

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

July 25, 2012

Attention: Charles Reed

Comment: Nutrient Offset Program – Laguna de Santa Rosa, Resolution No. R1-2008-0061 – Including proposed offset program for Beretta Dairy.

These comments are being provided for Northern California River Watch and Coast Action Group.

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.

Note: Please reference CAG letter on the Resolution (June 4, 2008).

The Laguna is listed on the State's 303 (d) impaired waterbodies list for the pollutants Nitrogen, and Phosphorous. 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.

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 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.

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.

We would like application for offset conditions to be to be noticed to concerned parties and held open for review and comment. We would like opportunity to review proposed pollution offset projects for consistency with 303 (d), reasonableness of application, and for assessment of undisclosed environmental effects.

We would like removal of any condition that allows for automatic approval of an offset application. Automatic approval denies appropriate time for staff or public review of potential consequences of such a program.

Since this is a program, as part of a rule making process (arguably amendment of the an NPDES permit), and offsets include actions that could be described as projects under CEQA, we suggest that environmental review may be necessary under certain conditions. Automatic approval would necessarily limit availability for public or agency review of such a project.

It could be argued that offsets can be of benefit to the environment, and thus exempt from CEQA review. It could also be argued that an offset is not justified as the described actions should fall under aspects of the regulatory framework and/or have some negative effects that have not been described or disclosed. Thus, 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.

Laguna TMDL

We note that the Laguna TMDL (and related implementing programs) are not yet completed. There may be addition 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 pollu-

tion 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 or 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 BMP 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. 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.

City of Santa Rosa Offset Credit Proposal for Beretta Dairy BMPs

This proposal raises some of the issues noted above in this letter. It appears that some of the actions noted in the project description should fall under the Dairy Waiver, but do not due to weak enforcement language. 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 water-body), enforcement action should commence.

It is proposed, with BMPs employed as described in the project, that a serious amount of offset credit is suggested = tons of N and P?

Should not some of these actions occur, without offset, to comply with the Waiver and other regulatory controls?

Should full credit be allowed, as claimed in the analysis employed by the City and Kieser and Associates?

Margin of Safety consideration has not been demonstrated.

The Regional Board has provided no analysis of actual benefit or rational to why the pollution from the dairy should not be controlled under your authority.

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.

There are obvious serious problems with the City's application of this project for offset credit. As the compliance date for "0" Net Discharge of N and P approaches there seem to be no other viable alternative projects pending that have potential to remedy the issue. However, this situation does not justify approval of this project.

The application for nutrient offset by the City of Santa Rosa for the Beretta Dairy should be denied – pending further consideration of issues related to nutrient offsets, in general, and the Beretta Dairy nutrient discharge issues in particular.

Sincerely,

Alan Levine for Coast Action Group and Northern California River Watch

Cc: David Smith – EPA