

Draft Dairy Order: State Water Board's Own Motion Review of Central Valley Water Board's General WDRs for Dairies in the Central Valley Region

Virtual Staff Workshop, Oct. 30, 2024



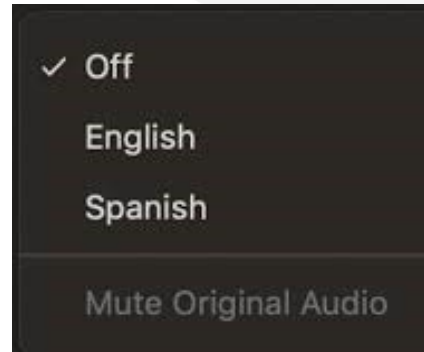
State Water Board, Office of Chief Counsel

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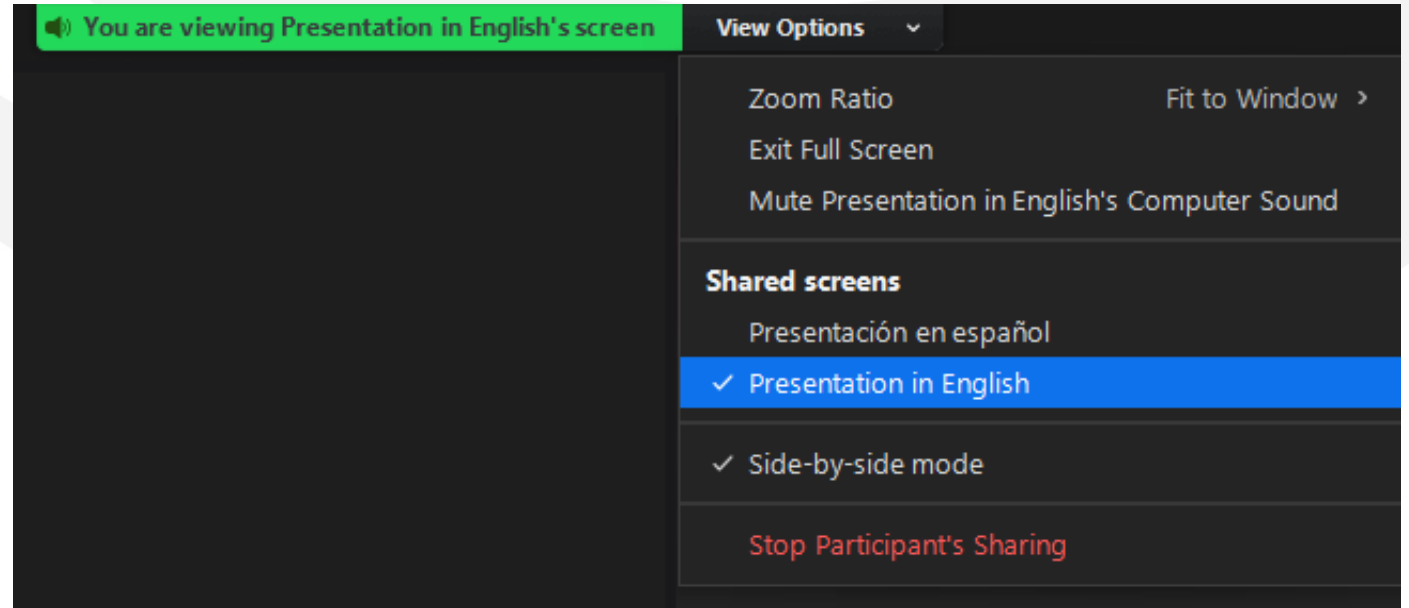
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Presentation Outline

1. Purpose of today's staff workshop
2. Petition process overview
3. CVWB's Dairy General WDRs
4. Overview of the petition
5. Key actions by the SWB to date
6. Overview of the draft dairy order
7. Issues raised in the petition
8. The new regulatory framework
9. Timeline and public process for the draft order
10. Actions by the SWB and the CVWB after adoption of the order

Purpose of the Staff Workshop

- Overview of the draft dairy order (distributed Oct. 1, 2024)
 - Issues raised on petition
 - New framework to regulate dairy discharges to groundwater
- Address clarifying questions about the draft dairy order
 - Submit questions: waterqualitypetitions@waterboards.ca.gov before the end of the workshop
- Written comments due Dec. 6, 2024

Overview of the Petition Process

- Petition process: Water Code § 13320
 - Allows anyone to challenge a RWB decision by petitioning the SWB
 - WDRs can be petitioned
- Issuing or reviewing WDRs: Judicial function (like a judge)
 - Private conversations (“ex parte communications”) are prohibited
 - Exception for general WDRs: ex parte communications allowed w/ disclosure
- Petition rules:
 - Explain why the RWB’s action was improper
 - SWB has 90 days to accept or dismiss; 270 days to issue a decision
 - SWB may review RWB action on its own, with no deadline to make a decision
 - SWB has discretion as to which issues it will address

Overview of the General Dairy WDRs

- Dairy General WDRs the CVWB adopted in 2013
- Scope:
 - 1,300 dairies covered
 - Four waste sources impacting groundwater: production areas, existing ponds, new or reconstructed ponds, land application
- Groundwater Limitation:
 - Waste discharge must not cause an exceedance of water quality objectives that apply to groundwater
 - Focus: drinking water standard for nitrates (10 mg/L)

(Cont'd) Overview of the Dairy General WDRs

- Immediate compliance with Groundwater Limitation – unless dairy complies with the Time Schedule: 16 years
 - Phase 1: 6 years for study and identification (due April 1, 2019)
 - Phase 2: 10 years for implementation of necessary improvements
- Time Schedule Extension
 - Central Valley Water Board may extend deadlines
 - If technically or economically infeasible
- Central Valley Dairy Representative Monitoring Program (CVDRMP)
 - Over 98% of dairies participate

Overview of the Petition

- Petition background:
 - Petitioners: Asociación de Gente Unida por el Agua (AGUA) and Environmental Law Foundation (ELF) filed petition in 2013
 - Requested the SWB review the Dairy General WDRs
- Issues raised in the petition:
 - The SWB's Antidegradation Policy, Porter-Cologne Water Quality Control Act, and the state's human right to water and antidiscrimination laws.
- Petition timeline:
 - Petition filed (2013); put in abeyance (2015); deemed complete (2017); CVWB filed administrative record and responses filed (2018)

Key Actions by the State Water Board to Date

1. Own Motion Review Order (2018)
2. Staff reviewed the CVDRMP's 2019 Summary Report and other literature
 - Conclusion of Phase I
 - Shift in understanding of nitrogen loading to groundwater: land application (94%)
 - Shift in compliance strategy
3. Approved CVWB's CV-SALTS (Oct. 2019, June 2021)
 - Collaborative approach for nitrates control solutions from all sources, including provision of safe drinking water; final compliance deadline up to 35 years

(Cont'd) Key Actions by the State Water Board to Date

4. Held 14 ex parte meetings (Sept. 2021 - May 2022)
 - a. Attendees: Petitioners, dairy industry, CVWB, CDFA, NGOs; Board Member Maguire
 - b. Constructive feedback on initial technical recommendations
 - c. Disclosures posted online
5. Added documents to the Administrative Record
6. Distributed Draft Dairy Order (Oct. 1, 2024)

Overview of the Draft Dairy Order

1. Addresses issues raised in the Petition
2. Establishes new framework to regulate dairy discharges
 - Comply w/ the nitrate drinking water standard of 10 mg/L (“Nitrogen Discharge Limit”)
 - New requirements: (a) land application, (b) waste retention ponds, and (c) providing alternative drinking water for affected residents
 - Applies to dairies in the Central Valley region, plus precedential elements for other regions that have dairies that collect and land apply their manure
3. Remand the Dairy General WDRS to the CVWB with direction to develop revised General WDRs for dairies consistent with the draft dairy order

1st Petition Issue: The Length of the 16-year Time Schedule

- Time Schedule: 16 years to comply with the Groundwater Limitation
- Petitioners claim: 16 years to stop exceeding the drinking water standard for nitrates is too long
- Conclusion: The timeline is reasonable and aligns with the Water Code and the Nonpoint Source Policy

2d Petition Issue: The Extension of Compliance Deadlines

- Issue: Involves the availability of an extension of the compliance deadlines, including the final 16-year compliance deadline, based on technical or economic reasons
- Petitioners' claim: the extension creates impermissibly indefinite deadlines
- Conclusion: The open-ended extension is inconsistent with the Nonpoint Source Policy. The next iteration of the general WDRs for dairies must set clear, specific timelines for compliance

3d Petition Issue: Did the CVWB properly apply the Antidegradation Policy's "Maximum Benefit to the People of the State"?

- Issue: When authorizing a lowering of water quality, the SWB's Antidegradation Policy requires that discharges to high quality waters maintain the highest water quality consistent with the *maximum benefit* to the people of the State.
- Maximum Benefit:
 - Requires considerations of economic and social costs
 - Re economic costs: costs to both the discharger and the affected public
- Petitioners' claim: The Dairy General WDRs only consider costs to the dairy industry, omit:
 - Costs to individuals, water providers, or the state, to treat or replace contaminated water
 - Health impacts from drinking contaminated water
- Conclusion: The Dairy General WDRs' maximum benefit analysis is incomplete. On remand, ensure the analysis addresses costs to the discharger and the affected public

4th Petition Issue: Does the Antidegradation Policy Prohibit Authorizing Water Quality Less than Applicable Water Quality Objectives?

- Issue: When authorizing a lowering of water quality, the SWB's Antidegradation Policy requires that discharges to high quality waters *will not result in water quality less than applicable water quality objectives*.
- Petitioners' claim: Time schedule in the Dairy General WDRs allows degradation of high-quality waters to fall below water quality objectives
- Conclusion: Temporary degradation of high-quality waters is permissible
 - The Water Code (§ 13263) and NPS Policy allow time schedules

5th Petition Issue: The Human Right to Water Statute (HRWS) (Wat. Code § 106.3)

- Petitioners' claim: The CVWB failed to consider the HRWS when adopting the General Dairy WDRs
- Conclusion:
 - The HRWS does not apply to WDRs
 - SWB and CVWB resolutions have adopted the right more broadly and SWB expects the right will be considered in future actions.

6th Petition Issue: The Antidiscrimination Law and Disproportionate Impact (Gov't Code 11135)

- Petitioners' claim: Dairy General WDRs violate the state's antidiscrimination law by disproportionately harm low-income and Latino communities reliant on groundwater.
- Conclusion:
 - No evidence shows disproportionate harm to Latinos reliant on groundwater
 - Emphasizes SWB's commitment to protect all groundwater-dependent residents

We are taking a short break.

We will be right back.

The New Regulatory Framework: Overview

- Scope:
 - Applies to all dairies in the Central Valley region
 - Some components are precedential for dairies in other regions that collect and land apply their dairy waste
 - Land application components
 - Requirement to provide replacement drinking water
- Three key areas:
 - Land application
 - Waste retention ponds
 - Requirement to provide alternative drinking water

(Cont'd) The New Regulatory Framework: Overview

1. Ultimate Objective: Compliance with the Nitrogen Discharge Limit (NDL)
 - Ensure dairies do not cause or contribute to exceedances of 10 mg/L drinking water standard for nitrates in groundwater
 - Applies to all dairy waste management practices
 - Also precedential statewide
2. Provides different guidance to CVWB on revising the general WDRs:
 - Specified implementation requirements: Nitrogen Discharge Limit, whole-farm nitrogen accounting method, alternative drinking water supplies
 - Recommended implementation requirements: All remaining land application components and pond components

Regulatory Framework: The Land Application Components

1. **Final numeric land application rates** to be developed that correlate directly with the Nitrogen Discharge Limit (10 mg/L nitrates) (precedential)
 - 2-part “conceptual” implementation proposal for the CVWB to consider
 - **Groundwater loading limit:** Amount of nitrogen that can reach below root zone without exceeding drinking water standard, with a margin of safety (e.g., 8 mg/L)
 - **Multi-year land application rate formula:** Amount of nitrogen that can be applied to each acre of cropland per year per acre-foot of water without exceeding the groundwater loading limit
 - Conceptual because they are to be further developed by SWB staff
 - Scientific peer review process
 - After SWB adoption of the dairy order

(Cont'd) Regulatory Framework: The Land Application Components

2. Time schedules: CVWB to establish time schedules to comply with final numeric land application rates (precedential)
 - Existing Central Valley dairies: align with CV-SALTS
 - New dairies: immediate

(Cntd.) Regulatory Framework: The Land Application Components

3. CVWB to establish interim numeric land application rates: (precedential)

- Discretion as to specific milestones and corresponding deadlines
- But SWB *recommends* whole farm nitrogen **balance** (agronomic rates) as one interim milestone

4. Whole farm nitrogen **accounting** (precedential)

- *Must* be used in revised general WDRs
- Developed by CVWB
- Scientific peer review

(Cont'd) Regulatory Framework: The Land Application Components

5. Additional technical recommendations to improve land application practices:
 - a. Measures for more accurate whole-farm nitrogen balance accounting
 - b. Continue using the CVDRMP's representative well monitoring
 - c. An increased role for the CVDRMP
 - d. Education to improve nitrogen efficiency
 - e. Replace the strict field-by-filed accounting with grouping fields
 - f. Irrigation and Nitrogen Management Plan reporting requirements (precedential)

Regulatory Framework: Waste Retention Ponds (not precedential)

1. Determine category for existing ponds
 - CVWB to issue order within 1 year to test for hydraulic continuity to groundwater
2. Existing ponds that demonstrate **no** hydraulic continuity to groundwater
 - Seepage rate ≤ 0.9 mm/day
 - Seepage rate test or alternative every 3 years

(Cont'd) Regulatory Framework: Waste Retention Ponds (not precedential)

3. Existing ponds that cannot demonstrate **no** hydraulic continuity to groundwater
 - Same as new/reconstructed ponds (below)
 - Implement within 3 years of failing to demonstrate no continuity
4. New ponds or reconstructed existing ponds
 - Double liner plus leachate collection system, OR
 - Single liner plus monitoring

Regulatory Framework: Providing Alternative Drinking Water Supplies

1. Requires dairies that cause or contribute to an exceedance of 10 mg/L in groundwater to promptly provide alternative water supplies to affected residents
2. Precedential in other regions that have dairies that collect and land apply their dairy waste
3. Requirement is satisfied for Central Valley dairies in management zones complying with CV-SALTS

Regulatory Framework: Take-Aways

1. Specified implementation requirements for CVWB to include in WDRs on remand:
 - Nitrogen Discharge Limit (do not cause or contribute to exceedance of 10 mg/L drinking water standard)
 - Whole farm nitrogen *accounting method* (to be developed by CVWB)
 - Final time schedule
 - Interim milestones and deadlines
 - Provision of alternative drinking water supplies
2. Recommended implementation requirements for components for CVWB to consider including in WDRs on remand:
 - Groundwater loading limit (to be developed by SWB)
 - Multi-year final land application rates (to be developed by SWB)
 - Whole farm balance as an interim milestone

Precedential Elements

- The statewide precedential components: Applicable in regions outside of the Central Valley Region where dairies “land apply” include:
 1. Nitrogen Discharge Limit
 2. Final land application rates
 3. Time schedule for compliance with final land application rates
 4. Interim land application rates and schedule
 5. Whole-farm nitrogen accounting approach (w/o the need to develop it and submit to peer review if the regional water board uses the same approach developed by the CVWB)
 6. Irrigation and Nitrogen Management Plan reporting requirements
 7. Provide alternative drinking water supplies to residents reliant on domestic wells where the dairy is contributing to the exceedance of 10 mg/L nitrate in groundwater.
- These regional water boards must issue or update dairy WDRs to include these components within 3 years of the CVWB’s adoption of revised dairy general WDRs.

Anticipated Timeline and Public Process for the Draft Dairy Order

- Draft Dairy Order Distributed: October 1, 2024
- Virtual Staff Workshop: October 30, 2024
Opportunity to ask questions
- Written Comment Deadline: December 6, 2024
Opportunity to provide written comments
- *(Potential revisions to draft order)*
- State Water Board Workshop: Mid-2025 (estimated)
Opportunity to provide oral comments
- *(Potential revisions to draft order)*
- State Water Board Adoption: Late 2025 to Mid-2026 (estimated)

Actions by the SWB and the RWBs after the SWB's Adoption of the Dairy Order

- SWB to develop
 - Groundwater Loading Limit
 - Final land application rate formulas
 - Consult with academics; technical coordination with CVWB and CVDRMP
 - Scientific peer review process
- CVWB to develop
 - Whole farm nitrogen accounting
 - Consult with technical experts, dairy representatives and other stakeholders
 - Scientific peer review process
- CVWB's CEQA analysis
- CVWB determine which ponds are in hydraulic continuity with groundwater (corrected from original presentation)
- CVWB's adoption of revised dairy WDRs
- Other RWBs issue or update dairy WDRs

Questions and Additional Information

- Submit questions to waterqualitypetitions@waterboards.ca.gov before the end of the staff workshop
- Recording of staff workshop will be posted on website by Nov. 4, 2024
- Subscribe to future communications regarding the Draft Dairy Order
- Website:
https://waterboards.ca.gov/public_notices/petitions/water_quality/r5-2013-0122.html
- Stacy.Gillespie@waterboards.ca.gov
- Philip.Wyels@waterboards.ca.gov

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