

COAST ACTION GROUP P.O. BOX 215 POINT ARENA, CA 95468

Mat St. John , Executive Officer
Regional Water Quality Control Board, Region 1
5550 Skylane Blvd
Santa Rosa, CA 95403

December 14, 2012

Attention: Charles Reed

Information Request: Nutrient Offset Program, City of Santa Rosa proposal for Nunes – Ocean View Dairy

Dear Mr. St John:

Coast Action Group and Northern California River Watch are interested parties in this proposed action. CAG and NCRW have a long history of interest in water resource actions on the Russian River and Laguna de Santa Rosa. CAG and NCRW have participated in the Laguna impaired listing process, City of Santa Rosa Wastewater NPDES, flow issues, and, in general, water quality issues on the Russian River and the Laguna.

Overview

Coast Action Group has commented, with concerns, on the use of the offset program, including the Beretta Dairy proposal, for achieving compliance to the City of Santa Rosa Wastewater NPDES.

These comments on Nunes –Ocean View Dairy raise similar issues to those raised previously. The degrees of scale (application of offsets, gross numbers being used for offset, pollutant sources being used for offset, and application of mandated anti-degradation policy (including recent court decisions), and relevance to environmental requirements in compliance with CEQA have all changed.

The project description claims to reduce delivery of pollutants N and P to surface waters for credits of in excess of 90 tons of retained pollutants (over a period of 4 years) by application of BMPs. The sources are large manure piles that are, as indicated, eroding and leaching nutrients to surface waters during rain events and large, unlined, manure ponds that are sources of delivery of nutrients to surface and ground waters.

The project claims eligibility for offsets as the pollutant sources are not covered by the current Dairy WDRs and Waivers. It is not discussed how eligibility requirements are met in terms of CEQA compliance and/or in compliance with anti-degradation requirements – under the law. This failure is a failure to meet reasonable and legal standards regarding CEQA and anti-

degradation analysis and implementation mandates (including a robust monitoring adaptive management program).

Environmental Setting

The Laguna is listed on the State's 303 (d) impaired waterbodies list for the pollutants Nitrogen, and Phosphorous. **[Note: Currently the Laguna de Santa Rosa is also listed for invasive Ludwigia. The City of Santa Rosa Compliance EIR, Section 4.6 Surface Water Quality – Section 303(d) of the Clean Water Act – this section is inaccurate in not noting listed constituents]**. These nutrients are biostimulants responsible, in part, for other impaired conditions in the Laguna - including hydrophyte growth - Ludwigia. There is an ongoing TMDL and Implementation strategy currently in process. The City of Santa Rosa has a "0" net discharge limitation on their Wastewater NPDES which they must satisfy. This application is an attempt to show pollutant reductions in conformance with the “0” net discharge goal. The Wastewater discharge from the City has potential to add pollutants N and P to the Laguna and must be controlled under the Basin Plan (anti-deg language). Any “offset” program must clearly demonstrate benefits – outside and separate from any other regulatory authority or ongoing violation. In addition, anti-degradation analysis must be part of this program (proposal), including findings on how the proposal will not result in loss in water quality standards. Also, an effective monitoring and adaptive management program must be in place to determine trends and take corrective action – if necessary.

Pollutant control issues on the Russian River, and the Laguna, have become controversial. There are serious concerns with the proposed application of this Resolution and proposed actions as part of any offset program.

The proposed offset program does not provide adequate description of the environmental setting and is ambiguous in its justifications and how the application of offsets would apply. What is the ratio of offset? Are claims of TN and TP reduction verified? If so, please describe the verification process/methodology.

We are concerned with the ratio of offset for different potential pollutant sources as well of the use of pollutant offset sources suggested by the City in the application. It appears that the proposed offset credits for pollution inputs should come under other permit conditions (Dairy Waiver, NPDES, Ludwigia removal, etc.). We understand, under the Resolution, that potential pollutant inputs that fall under regulatory programs (WDRs, Waivers, NPDES, Title 27, TMDL and related Implementing Programs, or if there are ongoing violations) are not eligible for use as offsets. If such large amounts that are being claimed for reduction exist, and have been allowed to exist for an extensive period of time, please explain why they are not controllable under Regional Board authority?

Note: Title 27, inclusive of the State minimum criteria is included (as an attachment) to the Waiver. Title 27, requiring full containment of pollutant flows from manure storage and containment areas, is fully enforceable under Cal Water Code. These pollution control standards are

part of the regulatory mechanism for dairies and should not be overlooked, as compliance standards, in the assessment and approval process of any proposed offset project.

Laguna TMDL

We note that the Laguna TMDL (and related implementing programs) are not yet completed. There may be additional compliance standards associated with the TMDL and related programs. An offset program that relates to issues on the Laguna may be subject to the TMDL findings and actions necessary to attain Water Quality Standards. TMDL findings may point to additional or different pollution control needs and actions. A margin of safety is required as part of the pollution control implementation analysis a required performance standard related to TMDL compliance. Approval of an offset program without the TMDL completion, in this case, may be inappropriate.

Consideration of Projects for TMDL Compliance – Attainment of WQS

We are very concerned in regards to application of regulatory authority and application of resources that will improve conditions on the Laguna. The Regional Board should consider the full range of needs and potential projects, resource cost to benefits, and desired final outcomes. The TMDL analysis should be an aid to pointing to appropriate conclusions and the best use of regulation and resource mix (matrix).

Stormwater: The TMDL may conclude that Stormwater is the major pollutant component (both, City and County responsibility). There are additional actions that the City may take to enhance their Stormwater Plan (and qualify for nutrient offset). Resources spent for stormwater collection and treatment may be the most viable solution to the nutrient input issue.

This is particularly true of runoff that discharges during the dry season. While eliminating the sources of this pollution (car washing, irrigation runoff, rising ground water, leaky storm drain pipes, etc) should be the prime goal for the storm water program, it is likely impossible to stop all dry weather flow.

Regional Board investigation shows high concentrations of nutrients in some dry weather flow. Other urban pollutants are present in these discharges. At least two major Santa Rosa storm drains are discharging pollutants from toxic groundwater contamination.

Santa Rosa can collect storm drain flow in the dry season and discharge it to their wastewater plant for treatment. The City has claimed that this would be too expensive. This technology has been used by the Town of Windsor for many years to address reclaimed water over irrigation. Cities in Southern California (Santa Monica and other cities) use this concept for addressing bacteria pollution and as a nutrient TMDL BMP. In consideration of costs to implement this and the fact that that this is a rarely used BMP, it can be argued that this would be a project that would not be already required by the existing stormwater program – and thus would be eligible for nutrient offset credits.

Wetland and floodplain restoration: Wetlands and floodplains help assimilate nutrients in surface waters. Wetlands also help mitigate secondary impacts from excess nutrients (temperature increases, etc). TMDLs for nutrient impairment commonly include recommendations for wetland and floodplain restoration. The Laguna TMDL findings and Regional Board staff conclusions may indicate that the only reasonable way to meet current Water Quality Standards in the Laguna is through significant wetland and floodplain restoration and creation. There are issues of cost and assessing nutrient credit for such actions. This type of pollution trading is new and nutrient benefits are variable and difficult to quantify in advance (this also applies to proposed offsets). However, there is potential to work these issues out. There is some precedent as the Regional Board staff is currently developing similar trading programs in the Klamath. Consideration of such projects, and related nutrient offset credits, should be given. Benefits may be significant and would last forever.

CEQA Compliance

This is the third (with potential for more) offset proposal to come before the Regional Board. Given the issues described above (and elsewhere in this document), the Fair Argument can be made that this project fails in the mandate for full and comprehensive project description. The Compliance EIR provided by the City of Santa Rosa indicated the potential use of offsets for compliance. No description of the offset type, load reductions, BMPs or other actions taken, or compliance with anti-degradation policy was provided. Furthermore, a number of projects have been revealed over time – all lacking these basic CEQA based constituents. This amounts to a moving target for review and analysis – also known as piecemealing of a project under CEQA. The piecemealing issue probably should have been dealt with supplemental environmental review (Supplemental EIR or PTEIR).

Inclusive of this proposed project and the City of Santa Rosa compliance EIR there is failure to provide: complete and accurate description of the project and existing conditions, complete and accurate discussion and application of anti-degradation policy (and related necessities and implications), complete and accurate discussion of existing monitoring and monitoring necessary for anti-deg compliance, discussion and description of adaptive management program based on monitoring, and necessary discussion of the full range of alternatives (wetland creation and management was mentioned – with no attendant discussion). ***Reminder – the Regional Board resolution authorizing approval of offsets mandates compliance with CEQA- not just aspects of CEQA.***

The “no degradation of baseline” argument does not apply – unless there is a sufficient monitoring program in place to make water quality trend information available regarding the constituent pollutants.

Still, the public and responsible agency are due sufficient project description, including ant-deg analysis and monitoring programs, for review and analysis in an informed decision making process.

It is the responsibility of the lead agency to show proof of benefit and assure full description of the project and related benefits and/or consequences.

The full range of alternatives to the propose offsets must be discussed – with consideration of the full range of alternatives. This has not occurred with proposal and use of these offsets.

CEQA requires expert opinion in areas where such expertise is needed. However, expert opinion is not needed to substantiate basic failures of process or accounting.

Regional Board failure to enforce

It also appears that some of the proposed actions to control pollution inputs for N and P indicate ongoing violation of the Basin Plan (anti-deg language and control language relating to pollutants deleterious to water quality). The indication is that pollution has been ongoing, for many years (potentially a significant factor in the impaired condition of the Laguna) and that the Regional Board has applied their authority, or that there is no authority in place to curtail the pollution.

The actions, to control manure flows, proposed in this application are BMPs that should have been employed a long time ago – to comply with the Basin Plan, Title 27, and other regulatory demands. Control of manure flows is a basic requirement of State regulations and Regional Board permitting authority. The application of BMPs, in this case, are not eligible for nutrient offsets. If manure discharges are occurring to the Laguna de Santa Rosa (listed impaired waterbody) and also to ground water, enforcement action should commence.

The failure of the Regional Board to deal with these large scale and historic issues that obviously, to a significant extent, contribute to diminished water quality conditions should be assessed and discussed as part and parcel of this permit review.

Monitoring – A sufficient monitoring program that is capable of guiding an adaptive management program must be in place. The City was to manage such a program as part of their Wastewater NPDES. Was a sufficient program put in place? Such a program must be part of compliance to State and Regional Anti-degradation language and requirements.

Anti-degradation Responsibility

Both, State and Regional Basin Plan anti-degradation language is fully enforceable. This language demands control of anthropogenic pollutant sources if reasonably controllable. Analysis of degradation potential, with findings, must be part of this project. If findings claim no degradation, there must still be a monitoring program and adaptive management program in place.

Note: The City of Santa Rosa Compliance EIR, , Section 4.6 Surface Water Quality – Antidegradation Policies: There is some discussion of State and Federal policy. The discussion, however, is inaccurate/incomplete as to the Application of State antidegradation policy and fails to consider the wording on antidegradation policy – which is much more comprehensive (inclusive of all pollutants and all waters from controllable sources) and completely enforceable.

Finally

We are concerned, and the Regional Board should be concerned, that allowing large scale credit for offsets can easily be mismanaged - where undue and unjustified credit can be requested (and potentially approved) that results in less (not more) effective management of pollutant inputs to seriously impaired waters.

We are also concerned that regulatory factors, currently in place and potential future regulatory needs and mechanisms associated with the future TMDL, might point to and emphasize pollution control needs other than those proposed in the City of Santa Rosa proposed nutrient offset.

We are calling for due diligence, with public and agency oversight, in effort to curtail and manage pollutant inputs, under the law, and in consideration of actions the will lead to the most efficient use of scarce resources and actions needed to address pollutant issues on the Laguna.

Please respond to our concerns and comments and keep us up to date on actions taken.

Sincerely,

Alan Levine for Coast Action Group and Northern California River Watch

Cc: David Smith – EPA