

**BEFORE THE STATE WATER RESOURCES CONTROL BOARD**

IN THE MATTER OF THE PETITION OF ASOCIACIÓN DE GENTE UNIDA POR EL AGUA AND ENVIRONMENTAL LAW FOUNDATION FOR REVIEW OF REISSUED WASTE DISCHARGE REQUIREMENTS GENERAL ORDER NO. R5-2013-0122, FOR EXISTING MILK COW DAIRIES

SWRCB/OCC File A-2283(b)

Response of Central Valley Regional Water Quality Control Board

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) submits the following in opposition to Asociación de Gente Unida por el Agua and Environmental Law Foundation's (*collectively*, Petitioners) petition for review of the Reissued Waste Discharge Requirements General Order No. RS-2013-0122 for Existing Milk Cow Dairies (2013 Dairy General Order or General Order).

In adopting its 2013 Dairy General Order, the Central Valley Water Board developed an iterative approach toward the long-term protection of groundwater while still avoiding the imposition of impracticable prescriptive requirements on a dairy industry that was struggling with low milk prices and high production costs.

Petitioners seek to upset this delicate balance by demanding, among other things, the immediate lining of all existing ponds. However, the need for an iterative approach – particularly with regard to the lining of existing wastewater ponds - is not simply a matter of discharger cost savings. Rather, it is about imposing requirements to ensure the long-term economic and environmental sustainability of an industry vital to local economies across the Central Valley Region. Additionally, Petitioners' interpretation of the Statement of Policy with Respect to Maintaining High Quality of Waters in California, Resolution 68-16, is directly contrary to the Porter-Cologne Water Quality Control Act and its express authorization for the inclusion of time schedules as part of waste discharge requirements. For these and other reasons, the petition for review should be dismissed.

**SUMMARY OF GENERAL ORDER**

The Central Valley Water Board adopted its 2013 Dairy General Order on October 3, 2013. For the purposes of instant petition, the pertinent provisions are Section F .1 ( Groundwater Limitations) and Section M (Time Schedules for Compliance). Taken together, these provisions establish an iterative process designed to ensure the long-term protection of groundwater in the Central Valley.

Under Section F.1, existing milk cow dairies are prohibited from discharging waste that "cause[s] the underlying groundwater to exceed water quality objectives, unreasonably affect[s] beneficial uses, or cause[s] a condition of pollution or nuisance." (2013 Dairy General Order, p. 23,

§ F.1.) This general prohibition is then imposed through iterative processes prescribed by Section M.

Section M contains different provisions depending on whether a dairy conducts its own monitoring or participates in a representative monitoring program with other dairies, yet the overall iterative process remains substantively the same. Dairies will implement initial waste management practices to comply with Section F.1, and then monitor the effects of those practices on underlying groundwater. Those impacts will then be evaluated each year as part of the dairies' annual reporting requirements. After six years of monitoring underlying groundwater and evaluating the protectiveness of their initial practices, dairies will then submit, for Executive Officer approval, a summary report identifying new management practices necessary to comply with the general prohibition in Section F .1, as well as a time schedule for their implementation of those new practices. (*Id.*, pp. 28-29, § M.)

All time schedules must be "supported with appropriate technical or economic justification...," and require implementation of additional measures "as soon as practicable, and in no case ... beyond 10 years ...." Though time schedules may be modified for technical or economic infeasibility, they are still limited to a 10-year timeframe. (*Id.*, pp. 28-29, § M.)

The 2013 Dairy General Order's use of time schedules dovetails neatly with the general prohibition in Section F .1. As long as dairies are in the process of improving waste management practices in accordance with an approved time schedule, they shall be deemed in compliance with Section F.1. (*Id.*, p. 7, fn. 7, § F.1.)

## DISCUSSION

### **A. The Time Schedules under the 2013 Dairy General Order are Consistent with Regulatory Guidelines, and Reasonable and Appropriate under the Circumstances.**

In their petition, the Petitioners appear to conflate two separate yet interrelated arguments. First, they contend that the Central Valley Water Board, in adopting the 2013 Dairy General Order, failed to comply with the express requirements of the Statement of Policy with Respect to Maintaining High Quality of Waters in California, Resolution 68- 16 (Antidegradation Policy). Second, they contend that the inclusion of relatively lengthy time schedules in the General Order will not adequately protect beneficial uses of groundwater, namely municipal and domestic supply. The Central Valley Water Board acknowledges that certain "high quality" waters will be degraded to some extent by the continued operation of dairies regulated under the General Order. Even so, the Central Valley Water Board has made all appropriate findings necessary to allow this limited degradation to occur, consistent with the Antidegradation Policy.

Throughout their petition, Petitioners seem to elevate that the Antidegradation Policy as the most important legal requirement respecting the regulation of dischargers for protection of underlying groundwater. However, the Antidegradation Policy, by its own terms, only applies when the State Water Board or Regional Boards allow the degradation of "high quality" waters. While Petitioners are rightfully concerned about groundwater relied upon by disadvantaged communities groundwater becoming contaminated with nitrates from nearby agricultural

operations, the real issue here is not mere degradation, but rather the pollution of "high-quality" waters. To that end, the Water Code mandates that the Central Valley Water Board prescribe waste discharge requirements (WDRs) to protect the beneficial uses designated in the Central Valley Water Board's two basin plans for the Central Valley Region (Basin Plans).<sup>1</sup> (See Wat. Code, §§ 13241, 13263, subd. (a).) Further, the Central Valley Water Board is statutorily authorized to issue time schedule orders rectifying a wide range of inadequate practices (see *id.*, §§ 13263(c), 13300, 13301), provided that the time schedules are as short as practicable (see Cal. Code Regs., tit. 23, § 2231, subd. (a)). In adopting the 2013 Dairy General Order, the Central Valley Water Board issued WDRs to protect groundwater, conditioned by time schedules under which the dischargers will be required further improve their facilities and management practices within a finite amount of time. The time schedules reflect an aggressive yet reasonable approach to protecting beneficial uses. All of this is wholly consistent with the Antidegradation Policy, the Water Code and the Basin Plans.

As outlined above, Section F .1 of the 2013 Dairy General Order establishes a general prohibition against discharges that "cause the underlying groundwater to exceed water quality objectives, unreasonably affect beneficial uses, or cause a condition of pollution or nuisance." (2013 Dairy General Order § F .1, p. 23.) However, this prohibition is qualified as to dairies that are in the process of implementing improvements pursuant to an approved time schedule. (*Id.*, fn. 7.) Petitioners take issue with this time schedule provision, arguing that its inclusion violates the Antidegradation Policy by effectively permitting the continuation of activities that may result in further water quality degradation beyond applicable objectives.

The Antidegradation Policy essentially sets forth two key principles. First, the Antidegradation Policy requires that the water quality of "high-quality" waters "be maintained until it has been demonstrated to the [State Water Board or Regional Board] that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water, and will not result in water quality less than that prescribed in the policies." (Antidegradation Policy, p. 1.) Second, when the State Water Board or Regional Boards authorize an activity that will result in the degradation of "high quality" waters, they must require the discharger to employ best practicable treatment and control (BPTC) of discharges necessary to (1) avoid a pollution or nuisance, and (2) maintain the highest water quality consistent with the maximum benefit to the people of the State. (*Id.*)

In challenging the 2013 Dairy General Order's exemption for dairies implementing an approved time schedule (per § F .1, M), Petitioners are essentially arguing that the Antidegradation Policy precludes the use of time schedules with WDRs prescribed to rectify water quality below established objectives. However, Petitioners' argument is completely undermined by the unqualified availability of time schedules under the *subsequently-adopted* Porter Cologne Water Quality Control Act. (See, e.g., Wat. Code, §§ 13267(c), 13300, 13301.) For example, if a discharger is found to be in violation of their WDRs, the regional board is authorized to issue a Cease and Desist Order requiring compliance either "forthwith," or "in accordance with a time schedule ...." (*Id.*, § 13301.) Similarly, the regional board is authorized to

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<sup>1</sup> See Central Valley Water Board, Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 3d ed. (rev. July 2016); Central Valley Water Board, Water Quality Control Plan for the Tulare Lake Basin 2d ed. (rev. July 2016).

incorporate a time schedule as part of WDRs (*id.*, § 13267, subd. (c)), especially when the WDRs at issue cannot be immediately met by the discharger (see Cal. Code Regs., tit. 23, § 2231, subd. (b) ["Time schedules should be included in requirements for existing discharges when it appears that the discharger cannot immediately meet the requirements."]).

Petitioners contend that time schedules cannot result in even short-term degradation below water quality objectives, yet accepting their position at face value would virtually read time schedule provisions right out of the Water Code. However, time schedules by definition allow dischargers to temporarily avoid strict compliance with WDRs, which means that at least some *short-term* degradation will typically result.<sup>2</sup> If the Antidegradation Policy's first principle were narrowly interpreted so as to prohibit both short-term degradation as well as long-time degradation, it would effectively preclude the availability of time schedules that are otherwise expressly authorized by law.

Petitioners also worry that the Central Valley Water Board's ability to modify technically or economically infeasible time schedules (per Section M) will lead to an indefinite postponement of compliance. Such concerns are entirely unfounded. After the first six-year phase of management practice implementation and monitoring efforts conclude and the Summary Monitoring Report is submitted to the Board, time schedule proposals for upgrades still cannot exceed 10 years according to the plain terms of the Order. (2013 Dairy General Order, p. 29 § M.)

WDRs limitations may be most strict under the Antidegradation Policy when it is necessary to maintain water quality above established objectives - yet that is also when immediate compliance with WDRs will be most difficult. Under the Porter-Cologne Water Quality Control Act, this is precisely when it is *most appropriate* to include a time schedule. (See Wat. Code, § 13300; Cal. Code Regs., tit. 23, § 2231.) This is why Petitioners' contentions must be rejected.

**B. The Time Schedules Imposed by the 2013 Dairy General Order are Consistent with the Water Code and the Antidegradation Policy and Represent a Reasonable Policy Determination by the Central Valley Water Board**

Petitioners argue that the 2013 Dairy General Order time schedules are improper because they "allow degradation to continue for an unreasonable, and arguably undefined, period... " of up to 16 years. Petitioners further imply that the subject time schedules are contrary to the directive that time schedules "not permit any unnecessary time lag... ," and "be periodically reviewed and ... updated, when necessary, to assure the most rapid compliance." (See Cal. Code Regs., tit. 23, § 2231, subds. (b), (d).)

Contrary to Petitioners' assertions, the 2013 Dairy General Order does not simply "kick the can" down the road for 16 years .. Upon enrollment under the General Order, dairies will implement an initial iteration of waste management practices designed to prevent further

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<sup>2</sup> To be clear, this does not mean that the resulting degradation will be permanent. If WDRs are properly calibrated so as to eventually improve water quality above established objectives, any interim degradation will be negated by long-term gains in water in water quality.

degradation of groundwater. The effectiveness of these initial practices will then be evaluated based on six years of monitoring data. If these initial protective measures are shown to be insufficient, new practices must be identified and implemented as soon as practicable and, in any event, within 10 years. In other words, it is the 10-year time schedule following the summary report, not "practicability," that constrains the length of time that the dairies will have to rectify their management practices.

The initial six-year monitoring period and the subsequent implementation time schedule are reasonable and appropriate. With respect to the initial six-year monitoring period, there is good reason for allowing up to six years of monitoring data to be considered in analyzing the effectiveness of existing management practices. As explained in the Information Sheet accompanying the General Order:

[A] single set of monitoring data, or even monitoring data over a short period of months or years, may not be sufficient to determine the effectiveness of existing practices. In many cases, because of time lags of weeks, months or even years between surface practices and resulting effects in groundwater, the effects of improved management practices will not be reflected immediately in monitoring wells. Evaluating these results over time and in conjunction with data regarding surface practices and other data is necessary to determine whether water quality is being protected or is being unreasonably impacted. (2013 Dairy General Order, Info. Sheet, p. 31.)

Absent the initial six-year monitoring period, there is simply no way of instantly verifying whether changes in surface practices have degraded, maintained or improved groundwater quality.

The subsequent time schedule periods of up to 10 years are equally well-warranted in view of the potentially enormous costs associated with new practices that may be shown to be essential for compliance with Section F .1. For example, uncontradicted evidence in the administrative record demonstrates that lining dairy ponds will cost anywhere from \$180,000 to \$1,383,000, and that existing dairies cannot immediately absorb such costs and still remain in business. (See generally Mem. from John Schaap and Steve Bommelje, Provost & Pritchard, to Theresa A. Dunham, Somach, Simmons & Dunn (Aug. 5, 2013) re: *Costs to Retrofit Existing Dairies That Do Not Have Tier 1 or Tier 2 Lagoons*; Mem. from Annie AcMoody, Western United Dairymen, to Theresa A. Dunham, Somach, Simmons & Dunn, (Aug. 6, 2013) re: *Financial Impact to Retrofit Existing Dairies That Do Not Have Tier 1 or Tier 2 Lagoons*.) To impose a time schedule with substantially less time would be tantamount to immediately putting a huge number of dairies out of business.

**C. The Central Valley Water Board's Iterative Approach toward Management of Existing Wastewater Ponds Reflects "Best Practicable Treatment or Control" Consistent with the Antidegradation Policy.**

Petitioners also contend that the 2013 Dairy General Order, in failing to require dairies to immediately install impermeable liners in all existing wastewater ponds, violates the

Antidegradation Policy's second principle that WDRs "result in the best practicable treatment or control [BPTC] of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained." This contention also lacks merit.

The State Water Board has previously instructed that "[t]o evaluate the best practicable treatment or control method, the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers . . . . The costs of the treatment or control should also be considered....'" (See State Water Board Order WQ 2015-0075 (*L.A. Cnty. MS4 Petitions*), p. 24, fn. 81, quoting State Water Board, *Questions & Answers re: Resolution 68-16* (Feb. 16, 1995), p. 6.) Because not all dairies are alike, the sort of evaluation contemplated by State Water Board guidance materials must be performed on a case-by-case basis. The iterative process outlined in Section M of the 2013 Dairy General Order accomplishes exactly that.

Petitioners are unsatisfied with the 2013 Dairy General Order's iterative approach for existing wastewater ponds,<sup>3</sup> even though the process may very well lead to the lining of such ponds if it is the only manner of complying with the Basin Plans. (See 2013 Dairy General Order, pp. 16-17, § C.4.) Instead, they demand that the Central Valley Water Board immediately impose concrete, prescriptive standards for existing wastewater ponds at each of the approximately 1,300 dairies within the Central Valley Region.<sup>4</sup> Although lining existing wastewater ponds may be an optimal form of waste treatment and control for certain sites, it is simply not practicable to do so immediately, and imposing such a blanket requirement would be overbroad and unduly prescriptive.

Petitioners also appear to suggest that the Central Valley Water Board's justification for an iterative approach with existing ponds is somehow undermined by the more prescriptive two-tiered approach being applied new or reconstructed ponds. (See Petition, pp. 8-9 & fn. 2.) Under the 2013 Dairy General Order, new or reconstructed pond must be designed according to one of two tiered specifications, both of which exceed requirements imposed under California Code of Regulations, title 27 (Title 27).<sup>5</sup> (See 2013 Dairy General Order, p. 9, Finding No. 28(d) & p. 17, § C.5.b.) Detailed designs must also be approved by the Executive Officer prior to construction. (*Id.*, pp. 17-18, § C.5.c.) The reasons for such differential treatment are clear in the Information Sheet attached to the General Order:

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<sup>3</sup> At minimum, existing wastewater ponds must comply with the standards set forth in California Code of Regulations, title 27 (Title 27). (2013 Dairy General Order, § G.2.) Although compliance with Title 27 was previously considered "best practicable treatment or control," this has "not been found to be protective of groundwater under all conditions." Rather than requiring the immediate retrofitting of all existing ponds, the Central Valley Water Board will evaluate whether ponds are adequately protective of underlying groundwater. (*Id.*, p. 9, Finding No. 28(c).)

<sup>4</sup> See Dairy General Order, p. 3, Finding No. 12.

<sup>5</sup> "Tier I" pond designs will incorporate two 60mm high-density polyethylene ( or similarly durable material) liners separated by a leachate collection and removal system constructed in accordance with California Code of Regulations title 27, section 20340. "Tier 2" pond designs must comply with California Natural Resource Conservation Service (NCRS) Conservation Standard 313, or an alternative design that has been demonstrated to be protective of groundwater quality. (2013 Dairy General Order, p. 17, § C.5.)

It would be difficult to determine if any proposed pond design would be protective of groundwater quality without an evaluation of information on depth to groundwater, existing groundwater quality beneath the facility, nature of the geologic material between the bottom of the retention pond and the first encountered groundwater, nature of the leachate from the retention pond, and proximity to existing supply wells. Proposed pond designs that do not include such an evaluation should be very conservative to assure protection of groundwater under any likely conditions. The most conservative pond design would include a double lined pond with a leachate collection and removal system between two geosynthetic liners. Such pond designs are currently being approved by the Central Valley Water Board at classified waste management units regulated under Title 27 of the California Code of Regulations (i.e., landfills and Class II surface impoundments) and a limited number of wastewater retention ponds at dairies. (2013 Dairy General Order, Info Sheet, p. 17.)

Ultimately, any form of "best practicable treatment or control" must be *practicable*. As explained above, Central Valley dairies are unable to absorb the cost of immediately relining all existing wastewater ponds. (See Provost & Pritchard 5 Aug. 2013 Memo re: *Costs to Retrofit Existing Dairies That Do Not Have Tier 1 or Tier 2 Lagoons*; Western United Dairymen 6 Aug. 2013 Memo re: *Financial Impact to Retrofit Existing Dairies That Do Not Have Tier 1 or Tier 2 Lagoons*.) Imposing such measures would undoubtedly spell the end of the dairy industry in the Central Valley; Petitioners cannot and do not contend otherwise.

**D. The Central Valley Water Board's 2013 Dairy General Order Is Consistent with the Maximum Benefit to the People of California.**

Petitioners also argue that the Central Valley Water Board's findings in the 2013 Dairy General Order do not satisfy the Antidegradation Policy's first principle that any degradation in water quality be demonstrated to be "consistent with the maximum benefit to the people of the State." However, Petitioners' argument is sustained only by a misreading of the General Order, coupled with a strained interpretation of State Water Board's 1995 guidance memorandum. As explained below, the Central Valley Water Board made all necessary findings in adopting its General Order.

The State Water Resources Control Board has previously instructed that the consistency of any degradation "with the maximum benefit to the people of the State" should be evaluated "on a case-by-case basis ... based on considerations of reasonableness under the circumstances at the site."<sup>6</sup> Factors to be considered include (1) past, present, and probable beneficial uses of the water. . . ; (2) economic and social costs, tangible and intangible, of the proposed discharge compared to the benefits, (3) environmental aspects of the proposed discharge; and (4) the implementation of feasible alternative treatment or control methods. With reference to economic costs, both costs to the discharger and the affected public must be considered. 'Cost savings to the discharger, standing alone, absent a demonstration of how these savings are necessary to

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<sup>6</sup> Because the 2013 Dairy General Order prescribes WDRs for a category of discharges (see Wat. Code, § 13263, subd. (i)), *site-specific* considerations of reasonableness are not possible.

accommodate "important social and economic development " are not adequate justification' for allowing degradation. [Citation.]" (State Water Board, *Questions & Answers re: Resolution 68-16* (Feb. 16, 1995), p. 5, quoting State Water Board Order No. WQ 86-17 (Fay), p. 22, fn. 10.)

In adopting the 2013 Dairy General Order, the Central Valley Water Board found that, in view of "the economic significance of the Central Valley dairy industry and the important role Central Valley dairies play in providing adequate milk supplies to the nation ... ," and to the extent that any long-term degradation would result from the General Order WDRs, such degradation was not only necessary to "maintain the [dairy] industry and to prevent the loss of jobs and the impacts to the local economy that might otherwise occur. ... ," but also "consistent with the maximum benefit to the people of the state."<sup>7</sup> (2013 Dairy General Order, p. 10, Finding No. 3 3.) The Central Valley Water Board went on to find that any resulting degradation would be limited so as to avoid long-term impacts to beneficial uses of water. (*Id.*)

Disregarding Central Valley Water Board findings that the 2013 Dairy General Order was "designed to protect human health and ensure that water is safe for domestic use," and to avoid any "long term impacts to beneficial uses ... " of water (see, e.g., 2013 Dairy General Order, pp. 10-11, Finding Nos. 3 3 & 38), Petitioners imply that the General Order places the economic interests of the dairy industry over and above the health and welfare of disadvantaged communities that rely on impacted groundwater.<sup>8</sup> This false dichotomy ignores the General Order's virtual *raison d'etre*-to protect those that rely on groundwater for municipal and beneficial uses. (See Wat. Code, §§ 13241, 13263.) On balance, the Central Valley Water Board's findings in the General Order are more than adequate, and must be upheld as such.

#### **E. The 2013 Dairy General Order Is Consistent with California's "Human Right to Water" Policy.**

Under the Human Right to Water Act, it is "the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." (Wat. Code, § 106.3, subd. (a).) This policy must be considered by "[a]ll relevant state agencies ... when revising, adopting, or establishing policies, regulations, and grant criteria when ... pertinent to [those] uses of water. ... "<sup>9</sup> (*Id.*, § 106.3, subd. (b).)

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<sup>7</sup>The fragility of the dairy industry is evidenced by the sharply decreasing number of operations in the Central Valley. In 2007, there were at least 1,600 dairies in the Central Valley Region. As of 2013, there were only 1,300. The decline in California dairy operations is largely due to economic reasons, as milk production revenues have lagged far behind rising costs of production. (See 2013 Dairy General Order, Info Sheet, pp. 3-4.)

<sup>8</sup> Petitioners also misconstrue the Central Valley Water Board's interest in preserving the dairy industry as amounting to little more than discharger cost-savings. As the State Water Board can see from the 2013 Dairy General findings, that is simply not the case.

<sup>9</sup> Aside from these obligations, the Human Right to Water Act "does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure .... " (See Wat. Code, § 106.3, subd. (c).)



Although the 2013 Dairy General Order is technically neither a policy, regulation nor grant,<sup>10</sup> the Central Valley Water Board nevertheless considered the right to safe, clean, affordable and accessible water " in developing the General Order. Indeed, the Central Valley Water Board expressly found that its order "promotes [the 'human right to water'] policy by requiring discharges to meet maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use." (2013 Dairy General Order, p. 11, Finding No. 38.) Consistent with its primary duty to protect the quality of waters for all beneficial uses, including municipal and domestic uses, the Central Valley Water Board is working diligently to ensure that communities within Central Valley Region enjoy "safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."

**F. The 2013 Dairy General Order Is Neither Discriminatory Nor Violative of Civil Rights with Respect to Low-Income Communities, Latinos and Other Communities of Color.**

Finally, Petitioners assert that that the 2013 Dairy General Order's inability to adequately protect groundwater from nitrate degradation is discriminatory and otherwise violative of civil rights because of its disparate impact on low-income communities, Latinos and other communities of color, which are more likely to rely on groundwater contaminated by nitrates from agricultural activities.<sup>11</sup> Such assertions are patently without merit.

Like all other Central Valley Water Board WDRs, the 2013 Dairy General Order, "implement[s] ... water quality control plans ... , and ... take[s] into consideration the beneficial uses to be protected, [and] the water quality objectives reasonably required .... " (See Wat. Code, § 13263, subd. (a).) Basin Plans and the various water quality objectives they incorporate are *strictly results-oriented*, and literally incapable of disparate impacts when applied neutrally through WDRs. The General Order was adopted to do just that. The Central Valley Water Board recognizes that low-income communities and communities of color are often the most vulnerable to groundwater contamination from agricultural activities. However, the General Order endeavors to protect these Californians as much as any other group.

## CONCLUSION

The Central Valley Water Board, in adopting the 2013 Dairy General Order, sought to rectify the legal inadequacies of prior general order, as identified by the Third District Court of Appeal,<sup>12</sup> while still imposing meaningful and substantial requirements on the dairy industry to improve waste management practices for the protection of underlying groundwater for all communities across the Central Valley Region. In developing the General Order, the Central Valley Water Board reached a careful balance between ensuring long-term protection of

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<sup>10</sup> "[Water Code] section 106.3, by its terms, does not apply to the issuance of a water quality order." (State Water Board Order WQ 2013-0101 (*Central Coast Region Conditional Waiver of WDRs for Irrigated Lands*), p. 67.)

<sup>11</sup> State agencies are unequivocally forbidden from conducting, operating or administering programs and activities that discriminate against, or otherwise deny full and equal benefits to, any person based on their sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status or sexual orientation. (Gov. Code, § 11135, subd. (a).)

<sup>12</sup> See *Asociación de Gente Unida por el Agua v. Central Valley Reg'l Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255.

underlying groundwater, and imposing reasonable requirements upon an industry vital to the well-being of California's Central Valley economy. It is the Central Valley Water Board's contention that the General Order imposes aggressive, but reasonable, requirements consistent with the Antidegradation Policy, the Water Code and Basin Plans, and does not violate civil rights or Human Right to Water.

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Central Valley Regional Water Quality Control Board

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5 February 2018