

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**REVISED TENTATIVE RESOLUTION NO. R2-2015-0031**

**RENEWAL OF CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS  
FOR EXISTING DAIRIES  
WITHIN THE SAN FRANCISCO BAY REGION**

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (Water Board), finds that:

**Scope of Coverage**

1. Resolution No. R2-2015-0031 serves as a conditional waiver of waste discharge requirements (WDRs) for discharges of waste from existing dairies (dairies are confined animal facilities [CAFs])<sup>1</sup> of all sizes and types that meet the terms and conditions of this conditional waiver (hereafter, Conditional Waiver). This Conditional Waiver also covers grazing operations on grazing lands associated with an existing dairy.
2. For purposes of this Conditional Waiver, “existing dairies” are dairies (cow, goat, sheep, etc.) that are constructed and operating as of the effective date of this Conditional Waiver and which have subsequently not expanded the size of their physical facilities beyond their maximum animal capacity. New or expanding dairies must file a report of waste discharge (ROWD) to the Water Board prior to discharging waste.
3. This Conditional Waiver covers the management of process water, manure, and other organic materials at existing dairies, including the application of such materials to land. Other wastes, such as medicines, pesticides, chemicals, and fertilizers must be disposed at appropriately permitted facilities.
4. Owners and operators of existing dairies (facilities) discharging, or proposing to discharge, waste in any manner that could affect the quality of the waters of the State within the San Francisco Bay Region (Region) and who have been designated by the Water Board are hereinafter referred to as “Dischargers” and are subject to the terms and conditions of this Conditional Waiver.
5. This Conditional Waiver applies to facilities that pose a low risk to surface water and/or groundwater; are in compliance with the Statewide Minimum Standards (Attachment G) as defined in Finding 32; and comply with the terms and conditions herein. Such facilities include the dairies previously covered under Water Board Resolution No. R2-2003-0094, dairies covered under General WDRs that can currently meet the terms and conditions of this Conditional Waiver, other existing dairies not previously regulated, and associated grazing operations.

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<sup>1</sup> Title 27 of the California Code of Regulations, section 20164, defines a CAF as “... any place where cattle, calves, sheep, swine, horses, mules, goats, fowl, or other domestic animals are corralled, penned, tethered, or otherwise enclosed or held and where feeding is by means other than grazing.”

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6. Owners or operators of dairies that discharge or propose to discharge pollutants<sup>2</sup> to the waters of the United States are required to obtain coverage under a National Pollutant Discharge Elimination System (NPDES) permit and are not required to seek coverage under the Conditional Waiver.
7. Dairies that are defined by federal regulations as a large concentrated animal feeding operation (CAFO)<sup>3</sup>, not subject to NPDES permitting requirements, must separately address any stormwater-related discharges from land application areas. Such discharges can qualify as “agricultural stormwater discharges”, not subject to NPDES permitting, if manure and wastewater are applied to the land in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater (40 CFR section 122.23(e)).
8. Large dairies that discharge stormwater from cropland where manure, litter, or process wastewater has been applied may enroll under this Conditional Waiver if they are implementing a Nutrient Management Plan upon enrollment. Large dairies that discharge such stormwater without a Nutrient Management Plan are in violation of the federal Clean Water Act (CWA) and may be fined for the discharge and/or be required to enroll under a NPDES permit.
9. This Conditional Waiver applies to the disposal of waste generated by onsite animal production and food-processing activities. Food-processing activities, such as cheese-making, which generate additional waste and/or wastewater that may be co-mingled with the animal production waste stream, must be included in the facility’s Waste Management Plan, consistent with the technical standards specified in Attachment B.
10. This Conditional Waiver **does not apply** to other types of waste, including, but not limited to, wastes such as cannery waste, septage, municipal or industrial sludge, and/or biosolids or similar types of waste generated onsite or brought onto the facility for disposal or nutrient recycling. Dischargers must submit a separate ROWD and receive individual WDRs prior to receiving and/or discharging such wastes.
11. This Conditional Waiver does not address the cleanup of existing degraded surface water and groundwater from past dairy operations. Any required cleanup actions are handled under separate authority under the California Water Code (CWC).

**Water Quality Concerns**

12. Pursuant to the CWC, Division 7, the Water Board regulates the discharge of wastes that could affect the quality of the waters of the State to ensure protection of the beneficial uses of both surface water and groundwater and the prevention of nuisances. Dairies, as described herein, represent a significant source of waste discharges in the Region.

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<sup>2</sup> 40 CFR section 122.23 (d)(1) requires only facilities that discharge to waters of the United States to seek NPDES permit coverage. A facility proposes to discharge if, based on an objective assessment, it is designed, constructed, operated, or maintained such that a pollutant discharge will occur.

<sup>3</sup> 40 CFR section 122.23 (b)(4) defines a large dairy as an operation that stables or confines as many as, or more than, 700 mature dairy cows, whether milked or dry or 10,000 sheep or lambs.

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13. CAFs are operations where animals are confined and fed in an area that has a roof or is devoid of vegetation, generating solid and liquid manure wastes that are collected and disposed of on land (crops and pastures) or offsite. Within the Region, the primary types of CAFs are cow dairies, horse facilities, a few goat and sheep dairies, and a few egg, chicken, turkey, and/or swine production facilities. The majority of animal waste is produced by cow dairies within the counties of Marin and Sonoma. There are approximately 40 cow dairies currently operating within the Region, with total herd sizes ranging from 100 to 2200, averaging 200-300 head.
14. Dairies generate wastes that include, but are not limited to, manure, process wastewater, animal wash water, and any water, precipitation or rainfall runoff that contacts animal confinement areas and/or raw materials, products or byproducts such as manure, compost piles, feed, bedding materials, silage, eggs or milk. Wastewater may also contain certain chemicals such as detergents, disinfectants, and biocides. Wastes from such facilities can contain significant amounts of pathogens, oxygen-depleting organic matter, sediment, nitrogen compounds, and other suspended and dissolved solids that can impact both groundwater and surface water if not properly managed. Daily operations can cause degradation of water quality of surface water and groundwater as a result of waste discharges and activities that result in soil erosion and destruction of riparian habitat.
15. Dairy wastes are stored in retention ponds, in corrals, and/or in waste piles. These wastes are then applied to onsite cropland or pastures or transported offsite. The applied wastes are a source of water and nutrients to crops and pastures but, if improperly managed, can create nuisance conditions and cause pollution of surface water and groundwater. Adverse aquatic habitat impacts associated with improper waste management and application may include: nutrient enrichment resulting in algal blooms, organic waste loading resulting in lowered oxygen levels, siltation of gravel areas that can eliminate fish habitat, high levels of ammonia that are toxic to fish and aquatic invertebrates, and raised levels of nitrates and other salts in groundwater.

**Background**

16. In 2003, the Water Board adopted Resolution No. R2-2003-0094, Renewal of Waiver of Waste Discharge Requirements for Confined Animal Facilities (2003 Conditional Waiver) and Order No. R2-2003-0093, General Waste Discharge Requirements (2003 General WDRs) for Confined Animal Facilities. Resolution No. R2-2003-0094 was in effect for a five year-term and expired in 2008.
17. Forty-two dairies within the Region initially operated under the 2003 Conditional Waiver. Nine dairies did not meet the conditions of the 2003 Conditional Waiver and applied for coverage under the 2003 General WDRs.
18. Numerous watersheds throughout the Region are listed as impaired pursuant to CWA section 303(d). The CWA requires states to address these impairments by developing Total Maximum Daily Loads (TMDLs) that examine these water quality problems, identify sources of pollutants, and specify actions that create solutions and restore beneficial uses.
19. The renewal of the 2003 Conditional Waiver provides an opportunity to include implementation plan requirements identified in Chapter 7, Water Quality Attainment Strategies Including Total

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Maximum Daily Loads of the Water Quality Control Plan for the San Francisco Basin (Basin Plan).

20. The Basin Plan specifies implementation measures for each categorical pollutant source identified as contributing to the water quality impairment. Livestock grazing lands and CAFs, including dairies, are identified as categorical pollutant sources that are required to implement site-specific management measures to control and reduce animal waste and sediment runoff. This Conditional Waiver implements the Basin Plan by requiring grazing land management.
21. The Water Board adopted Resolution No. R2-2011-0060, Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Napa River and Sonoma Creek Watersheds, and Resolution No. R2-2013-0039, Renewal of Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed. These conditional waivers require landowners or operators of grazing operations to implement specific management practices to minimize discharges of sediment, pathogens, and nutrients from their grazing operations to receiving waters, conduct compliance monitoring, and submit annual reports of progress made in controlling and minimizing discharges. Grazing operations associated with dairies are not covered under the 2011 and 2013 conditional waivers.
22. This Conditional Waiver includes consideration for potential impacts to groundwater associated with dairy operations. Since the adoption of the 2003 Conditional Waiver, California dairy groundwater data and various published studies related to dairies and groundwater impacts have been evaluated in order to determine the effectiveness of current confined animal State regulations in protecting groundwater quality. Findings from these studies indicate that effective groundwater protection depends on whether subsurface conditions were adequately assessed in the siting, design, and operation of each facility. Since impacts to groundwater depend on site-specific considerations, facility-specific data are necessary to assess compliance with groundwater water quality objectives. Therefore, this Conditional Waiver requires sampling of existing groundwater wells.

**Regulatory Framework**

23. CWC section 13260 (a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, must file with the appropriate water board an ROWD containing such information and data as may be required by the water board, unless the requirement is waived pursuant to CWC section 13269.
24. The Water Board may waive WDRs when it finds, pursuant to CWC section 13269, that a waiver of submission of ROWDs and/or issuance of WDRs is in the public interest. CWC section 13269 authorizes the Water Board to waive WDRs for a specific discharge or type of discharges if the waiver is consistent with the Basin Plan and is in the public interest. Relevant factors in determining whether a waiver is in the public interest include the following: whether the discharger is implementing reasonable practices to minimize the deleterious effects of the discharge; whether a feasible treatment method or set of management practices exist to control the pollutants in the discharge; and whether waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Water Board to focus its limited resources to conduct field oversight, public outreach, and, where necessary, enforcement.

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25. Pursuant to CWC section 13269, waivers of WDRs may not exceed five (5) years in duration but may be renewed by the Water Board after holding a public hearing. The Water Board may terminate a waiver at any time.
26. CWC section 13263 (i) authorizes the Water Board to prescribe general WDRs and/or waivers of WDRs for a category of discharges if the discharges are produced by the same or similar operations, involve the same or similar types of waste, require the same or similar treatment standards, and are more appropriately regulated under general WDRs or waivers than individual WDRs.
27. The Water Board, in compliance with CWC sections 13263 (i) and 13269, reviewed the 2003 Conditional Waiver and determined that it should be replaced by a new conditional waiver.
28. The adoption of this Conditional Waiver is in the public interest because it:
  - a. Includes industry-specific conditions that are intended to reduce and prevent pollution and nuisance and protect beneficial uses of the waters of the State;
  - b. Applies to those existing facilities that pose a low risk to surface water or groundwater and are currently in compliance with waiver terms and conditions, including the Statewide Minimum Standards for confined animal facilities;
  - c. Provides a more efficient and timely mechanism of complying with water quality objectives than other regulatory options,
  - d. Provides for an efficient and effective use of limited Water Board resources; and
  - e. Provides flexibility for the Dischargers by providing an option of complying with water quality monitoring through a third-party entity.
29. CWC section 13269 includes the following provisions:
  - a. The waiver of WDRs shall include the performance of individual, group, or watershed-based monitoring, unless the Water Board determines that the discharges do not pose a significant threat to water quality.
  - b. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.

This Conditional Waiver requires compliance with monitoring conditions consistent with CWC section 13269.
30. Pursuant to this Conditional Waiver and CWC section 13267, Dischargers will implement a Monitoring and Reporting Program (Attachment A). The Monitoring and Reporting Program is necessary to ensure compliance with this Conditional Waiver's terms and provisions and must be consistent with the facility's Waste Management Plan, Nutrient Management Plan, and Grazing Management Plan. The goal of the Monitoring and Reporting Program is to prevent or reduce uncontrolled waste discharges and to protect water quality; it requires regular visual inspections, surface and groundwater sampling, reporting, and record-keeping.

31. This Conditional Waiver satisfies the State Water Resources Control Board's 2004 Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy), which requires that nonpoint source discharges of waste be regulated by WDRs, waiver of WDRs, or prohibitions to ensure compliance with Regional Water Board Water Quality Control Plans.
32. This Conditional Waiver is consistent with the requirements of the Statewide Minimum Standards for confined animal facilities, California Code of Regulations, Title 27, sections 22560-22565, which are attached to this Conditional Waiver as Attachment G (hereafter, the "Statewide Minimum Standards"). These Statewide Minimum Standards require containment of manure, wash water, and stormwater runoff from animal confinement areas. The Statewide Minimum Standards are the *minimum* standards for discharges of animal waste at CAFs and must be implemented in WDRs.

### **Water Quality Control Plan for the San Francisco Bay Basin**

33. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. Economics were considered as required by law during the development of these objectives. It also includes programs of implementation, prohibitions, provisions and policies to achieve and protect water quality objectives. The region's TMDLs and associated implementation plans are also part of the Basin Plan. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.
34. Pursuant to the Basin Plan, the existing and potential beneficial uses of waters in the San Francisco Bay Region that could be impacted by the discharge of the wastes described in Finding 14 include:
  - a. Municipal and domestic water supply
  - b. Agricultural water supply
  - c. Groundwater recharge, estuarine habitat
  - d. Marine habitat
  - e. Preservation of rare and endangered species
  - f. Water contact recreation
  - g. Noncontact water recreation
  - h. Shellfish harvesting
  - i. Cold freshwater habitat
  - j. Warm freshwater habitat
  - k. Wildlife habitat
  - l. Preservation of areas of special biological significance.
35. The Basin Plan directs the Executive Officer to work with the dairy industry through local dairy waste committees and local/State agencies in obtaining cooperative corrections of dairy waste problems. The Basin Plan also recommends adoption of WDRs in those cases where water quality objectives for waters within an agricultural watershed are consistently exceeded or where corrective action is not yet successful in eliminating either short- or long-term water quality problems or threats. It also states that WDRs may be waived where such a waiver is not against the

public interest and still assures the protection of beneficial uses of State waters. This Conditional Waiver is consistent with the Basin Plan since it applies to those facilities currently in compliance with the Statewide Minimum Standards.

**Anti-Degradation**

36. State Water Board Resolution 68-16 (“*Statement of Policy with Respect to Maintaining High Quality of Waters in California*”) requires whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality must be maintained. Resolution 68-16 only allows change in the existing high quality if it has been demonstrated to the Water Board that the change is consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial uses of such water, and will not result in water quality less than that prescribed in the policies. Resolution 68-16 further requires that discharges meet WDRs that will result in the best practicable treatment or control of the discharge necessary to assure that (a) pollution or nuisance will not occur and (b) the highest water quality consistent with the maximum benefit to the people of the State will be maintained. Resolution 68-16 incorporates the federal “antidegradation” policy (Cal. Code Regs., tit. 40, § 131.12). This Conditional Waiver is consistent with these policies.

This Conditional Waiver prohibits discharges of waste to surface waters except in specified circumstances that are consistent with federal regulations, requires Dischargers to manage waste and waste disposal in a manner that will prevent degradation of groundwater, and requires Dischargers to manage waste to minimize odors and prohibit nuisance conditions. The Water Board finds that under normal operating conditions:

- a. The discharge conditions and effluent limitations established in this Conditional Waiver will ensure that the existing beneficial uses and quality of waters of the State in the Region will be maintained and protected, and
- b. Discharges regulated by this Conditional Waiver will not degrade existing water quality if the terms and conditions of this Conditional Waiver are met.

37. This Conditional Waiver requires that discharges of waste, as defined in Finding 14, from existing dairies shall not cause surface water or groundwater to be further degraded, to exceed water quality objectives, to unreasonably affect beneficial uses, or to cause a condition of pollution or nuisance. This Conditional Waiver also requires monitoring of surface water and groundwater to demonstrate compliance with water quality objectives.

**California Environmental Quality Act**

38. The Water Board is the lead agency for purposes of complying with the California Environmental Quality Act (CEQA), Public Resources Code sections 21100-21177. Pursuant to CEQA Guidelines section 15301, this action to adopt a Conditional Waiver of WDRs for existing dairies is exempt from the provisions of CEQA under Exemption 1 for “Existing Facilities.” CEQA Guidelines section 15301 applies to “...the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination...”

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39. This Conditional Waiver involves the permitting of facilities, which are defined as dairies that are fully constructed and operating as of the effective date of this Conditional Waiver, and which have subsequently undergone no expansion in size of their physical facilities. Accordingly, because this Conditional Waiver allows for no expansion in use beyond the existing physical facilities, this Conditional Waiver is exempt from CEQA pursuant to CEQA Guidelines section 15301.
40. Each Discharger must demonstrate that it is operating an “existing facility” under CEQA Guidelines Exemption 1 for Existing Facilities (Cal. Code Regs., tit.14, § 15301) before obtaining coverage under this Conditional Waiver. New sources that do not qualify for the Existing Facilities categorical exemption will be required to submit an ROWD.
41. Two additional CEQA categorical exemptions may also be applicable to this action:
  - a. CEQA Guidelines Exemption 2 for Replacement of Existing Structures (Cal. Code Regs., tit.14, § 15302) exempts “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.” Consistent with the categorical exemption for Replacement of Existing Structures, covered facilities may replace or reconstruct retention ponds or other structures on the facility to ensure proper function in compliance with this Conditional Waiver.
  - b. CEQA Guidelines Exemption 4 for Minor Alterations (Cal. Code Regs., tit.14, § 15304) exempts “minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes...” Consistent with the categorical exemption for Minor Alterations, covered facilities may make improvements to their facilities that will result in minor alterations to land, water, and/or vegetation.
42. Food and Agricultural Code section 33487 exempts State agencies from any requirement to prepare a CEQA environmental impact report for CAFOs under the following circumstances: (1) when the CAFO will be constructed and operated in accordance with the minimum standards in Chapter 5 of the Food and Agricultural Code; (2) where the applicable local agencies have completed all necessary reviews and approvals including that required by CEQA; and (3) where a permit for construction was issued by a local agency on or after the effective date of Food and Agricultural Code section 33487 and construction has begun.

**Safe Drinking Water Act**

43. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Conditional Waiver promotes that policy by requiring the Dischargers to meet water quality objectives, as applicable, designed to protect human health and ensure that water is safe for domestic use.

**Public Notice**

44. The Water Board has reviewed the contents of this Conditional Waiver and all evidence concerning this matter, written public comments, and testimony provided at the public hearing on June 10,

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2015, in Oakland and hereby finds that the adoption of this Conditional Waiver is consistent with the Basin Plan and is in the public interest.

45. The Water Board has publicly notified interested agencies and persons of its intent to issue this Conditional Waiver for discharges of wastes from existing dairies (including associated grazing operations) and has provided them with an opportunity for a public meeting and an opportunity to submit comments.

**THEREFORE BE IT RESOLVED** that, the Water Board hereby approves and adopts the CEQA exemptions in this Conditional Waiver and directs the Executive Officer to file all appropriate notices; and

**BE IT FURTHER RESOLVED** that, pursuant to CWC section 13269 subdivision (a) and (e), WDRs are waived for existing dairies provided that conditions listed below are met; and

**BE IT FURTHER RESOLVED** that this Conditional Waiver is for a period of five years unless terminated sooner.

**A. DISCHARGE PROHIBITIONS**

1. The discharge of waste classified as hazardous (Cal. Code Regs., tit. 23, section 2521(a)), is prohibited.
2. The collection, treatment, storage, discharge, or disposal of waste at the facility shall not cause a condition of nuisance, contamination, pollution, or degradation of surface water or groundwater (as defined in CWC section 13050).
3. The discharge of waste from a facility that causes or contributes to an exceedance of any applicable water quality objective in the Basin Plan or any applicable State or federal water quality criteria or to a violation of any applicable State or federal policies or regulations is prohibited.
4. The direct and indirect discharge of waste, including stormwater contacting wastes, from the animal production or housing area to any surface water, or tributary thereof, is prohibited.
5. The application of manure or process water to a land application area in a manner that results in the discharge of wastes to surface water is prohibited.
6. The disposal of dead animals at the facility or in any liquid manure or wastewater retention pond is prohibited. The Discharger must dispose of dead animals in compliance with all applicable federal, State, county, and local laws and regulations.
7. The discharge of manure or process water to lands not owned, leased, or controlled by the Discharger without written permission from the landowner and in a manner not approved by Executive Officer is prohibited.

8. The direct discharge of wastewater into groundwater via backflow through water supply or irrigation supply wells is prohibited.

## **B. WASTE DISCHARGE SPECIFICATIONS BY FACILITY OPERATION**

### **1. PRODUCTION/CONFINED AREA**

- a. All facilities shall be designed, constructed, operated and maintained to retain all waste, wastewater flow, and stormwater contacting manured areas that are likely to accumulate up to and during a 25-year, 24-hour storm event. Management of such facilities shall be in accordance with a site-specific Waste Management Plan, consistent with the technical standards specified in Attachment B. (Cal. Code Regs., tit. 27, §22562(a).)
- b. In addition to manure waste, and wastewater generated from stormwater contacting manured areas, the Discharger must properly contain and manage all other wastes including, but not limited to, silage leachate, dead animals, waste milk, veterinary medical waste, solid and liquid waste from onsite slaughtering, solid and liquid waste from onsite food processing (such as cheese), spoiled feed, bedding, and any precipitation contacting these materials. Specific pollution prevention measures must be included in the facility's Waste Management Plan.
- c. All precipitation and clean surface drainage outside of manured areas, including that from roofed areas and tributary drainages, shall be diverted away from confined and/or manured areas, unless such drainage is fully contained in a retention pond. (Cal. Code Regs., tit. 27, §22562(b).)
- d. All animal confinement areas, and feed and waste storage areas, shall be managed to minimize standing water as of 72 hours after the last rainfall and the infiltration of water into underlying soils.
- e. All confined animals shall be fenced or excluded from any surface water or perennial streams passing through the confined area. Creek crossings shall be bridged in a manner that prevents animal waste from entering the waterway.

### **2. RETENTION PONDS**

- a. Retention ponds and manured areas at dairies in operation on November 27, 1984, shall be protected from inundation or washout by overflow from any stream channel during 20-year peak flows. Dairies existing before November 27, 1984, and protected against 100-year peak stream flows must continue to provide such protection. Dairies, or portions thereof, that began operating after November 27, 1984, shall be protected against 100-year peak stream flows. (Cal. Code Regs., tit. 27, §22562(c).)
- b. Existing retention ponds must, at a minimum, be lined with, or underlain by, soils which contain at least ten (10) percent clay and not more than ten (10) percent gravel or artificial materials or materials with equivalent impermeability or include additional lining materials necessary to comply with this Conditional Waiver's Discharge Prohibitions No. 2 and No. 3. (Cal. Code Regs., tit. 27, §22562(d).)

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- c. Retention ponds constructed after adoption of this Conditional Waiver must meet all applicable federal, State, and local laws and regulations. Waste storage facilities should be located outside of floodplains; however, if site restrictions require location within a floodplain, they shall be protected from inundation or damage from a 100-year flood event, or larger if required by laws, rules, and regulations.
- d. Retention ponds (or expanded ponds) constructed after adoption of this Conditional Waiver must comply with Natural Resources Conservation Service (NRCS) Waste Storage Facility Code 313 including a maximum specific discharge (unit seepage rate) of  $1 \times 10^{-6}$  cm/sec. Such ponds may not be used until the Discharger submits a report verifying that the liner meets this requirement. Waste shall not be placed into the retention pond until after the Executive Officer notifies the Discharger in writing that the report is acceptable.
- e. Retention ponds shall be managed to have sufficient freeboard, but in no case less than two feet in partially or completely aboveground ponds and one foot in pond structures that are completely in ground. Freeboard shall be measured vertically, from the water surface up to the point on the surrounding berm or dike having the lowest elevation, and shall be designed and constructed to prevent overtopping as a result of windy storm conditions. Lesser freeboard may be approved by the Executive Officer if documented by a registered civil engineer that structural integrity and required capacity will not be compromised with the proposed freeboard.
- f. Following a storm event, the Discharger shall restore the wastewater holding capacity of retention ponds, if necessary to maintain required freeboard, in a timely manner and in a manner consistent with the Waste Management Plan and the Nutrient Management Plan.
- g. Retention pond clean-out shall occur annually, at a minimum, and should be conducted prior to the start of the rainy season, but no later than November 30.

**3. LAND APPLICATION AREAS (if applicable)**

- a. Discharges to land of solid and liquid waste shall be conducted in such areas that prevent the discharge of waste to surface waters or flood-prone areas and shall be managed to minimize percolation to groundwater.
- b. Discharges to land of solid or liquid waste shall be at rates that are reasonable for crop, soil, climate, special local situations, management system, and type of manure. The total nutrient loading shall not exceed the amount needed to meet crop demand and shall be in accordance with the facility's Nutrient Management Plan, consistent with the technical standards specified in Attachment C.
- c. Manure and wastewater discharges to land, including spray irrigation, shall be conducted during non-rainy or non-saturated conditions; must not result in runoff to surface waters; and must infiltrate completely within 72 hours after application.
- d. Manure and wastewater shall not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural or domestic well heads, or other conduits to surface waters, unless a 35-foot wide vegetative buffer or

physical barrier is substituted for the 100-foot setback, or alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions achieved by the 100-foot setback.

- e. Large CAFOs that are eligible to enroll under this Conditional Waiver must implement an adequate Nutrient Management Plan (in accordance to technical standards specified in Attachment C) prior to discharging and prior to obtaining coverage, if they will discharge stormwater from cropland where manure, litter, or process wastewater has been applied.

#### 4. GRAZING OPERATIONS (if applicable)

- a. Dischargers shall implement site-specific management practices that reduce water pollution due to grazing and protect water quality. In selecting management practices for the facility, the Discharger shall take into consideration the vegetation, terrain, type of livestock, and general facility operation procedures.
- b. Dischargers with grazing operations on grazing lands that encompass an area of 50 acres or more, or encompass an area smaller than 50 acres and are identified by the Executive Officer as posing a threat to water quality, must develop and implement a Grazing Management Plan, consistent with the technical standards specified in Attachment D.

### C. PROVISIONS

1. The Discharger shall comply with all applicable provisions of the CWC, Title 27, and the Basin Plan.
2. The Discharger shall comply with the attached Monitoring and Reporting Program, and also develop and implement a site-specific Waste Management Plan, Nutrient Management Plan, and Grazing Management Plan, as applicable, according to the waste discharge specifications B.1 through B.4. All existing plans must be updated and new plans developed in accordance to the technical standards specified in Attachments A, B, C and D. **Plans must be completed within the schedule outlined below in Section F. Required Reports and Notices.**
3. If the Discharger observes deficiencies, defects, and/or impending failures in any of the manure-contacted water conveyance, control, and/or retention structures, the Discharger shall take immediate action to correct and/or prevent any unauthorized release. Records of such actions shall be kept and maintained as required in the Monitoring and Reporting Program. The Waste Management Plan shall be updated to include corrective management measures needed to avoid a recurrence of the observed condition.
4. If onsite or offsite monitoring (visual or water quality testing) results indicate that the Discharger's facility (including land application areas) is causing a condition of nuisance, contamination, pollution, or degradation of surface water or groundwater, the Discharger shall take immediate corrective action to cease such pollutant discharges. The corrective action must be documented and submitted with a Noncompliance Report, as required by the Monitoring and Reporting Plan.

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5. Manifests are required to be kept onsite to record transfer of waste to outside facilities and must be kept as part of the Waste Management Plan. The application of manure or process water to lands not owned, leased, or controlled by the Discharger without written permission from the landowner or in a manner that is not consistent with the conditions of this Conditional Waiver is prohibited. The requirements for such third party agreements are outlined in Attachment C.
6. The Discharger shall comply with all federal, State, county, and local laws and regulations pertaining to the discharge of wastes from the facility that are no less stringent than the requirements of this Conditional Waiver.
7. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the Discharger from liabilities under federal, State, or local laws, nor guarantee the Discharger a capacity right in receiving waters.
8. This Conditional Waiver does not convey any property rights or exclusive privileges. In accordance with CWC section 13263(g), “No discharge of waste into the waters of the State, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the State are privileges, not rights.”
9. This Conditional Waiver does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Wildlife Code §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). Dischargers shall be responsible for meeting all requirements of the applicable endangered species act. A discharge that is deleterious to fish, plant life, mammals, or bird life, or is otherwise in violation of California Fish and Wildlife Code section 5650 is not a discharge that is authorized nor in compliance with the terms and conditions of this Conditional Waiver. The Discharger shall obtain permits as necessary and comply with permit conditions and all other applicable federal, State, county, and local laws and regulations.
10. Upon presentation of credentials at reasonable hours or in response to a complaint or report of noncompliance, Water Board staff and other authorized representatives shall be allowed:
  - a. Entry upon premises where a regulated facility or activity is located or conducted or where records are kept under the conditions of this Conditional Waiver;
  - b. Access to copy any records that are kept under the conditions of this Conditional Waiver;
  - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Conditional Waiver; and
  - d. To photograph, sample, and monitor for the purpose of assuring compliance with this Conditional Waiver.
11. The Discharger shall maintain a copy of this Conditional Waiver and each management plan (i.e., Waste, Grazing, and Nutrient) at the site so as to be available at all times to daily supervising personnel. The Discharger shall ensure that all daily supervising personnel are familiar with the content of this Conditional Waiver and each management plan.

12. The provisions of this Conditional Waiver are severable, and if any provision or the application of any provision of this Conditional Waiver to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this Conditional Waiver shall not be affected thereby. If there is any conflicting or contradictory language between this Conditional Waiver and the associated attachments that outline technical requirements for the Monitoring and Reporting Program, Waste Management Plan, Nutrient Management Plan, and Grazing Management Plan, the language in the Conditional Waiver shall govern over the other documents.
13. Compliance determination with the terms of this Conditional Waiver shall be based on the following:
  - a. Periodic inspections by Water Board staff;
  - b. Evaluation of the completed Annual Report and required information submitted according to the Monitoring and Reporting Program, including monitoring results, certificates of completion for the Waste Management Plan, the Nutrient Management Plan, and the Grazing Management Plan; and,
  - c. Any other information deemed necessary by the Executive Officer.

**D. PERMIT REOPENING, REVISION, REVOCATION, TERMINATION AND RE-ISSUANCE**

1. The Water Board may modify or revoke and reissue this Conditional Waiver at any time.
2. An authorization to discharge wastes under this Conditional Waiver is not transferable to any person without written authorization from the Executive Officer. In the event of any change in operation, control, or ownership of land or waste discharge facilities, the Discharger shall notify any succeeding owner/operator of his/her responsibility to comply with this Conditional Waiver by letter at least 60 days in advance of such change. A copy of such letter shall be submitted to the Water Board, along with a Notice of Termination (NOT), in order for the original Discharger to be relieved of its responsibility to comply with this Conditional Waiver.
3. To assume operation under this Conditional Waiver, the succeeding owner/operator must submit a completed Notice of Intent to the Water Board within fifteen days of receipt of such notice and receive approval by the Executive Officer. The succeeding owner/operator is not authorized to discharge under the Conditional Waiver and may be subject to enforcement until written approval of the coverage transfer from the Executive Officer.
4. In the event of closure or change in land use of the Discharger's facility, the Discharger shall file an NOT in the form of a letter that explains the extent of the change in operation, measures taken to close and/or change the operation, and owner/operator contact information. Prior to NOT approval, all manure- and animal waste-impacted soil is to be disposed of in a manner that will not pose a threat to surface water or groundwater quality or create a condition of nuisance.

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5. Water Board staff shall review the NOT and determine its appropriateness. The review may include a field staff inspection to verify project completion and water quality protection. The Executive Officer shall notify the Discharger regarding approval or disapproval of the NOT.
6. If more stringent requirements are necessary to implement or be consistent with any TMDL adopted by the Water Board to achieve applicable water quality standards pursuant to CWA section 303, or amendments thereto, the Water Board will revise and modify this Conditional Waiver.
7. This Conditional Waiver may be reopened to address any changes in State or federal plans, policies, or regulations that would affect the quality requirements for the discharges and as authorized by federal and State law.
8. The Executive Officer may at any time terminate coverage under this Conditional Waiver, as to a particular Discharger, where the Discharger fails to comply with this Conditional Waiver; such termination is in the public interest; the Discharger's activities could adversely affect beneficial uses of waters of the State; or the Executive Officer determines, based on changes to the Discharger's facility, that coverage under General WDRs, individual WDRs, or an NPDES permit is more appropriate.

**E. ENFORCEMENT**

1. A Discharger who fails to comply with the terms and conditions of this Conditional Waiver is subject to an enforcement action to the extent allowed by law, including but not limited to, administrative civil liabilities. Discharges that could affect the quality of the waters of the State may commence only in accordance with CWC section 13264(a).
2. Section 13387(e) of the CWC provides that any person who knowingly makes any false statement, representation, or report in any record, report, plan, notice to comply, or other document filed with a Regional Water Board or the State Water Board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than \$25,000, or by imprisonment in State prison for not more than 2 years, or by both.
3. Large CAFOs that discharge stormwater from land application areas without implementing an adequate Nutrient Management Plan are in violation of the CWA and may be fined for the discharge and/or required to enroll under an NPDES permit.
4. CWC section 13350 provides that any person who violates a waiver condition is subject to civil liability of up to \$5,000 per day or \$15,000 per day of violation or, when the violation involves the discharge of pollutants, is subject to civil liability for up to \$10 per gallon, or \$20 per gallon, or some combination thereof, depending on the violation or upon the combination of violations.

**F. REQUIRED REPORTS AND NOTICES**

1. The Discharger must complete the following tasks and submit a certification of completion. Facilities have the option to prepare the Waste Management Plan and the Nutrient Management

Plan through a technical education program, administrated by a qualified professional, as described in Attachment B, General Requirement 2.

a. **Facility Monitoring Program**

The facility's Monitoring and Reporting Program must be developed and implemented consistent with the technical standards specified in Attachment A, **by November 1, 2016**. This is an onsite operational plan to implement visual inspections and associated documentation and water quality monitoring. Preparations must be made in order to begin monitoring during the 2016-17 rainy season.

If the Discharger opts to participate in an Executive Officer approved watershed or group monitoring program in lieu of individual surface water quality testing, confirmation of such participation must be documented in the facility's 2016 Annual Report (Attachment A, Appendix 1) and the program must also be prepared to begin sampling by November 1, 2016, the start of the 2016-17 monitoring period.

b. **Waste Management Plan (WMP).**

A WMP must be updated and/or completed and implemented consistent with the technical standards specified in Attachment B, **by November 30, 2017**.

A copy of the WMP must be kept on the facility site and made available for review by Water Board staff during inspections and upon request by Water Board staff. The Discharger must certify that the WMP is complete, as required. If the WMP was prepared through completing a technical education program, a letter of completion shall be submitted either separately or attached to the facility's Annual Report.

c. **Grazing Management Plan (GMP).**

A GMP must be completed and implemented consistent with the technical standards specified in Attachment D, **by November 30, 2017**.

A copy of the GMP must be kept on the facility site and made available for review by Water Board staff during inspections and upon request by Water Board staff. The Discharger must certify that the GMP is complete, as required, by submitting a letter either separately or attached to the facility's Annual Report.

d. **Nutrient Management Plan (NMP)**

An NMP must be completed and implemented consistent with the technical standards specified in Attachment C, **by November 30, 2019**.

**Large Concentrated Animal Feeding Operations (700 mature cows or more) must implement an NMP prior to enrolling under the Conditional Waiver.**

A copy of the NMP must be kept on the dairy facility and made available for review by Water Board staff during inspections and upon request by Water Board staff. The Discharger must certify that the NMP is complete, as required. If the NMP was prepared through completing a technical education program, a letter of completion shall be submitted either separately or attached to the facility's Annual Report.

2. Annual Report

The Discharger must submit an Annual Report to the Water Board by **November 30 each year**, in accordance to the Monitoring and Reporting Program requirements. The Annual Report shall assess if best management practices for waste containment, nutrient application to land at agronomic rates, and grazing management measures are effective in preventing discharges to surface water and groundwater for the past year (November 1 of the last year through October 31 of the current year). It shall also include documentation that rainy-season preparations have been completed and copies of analytical results for surface water and groundwater samples, if individual monitoring was completed. If participating in a watershed-based or group monitoring program, a statement identifying the group must be included.

3. Noncompliance Reports

- a. The Discharger shall report any noncompliance that endangers human health or the environment within 24 hours of becoming aware of its occurrence. **The incident shall be reported to the Water Board Spill Hotline at (510) 622-2369 and to the California Office of Emergency Services (OES) at (800) 852-7550.** During non-business hours, the Discharger shall leave a message on the Water Board's office voice mail. The message shall include the time, date, and place of the discharge. The OES is operational 24 hours a day. A written report shall be submitted to the Water Board office within five (5) business days of the Discharger becoming aware of the incident. The report shall include complete details of the steps that the Discharger has taken, or intends to take, in order to prevent recurrence. The written submission shall, at a minimum, contain:
  - The approximate date, time, and location of the discharge;
  - A description of the noncompliance and its cause;
  - The flow rate, volume, and duration of the discharge;
  - A description of the noncompliance, its causes, duration, if the noncompliance has been corrected and/or the actual or anticipated time for achieving compliance; and,
  - A time schedule and a plan to implement necessary corrective actions to prevent the recurrence of such discharges.
- b. The Discharger shall take all reasonable steps to minimize any adverse impact to the waters of the State resulting from noncompliance with this Conditional Waiver. Such steps shall include accelerated or additional monitoring as necessary to determine the nature and impact of the noncompliance.
- c. The fact that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the Conditional Waiver shall not be a defense for violations.

4. Reporting Provisions:

- a. The Notice of Intent, all technical reports and/or monitoring program reports submitted to the Water Board shall be accompanied by a cover letter signed by the owner, operator, or duly authorized representative, with the following certification:

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*“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”*

- b. Any Discharger authorized to discharge waste under this Conditional Waiver shall furnish, within a reasonable time, any information the Water Board may request, to determine whether cause exists for modifying, revoking, reissuing, or terminating its authorization for this Conditional Waiver. The Discharger shall also furnish to the Water Board, upon request, copies of records required to be kept by this Conditional Waiver.
  - c. Except for data determined to be exempt from disclosure under the Public Records Act (California Government Code sections 6275 to 6276), and data determined to be confidential under CWC section 13267(b)(2), all reports prepared in accordance with the terms of this Conditional Waiver and submitted to the Executive Officer shall be available for public inspection at the offices of the Water Board. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in CWC section 13387.
5. The Discharger shall submit an ROWD to the Water Board at least 140 days prior to any changes or proposed changes in:
    - a. The character, location, volume, or disposal methods of waste discharges;
    - b. The size and/or use of the facilities; and/or
    - c. The size of the animal population, if it increases beyond the existing design capacity of the facility specified in the Waste Management Plan, the Nutrient Management Plan, and/or the Grazing Management Plan.
  6. The filing of a request by the Discharger for modification, revocation, reissuance, or termination of this Conditional Waiver, or notification of planned changes or anticipated noncompliance, does not stay any condition of this Conditional Waiver.
  7. The Discharger may be required to submit technical reports as directed by the Executive Officer in accordance with CWC section 13267.
  8. **Extension Request** - The Discharger may request an extension to deadlines by written request to the Executive Officer at least 30 days prior to the deadlines. This request must include a description of incomplete plan elements, an alternative date of compliance, and assurance of water quality protection in the interim. Any requests for extension are subject to written approval by the Executive Officer.

**G. APPLICATION REQUIREMENTS**

1. Dairies that can certify compliance with the terms and conditions of this Conditional Waiver shall apply for coverage by submitting a completed Notice of Intent form (Attachment F) **on or before September 1, 2015.**
2. If the Discharger becomes aware that a relevant fact was omitted in a Notice of Intent, or incorrect information was submitted in a Notice of Intent or in any report to the Water Board, it shall promptly submit the correct facts or information. Completed forms shall be sent to the Water Board at the following address:  

San Francisco Bay Regional Water Quality Control Board  
ATTN: Confined Animal Facility Program  
1515 Clay Street, Suite 1400  
Oakland, CA 94612
3. Coverage under this Conditional Waiver is subject to fees as determined by the State Water Board. The application fee/annual fee schedule is developed by the State Water Board annually.

**This Conditional Waiver expires on (date).**

*I, BRUCE H. WOLFE Executive Officer, do hereby certify the foregoing is a full, true, and correct copy the Conditional Waiver of WDRs adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on **DATE**, 2015.*

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BRUCE H. WOLFE  
Executive Officer

Attachment A: Monitoring and Reporting Program No. R2-2015-0031  
Appendix 1 - Annual Report form (template to be provided to enrollees by September 30, 2015)  
Appendix 2 - Sampling and Analysis Reduction Certification form  
(template to be provided to enrollees by September 30, 2015)  
Appendix 3 - Schedule for Activities Required by Conditional Waiver of Waste Discharge Requirements for Existing Dairies

Attachment B - Waste Management Plan Minimum Requirements  
Attachment C - Nutrient Management Plan Minimum Requirements  
Attachment D - Grazing Management Plan Minimum Requirements  
Attachment E - Definitions  
Attachment F - Notice of Intent Form  
Attachment G - Title 27 of the California Code of Regulations, sections 22560-22565