

Central Valley Regional Water Quality Control Board

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COMMENTS ON STANISLAUS COUNTY CEQA REFERRAL INITIAL STUDY AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION FOR THE JOHN BRASIL DAIRY EXPANSION PROJECT (USE PERMIT APPLICATION NO. PLN2021-0033), STATE CLEARINGHOUSE NUMBER 2021070146

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) is a state agency with the statutory responsibility to protect water quality in California's Central Valley. (Wat. Code, § 13000 et seq.) In support of this mission, the Central Valley Water Board regulates discharges of waste, including from dairies, that have the potential to affect surface water and groundwater. The Central Valley Water Board has established a regulatory program that regulates discharges of waste from dairy facilities throughout the Central Valley.

The Central Valley Water Board, in its role as responsible agency, has reviewed the "CEQA REFERRAL INITIAL STUDY AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION" (IS/MND) prepared by the Stanislaus County Planning and Community Development Department (County) for the John Brasil Dairy (Dairy) Expansion Project. The Dairy is physically located at 1707 and 2300 South Mitchell Road in the Turlock area (APN: 058-015-008, 058-015-012, and 058-016-016). Consistent with the Central Valley Water Board's obligations as a responsible agency, this comment letter reviews the scope and content of the environmental information germane to the Board's statutory responsibilities included in the environmental document for the proposed project.

Project Description/Summary

The proposed project evaluated in the IS/MND is a request to expand the herd of an existing dairy facility located on three parcels across a total of 135.5± acres, in Stanislaus County's General Agriculture (A-2-40) zoning district. The applicant proposes to expand the herd from 442 mature cows to 1,500 mature cows, consisting of primarily milk cows and no dry cows. Under this request, the applicant also proposes to increase support stock number from 600 to 1,200. The increase to support stock will consist of 400 heifers 7-14 months old; 400 heifers 4-8 months old; and 400 calves 4-6 months old. Additionally, the applicant proposes to construct a 10,140± square-foot free stall barn on Assessor

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Parcel Number (APN) 058-016-016, corrals totaling 5± acres in area on APN 058-015-012, and a new wastewater pond 1.3± acres in size on APN 058-015-008. The applicant anticipates an increase of 2,184± cubic feet of additional manure per day generated on the facility from the proposed herd expansion for a total of 3,866± cubic feet of manure per day.

Nutrients produced from the herd will be utilized to fertilize approximately 72± acres of irrigated cropland located across the project site. Hours of operation are 24-hours a day, seven days a week. The dairy currently receives three visits for tallow and veterinary services every two weeks, and a total of four milk and feed truck trips per day. The proposed request is expected to increase the number of feed truck trips by one for a combined total of five milk and feed truck trips per day as part of this request; no increase to the current milk truck trips, tallow, or veterinary service trips are proposed.

Central Valley Water Board Comments

For the reasons discussed below, the Central Valley Water Board believes that the Initial Study (IS) is inadequate to properly inform decisionmakers and the public of the proposed project's potentially significant environmental impacts and does not include sufficient description of mitigation measures that would reduce those impacts to less than significant. The County should prepare an Environmental Impact Report (EIR) rather than a mitigated negative declaration (MND) because there is a fair argument that the proposed project could result in significant water quality impacts.

1. Section X, Discussion paragraph 2, incorrectly asserts that the Dairy is regulated under the Central Valley Water Board's Order R5-2011-0091, *General Waste Discharge Requirements and General NPDES Permit for Existing Milk Cow Dairy Concentrated Feeding Operations within the Central Valley Region*. This Order was rescinded on 20 February 2020 and will not be replaced (see https://www.waterboards.ca.gov/centralvalley/water_issues/confined_animal_facilities/program_regs_requirements/dairy/). The Dairy is actually regulated under Order R5-2013-0122, *Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies* (Dairy General Order), under which the Dairy was enrolled on approximately 29 June 2007.

It may be appropriate to revise the discussion of permit requirements in paragraphs 2-4 to reflect the requirements of the Dairy General Order. However, it should also be noted that the Dairy General Order prohibits enrolled dairies from expanding (Dairy General Order, Prohibition A.15; and see Att. E, Definition 15), so the proposed expansion can only legally proceed after the Central Valley Water Board provides appropriate authorization under a new waste discharge requirements (WDRs) order. The establishment of waste discharge requirements for individual facilities generally can take 18 months or longer, even in ideal circumstances. Adding to the complexity of the regulatory situation is the fact that the State Water Board is currently conducting a review of the Dairy General Order, which the State

Water Board has indicated is likely to result in an order directing the Central Valley Water Board to reconsider significant aspects of its CAF program. These directives will be announced before the Central Valley Water Board will be able to develop and issue permit requirements for proposed dairy expansions or new dairies. Therefore, while the Board will accept any report of waste discharge (i.e., permit application) submitted to obtain individual requirements, it is temporarily deferring work on such requirements until the State Water Board finalizes its review of the Reissued Dairy General Order.

For many non-dairy permittees, this type of delay is mitigated by the provisions of Water Code section 13264, which allows facilities to operate according to their proposed plan of operation while the Board works to develop robust and enforceable permits. However, one limitation in Water Code section 13264 is that it only applies to facilities that do not threaten to create or exacerbate a condition of pollution or nuisance (as defined by Wat. Code, § 13050). Unfortunately for dairies in the Central Valley, even the most effective suite of management practices has not yet proven effective at limiting groundwater impacts to levels that would not be considered pollution or nuisance. Therefore, a facility that proposes to expand may not begin to operate at its expanded capacity until permit requirements are established by the Board.

2. In addition to the issue noted in #1, Section X, Discussion paragraph 2 incorrectly states “Large CAFOs are required to prepare and implement a Nutrient Management Plan (NMP) and Waste Management Plan (WMP), which describe the regulatory requirements for the facility, and together they serve as the primary tool to prevent groundwater contamination and to establish best management practices (BMP) for dairy waste management.” NMPs and WMPs are Discharger-developed plans for implementing BMPs to meet Dairy General Order requirements, not descriptions of regulatory requirements.
3. Section X, Discussion paragraph 6, contains contradictory evaluation of whether the proposed project would violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality. Paragraph 6 states that “the proposed project could result in degradation of groundwater resources.” A few sentences later, paragraph 6 states, “[w]hile the proposed dairy expansion is not anticipated to increase the potential for impacts to groundwater quality...” Given the County’s conclusion that the proposed project may result in “degradation of groundwater resources,” it is not clear why the County does not anticipate that the project would result in increased potential for impacts to groundwater quality. The County should perform a more robust evaluation of the potential water quality impacts of the proposed project and provide a more thorough discussion of its findings resolving the inconsistency noted above.
4. Based on the IS, the proposed project is anticipated to result in an “increase of 2,184± cubic feet of additional manure per day generated on the facility from the proposed herd expansion for a total of 3,866± cubic feet of manure per day.” (Initial Study, § 8.) In other words, under the proposed project, the amount of manure

generated, stored, and disposed of by the dairy will increase by approximately 130 percent. As noted on IS/MND page 17, paragraph 2, most nitrates in local groundwater are from anthropogenic sources, including dairy and wastewater drainage. Nevertheless, the IS/MND contains little discussion of whether and how the proposed project's significant increase in waste generation, storage, and disposal could impact the environment prior to mitigation. Further, as discussed in the following comment, it is not clear that the potential impacts of the proposed project could be fully mitigated. Thus, there is a fair argument that this increase in waste generated, stored, and disposed at the Dairy could have a significant impact on the environment by causing or contributing to degradation and/or pollution of underlying groundwater. The County should prepare an EIR evaluating the scope and likelihood of potential water quality impacts that could foreseeably result from the proposed project.

5. The Project Description and Section X mitigation measures do not specify whether the proposed wastewater pond would be designed and constructed to Tier 1 or Tier 2 specifications, as those terms are described in the Dairy General Order. The designs of wastewater ponds can vary, such that some ponds pose a larger threat than others to groundwater quality. The IS/MND does not provide sufficient information for the Central Valley Water Board or the public to determine whether the construction and operation of the proposed pond could impact groundwater quality or otherwise violate applicable waste discharge requirements.
6. The mitigation measures discussed in Section X are known to be inadequate to prevent impacts to groundwater. As described in IS/MND Section X, Discussion paragraph 6, the Central Valley Dairy Representative Monitoring Program (CVDRMP) has indicated that nutrient management practices required by the Dairy General Order "are not sufficient to prevent the pollution of groundwater from cropland" where dairy waste is applied. (See SRMR, pp. 30, 32-33.) Despite the County's acknowledgement that Dairy General Order requirements are inadequate to mitigate groundwater quality impacts, the majority of mitigation measures identified in Section X are similar or identical to the requirements of the Dairy General Order. In particular:
 - Mitigation X.1, bullets 1, 3, and 4 describe management practices involving proper drainage in compliance with California Code of Regulations, title 3, section 646.1, and paving of certain production areas. Dairy General Order Provisions D.1, D.2, D.4. and D.6 likewise require proper drainage in accordance with California Code of Regulations, title 3, section 646.1, and paving of certain production areas.
 - Mitigation X.2 describes compliance with the Nutrient Management Plan (NMP) and Waste Management Plan (WMP) submitted to the County, application of manure to land application areas at a rate not to exceed 1.65 times total nitrogen removed via harvest, and, upon request by the County, compliance sampling. The NMP and WMP submitted to the County are the same as the NMP and WMP that the Dairy is required to maintain and implement pursuant to Dairy

General Order Provisions J.1.b and J.1.c and Attachments B and C. The 1.65 ratio of nitrogen application to removal ratio is drawn directly from the Dairy General Order (see Att. C, p. C-11). The Dairy General Order likewise provides for required and on-request nutrient sampling (see Monitoring and Reporting Program Order R5-2013-0122 (MRP), pp. MRP-2 to MRP-4).

- Mitigation X.3 describes enrollment of the Dairy under the CVDRMP to meet requirements for groundwater monitoring prior to increasing herd size. The Dairy General Order and MRP likewise require the Dairy to either conduct individual groundwater monitoring or enroll in the CVDRMP.

Because the majority of mitigation measures described in Section X have been deemed generally insufficient to protect against groundwater quality impacts, the Central Valley Water Board disagrees that the measures discussed will mitigate or prevent water quality impacts that could foreseeably result from the proposed project. The County should reevaluate its Section X mitigation measures and either identify additional mitigation measures that would provably (i.e. provide a strong level of proof of mitigation) mitigate the potentially significant groundwater quality impacts of the proposed project or prepare an EIR.

7. As noted in the Central Valley Water Board's 23 July 2021 *Comments to Request for Review for the Early Consultation, Use Permit Application No. PLN2021-0033 – John Brasil Dairy Project, SCH#2021-7-146, Stanislaus County*, dischargers whose projects disturb one or more acres, or less than one acre but are part of a larger common plan of development that totals one or more acres of land disturbance, are required to obtain coverage under the State Water Board's Order WQ 2022-0057-DWQ,¹ *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit). The proposed project involves the construction of corrals totaling approximately five acres, a wastewater pond totaling approximately 1.3 acres, and a free stall barn totaling approximately 10,140 square feet. The IS/MND does not contain any discussion of the potential water quality impacts that could arise from the proposed construction activities, nor mitigation measures, such as enrollment under and compliance with the Construction General Permit.

Thank you for the opportunity to comment on this IS/MND. If you have questions about these comments, please contact me at (916) 464-4724 or by email at Daniel.Gamon@waterboards.ca.gov.

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