

## NUNES OCEAN VIEW DAIRY NUTRIENT OFFSET PROPOSAL RESPONSE TO PUBLIC COMMENTS

Two public comment letters were received regarding a proposal from the City of Santa Rosa to employ Best Management Practices (BMPs) at the Nunes Ocean View Dairy in Sonoma County (Project). The following is the North Coast Regional Water Quality Control Board (Regional Water Board) staff response to significant comments, which were focused on the following issues:

### 1. COMMENT TOPIC: Anti-degradation

**Comment:** *The City of Santa Rosa's NPDES permit contains a "zero, or no net loading" discharge limitation for which the City seeks relief. Because the City's discharge has the potential to add nitrogen and phosphorus to the Laguna de Santa Rosa, additional loading should be controlled under federal and state anti-degradation requirements.*

**Response:** The nutrient trading approach is consistent with the US EPA's Water Quality Trading Policy, which was established to encourage states, interstate agencies and tribes to develop and implement water quality trading programs for nutrients, sediments and other pollutants where opportunities exist to achieve water quality improvements at reduced costs. The federal policy is intended to encourage voluntary trading programs that facilitate implementation of Total Maximum Daily Loads (TMDLs), reduce the costs of compliance with Clean Water Act regulations, establish incentives for voluntary reductions and promote watershed-based initiatives. Specifically, the Trading Policy states: *EPA does not believe that trades and trading programs will result in "lower water quality" . . . or that antidegradation review would be required under EPA's regulations when the trades or trading programs achieve a **no net increase** of the pollutant traded and do not result in any impairment of designated uses.*

In addition to serving as a means to comply with effluent limitations in the City's NPDES permit, the Nutrient Offset Program is an early TMDL implementation action by the City of Santa Rosa for the Laguna de Santa Rosa TMDL for nitrogen and phosphorus under development by the Regional Water Board.

Further, because the permit specifies nutrient offset programs as a means to comply with the no net loading effluent limitations, and the permit complies with all federal and state anti-degradation requirements, this comment is misplaced.

### 2. COMMENT TOPIC: Ambient Monitoring

**Comment:** *One Commenter asserts that a monitoring program for this and other future offset projects is required in order to comply with the State Anti-degradation Policy, to determine whether baseline water quality conditions are being met, and to guide an adaptive monitoring plan.*

**Response:** With respect to the State Anti-degradation Policy, as explained in the response to Comment No. 1, the Project will not result in lower water quality, so an anti-degradation analysis is not required for this project. Consequently, a project-specific ambient monitoring program to determine baseline water quality or otherwise support an anti-degradation analysis is also not required.

However, ambient monitoring is currently conducted in the vicinity of the Project in conjunction with other Regional Board programs. Routine surface water monitoring is conducted at the Trenton-Healdsburg Road Bridge (approximately one mile downstream of the Project site) by the Regional Water Board's Surface Water Ambient Monitoring Program (SWAMP). The purpose of the SWAMP program is to monitor localized trends in water quality. The results of SWAMP data at this site can be used to determine baseline water quality and the overall effectiveness of nutrient reduction strategies in the watershed. In addition, future ambient monitoring is tentatively planned at the Nunes Dairy through the Dairy's participation in group monitoring for compliance with the Dairy Program.

The Commenter's assertion that adaptive monitoring (i.e., project-specific monitoring to assess and/or improve the effectiveness of BMPs) is required for an offset project is not supported by the EPA's Water Quality Trading Policy or the City's Nutrient Offset Program. Instead of project-specific monitoring, the Water Quality Trading Policy recommends monitoring (and reporting) that is appropriate for evaluating the effectiveness of the BMPs used to generate pollutant reduction credits. The Project proposal includes a commitment to conduct an annual inspection of all components of the employed BMPs, with a follow-up inspection to verify that all deficiencies were corrected. The Nutrient Offset Program also does not require direct measurement of nutrient reductions (through monitoring) where load reductions are not amenable to direct measurement, instead allowing reduction credits to be based on an estimated reduction. For this Project, estimates of nutrient reduction that are based on accepted empirical models have been deemed acceptable for determining the mass of nutrients controlled. Therefore, Regional Water Board staff has determined that adaptive monitoring of the kind suggested by the Commenter is not necessary for this project.

### **3. COMMENT TOPIC: Project Eligibility**

**Comment:** *One Commenter questions whether the Project is eligible for offset credits under the Nutrient Offset Program because components of the proposed projects are already required under other permit conditions or regulatory programs.*

**Response:** The Nunes Ocean View Dairy is currently enrolled under Order No. R1-2012-0003, *Conditional Waiver of Waste Discharge Requirements for Existing Cow Dairies in the North Coast Region* (Dairy Waiver). Provisions of the Dairy Waiver require enrollees to submit a Water Quality Plan (WQP) by November 30, 2012, but allow up to two years for an enrollee to submit the WQP if its dairy is participating in an approved nutrient offset project. The Nunes Dairy has submitted a WQP, although it has not yet been approved by the Regional Water Board Executive Officer. Once the WQP is submitted and accepted, the window for the City to obtain nutrient offset credits for nutrient reduction at the Nunes Dairy is closed. Should the Nunes Dairy transfer permit coverage to Order No. R1-2012-0002, *General Waste Discharge Requirements for Existing Cow Dairies in the North Coast Region* (Dairy General Permit), nutrient reduction projects may be eligible for offset credits for a period of time past the deadlines to submit required management plans for the dairy if the enrollee is participating in an approved nutrient offset project. Thus, the eligibility of the Project depends on a change of enrollment for the Nunes Dairy from the Dairy Waiver to the Dairy General Permit.

The Project involves the removal and land application of manure that has accumulated as a result of past practices and site restoration to prevent erosion and migration of soil-attached nutrients to surface waters. The primary management practice proposed as a component of the Project, removal and land application of manure, is not required at this non-operational dairy by the Dairy Waiver, the Dairy General Permit, or title 27 of the California Code of Regulations. Ancillary activities included in the Project, including establishment of a cover crop to prevent erosion and migration of manure-enriched soil to surface waters, are proposed to generate credits only until the Nunes Dairy is required to fully comply with the Dairy General Permit.

**4. COMMENT TOPIC: CEQA Review for this proposal is inadequate.**

**Comment:** *The Regional Water Board and/or the City of Santa Rosa have not adequately complied with the requirements of California Environmental Quality Act (CEQA) for this proposal.*

**Response:** The City certified the Discharge Compliance Project Environmental Impact Report (DCP EIR) on October 8, 2008. The DCP EIR is a program-level EIR that evaluated activities related to street sweeping, manure management, and agricultural land management projects. The installation of BMPs to control nonpoint source discharges at the Nunes Ocean View Dairy is within the scope of activities considered in the EIR. The DCP EIR evaluated the potential impacts from nutrient offset projects and found that the impacts from nutrient offset projects would be less than significant and no mitigations were required because the nutrient offset project, if effective,

would reduce the nutrient loads from the Laguna Subregional Water Reclamation System to no net increase. In addition, given the nature of these offset projects, which are designed to be beneficial to water quality, it is expected that an offset project would be a net benefit to water quality, and ultimately, the environment.

The Regional Water Board has reviewed the City's DCP EIR and is relying on the DCP EIR and makes a determination that there are no potentially significant impacts associated with the Project. The Regional Water Board will file a notice of determination in accordance with title 14, California Code of Regulations, section 15096(i) within five days from the issuance of this Notice of Approval.

**Comment:** *Approval of individual offset projects relying on the City's programmatic EIR rather than separate environmental review documents circumvents public review of individual projects and amounts to piecemealing of a project under CEQA.*

**Response:** The Enhanced Nutrient Removal component of the 2007 DCP EIR evaluated two options, a Nutrient Offset Program and the addition of new facilities at the Laguna Treatment Plant designed to reduce nutrients in recycled water to be discharged to the Russian River or the Laguna de Santa Rosa. Among the proposed elements of the Nutrient Offset Program was manure management at up to eight dairies. According to the EIR, offset projects could include capital improvement projects at a dairy and on-site land application of manure. These activities are consistent with the project proposal.

Please also see response to Comment 4, above.

## 5. COMMENT TOPIC: Regional Water Board Enforcement Authority

**Comment:** *The Regional Water Board has enforcement authority to require the dairy owner to address the accumulated manure. The Regional Water Board should not enable the City to expend public funds for work that should be required of the dairy owner amounts.*

**Response:** The Regional Water Board has used its regulatory discretion to bring dairies into compliance with state and federal regulations and the Basin Plan through the recently adopted Conditional Dairy Waiver, GWDR, and associated NPDES permit for dairies. While these permits take major strides in controlling the discharge of pollutants from dairy operations, in accordance with federal and state laws and regulations, some nonpoint source discharge of pollutants may still occur even though individual dairies are in full compliance with the dairy regulatory program. Additional efforts to control nutrients from nonpoint sources will be undertaken to

address these nonpoint sources, including through implementation of the nutrient TMDL for the Laguna de Santa Rosa, which is currently under development. The City's Nutrient Offset Program is an important tool for identifying potential sources of nutrient discharges and preventing or reducing the potential for these sources to contribute to nonpoint source pollution and impairment of the Laguna de Santa Rosa. Through these programs, the Regional Water Board expects to see measurable water quality improvement in the coming years.

Regional Water Board staff understands the commenter's discomfort with the concept that public funds are being used for a project where a private entity could be seen to derive some gain. However, the proposed project was evaluated under an EIR that was prepared by the City that contemplated that capital improvement projects at dairies could be a component of an offset project. The EIR was approved by the City in conformance with CEQA requirements, including providing an opportunity for public comment.

**6. COMMENT TOPIC: Projects other than dairy projects should be considered and given higher priority.**

***Comment:** One commenter has suggested that nutrient offset projects other than dairies are a more efficient use of scarce resources and actions are needed to address these pollutant sources in the Laguna. Commenters cite potential projects such as more effective storm water control, stream restoration, and Ludwigia removal, where the projects are not already required by state or federal permits.*

**Response:** Regional Water Board staff acknowledges that the types of projects cited by commenters are options the City should consider as potential nutrient offset projects and Regional Water Board staff would certainly support approval of these projects if they are proposed and where they are eligible for offset credits. That said, the Nutrient Offset Program does not favor one type of offset project over another; it only requires that the project is eligible under the conditions of the Offset Program. In addition, during development and Board adoption of the Offset Program, it was anticipated that some offset projects proposed by the City might include projects to prevent or reduce nonpoint source discharges from dairy operations.

**7. COMMENT TOPIC: Project Description is Inadequate**

***Comment:** The proposed Project does not provide an adequate description of the environmental setting, contains ambiguous assumptions, and does not explain how the nutrient credits would apply.*

**Response:** The offset credits were developed by the City's consultant, Keiser and Associates, using a nutrient offset tool known as the Pennsylvania Credit Calculator, which was modified for use for the Nunes Dairy Project. This offset calculating tool is well established in the Midwest and accepted there by the pertinent regulatory agencies. The Project proposal contains detailed information about how offset credits were calculated, including assumptions used to estimate nutrient content of manure, runoff potential, erosion rates, delivery ratios, nutrient bioavailability, and BMP treatment efficiency. The proposal also included links to models used in the analysis and references to literature cited. After reviewing the Project proposal, Regional Water Board staff concluded that the assumptions were conservative and reasonable and determined that the final credit proposals were acceptable.

#### **8. COMMENT TOPIC: Project conflicts with Laguna TMDL**

*Comment:* Some commenters noted that the Laguna Nutrient TMDL is underway and therefore, implementation of City's Nutrient Offset Program should wait until TMDL implementation for consistency.

**Response:** The City's Nutrient Offset Program was designed to bridge the gap between the November 2011 compliance date for final effluent limitations for total nitrogen and total phosphorus and the date upon which final limits will be established based on the TMDL implementation plan. Regional Water Board staff anticipates that a watershed-wide Nutrient Trading Program may also be developed as part of the implementation plan for the Laguna. However, there is no reason that the programs couldn't be made complementary or consistent in the future.

#### **9. COMMENT TOPIC: Public Participation**

*Comment:* One commenter expressed concern that past offset projects were approved without a response to public comments from Regional Water Board staff and suggested that the issues raised by the public should be addressed in some format before project approval.

**Response:** In adopting Resolution No. R1-2008-0061 that approved the City's Nutrient Offset Program, the Regional Water Board provided an opportunity for public comment on specific nutrient offset projects proposed under the Offset Program. At the time of its adoption, the Nutrient Offset Program did not provide specific details about the public participation process; however, Regional Water Board staff has since established a procedure that staff believes satisfies the desire of

the Board to have staff made aware of public concerns about a project and to have time to make modifications to a projects based on public comments or other information, if necessary. The public participation process is as follows:

Staff notifies the public through a Lyris service of the commencement of a minimum 21-day public review period during which the public may review the project proposal and submit comments. After the conclusion of the 21-day review period, Regional Water Board staff reviews public comments and prepares a written response. The final written response to comment document is posted on the Regional Water Board web site along with the Executive Officer's notice of determination for the project. Notification of announcements related to the City's Nutrient Offset Program, including the availability of the final determination and staff response to comments, is provided to interested parties by way of a Lyris email notification. Interested parties can subscribe to the Lyris list for updates about the City's Nutrient Offset Program or other Regional Water Board programs by visiting the following:  
[http://www.waterboards.ca.gov/resources/email\\_subscriptions/reg1\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/reg1_subscribe.shtml).

For the two offset projects previously approved by the Executive Officer (prior to the approval of the Nunes Dairy Offset Project), public comments were received for only the Beretta Dairy Project. For the Beretta Dairy Offset Project, Regional Water Board staff prepared a response to comments and posted the final document on the Regional Water Board web page for the Santa Rosa Nutrient Offset Program. This document is still posted.