no analysis of actual groundwater quality for impacted basins, either in 1968 or in 2014. Without this analysis the Permit cannot comply with antidegradation requirements.

Third, Staff asserts, without any basis, that the management practices and requirements set out in the Permit represent Best Practicable Treatment or Control (BPTC). Permit at ¶ 33. The Permit and the Information Sheet contain no survey or analysis of current technology for pollution management at CAFOs, and no analysis of the effectiveness of the proposed measures, or whether they ensure compliance with water quality objectives or protection of high quality waters. For example, the Permit requires that CAFOs design facilities sufficient to retain drainage up to the 25 year 24 hour storm, except for CAFOs in certain basins. CAFOs built before 1984 in Sacramento and San Joaquin basins or in Tulare basin need only prevent washout up to the 20 year 24 hour storm. The Permit provides no rationale for these “grandfather” clauses, and specifically why exempting older CAFOs from the more stringent design requirements meets BPTC.

Fourth, Staff has failed to conduct any meaningful analysis to demonstrate that the continued degradation allowed by the Permit is “to the maximum benefit of the people of the State.” APU 90-004 sets forth specific requirements for the analysis required to balance the socio-economic costs of water quality degradation against the costs of compliance. For example, APU 90-004 lists some of the factors that the permit writer must consider in weighing the benefit to the public as:

- b. Economic and social costs, tangible and intangible, or the proposed discharge compared to benefits. The economic impacts to be considered are those incurred in order to maintain existing water quality. The financial impact analysis should focus on the ability of the facility to pay for the necessary treatment...
- c. The environmental aspects of the proposed discharge must be evaluated...
- d. The implementation of feasible alternative control measures which might reduce, eliminate, or compensate for negative impacts of the proposed

April 06, 2017

action.

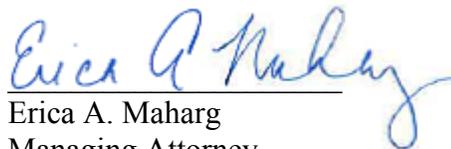
Groundwater, and thus drinking water, contamination is well documented in the Central Valley. Dozens of water suppliers and wells currently fail to meet drinking water standards for pollutants discharged by CAFOs, forcing thousands of residents to either drink polluted water or buy bottled water. Dozens of creeks, streams and rivers in the Central Valley are impaired for pollutants discharged by CAFOs. Yet Staff conducted no analysis of the social and economic costs of the continued degradation of surface and groundwater, and thus undertook no effort to balance those interests. Instead Staff looked only at estimated costs of compliance, *Information Sheet* at IS-11-12, and then concluded without basis that "...maintaining the Central Valley Confined Bovine Feeding Operation Industry is consistent with the maximum benefit to the people of the State." This one sided, conclusory statement fails to meet the requirements of a meaningful antidegradation analysis.

For each of the findings in the Permit, the Regional Board's findings must "bridge the analytic gap between the raw evidence and ultimate decision or order." *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Mere recitation of the legal requirements is not sufficient. *Am. Funeral Concepts v. Bd. of Funeral Directors and Embalmers* (1982) 136 Cal.App.3d 303, 309; *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board* (2012) 210 Cal. App. 4th 1255. In each of the four examples above, Staff has failed to provide meaningful factual support, or adequate analysis, to support the findings included in the Permit relating to the antidegradation analysis, as required by law.

Conclusion

Staff's inadequate antidegradation analysis is particularly troubling given that a previous, inadequate antidegradation analysis for CAFOs in the Central Valley was rejected by the Court of Appeals. *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board* (2012) 210 Cal. App. 4th 1255. Yet Staff proposes to again choose industrial animal feeding operations over public health and the environment. Therefore, Baykeeper requests that the Permit be revised and recirculated to provide the antidegradation analysis, and balancing of socio-economic interests, required by law.

Very truly yours,



Erica A. Maharg
Managing Attorney
San Francisco Baykeeper