

APPENDIX C
RESPONSE TO COMMENTS

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO WRITTEN COMMENTS RECEIVED ON

General Waste Discharge Requirements for Confined Animal Facilities
Within the San Francisco Bay Region

Introduction

Our responses to comments (RTCs) on the tentative order (Order or General WDRs) are provided below. The RTCs are organized in two parts: 1) responses to key comments, and 2) responses to individual comments. Key comments are summaries of comments that share recurring themes or voice similar concerns. Individual comments are sometimes directly quoted from the comment letter or summarized for clarity and brevity. Every effort was made to preserve the original meaning and context. Where comments are repeated, we refer back to the earlier responses.

The General WDRs were circulated for public review beginning on March 15 and ending on April 29, 2016 (45 days). We received six comment letters, which are provided in Appendix B and are organized alphabetically as shown below:

	Affiliation	Commenter's Name	Date Received
1.	Alameda County Flood Control and Water Conservation District (Zone 7)	Elke Rank	April 27, 2016
2.	Bay Area Air Quality Management District	Jean Roggenkamp Deputy Executive Officer	April 26, 2016
3.	Equine Environmental Management Consulting	Michael Murphy	April 29, 2016
4.	Sonoma County Horse Council	Mark Krug Treasurer and Chair, Community Liaisons	April 26, 2016
5.	United States Department of Interior National Park Service Golden Gate National Recreation Area	Brian Ullensvang Chief, Environmental and Safety Programs Office	April 27, 2016
6.	University of California Cooperative Extension, Marin County	David Lewis Director	April 29, 2016

KEY COMMENTS

Key Comment No. 1

Several commenters raised concerns about the compliance timeframes for non-dairy confined animal facilities specified in the tentative Order noting that dairies have had the benefit of learning about water quality management and the technical and financial support of local, state, and federal partners for years. Commenters recommend that a) implementation of the Order's requirements be phased-in, b) longer compliance timelines be provided, c) fees be phased-in, and d) exceptions or delays in water quality monitoring be considered.

Response to Key Comment No. 1

We do not propose changes to the Order to extend the compliance time frames for non-dairy confined animal facilities for the reasons provided below.

Phased-In Requirements and Time frames

Implementation of the Order relies on a phased approach for plan development and implementation. For a CAF that does not utilize a waste pond (e.g., most horse facilities), the discharger has two years in which to complete and implement a Ranch Water Quality Plan (RWQP) that complies with the requirements of the Order. As compared to the Tier II CAFs that utilize waste ponds, the Tier I RWQP is much less detailed and can be completed by filling out a RWQP template, which Water Board staff will prepare and make available in a timely fashion. The RWQP can be tailored depending upon the facility's activities, location, size of operation, intensity of land use, etc. The plan can be completed with or without the assistance of a qualified professional. For these reasons the two-year time frame should be more than sufficient to finish the RWQP. In addition, the Order includes provision H.10, allowing dischargers to request an extension of the deadline for submission of the required plans, subject to Executive Officer approval.

Financial Assistance and Fees

Some resources have been provided for the equine facilities to learn about water quality, and, while we agree that additional financial assistance could be helpful, we do not agree that this a reason to extend the compliance time frames. Dating back to 2003, U.S. EPA and the State Water Board have provided grant funding to the Council of Bay Area Resource Conservation Districts (RCDs) and the Alameda, Marin, San Mateo, and southern Sonoma RCDs to develop equine facilities assistance programs for the protection of water quality (http://www.marincounty.org/~media/files/departments/pw/mcstoppp/residents/water_quality.pdf). The Council worked with many individuals and agencies to produce assistance materials aimed at promoting awareness between horse keeping and water quality issues. These resources can be found on many of the RCD websites and provide valuable resources for dischargers in complying with the requirements of the Order.

With respect to fees, the State Water Board is responsible for setting annual fees for waste discharge requirements, and the Regional Water Board has no direct control over phasing-in fees. However, we are working with the State Water Board's fee unit to develop a fee schedule that sets lower fees for smaller CAF operations (fewer animals). Staff undertook a similar, successful effort in 2015, at the time of the Dairy Waiver renewal, to lower the fees for dairies that contain fewer than 50 animals.

Water Quality Monitoring Is Necessary to Determine Compliance with Water Quality Objectives

We see no reason to delay requirements for monitoring. Water quality monitoring requirements are new to all CAF permittees, including dairies. The Order establishes a water quality sampling and reporting program to assess compliance with Basin Plan water quality objectives and to assess the effectiveness of facility management plans and BMPs. Each facility must be prepared to conduct visual inspections and water quality sampling within one year of enrollment. Surface water sampling procedures are relatively simple and low cost, depending on the number of discharge points from the facility. Sampling may be conducted by CAF operators and owners with a portable monitoring device (average one-time cost of \$50) and test strips (average cost \$1 per sample). Groundwater monitoring is limited to those facilities that have onsite waste ponds due to the potential for water quality impacts. Sampling results are intended to be used by the CAF operators to assess water quality conditions and to make informed decisions regarding the effectiveness of management practices.

Key Comment No. 2

Several commenters recommended that the grazing management elements of the Order not be included or required across the watersheds covered by the Order on the basis that there are Grazing Conditional Waivers in the Napa River, Sonoma Creek, and Tomales Bay watersheds. Commenters further noted that the Order contains elements that parallel the State Water Board's exploration of a statewide Grazing Regulatory Action Project (GRAP) and is not consistent with the State Water Board's decision to not pursue the GRAP. Commenters suggest that water quality should be addressed at specific sites instead of applying policy and requirements broadly in the absence of identified impacted water quality conditions.

Response to Key Comment No. 2

We disagree that the grazing management elements should not be included in the Order; they are included so that Dischargers do not have to get coverage under multiple permits. Implementation of the Order is consistent with the State Water Board's decision to not pursue the GRAP.

The GRAP work group was established to develop a regulatory strategy that would set forth requirements for livestock grazing to address known and potential impacts to water quality at a statewide level. On September 16, 2015, the State Water Board adopted Resolution No. 2015-0062 discontinuing the GRAP. The resolution directed the Regional Water Boards to work collaboratively with individual property owners, livestock grazing operators, and other interested stakeholders to determine which actions, including regulatory action and effective non-regulatory efforts, are best suited to protect water quality. The resolution directed the Regional Water Boards to consider prioritizing actions to address livestock grazing operations that cause impairment or have the likelihood to do so. This is exactly the focus of the Order; therefore, the Order is consistent with the direction provided by the State Water Board. The Order prioritizes the regulation of CAF operations that are located within water quality-impaired watersheds that are identified as categorical pollutant sources in completed total maximum daily loads (TMDLs) and included in Chapter 7 of the Basin Plan. The Order requires, as part of a Ranch Water Quality Plan (RWQP), that only those CAFs that maintain grazing operations identify and implement pollution prevention measures and/or best management practices that reduce sediment, pathogen, and nutrient discharges to surface waters.

INDIVIDUAL COMMENTS

Comment Letter No. 1

Affiliation: Alameda County Flood Control and Water Conservation District (Zone 7)
Commenter: Elke Rank

Comment No. 1.1

“WDR Scope of Coverage, Item 2 (page 1): In addition to application to land, the Order should also cover storage and processing (like composting).”

Response to Comment No. 1.1

The Order addresses the concern raised by the Commenter. Item 2 (page 1) states in part, “This Order covers the management of process water, manure, and other organic materials at CAFs, including the application of such materials to land.” This statement is further explained in detail throughout the Order, including specific discharge prohibitions and waste discharge specifications for the storage, processing and utilization of animal wastes (including compost). In addition, Findings 14 and 15 (page 3) further describe the water quality concerns of potential wastes generated (including compost), stored, utilized on-site, and/or transported off-site.

Comment No. 1.2

“WDR Scope of Coverage, Item 5a (page 2): Some horse boarding facilities do have retention ponds for wash water capture; consider clarifying the example for Tier 1 facilities.”

Response to Comment No. 1.2

Board staff agrees. Item 5a (page 2) has been revised as follows:

“Tier 1 applies to CAFs that do not utilize liquid waste retention ponds. ~~such as horse boarding facilities or small-scale sheep dairies.~~”

Comment No. 1.3

“WDR Scope of Coverage, Item 23 (page 5): The Order should require sampling of any existing monitoring wells in addition to existing groundwater wells.”

Response to Comment No. 1.3

We have revised Finding 23 (now Finding 24) to read as follows:

“Therefore, this Order requires sampling of existing groundwater wells, including existing monitoring wells, at any CAF that utilizes a waste pond to store and manage operational wastes.

Comment No. 1.4

“WDR Required Reports and Notices, Item 3a (page 21): ‘Minimal’ may be overly vague, and/or it should state who determines if the number of animals is ‘minimal.’”

Response to Comment No. 1.4

We agree and have revised the Order. The term “minimal” was used intentionally due to the complex relationship between site conditions and water quality impacts. The proposed General WDRs are intended to regulate many different types of CAFs, each having a unique facility, location, terrain, and level of management. Any number of animals has the potential to cause

adverse water quality impacts if managed poorly. For each Notice of Non-Applicability (NONA) that is submitted, Water Board staff will review the submitted information and may inspect the facility, prior to approval or denial from the Executive Officer. Water Board staff agrees that additional language is needed within Item 3 (Page 21) and within Attachment I – Notice of Non-Applicability, to clarify the intent of the NONA process. The following sentences have been edited:

H. Required Reports and Notices, H.3 (page 22):

“A CAF that meets any of the following conditions may apply for an exclusion from coverage under this Order by submitting ~~completing~~ a Notice of Non-Applicability (NONA) (Attachment I), subject to Executive Officer approval:

- a. Number of animals within confined areas is ~~minimal~~ small in relation to the size of the facility and poses no potential for adverse water quality impact;”

Attachment I – Notice of Non Applicability:

- “4. The number of animals within this facility’s confined areas is small in relation to the size of the facility ~~minimal~~ and poses no potential for adverse water quality impact.”

Comment No. 1.5

“WDR Required Reports and Notices, Item 3c (page 21): As written, this statement [“Animals are rarely confined and fed in areas devoid of vegetation...”] can be mis-read. Consider ‘Animals are rarely confined and/or fed in areas devoid of vegetation...’”

Response to Comment No. 1.5

We agree. The suggested change has been made to the Order. Item H.3.c now reads as follows:

Animals are rarely confined and/or fed in areas devoid of vegetation, especially during the rainy season;

Comment No. 1.6

“WDR Attachment A MRP, Item b (page 8): The Nitrate benchmark is more appropriate at ‘10 mg/l as N’ rather than 45.0 mg/l.”

Response to Comment No. 1.6

We agree and have revised Attachment A. The suggested Nitrate benchmark “10mg/l as N” is equivalent to “45 mg/l as NO³” and is also listed in the Basin Plan as a benchmark for Municipal Supply. We understand that the current laboratory convention is to test and report Nitrate as N.

To address this comment and clarify our expectation, Water Board staff revised Attachment A, Item b, to show both Nitrate as NO³ at 45 mg/L or Nitrate as (N) at 10 mg/L, and to make clear that the Discharger is responsible for sampling and analyzing the well for one of the parameters.

Comment No. 1.7

“WDR Attachment A MRP (page 9): While the annual report template was not provided for review, following are suggestions for content of these reports:

- a. Maximum animal population by type for reporting period.*
- b. Site and operation changes since last reporting period.*
- c. Site map similar to that in RMP or WMP with any changes highlighted.*
- d. Facility inspection checklist.*
- e. Identification of potential water quality problem areas and planned repairs, and planned repair schedule.”*

Response to Comment No. 1.7

The Annual Report form will be similar to the form currently used for dairies with coverage under the Conditional Waiver. This form can be found on our confined animal webpage: http://www.swrcb.ca.gov/rwqcb2/water_issues/programs/TMDLs/agriculture/CAF.shtml#CPRF

This form includes most of the items listed in this comment. However, Board staff agrees it should contain a requirement to describe any site and/or operational changes since the last reporting period. This item will be added to the Annual Report template.

Comment No. 1.8

“Well Monitoring: The MND and the WDR appear to be somewhat out of step on the issue of groundwater monitoring. The Proposed Mitigated Negative Declaration states that “monitoring of surface water and groundwater to demonstrate compliance is required” (IX: Hydrology and Water Quality, Item f), but the Tentative General WDR Order (R2-2016-00XX) states that “Tier 1 facilities are not required to conduct groundwater monitoring (see Item 18) and for Tier 2 CAFs only “requires sampling of existing groundwater wells at any CAF facility that utilizes a waste pond to store and manage operational waste” (see Item 23). Further, the groundwater monitoring requirements are unclear for Tier 3 CAFs or for Tier 2 CAFs when no wells exist at the site.”

Response to Comment No. 1.8

We agree and revised the Mitigated Negative Declaration and the Order. The discussion of impacts for resource category IX, Hydrology and Water Quality, subsection f, has been edited for consistency with the General WDRs as follows:

“Monitoring of surface water is required of all confined animal facilities subject to the Order. For confined animal facilities that utilize waste ponds, monitoring of groundwater is an additional requirement. Monitoring of surface water and groundwater is intended to demonstrate compliance with the Order.”

Furthermore, to clarify the groundwater requirements for Tier 3 CAFs, Water Board staff has edited Attachment A. Monitoring and Reporting Program, to clarify that Tier 3 CAFs utilizing waste retention ponds are subject to the same groundwater monitoring requirements imposed on Tier 2 facilities.

Comment Letter No. 2

Affiliation: Bay Area Air Quality Management District
Commenter: Jean Roggenkamp, Deputy Executive Officer

Comment No. 2.1

“Air District staff recommends that the IS/MND state that CAFs are regulated by Air District Regulation 2, Rule 10, and that CAFs may require Air District permits, per Air District Regulation 2, Rule 1.”

Response to Comment No. 2.1

We agree and have revised the Initial Study / Mitigated Negative Declaration in Section VII, Greenhouse Gas Emissions to include this statement.

Comment Letter No. 3

Affiliation: Equine Environmental Management Consulting
Commenter: Michael Murphy

Comment No. 3.1

“I have read David Lewis comments and feel that his statement concerning the time line for CAF’s that have never been regulated is correct; expecting quick compliance is a little extreme. I represent the equine industry that has never had any regulation except the local county zoning and use permits. Most equine owners are good stewards of the land. It has been my observation that at present, a horse owner will become noticed by the Water Quality, only after a complaint has been filed. It will be very difficult for horse ranchers to comply with documentation, monitoring, BMPs, and additional fees when they have never been exposed to them.”

Response to Comment No. 3.1

Please see response to Key Comment No. 1

Comment No. 3.2

“The dairies have had to comply with these rules and standards for years and have had access to grants and funds provided by NRCS, RCDs, and the Department of Agriculture. I would like to see the Equine industry be able to apply for assistance, grants, and other opportunities that apply to other agricultural producers. Since the State Water Quality is placing Equines under the new CAF’s regulations this should now mean that the State now recognizes Equines as a vital part of Agriculture and eligible for the funding available to other agriculture sectors to defray the cost of implementing environmental improvements to ensure the best Water Quality for California.”

Response to Comment No. 3.2

See Response to Key Comment No. 1. In addition, we agree that funding may be needed to assist compliance efforts of landowners and/or CAF operators. While we cannot change how federal agencies award funds, the equine industry is eligible to apply for State grants for funding proposed water quality improvement projects. There are various grant funding programs and opportunities periodically available through State agencies to assist property owners with

specific issues, such as those a CAF may need to implement in order to comply with the proposed Order, such as infrastructure improvements, fencing projects and best management practice implementation. As Board Staff identifies funding opportunities, we will share that information with local education and technical assistance organizations and through the Water Board’s website and email lists.

Comment No. 3.3

“The dairies also have a program called Dairy Quality Assurance Program that allows them to within their industry to teach and supplement facilities with professional assistance and resources for them to satisfy the requirements of a Waste Discharge Waiver or permit. I would like to suggest such a program be started through the Sonoma County Horse Council and the Santa Rosa Junior College Equine Studies Facility that would allow the equine the same reduced fee and the ability to comply by assistance given by a peer group.”

Response to Comment No. 3.3

We agree and have made revisions to the Order. Environmental stewardship programs, such as the California Dairy Quality Assurance Program, are a valuable educational resource and can be instrumental in assisting on-the-ground compliance efforts and ultimately in improving water quality. We encourage and will support any efforts to develop such a program for other animal sectors. The Order has been revised to include additional findings that emphasize the value and need for such third-party programs. These findings read as follows:

“Third-Party Programs

43. The NPS Policy encourages the Water Boards to “be as creative and efficient as possible in devising approaches to prevent or control nonpoint source pollution.” This includes development of third-party programs, to assist the dischargers in complying with the requirements of the Order and assure the Water Board and the public that actions have been taken to reduce nonpoint source pollution.
44. The Water Board supports the use of third-party groups to assist Dischargers in filing required forms, providing technical assistance to Dischargers in preparing required management plans, implementing non-point source pollutant control projects, assisting with water quality monitoring, and annual reporting to the Water Board.
45. Since its inception in 1998, the California Dairy Quality Assurance Program has provided valuable educational resources to assist dairy operators in the preparation of site-specific management plans. These efforts have resulted in dairy operators having a greater understanding of the need for water quality protection. The Water Board supports the development of similar Quality Assurance Programs for equine or other non-dairy CAFs that would advance water quality protection and assist Dischargers comply with the requirements of the Order.”

Comment No. 3.4

“As far as grazing permits, I do not feel this is necessary unless a facility is bordering a body of water. This issue should be dealt with in workshops and education.”

Response to Comment No. 3.4

See response to Key Comment No. 2, which explains why grazing management practices are needed. Separate grazing permits are not required for CAFs enrolled under this Order. In addition, most equine facilities will be required to complete a Ranch Water Quality Plan, which includes pollution prevention measures for grazing in the context of a holistic plan for pasture and land management.

Comment Letter No. 4

Affiliation: Sonoma County Horse Council

Commenter: Mark Krug, Treasurer and Chair, Community Liaisons

Comment No. 4.1

“Our principal concern is the scope of applicability and some perceived ambiguity about that scope, especially as pertains to small-scale horse operations. For instance, #4 under Scope of Coverage (p. 1) states ‘commercial CAFs’ are covered by the regulation including (4.c): ‘Other, existing CAFs, that the Water Board determines need coverage under this Order due to size, location, and/or threat to water quality.’ The term ‘commercial’ is not defined and this is problematic for the horse-owner community. It is commonplace for a property owner who owns one or several of their own horses to board one or several other horses, often to defray the cost of maintaining their horses. Strictly speaking, this is of course a ‘commercial’ operation. However, in this very typical arrangement, the property owner or operator does not have a business license, land use permit or other ‘commercial’ license or registration. Is it your intent to cover this category of ‘mom & pop’ operations?”

Response to Comment No. 4.1

It is not our intent to cover “mom & pop operations” and we revised the Order to provide clarity. The term “commercial CAFs” refers to any non-residential facility that meets the definition of a confined animal facility and conducts activities on-site that require a local business license. This clarification has been added through insertion of footnote 2 on Page 1, Scope of Coverage, Finding 4:

² The term “commercial CAFs” refers to any non-residential CAF that conducts activities on-site that require a local business license.”

While it is not the intent of the Water Board to require General WDR coverage for residential animal owners that choose to board other animals, such facilities may discharge pollutants to surface or groundwater and must comply with the California regulations for confined animal facilities (see Attachment K – Title 27 of the California Code of Regulations, sections 22560-22565)

Comment No. 4.2

“Moreover, this paragraph provides your agency the ability to designate any CAF as covered under the regulation based on ‘size, location, and/or threat to water quality’. Those first two criteria appear vague and perhaps in need of definition or qualification or even, perhaps, elimination. Is not ‘threat to water quality’ adequate and indeed, the over-arching purpose of the Order? We appreciate that ‘size’ and ‘location’ are factors in assessing the threat to water quality, but there are a host of other factors not listed.”

Response to Comment No. 4.2

We agree and have revised the Order. We have removed the terms “size and location” from Finding 4.c. as follows:

- c. “Other, existing CAFs that the Water Board determines need coverage under this Order due to ~~size, location, and/or~~ threat to water quality;”

Comment No. 4.3

“It appears possible that it is not the intent to include the ‘mom & pop’ small-scale horse operations within the covered scope. This is based on #3 under Required Reports and Notices (p.21) entitled ‘Notice of Non-Applicability’. We offer several suggestions here because this is both a key section for small-scale horse operations as well as the section that is arguably the vaguest and most ambiguous. First, as a matter of document construction, a ‘mom & pop’ operator, if provided the Order, would likely search through it for a section on exemptions, waivers or applicability to ascertain if their small operation was subject to the Order. A sub-section entitled ‘Notice of Non-Applicability’ under the section ‘Required Reports and Notices’ does not inform the reader that this is, in fact, the exemption/waiver/scope area of interest. We’d suggest this sub-section be moved under Scope of Coverage and perhaps re-named ‘Coverage Exemptions’ or other plain language that clearly reflects the content and purpose.”

Response to Comment No. 4.3

See Response to comment No. 4.1. In addition, for a new facility to be required to apply for coverage, it must meet the definition of a commercial CAF and be located within a water quality-impaired watershed. The Notice of Non-Applicability is intended for a small sub-set of these facilities that, due to operational practices, size of operation, and/or existing structural facilities, pose little to no threat to water quality. Board staff agrees with the suggestion to include an additional finding within the Scope of Coverage section, to better inform the reader of the Notice of Non-Applicability option. We also edited the Order to include a new Finding 5 as follows:

5. “Dischargers may be eligible for an exemption from this Order if the facility is in compliance with this Order, meets certain special operational and/or physical criteria, and is determined to be an insignificant threat to water quality (see Section H.3.).”

Comment No. 4.4

“Second and substantively, under Notice of Non-Applicability, the language states that a CAF owner or operator may apply for an exclusion from coverage if their operation meets one or more of several provided criteria, including 3.a: ‘Number of animals within confined areas is minimal and poses no potential for adverse water quality impact’. The use of the term ‘minimal’ here is highly problematic. For example, in practice, cattle ranchers may think under 50 head are clearly minimal operations whereas 50 horses on a property is generally seen as a large operation. In general, reasonable people may disagree by orders of magnitude about what constitutes ‘minimal’. We strongly urge you to avoid inherently subjective terms like ‘minimal’ and use actual numbers or ranges, even if they are representative or illustrative and not necessarily definitional. Further, in this context, it may be advisable to list different numbers of animals by species because 10 chickens would appear to provide a far less intense threat to water quality than would 10 head of cattle, as a simplistic example.”

Response to Comment No. 4.4

Please see Response to Comment No. 1.4 for clarification on the term “minimal” and the challenges with designating a no-impact animal threshold.

Comment No. 4.5

“Lastly on this point, our strongest recommendation. Namely, that the Order provide for a categorical exemption of small-scale operations rather than, as written, the requirement that any and all commercial CAF's, no matter how small, either comply with the Order or prepare and submit a Notice of Non-Applicability form to request exclusion. A categorical exemption/exclusion could be granted to any horse boarding CAF of, say, up to ten horses provided that the operation has not been, or is subsequently characterized as, a ‘threat to water quality.’ This categorical exclusion would eliminate coverage for the vast majority of ‘mom & pop’ horse operations. Read in its totality, the Order appears to be principally designed to target dairies and larger CAF's that pose the greatest threat to water quality. Thus, this categorical exemption would have zero or negligible negative impact on the Order's impact and desired results.”

Response to Comment No. 4.5

See Response to Comment No. 4.1, Response to Comment No. 1.4 and Response to Key Comment No.1.

Comment No. 4.6

“A 2014 economic study of the Sonoma County equine sector commissioned by the SCHC and done by Sonoma State University contains some data that illustrates the ubiquitous ‘mom & pop’ nature of the local horse community. First, over 75% of survey respondents owned three or fewer horses and almost 96% own ten or fewer. Second, respondents indicate that while the range of acreage for horse properties ranged from one acre to 2,000 acres, the median size of an equine business in Sonoma County is 15 acres. As a practical matter, the typical small-scale horse operation is not a threat to water quality and these operators cannot be expected to comprehend and appropriately respond to the highly technical Order... Thus, the need to hire a third party professional for \$5,000 initially, and perhaps additional outlays later, is onerous and unrealistic. Without a categorical exemption for ‘mom and pop’ operations, Order compliance is not realistic from this sector.

Response to Comment No. 4.6

See Response to Comment 4.1. As previously stated, given the proposed Order’s Scope of Coverage, the group of new facilities required to enroll is limited to commercial CAFs located within impaired watersheds. The proposed General WDRs are intended to regulate many different types of CAFs, each having a unique facility, location, terrain, and level of management. Any number of animals has the potential to cause adverse water quality impacts if managed poorly.

However, a well-managed facility with adequate infrastructure to ensure that waste is not discharged to surface or groundwater during dry or wet weather conditions will be able to easily understand and comply with the terms and conditions of this Order with minimal expense. The tiered requirements rely on a phased approach for plan development and implementation. For a CAF that does not utilize a waste pond (e.g., most horse facilities), the discharger has two years in which to complete and to implement a Ranch Water Quality Plan (RWQP) that complies with the requirements of the Order. As compared to the Tier II CAFs that utilize waste ponds, the Tier I RWQP is much less detailed and can be completed by filling out a RWQP template provided by the Water Board. The RWQP can be tailored depending upon the facility’s activities, location, size of operation, intensity of land use, etc. The plan can be completed with or without the

assistance of a qualified professional. Additionally, once organized and prepared, each operator may conduct their own monitoring program, utilizing low-cost test strips and a portable water quality meter (average one-time cost of \$50). Any other expense would be associated with the necessary non-structural or structural management practices or changes required to bring the facility into lawful compliance.

The Water Board has and will continue to support and participate in outreach efforts to assist Dischargers in complying with the Order, either through third party-programs and, when available, through grants and loans. The Order’s requirements are designed to address the impacts created by the land use largely through the implementation of reasonable best management practices that are generally applicable for the reasonable protection of water quality. The Water Board does not intend or expect the compliance efforts to adversely impact owners and operators in such a way that could be considered onerous and/or infeasible.

Comment No. 4.7

“The SCHC respects and honors your agency’s role in protecting waterways and water quality in California and indeed, the ‘health and well-being of horses’ depends on it. We also very much appreciate and applaud the notable effort you and your agency have made to reach-out to stakeholders about these proposed regulations.”

Response to Comment No. 4.7

Comment noted.

Comment Letter No. 5

Affiliation: United States Department of Interior; National Park Service; Golden Gate National Recreation Area

Commenter: Brian Ullensvang, Chief, Environmental and Safety Programs Office

Comment No. 5.1

“We request that the language of the order be clarified with respect to the roles of the land owner and facility operator, when these two are not the same organization. We believe that the current draft order does not provide clear direction as to the regulatory intent regarding the compliance responsibilities between the facility operator and land owner. Currently, for most requirements, the discharger is clearly identified as the responsible party; however, there are several places the order refers to the responsible party as the “owner/operator”; and other places where the discharger is defined, such as in both Attachment A and Attachment J, to include both the owner and operator.

We recommend that the discharger be defined as the operator, as they are in the best position to control the facility operations and perform the required pollution control activities, such as daily inspections and plan preparation. To the extent that the RWQCB desires to work with the land owner as a responsible party, the land owner can be engaged in discussions when, or if, the operator fails to meet the requirements as the discharger.”

Response to Comment No. 5.1

We agree in part with the commenter’s statement and have revised the Order to make it clear that the Discharger, defined as the owner and operator, is responsible for compliance. We disagree that the Discharger should be defined only as the operator.

The Scope of Coverage, finding No. 3, defines “Dischargers” as owners and operators of CAFs discharging or proposing to discharge waste from a CAF in any manner that could affect the quality of the waters of the State within the San Francisco Bay Region (Region) and who have been designated by the Water Board as subject to the terms and conditions of the Order.

While it is our expectation that the operator/lessee of a facility will be primarily responsible for facility compliance, it is up to the owner and operator to enter into an agreement that outlines the responsibilities for each entity. To ensure consistency in use of the terms owner, operator, and/or Discharger, the Order and its attachments have been edited to include the term “Discharger” (as defined in Finding 3, page 1) instead of owner and/or operator.

The definition of “Discharger” is consistent with other regions throughout the State and Orders adopted by the Water Board that regulate grazing operations and dairies, including: Resolution No. R2-2015-0031, Conditional Waiver of Waste Discharge Requirements from existing cow dairies (dairies are one type of confined animal facility);

- a) Resolution No. R2-2013-0039, renewal of Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed; and
- b) Resolution No. R2-2011-0060, Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Napa River and Sonoma Creeks Watersheds.

While the operator may be in the best position to monitor facility operations from day-to-day, we do not agree that all required pollution control activities may be performed at the operator’s discretion. For example, a ranch operator who may wish to install exclusion fencing to restrict animal access to a stream, in order to control sediment and manure discharge and protect riparian function, may be prohibited by the landowner from doing so. Similarly, an operator of a leased facility may be limited as to the types of structural improvements, such as the installation of roof gutters to divert clean runoff from manured-areas, because of lease or financial limitations or considerations.

The Order also allows the landowner to designate an “authorized representative” as part of the certification process, and, in so doing, identify which party is responsible for complying with the Order.

Comment No. 5.2

“In addition to the changes to the definitions of the discharger, this clarification may require the addition of a new definition to address the role of the nonoperator landowner. The proposed NOI form provided in Attachment F currently allows either party (owner or operator) to file without signed acceptance by the other party. This should be revised to better reflect any changes that the RWQCB chooses to make to the definitions of the discharger, operator, and land owner.”

Response to Comment No. 5.2

We agree that the NOI form should be revised and have added a landowner notification certification to the Notice of Intent (Attachment F) as follows:

“SECTION VIII. LANDOWNER NOTIFICATION AND CERTIFICATION

If the facility is currently leased or operated by someone other than the owner, this section must be signed by the operator.

I certify that the owner of the facility has been notified of these General Waste Discharger Requirements and that I have been designated by the owner as the “authorized representative.

Operator’s Printed

Name: _____ Signature: _____

Title: _____ Date: _____”

For consistency, we have added the same landowner notification and certification to Attachment H (NOI for New or Expanding CAFs) and Attachment G (NOI for Re-opening of Dormant Confined Animal Facilities).

Furthermore, we have edited Attachment J (Definitions) to read as follows:

“Discharger: the property owner and operator of a confined animal facility subject to General Permit requirements. Owner includes the owner of the land underlying the facility and the owner of the CAF business.”

Comment No. 5.3

“Some provisions regarding the specific requirements of the discharger are not well defined and greater specificity regarding the requirements may help to avoid confusion and promote compliance. For example, Attachment A describes prestorm event inspection requirements, but does not identify the criteria to use for determining when a storm event is ‘anticipated’ or even how much rain is needed to determine a storm event. The Construction General Permit for Stormwater identifies very specific criteria to define a storm event and to define the conditions that require a pre-storm event inspection and the timelines and frequencies of such inspections. And while it may not be necessary to be as detailed in this order, some similar criteria could be helpful here.”

Response to Comment No. 5.3

An “anticipated” storm event would rely on weather forecasts. Storm event surface water sampling criteria are described in Attachment A, C.1, third paragraph; “Sampling shall take place during or directly following each of three major storm events after at least 1 inch of rain per 24 hours. Sampling will occur in the winter rainy season, which generally begins in October and ends in March, with the first samples to be collected starting 1 year after submitting a Notice of Intent. Sampling events shall be at least 14 days apart. Sampling shall be done when conditions are safe to do so. Visual observations, such as changes in surface water color or turbidity, must be recorded at the time of surface water sampling and reported in or submitted with the Annual Report.”

Comment No. 5.4

“We appreciate the effort that the RWQCB is taking to protect and improve water quality in the park, including the recent development of the Water Quality Improvement Plan for San Vicente Creek and this Confined Animal Facility (CAF) Order. Together, both of these will help to address potential contamination from the animal facilities in that watershed.”

Response to Comment No. 5.4

Comment noted.

Comment Letter No. 6

Affiliation: University of California

Commenter: David Lewis, Director – UC Cooperative Extension Marin

Comment No. 6.1

“Implementing 40 years of water quality management in 5 years – For those CAFs that have never participated in water quality management programs and efforts, this order will be difficult to fully comply with in the short five-year timeframe stipulated in the order. Existing dairies have had the benefit of learning about water quality management and the technical and financial support of local, state, and federal partners to implement practices for decades. The proposed Order asks the other CAFs to come up to the same level of documentation, management measure implementation, monitoring, and fees in too short of time frame. More effort and input on how to phase-in the implementation of the requirements is needed – longer timeline, temporary or phased fee waivers, and exceptions or delays in water quality monitoring should be considered. It is appreciated that this order provides flexibility in the requirement of the different plan elements for each CAF based upon the scale and operational factors for animal and manure handling of specific facilities.”

Response to Comment No. 6.1

Please see Response to Key Comment No. 1.

Comment No. 6.2

“Tiers – From the stand point of the existing dairies the proposed Tiers mirror current scales of operation and compliance requirements in the renewed conditional waiver.”

Response to Comment No. 6.2

Comment noted.

Comment No. 6.3

“Dormant and New Dairies/CAF’s - It is appreciated that there is a path for dormant dairies that restart and for entirely new dairies fall under this order.”

Response to Comment No. 6.3

Comment noted.

Comment No. 6.4

“Application of Grazing elements – It is not recommended that the grazing elements be included and required across all regions covered by the order on the basis that there are Grazing Conditional Waivers in the Napa River and Sonoma Creek and Tomales Bay Watersheds. There are parallels with the State Water Resources Control Board’s exploration and subsequent decision to not pursue the Grazing Regulatory Action Program (GRAP). Namely, water quality regulation is best organized and implemented to address identified problems instead of applying the same policy and set of requirements broadly in the absence of identified impacted water quality conditions.”

Response to Comment No. 6.4

Please see Response to Key Comment No. 2.

Comment No. 6.5

“Page 1 #2 and Page 3 #9 – It is appreciated that processing water for endeavors like creameries is included making it easier for the producer and RB staff to work through the handling of processing water.”

Response to Comment No. 6.5

Comment noted.

Comment No. 6.6

“Page 4 #21 and #22, Page 13 4.a. and 4.b – These are the specific elements that assert the assumption that there are impacted watersheds and that those impacts are from grazing livestock and therefore the grazing elements of the order are required. Again, the dialogue, recommendations, and resulting decision of the SWRCB not pursue GRAP are directly relevant to this portion of the order. The recommendation is that these elements and requirements be removed.”

Response to Comment No. 6.6

Please see Response to Key Comment #2

Comment No. 6.7

“Page 5 #23 – The studies being referenced are for groundwater basins in other California regions with hydrogeologic conditions that differ greatly from those in RB2 in terms of the pathways and surface and groundwater connections. The order should not use those studies to justify requiring the monitoring of groundwater. Instead, a groundwater study should be implemented and where impacted conditions are identified a regulatory program should be developed and implemented to address those impacts.”

Response to Comment No. 6.7

The Order recognizes that region-wide hydrologic conditions are variable, and therefore as an initial screen of groundwater quality, the Order includes consideration for potential impacts to groundwater associated with CAFS that manage waste via liquid waste retention ponds. The required monitoring of groundwater is not based on groundwater impacts found in other California regions, but rather, due to studies that suggest that Title 27 standards for groundwater protection may not be protective of groundwater quality on a statewide basis and is highly dependent on site-specific soils and geologic conditions. The Order requires CAFs to sample and analyze their groundwater wells, over four discreet time periods, for total coliform bacteria and nitrate (as NO₃). The groundwater quality data will be used to: a) insure that the groundwater pumped from the water supply wells is safe, b) help assess whether retention ponds are leaking and adversely affecting groundwater quality, and c) as necessary, support the development of a more comprehensive groundwater study, should groundwater impacts be identified.

In 1979, a case of methemoglobinemia (blue baby) was attributed to a water supply well in rural Petaluma. As a result, Sonoma County asked the State Department of Water Resources to investigate the distribution of nitrates (the cause of the illness) in the groundwater in the area (Study of nitrates in groundwater in the Petaluma Area, Sonoma County, May 1982). The study concluded that nitrates in the study area do not occur naturally and that the local geology and

soils did not provide sufficient retardation to the movement of nitrate to the underlying groundwater. The study found that the nitrate groundwater contamination was primarily the result of past agricultural practices, notably poultry operations, and that the lack of proper or sufficiently deep sanitary seals in wells was contributing to the spread of nitrates in the groundwater.

Comment No. 6.8

“Page 8 #38 and Page 16 #E 1.a-c – It will be important to develop a way for potential new dairies to transition from individual WDRs to the Tiers and these General WDRs. This won’t happen very often but there is real potential for it to happen in a few select instances. This is in addition to the General WDRs’ recognition and path for accommodating the restart of dormant dairies that is very much appreciated.”

Response to Comment No. 6.8

The proposed Order currently includes provisions for a new or expanding CAF to be eligible for coverage. Please see Section E. Opening a New or Expanding Facility (page 16 of 25).

Comment No. 6.9

“Page 10 #A.7 – What does “...manner not approved...” mean and what is the process for approval?”

Response to Comment No. 6.9

We agree, in part, and have revised the Discharge Prohibitions, A.7 as follows:

7. “The discharge of manure or process water to lands not owned, leased, or controlled by the Discharger without written permission from the landowner and in a manner not in compliance with this Order, ~~approved by the Executive Officer~~, is prohibited”.

Comment No. 6.10

“Attachment A and other Attachments’ reference to and requirements for RDM monitoring – Please note that past and continual input and recommendation provided on the Conditional Waiver for Existing Dairies and the Grazing Land Conditional Waivers approved by RB2, affirming RDM as a management tool and not a regulatory tool for enforcement. In referencing past comments on this subject, the factors and conditions that effect RDM levels and that result in levels being below any recommended annual quantities should be considered and accounted for in this General WDR – this includes drought, fire, and weed management measures, among other factors and objectives.”

Response to Comment No. 6.10

The approach taken in the General WDRs is exactly the same as the 2015 Conditional Waiver. As the commenter notes, concerns over how the Water Board would use the RDM information reported by Dischargers were raised during adoption of the Conditional Waiver. As explained below and consistent with the approach taken in the past, the RDM minimum is not a regulatory standard; it is a threshold to compare against field-measured values to assess the need for management actions. Assessments measured below this threshold are expected to prompt the Discharger to determine if the implementation of additional management practices is warranted to conserve soils from erosion.

RDM is a measure of herbage material or vegetative stubble (mulch) left on the ground after a growing season. For California rangelands, RDM is usually measured before the first fall rains,

in late September/early October. RDM is recognized by rangeland managers as an important indicator of grazing pasture health and is used to assess grazing objectives and adjust management practices when needed. The amount of RDM has a direct influence on such environmental factors as soil surface erosion, soil stability and structure, water infiltration, nutrient cycling, plant species composition, habitat, forage, and seedling germination. Used alone, minimum RDM values do not necessarily equate to poor grazing management practices. A variety of non-controllable environmental factors (fire, drought, rocky soil types, etc.) influence RDM. We recognize that low RDM, below minimum values, may be due to a planned pasture management strategy, such as the control of invasive species or noxious weeds, or may be associated with an animal service area located on a pasture that is not representative of the grazing operation as a whole.

Comment No. 6.11

“Attachment A Page 9 and 10 III.A.1 and 2 – It is recommended that the requested photographs stay on farm and be filed with the other records, available for review upon request.”

Response to Comment No. 6.11

We disagree. The requirement to submit photos, attached to the Annual Report, that document pre-rainy season preparations and pollution prevention measures is consistent with the 2015 Conditional Waiver. Since the Annual Report is due by November 30 of each year, these photos provide timely documentation of proactive management measures taken prior to the winter rains. This documentation would provide little benefit if it was not provided during this time.

Comment No. 6.12

“A title for Order Elements and Attachments – In implementing the revised Waiver for Existing Dairies, it is difficult to communicate the content and purpose of the “Grazing Management Plan” because the title and the content are not in agreement. Learning from that experience, it is recommended that the titles for the following order elements and plans be changed as indicated:

- *Attachment B – Ranch Facility Water Quality Plan*
- *Attachment E – Grazing Ranch Water Quality Plan”*

Response to Comment No. 6.12

We disagree. Most CAFs that will be completing a Grazing Management Plan are currently enrolled under the 2015 Conditional Waiver and will have completed their plan prior to transferring to this Order. The suggested change in the plan title will have little effect on the content of such plans. To change the names would cause additional confusion to those enrollees who transfer to this Order.

WATER BOARD STAFF INITIATED CHANGES

Water Board staff made minor changes to the General WDRs and the supporting documents in order to add clarity, correct typographical errors, and to make language in each document consistent.