



VIA EMAIL TO commentletters@waterboards.ca.gov

May 14, 2014

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Agricultural Expert Panel Comments

Dear Ms. Townsend:

On behalf of Dairy Cares, thank you for the opportunity to submit the following comments regarding the Agricultural Expert Panel (hereafter "Panel").

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 efforts of the Panel to assess and make recommendations regarding existing nitrate control programs. We look forward to making additional comments when the Panel releases its initial draft report for public comment at the end of June 2014.

At this stage we offer brief comments intended to guide the Panel's thinking regarding dairies specifically, summarized as follows:

- I. Since the original adoption of the Central Valley Regional Water Quality Control Board's dairy order (hereafter "Dairy Order") in 2007, significant requirements are already in place for nitrate control for Central Valley dairies. These are mirrored by similar requirements in other regions. As a result, dairies have implemented many measures to protect and improve surface and groundwater quality, investing millions

of dollars in doing so. Support for these efforts is welcome and attention should be paid to avoid disruption of the positive momentum of these efforts. We urge the Panel to familiarize itself as much as is practical with the Dairy Order, implementation strategies in place, and ongoing work to analyze whether existing practices are protective of groundwater quality and to develop improved management practices where needed.

- II. We appreciate the difficulty of the tasks before the Panel and the short time available to accomplish the tasks. We suggest that the most important mission for the Panel is to identify a common framework for assessing nitrate control rather than attempting to identify practices that will work everywhere in California, given the wide variety of cropping systems, soil conditions, irrigation supply availability and other critical factors.

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 nitrate control programs occurs in the context of an ongoing, costly and robust regulatory program for Central Valley dairies. Originally adopted in May 2007, then revised and re-adopted on October 3, 2013, R5-2013-0122 “Waste Discharge Requirements General Order for Existing Milk Cow Dairies” (hereafter referred to as “Dairy Order”) is widely recognized as the nation’s most comprehensive water quality regulatory program for dairy farms. The 167-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. Extensive educational information about the Dairy Order is available online¹ at the CDQAP website, and even a quick review of the class materials will provide a great deal of evidence about the extent of information that dairy farmers have been required to process and understand, as well as the significant efforts of industry partners to carry out a successful education and outreach effort.

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,

¹ See <http://cdrf.org/home/checkoff-investments/cdqap/about-the-environmental-stewardship-program/wdr-general-order-reference-binder-materials/>

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 \$140 million and \$260 million in compliance costs, with costs for individual dairies ranging between \$15,200 and \$29,159 per year. These costs accrued over a time that included some of the most economically devastating developments for the dairy industry, such as 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. While the economics of the dairy industry have improved in the past year, many dairies continue to struggle with accrued debt and environmental compliance costs remain a significant factor.

Despite these significant costs and challenges, the Central Valley Regional Board staff report that compliance rates among dairy operators with the dairy Order 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. Assessment and improvement of existing management practices on dairy farms is an ongoing effort that will take years and significant resources to conduct and complete.

While there are many variable conditions across agriculture in California, including different cropping systems, soil types and variation in irrigation supply amounts and quality, to name a few, special attention must be paid to dairy because of its reliance on manure as a fertilizer. While manure is an important and valuable resource – one that allows farmers to recycle nutrients fed to cows back to the soil to grow new crops – it also presents special challenges. For example, manure contains a high percentage of organic nitrogen that is not immediately available for plant nutrition, and can complicate planning for farmers.

California dairy organizations are actively engaged in several efforts to assess and improve the use of manure as a fertilizer on active dairies. Most notable among these is the Central Valley Dairy Representative Monitoring Program, which is engaged in a years-long effort to monitor groundwater quality in shallow aquifers at 42 dairy sites across the Central Valley, while collecting and assessing data regarding above-ground management practices such as irrigation, cropping and fertilization. We anticipate that this program will continue to deliver valuable information to the dairy industry and regulators for years to come, which will support implementation of improved practices wherever practical and economically feasible.

Dairy Cares has some concerns related to the tasks before the panel to answer questions such as:

- “What management practices are expected to be implemented and under what circumstances for control of nitrogen?” and
- “What management practices are recommended for consideration by growers when they are selecting practices to put in place for control of nitrogen?”²

Specifically, it appears that the Panel is being asked to develop a set of recommendations that would apply to all farmers of all crops under all conditions in California. We respectfully submit that this could not be done in the time frame allowed for the Panel’s work. Rather, we expect that in many cases, management practices suites will be developed and tailored for farmers depending on their site-specific conditions. With more than 250 crops grown in California, we would anticipate these to be quite variable from crop to crop and sub-region to sub-region.

As such, Dairy Cares suggests that the panel focus on developing a framework for how groups of growers, perhaps divided into manageable subsets such as crop type, irrigation district or other practical considerations, could properly implement nitrogen control programs. The Panel could also describe the critical control points needed for such assessments, such as irrigation systems, nutrient management plans, and other such factors.

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

Sincerely,

² Page 3, April 24, 2014 revision of Agricultural Expert Panel Questions

A handwritten signature in black ink, appearing to read 'J.P. Cativiela', with a large, stylized initial 'J' and 'C'.

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
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