Central Valley Regional Water Quality Control Board

SOLICITATION OF INPUT ON USE OF CATEGORICAL EXEMPTION FOR LIMITED REVISION OF DAIRY GENERAL ORDER TO ALLOW ENROLLMENT OF EXISTING EXPANDED OR UNENROLLED DAIRIES OPERATING AS OF 15 SEPTEMBER 2026

Introduction

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) is soliciting public input on the Board's proposed determination to rely on a Categorical Exemption under the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et seq.) for an upcoming amendment to Order R5-2013-0122, the *Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies* (Dairy Order). (https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0122.pdf)

This amendment is being undertaken in response to State Water Resources Control Board (State Water Board) Order WQ 2026-0028 (State Board Order) (https://waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2026/wqo2026-0028.pdf), adopted 15 September 2026, which directed the Central Valley Water Board to make significant revisions to its Dairy Order. One of these directions is that the Central Valley Water Board revise the Dairy Order within 150 days (i.e., by 12 February 2027) to allow enrollment of existing dairies under the Order. (State Board Order, at pp. 79-83.) At present, the Dairy Order prohibits enrollment of new or expanded dairies; the directed revision will authorize enrollment of any dairy, or portion of a dairy, that meets the definition of "existing dairy" described below.

The State Board Order suggests that this revision will be exempt from CEQA review because it would simply establish a pathway to regulatory coverage for existing facilities, with negligible or no expansion of their existing uses, and result in only minor modifications to land, water, or vegetation. (See State Board Order, p. 81, fn. 222, referencing Cal. Code Regs., tit. 14, §§ 15301, 15304.) The Central Valley Water Board tentatively agrees that this approach is appropriate but is seeking public feedback before it proceeds.

Background & Explanation of Dairy Order Revision

The Central Valley Water Board's Dairy Order prescribes waste discharge requirements (WDRs) (i.e., permits) for milk cow dairies in order to minimize water quality impacts

caused by discharges of dairy wastes. The primary focus of the Dairy Order is to ensure that pollutants in dairy waste, such as nitrate, do not create threats to human health and safety and the environment or otherwise cause a public nuisance.

The State Board Order directs the Central Valley Water Board to revise the Dairy Order by no later than 15 September 2031 to incorporate a new regulatory framework for nitrogen discharges. Key elements of this new regulatory framework are interim and final land application requirements that will ultimately ensure that dairies' application of manure and other nitrogen-containing fertilizers to land do not cause or contribute to an adverse effect on beneficial uses of groundwater due to nitrate concentrations. (See State Board Order, pp. 68-72.) These interim and final land application requirements will be developed by the State Water Board, in coordination with the Central Valley Water Board and other experts and stakeholders, over the next few years. As directed by the State Water Board, the Central Valley Water Board's revisions to the Dairy Order to incorporate the interim and final land application requirements will also include time schedules for existing dairies to achieve compliance (compliance schedules)[1] with the newly introduced land application requirements within the shortest practicable time period. (State Board Order, pp. 72-79.) Compliance schedules for meeting interim and final land application requirements may not be granted to new or expanded dairies. (*Id*., p. 78.)

As a preliminary step towards implementing the State Water Board's new regulatory framework for nitrogen discharges, the State Board Order directs the Central Valley Water Board to revise the Dairy Order within 150 days,

> . . . for the sole purposes of authorizing enrollments for any dairy that is currently operating as of [15 September 2026] to submit current operational details (including the current herd size as of [15 September 2026]) and enroll under the amended [Dairy Order] within a deadline of 60 days after the amendment to the [Dairy Order], and to authorize future expansions of these dairies subject to [specified limitations].

(State Board Order, p. 81.) The central purpose of this directed revision is to group dairies into one of two categories: (i) existing dairies, which will be eligible for a compliance schedule for meeting interim and final land application requirements when the Dairy Order is revised to incorporate those requirements; and (ii) expanded or new

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[1] Compliance schedules are provisions that may be included in WDRs for dischargers that cannot immediately comply with all requirements. For example, if a discharger needs time to design, fund, and construct new or updated waste management facilities in order to meet water quality standards, WDRs may include a compliance schedule allowing a reasonable time to complete those tasks before the final requirement – meeting water quality standards, etc. – may be enforced.

dairies, which will not be eligible for compliance schedules for implementing the land application requirements. For these purposes: :

- **Existing dairies** are dairies that commenced operating prior to 15 September 2026 and, at that time: (1) were already regulated under WDRs for their current herd size; or (2) were not regulated under WDRs for their current herd size but either:

    a. Within 60 days after the Central Valley Water Board adopts a revised Dairy Order allowing new enrollments, submitted a complete Report of Waste Discharge (ROWD), including documentation sufficient to demonstrate they were operating prior to 15 September 2026 and to verify the accuracy of their herd size as of that date (State Board Order, p. 81); or

    b. Obtained coverage under WDRs for their expanded herd size "by submitting a complete ROWD that demonstrates immediate compliance with the currently applicable 1.4 A/R land application requirement[2] for the portion of manure that will be generated by the additional cows, accompanied by proof of CEQA compliance for coverage under the [Dairy Order, as amended]" and by waiting "for the Central Valley Water Board's notice that it has granted coverage prior to expanding the herd size." (State Board Order, p. 82.)

- **Expanded or New Dairies** are dairies, or portions of dairies' herds and associated facilities, that do not meet the definition of "existing dairies." (State Board Order, p. 82.)[3]

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[2] The "1.4 A/R Requirement" refers to the Dairy Order's requirement that Dischargers determine, in their Nutrient Management Plans (NMPs), the maximum amount of manure and process wastewater that can be applied to each land application area each year without exceeding 1.4 times the total nitrogen that will be removed from each field in the harvested portion of the crop. (See Dairy Order, Att. C, § V.B.3.) The Dairy Order requires that land application of animal waste and other materials containing nutrients to any cropland must be in accordance with a certified NMP that is consistent with the specifications outlined in Attachment C to the Dairy Order (see id., Land Application Specifications E.2, E.3, E.5.a, and E.6) and prohibits discharges of manure or process wastewater that would result in an exceedance of 1.4 A/R in any land application area (*Id.*, Prohibition A.9).

[3] To be clear, "a single dairy may, in some circumstances, have a fixed number of its dairy herd as of [15 September 2026] that is considered to be an "existing" dairy, while subsequent expansions to that dairy herd will be considered to the equivalent of a "new" dairy – even where all of the cows have been combined into a single herd. (State Board Order, p. 82.) "The consequence is that the proportion of the dairy manure generated by the fixed herd size that is considered to be "existing" will receive the full benefit of the time schedule, but the proportion of the dairy manure generated by the dairy expansion,

At present, the only dairies enrolled under the Dairy Order are those that were operating as of October 2005 and successfully obtained coverage under the 2007 iteration of the Dairy Order. The Dairy Order currently does not allow for enrollment of new dischargers, nor for updates to existing enrollments that would accommodate an expansion of a discharger's authorized herd size. (See Dairy Order, Prohibition A.15 and Att. E, Definition 15.) The State Board Order directs the Central Valley Water Board to revise the Dairy Order to allow enrollment of previously unenrolled dairies and updates to enrolled dairies' regulatory coverage to reflect expanded herd sizes and other operational differences.

The focus of this Solicitation Letter is the applicability of certain CEQA exemptions to the Central Valley Water Board's near-term revision of the Dairy Order to allow enrollment of existing dairies. For the longer-term Dairy Order revisions, which the State Water Board has directed must be completed by no later than 15 September 2031, the Central Valley Water Board intends to conduct CEQA review by preparing a programmatic environmental impact report (Programmatic EIR). Therefore, this Solicitation Letter's request for public feedback is limited to the near-term Dairy Order revisions that would create enrollment pathways for existing, new, and expanded dairies. The Board will seek public feedback on the wider range of anticipated revisions at a later date.

Implementation of State Water Board-directed Revisions to Dairy Order to allow New Enrollments.

As directed by the State Water Board, the Central Valley Water Board intends to revise the Dairy Order no later than 12 February 2027 to incorporate pathways for enrollment of existing dairies.

Existing dairies seeking first-time or updated enrollment under the Dairy Order will be required to submit a complete ROWD characterizing their facility and discharge practices, as well as documentation sufficient to demonstrate that, as of 15 September 2026, they were already operating with the herd size and operational specifications described in their ROWDs, or, alternatively, documentation that their proposed herd size expansion has been reviewed pursuant to CEQA and will immediately comply with the 1.4 A/R Requirement upon enrollment.

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which is considered "new," will not receive any time schedule for compliance with the final land application rates." (*Ibid.*) For example, if 80 percent of the herd is "existing" and therefore subject to an interim 1.4 A/R ratio, and 20 percent of the herd is "new" and therefore subject to a 1.1 A/R ratio, the total manure generated by the entire herd is subject to a 1.34 A/R ratio ((0.80 x 1.4) + (0.20 x 1.1) = 1.34). (*Id.*, fn. 223.)

As of this writing, the Central Valley Water Board estimates that approximately 120 dairies, or more, may qualify for first-time or updated enrollment in the Dairy Order as existing dairies. Most of these dairies submitted a ROWD prior to commencing or expanding their operations, as applicable, in order to comply with the substance of the Dairy Order despite being not formally enrolled. More than thirty operational dairies within the region that are not currently covered under WDRs are collectively estimated to house 145,000 mature cows. Approximately 80 percent of these facilities are located in the southern San Joaquin Valley counties of Kings, Tulare, and Kern, while the remaining 20 percent are situated within Merced, Stanislaus, and San Joaquin counties. Additionally, more than ninety dairies operating under existing WDRs have either already expanded or proposed expansions of their authorized maximum mature herd capacities. These expansions represent a cumulative increase of more than 147,000 mature cows across the region. Approximately 70 percent of the facilities pursuing such expansions are located in Merced, Stanislaus, and San Joaquin counties, with the remaining 30 percent located in Kings, Tulare, and Kern counties.

Basis for Reliance Upon Categorical Exemptions from CEQA for February 2027 Revisions to Dairy Order

CEQA requires public agencies to evaluate reasonably foreseeable potentially significant impacts to the environment that may result from agency-led or -approved projects. However, CEQA includes a variety of categorical exemptions from review on the basis that certain categories of projects are generally unlikely to cause significant impacts.

The Central Valley Water Board's forthcoming revision of the Dairy Order is a project that is generally subject to CEQA review unless a CEQA exemption applies. The State Board Order suggests on page 81, footnote 222, that the pending Dairy Order revisions are exempt from CEQA review because the revisions fit within the scope of two categorical exemptions for CEQA projects: the exemption for existing facilities (Cal. Code Regs., tit. 14, § 15301) and the exemption for minor alterations to land (*Id.*, § 15304). The exemption for existing facilities applies when a project will involve negligible or no expansion of existing facilities. The exemption for minor alterations to land applies when a project will not result in more than minor alterations to the condition of land, water, and/or vegetation. The State Board Order explains that these exemptions are likely applicable because existing dairies, including their current herd sizes, represent the environmental baseline for CEQA purposes and, since the directed revisions would only create an administrative pathway for enrollment of existing dairies, the revisions would not foreseeably result in environmental impacts beyond negligible expansions of existing facilities and minor alterations to the condition of land, water, and/or vegetation. To the extent that the revisions would also create a pathway for

enrollment of dairies that expand their herds after 15 September 2026, CEQA review at this time is not required because any prospective expanded or new dairy will be required to obtain a final, site-specific CEQA review before it will be authorized to operate as proposed.

The Central Valley Water Board tentatively agrees that its forthcoming revisions to the Dairy Order are exempt from CEQA under the exemptions described above. However, it is seeking public feedback on whether there are reasons that the proposed revisions would not be exempt. Under CEQA, there are certain exceptions to the use of exemptions (see Cal. Code Regs., tit. 14, § 15300.2. In particular:

- If the cumulative impact of successive projects of the same type in the same place over time is significant;
- If there is a reasonable possibility that a project will have a significant impact on the environment due to unusual circumstances;
- If the project may result in damage to scenic resources or a substantial adverse change in the significance of a historical resource; or
- With respect to the exemption for minor alterations to land, if a project that would normally have insignificant impacts would nevertheless have potentially significant impacts because it will impact a particularly sensitive environment.

Opportunity for Public Comment

A digital copy of the Amending Order and CEQA Consultation Notice is available on the Central Valley Water Board's tentative orders web page, under the heading, "All Other Items for Future Board Meetings".

(https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/#other)
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Questions concerning this solicitation notice should be directed to Scott Hatton at 559-444-2502 or scott.hatton@waterboards.ca.gov**. Written comments in response to this solicitation notice must be received by 5:00 pm on 4 December 2026**. Please email any comments to the Confined Animal Facilities Program at RB5-CAF@waterboards.ca.gov. Please indicate in the subject line, "Comments on CEQA Categorical Exemptions." While email is preferred, written comments may also be mailed to the following address:

Attention: Confined Animal Facilities Program
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, CA 93706

All comments received by the deadline will be documented in the administrative record and addressed in a staff response-to-comments document. Staff will consider public input in preparing the final proposed amendment. The Board may consider adoption of the limited revision – with or without preparation of an Environmental Impact Report (EIR) - during a publicly noticed meeting on 11 February 2027.