



Sonoma County Water Coalition

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Mr. Matt St. John: Executive Officer
Mr. Charles Reed
North Coast Regional Board
5550 Skylane Blvd. #A
Santa Rosa, CA 95403

copy by email to:
David Smith, US EPA
smith.davidw@epa.gov

July 31 2012

Dear Mr St. John and Mr Reed:

Re: Nutrient Offset Policy for the City of Santa Rosa
(RESOLUTION NO. R1-2008-0061)

The Sonoma County Water Coalition (SCWC) comprises 31 organizations representing more than 24,000 concerned citizens. SCWC is especially concerned about the preservation of a safe, economical and reliable water supply for all living things, including the people of Sonoma County. SCWC also works to preserve healthy ecosystems, supports watershed restoration and protection and careful oversight of all public trust resources, especially surface and groundwater quality and quantity.

We have numerous concerns about Santa Rosa's proposed Nutrient Offset Policy, which contains proposed activities expected to mitigate the City's wastewater nutrient content and thereby nutrient discharges to the Laguna:

- The application documents extensive dairy waste violations which form the premise for the project, yet no enforcement had been imposed at Beretta's dairy as it discharged pollutants into the Laguna for many years. (Including uncontrolled release of manure leachate from solids handling and uncontrolled raw wastewater released from confined loafing areas located just feet from Roseland Creek). Control of raw wastewater from confined animal areas is a basic requirement of state regulations and Regional Board permits and therefore is not eligible for nutrient offsets. Any dairy that allows uncontrolled discharges of wastewater from these facilities should be subject to enforcement action by the Regional Board. In other words, this proposed project for nutrient offsets purports to address problems that should already be controlled.
- Approval of any offset triggers the need for adjustment and alteration of the City's Wastewater NPDES. This process is subject to public review and comment (CEQA also?) and should not be subject to automatic approval.
- The City claims large nutrient reduction numbers utilizing measures that should be implemented anyway (offsets proposed for activities that should be

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prohibited or, at least, addressed by the dairy permit program). Approval (which occurs automatically 60 days after the city makes its proposal if project is not denied) will allow the city to continue discharging nutrients and other pollutants for years to come. It will also allow increased discharges despite 303d listing.

- Additionally, any offset program should wait to look at TMDL findings that may point to the need for pollution control work in areas other than dairy runoff.

We request that the RWQCB stop the clock on this proposed project at the Beretta Dairy, in order to ensure adequate time for appropriate staff and public review and comment. We request that staff deny the project, without prejudice, to prevent automatic approval and so as to allow time for review and modifications. If the project were to receive automatic approval, staff may not have the ability to condition, deny or terminate that approval. City attorneys wrote the resolution language assuming automatic approval of the project as written. Any approvals given should be subjected to annual review with the requirement to be re-approved each year.

The City of Santa Rosa has a zero net discharge limitation in their NPDES Permit (Subregional Treatment Plant) for which they seek relief. Their wastewater discharge has considerable potential to add pollutants Nitrogen (N) and Phosphorus (P) to the Laguna and should be controlled under Basin Plan anti-degradation language. Santa Rosa's phosphorus contributions were clearly delineated in the January 28, 2000 report entitled "*Phosphate Loading and Eutrophication in the Laguna de Santa Rosa*" by Dr. Daniel Wickham and Robert W. Rawson. (Report contained in Agency files.)

The Laguna de Santa Rosa is listed under the 303(d) Impaired Water Body List for Nitrogen (N) and Phosphorus (P), among other pollutants. These nutrients are biostimulants responsible, in part, for impaired conditions in the Laguna, including extensive hydrophyte growth (*Ludwigia*). There is an ongoing TMDL and implementation strategy in process that has not yet produced loading limit requirements. There may be additional compliance standards associated with the TMDL and related programs.

An offset program that relates to Laguna issues may be subject to the TMDL findings and required 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.

Furthermore, in applying its regulatory authority and resources on individual projects in the Laguna, the Regional Board should consider the full range of environmental needs, including resource cost/benefit analyses, and plan for potential projects that produce the desired final outcomes, i.e., improved conditions for the Laguna. The TMDL analysis should provide an aid to drawing appropriate conclusions that make the best use of regulation and resource mix (matrix).

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The proposed offset program does not make it entirely clear how the application of offsets would apply. What is the ratio of offset? Are claims of nitrogen and phosphorus reduction verified? If so, please describe the verification process and methodology.

We are concerned with the ratio of offset for different potential pollutant sources as well as the use of pollutant offset sources being proffered by the City that would 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 request that application for offset conditions be noticed to concerned parties and held open for review and comment. We would like opportunity to review 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 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.

Storm drain discharges are a significant cause of water pollution in the Laguna and its tributaries, particularly 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. Data collected by Regional Board staff shows high concentrations of nutrients in some dry weather flow. It also contains a variety of other urban pollutants and 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

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and discharge it to their wastewater plant for treatment. The City claims this would be too expensive, but this BMP has been used by the Town of Windsor for many years to address reclaimed water over-irrigation. Cities in Southern CA use this concept for addressing bacteria pollution and as a nutrient TMDL BMP. This is a rarely used BMP, and would be a project not already required by existing storm water program.

The TMDL may conclude that storm water is the major pollutant component (both are City and County responsibility). There are additional actions that the City may take to enhance their Storm Water Plan (and qualify for nutrient offset). Resources spent for storm water 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 may be impossible to stop all dry weather flow. Nevertheless, all efforts possible should be implemented to do so since this may be a major source of contamination. Not only does the irrigation water contain large amounts of nutrients, as determined by your own investigations, but the landscape runoff releases great amounts of nutrient material. Furthermore, other urban pollutants are present in these discharges as well, and at least two major Santa Rosa storm drains are discharging pollutants from toxic groundwater contamination. Many of the irrigated landscapes are loaded with various chemical applications.

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 storm water program and thus would be eligible for nutrient offset credits.

RRWPC has documented extensive runoff in the past in both Rohnert Park and Santa Rosa. Any project that includes irrigation as an offset (urban or agricultural), should also include strict accounting and oversight to assure that the runoff is fully documented and not counted as an offset. Santa Rosa should not get credit for an offset program to collect discharges that they should not have put in the storm drain system in the first place.

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

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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 River basin. Consideration of such projects, and related nutrient offset credits, should be given. Benefits may be significant and would last forever.

In conclusion, 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) resulting in less (not more) effective management of pollutant inputs to seriously impaired waters.

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

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

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,

A handwritten signature in black ink, appearing to be the name 'Gamb' or similar, written in a cursive style.

Sonoma County Water Coalition