

September 3, 2015

Chair Felicia Marcus and Board Members
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Sent via electronic mail to: commentletters@waterboards.ca.gov

RE: Comment Letter – Grazing Regulatory Action Project

Dear Chair Marcus and Board Members:

On behalf of California Coastkeeper Alliance, which represents 12 California Waterkeeper groups spanning the coast from the Oregon border to San Diego, we appreciate the opportunity to provide comments on the State Water Resources Control Board's ("State Water Board") Proposed Draft Resolution for the Discontinuation of Discussions Regarding a Statewide Approach to Addressing Water Quality Impact from Livestock Grazing ("GRAP Resolution" or "Draft Resolution"). Many of the California Waterkeepers – particularly in Regions 1 and 3 – witness serious and acute water quality degradation as a result of livestock grazing within riparian zones. We are disappointed to see that after years of regulatory absence, the State Water Board is now discontinuing its program to ensure livestock grazing is regulated in a manner that protects the beneficial uses of California's waterways.

Grazing activities is a serious source of pollution. Nonpoint source pollution associated with grazing include discharges of sediment from the erosion of stream banks, discharges of bacteria from livestock feces that get into the surface water, and increased temperature of streams caused from trampling of riparian habitat.¹ Researchers estimate that 80 percent of the damage incurred by streams and riparian systems in Western states was from grazing livestock. Improperly managed grazing degrades riparian habitat by trampling soils, reducing shade producing cover, and degrading the structure of streamside vegetation. This results in shallow, wide streams and increased water temperatures. Grazing in riparian zones also causes substantial amounts of stream bank and stream bed erosion causing sediment increases, resulting in the loss of spawning beds. Fecal coliform bacteria from animal waste, can reach high levels and impact beneficial uses of the water, including uses for recreation, domestic and municipal supply.

Given the severe impact grazing activities have upon California's waterways, we OPPOSE the GRAP Resolution unless it is revised to:

- Mandate all regions with grazing activities develop a livestock grazing program by December 31st, 2016;
- Require all regional grazing programs meet the Nonpoint Source Policy's requirements;
- Require adequate monitoring to ensure water quality objectives are achieved and maintained;
- Set minimal requirements and BMPs for regional grazing programs; and
- Prohibit direct animal access to waterways and set a minimum riparian buffer setback.

¹ State Water Resources Control Board, Grazing Regulatory Action Project: Outreach Document, pg. 1-2 (Dec. 2014).

A. THE STATE WATER BOARD SHOULD REQUIRE ALL REGIONS WITH GRAZING ACTIVITIES TO DEVELOP A LIVESTOCK GRAZING PROGRAM BY DECEMBER 31ST, 2016.

The Water Boards have a duty to protect the beneficial uses of California's waterways from non-point source pollution. Porter-Cologne Act obligates Water Boards to address all discharges of waste that could affect the quality of the waters of the State, including all nonpoint sources of pollution. Water Boards must not only address water bodies impaired by grazing activities, but also protect numerous high-quality streams within public lands, including federally managed wilderness areas, from water quality degradation caused by livestock grazing.²

Livestock grazing is impairing California's waterways. Despite the Water Boards' obligation to protect beneficial uses from livestock grazing, approximately 120 water quality impairments (including fecal bacteria, temperature, sediments or nutrients) are identified on the 2010 Clean Water Act List of Impaired Waters for California.³ Each of these impairments are on lands with active grazing operations.⁴

Regional regulation of grazing is inadequate. According to the State Water Board, "[g]razing in California is a nonpoint source of water pollution that is not currently regulated statewide."⁵ To date, the Water Boards have chosen to regulate livestock grazing through nominal approaches that according to the State Water Board "have varied in their application and effectiveness, and have resulted in inconsistencies statewide." On a local level, the California Waterkeepers have seen minimal regulation of grazing activities, and almost zero enforcement when regulations exist. By discontinuing statewide standards for regulating grazing activities, the State Water Board is dismissing a significant source of California's nonpoint source pollution.

The State Water Board does not provide a proper reason for discontinuing the GRAP. The State Water Board justifies its decision to go back to a regional approach to grazing rather than a statewide approach due to "regional differences in rangeland type, grazing practices and water quality factors..."⁶ Regardless of whether this holds merit, regional differences existed years ago when the State Water Board decided that a statewide approach was necessary. Regional boards continue to do nothing to regulate grazing, or they do so in an inconsistent and ineffective manner. The State Water Board needs to ensure that if it is going to delegate grazing regulations back to the regional water boards – that the boards actually develop a grazing program.

Given years of inactivity, the State Water Board should not abandon the GRAP without any positive outcomes or progress towards regulating livestock grazing. Regional water boards have consistently deferred taking action on livestock grazing because of the expectation for statewide standards. For example, in 2011, Region 1 released an Executive Summary stating that:

Discharges associated with dryland grazing activities have been removed from the scope of the regional program due to a recent decision to develop a statewide approach to address grazing activities on non-federal lands. The statewide grazing program is scheduled to be completed by 2013.⁷

Not only did Region 1 defer taking action on grazing due to a statewide approach, but it expected regulations to be adopted two years ago. Now, we are faced with a Draft Resolution that fails to develop

² *Id.*

³ *Id.* at 1.

⁴ *Id.*

⁵ *Id.*

⁶ State Water Resources Control Board, Revised Public Notice: PROPOSED DRAFT RESOLUTION FOR THE DISCONTINUATION OF DISCUSSIONS REGARDING A STATEWIDE APPROACH TO ADDRESSING WATER QUALITY IMPACTS FROM LIVESTOCK GRAZING (August 27, 2015).

⁷ North Coast Regional Water Board, Executive Officer's Summary Report, Update on Agriculture and Irrigated Lands Water Quality Program in the North Coast Region and the Statewide Grazing Program (April 21, 2011), available at http://www.waterboards.ca.gov/northcoast/water_issues/programs/agricultural_lands/pdf/110519/May_2011_EOSR.pdf.

a statewide grazing program. The State Water Board needs to revise the GRAP Resolution to ensure all regional water boards with grazing activities develop and adopt a grazing program by the end of 2016.

B. THE STATE WATER BOARD SHOULD REQUIRE ALL GRAZING PROGRAMS MEET THE NONPOINT SOURCE POLICY’S REQUIREMENTS.

A grazing program is a nonpoint source pollution control program and is required to meet the Nonpoint Source Policy (NPS Policy). The State Board adopted the NPS Policy in 2004 to guide regional water boards regarding nonpoint sources of pollution, consistent with the legislative direction in Water Code § 13369. The NPS Policy has the force and effect of a regulation.

The NPS Policy requires that nonpoint source pollution control programs contain five "key elements." In particular, a nonpoint source pollution control program must (1) explicitly address nonpoint source pollution in a manner that achieves and maintains water quality objectives; (2) include a description of management practices and program elements expected to be implemented; (3) include a time schedule and quantifiable milestones designed to measure progress towards achieving water quality objectives; (4) include sufficient feedback mechanisms to ensure that the program is achieving its stated purpose, and ascertain whether additional or different actions are required; and (5) state the potential consequences for failure to achieve the program's objectives.

The Draft Resolution suggests that BMPs should only be “considered for use” “where appropriate”, and only after “unique hydrology, water quality impacts and cost of compliance” have been considered.⁸ This falls well short of Element 1 of the NPS Policy: “address pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.”

The Whereas Clause 5 states that regional boards “*should consider* establishing monitoring requirements, including watershed-wide or regional monitoring programs, to assess the effectiveness of BMPs implemented under regulatory or non-regulatory actions.”⁹ This permissive directive does not meet the requirements of the NPS Policy. Element 4 requires a nonpoint source program to include “sufficient feedback mechanisms to ensure that the program *is achieving* its stated purpose.”

The Draft Resolution does nothing to require regional boards to achieve Element 2 (include management practices to be implemented); Element 3 (include a time schedule and quantifiable milestones to achieving water quality objectives); or Element 5 (state the consequences of failing to achieve the program’s objectives).

We request the State Water Board be explicit that all regional grazing programs shall comply with the NPS Policy. We further request the State Water Board revise Whereas Clause 5 to require regional boards establish monitoring requirements to provide sufficient feedback to ensure the program is meeting water quality objectives.

C. THE STATE WATER BOARD SHOULD MANDATE MINIMAL REQUIREMENTS FOR REGIONAL GRAZING PROGRAMS AND PROHIBIT DIRECT ANIMAL ACCESS TO WATERWAYS.

Regardless of whether regional differences exist to justify a region-by-region approach to grazing regulations, the State Water Board should provide minimal requirements for any regional program. The Draft Resolution provides no directive, only passive recommendations to regional water boards. The Draft Resolutions suggests that regional boards should “assess their current regulatory and/or non-

⁸ State Water Resources Control Board, Draft Resolution: DISCONTINUATION OF DISCUSSIONS REGARDING A STATEWIDE APPROACH TO ADDRESSING WATER QUALITY IMPACTS FROM LIVESTOCK GRAZING, Resolve Clause 4, available at http://www.waterboards.ca.gov/water_issues/programs/nps/docs/grap/091615_grap_draft_resolution.pdf.

⁹ *Id* at Whereas Clause 5.

regulatory strategies”, which has been non-existent in some regions, and to “consider adapting these strategies to include implementation of best management practices (BMPs) that are supported by current information.” However, nothing in the Draft Resolution requires regional boards with grazing activities to develop a grazing program. Regional water boards can continue with the status quo, which is unacceptable given the amount of impairments around the state due to livestock grazing.

The Draft Resolution also fails to provide any meaningful guidance on BMPs to be implemented. The State Water Board does not provide any BMP guidance to be implemented; and instead, finds that “[e]xisting non-regulatory efforts for implementation of best management practices (BMPs) were recognized as benefiting water quality.” If existing non-regulatory efforts were truly benefiting water quality, then California would not have 120 water quality impairments due to grazing activities.

We request that the State Water Board provide guidance to regional boards on minimum BMPs expected in a grazing program.

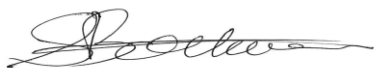
The State Water Board should also prohibit livestock from direct access to waterways. Recent Blue Green Algae blooms, and associated harmful Microcystin toxins, are strongly associated with high nutrient levels. In the last two weeks, the Russian Riverkeeper was out on the river, educating the public about these toxic blooms. As they educated the public, they also observed 7 properties along the Russian River where cows had full access to the mainstem. Riverkeeper witnessed livestock in the river or on the banks next to the river, with visual signs of manure on the low banks and in the water. From past water quality monitoring at the edge of dairy’s and manure sprayfields, we know that manure is a major source of nutrient pollution to the Russian River. Just the ammonia load from manure in a small creek will be acutely toxic to all aquatic life.

Climate Change will only increase the frequency and magnitude of toxic algae blooms as temperatures rise and flows lower. Continuing to allow livestock direct access to our waterways will only intensify toxic algae blooms due to excess nutrients. Northern California is already seeing intense animal killing blooms, such as the bloom on Lake Chabot in February that killed 4-5 dogs.

Livestock should be prohibited from direct access to waterways provided that there is a means of ensuring livestock have access to water but not to waterways. This is a minimal BMP that the state should adopt after at least four years of a regulatory void. The State Water Board should set a statewide prohibition to direct animal access to waterways and create a minimum riparian buffer setback for all livestock grazing.

We understand that stakeholder outreach was attempted several years ago, but the Waterkeepers were not contacted. We think this was an oversight given at least six of our California Waterkeepers have serious impairments due to grazing activities in their watersheds. While we do not oppose a region-by-region approach to grazing regulations, we have little confidence that the Draft Resolution will make progress towards meeting water quality objectives or protecting beneficial uses from grazing activities. Given the years of regulatory absence by regional boards as they wait for a statewide program, we believe discontinuing a statewide approach should come with greater assurances that regional boards will develop grazing programs in a timely manner and in compliance with the NPS Policy.

Sincerely,



Sean Bothwell
Staff Attorney
California Coastkeeper Alliance