



## Inland Empire Waterkeeper

*Advocacy • Education • Restoration • Enforcement*

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May 28, 2013

*Sent via E-Mail*

Regional Water Quality Control Board – Santa Ana Region  
ATTN: Steve D. Mayville  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

RE: Inland Empire Waterkeeper Comments on R8-2013-0001

Dear Mr. Mayville,

Inland Empire Waterkeeper (“Waterkeeper”) appreciates the opportunity to discuss the third draft of Tentative General Waste Discharge Requirements for Confined Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region (*National Pollution Discharge Elimination System (“NPDES”) General Permit No. CAG018001, Regional Water Quality Control Board – Santa Ana Region Order No. R8-2013-0001*) (hereinafter “Dairy Permit” or “R8-2013-0001”). Waterkeeper has remained engaged in the development of this permit since the release of the first draft in late 2012. Our comments here, and elsewhere, reflect the view of our members to protect and enhance the water quality of the Upper Santa Ana River watershed through advocacy, education, research, restoration, and enforcement.

Waterkeeper has worked collaboratively with the dairy industry and Regional Water Quality Control Board – Santa Ana Region (“Regional Board”) staff members in negotiating the terms the second and third drafts of the Dairy Permit. Overall, these negotiations have improved the opportunity for public participation in the permitting process, clarified the requirements for Nutrient Management Plans, provided for the removal of contaminated soil in containment ponds prior to the issuance of a Notice of Termination, and added a groundwater monitoring plan to identify total dissolved solid and nitrate contamination hotspots in the San Jacinto River basin.

As a result, Waterkeeper supports the adoption of the third draft of the Dairy Permit. The Dairy Permit has built on some of the successes of the existing permit while requiring the collection and analysis of regional groundwater data to assist in the identification of those dairies that are contributing to groundwater impairment. Dairies in the San Jacinto River basin have been proactive partners in identifying factors that contribute to groundwater and surface water impairments and should be commended for their cooperative approach towards resolving current water quality issues. Waterkeeper acknowledges some of the complex problems facing this industry are due to legacy pollutants generated over decades of dairy operation and farming. However, those problems must be addressed by those current permittees and Waterkeeper is confident the current dairies in the San Jacinto River basin are willing and capable to accomplish the task.

However, Waterkeeper does caution the Regional Board to consider the message the adoption of the Dairy Permit sends to regulated entities, be they dairies, municipalities, or other permittees, that the Regional Board will not enforce permit compliance deadlines. As detailed in our January 18, 2013 comment letter, the first draft of the Dairy Permit violated the prohibition against backsliding by adopting a compliance schedule that

was less stringent than the existing permit. The existing permit required dischargers to fully implement a “final Work Plan” to meet effluent limitations in the “San Jacinto Basin by September 6, 2012.” R8-2007-0001, Sec. VII.C.4. If dischargers failed to fully implement the “final Work Plan,” then dischargers were required to “cease the discharge of process wastewater and land application of manure within the San Jacinto River Basin.” Id. No one contests that dischargers failed to fully implement the “final Work Plan” and that discharge of process wastewater and land application of manure within the San Jacinto River Basin continues. The Dairy Permit ignores the failure of permittees to fully implement the final Work Plan by September 6, 2012, or cease their activities. Rather, the Dairy Permit asserts that its requirements are “at least as stringent as the 2007 Permit requirements.” R8-2013-0001, Attachment D. Section VII.H. By providing permittees with additional time to complete a task that was required in a previous permit the Regional Board is adopting a less stringent condition that violates the prohibition against backsliding. If adopted, the Regional Board is outlining how it intends to exercise its prosecutorial discretion in choosing not to enforce clear effluent limitations in the existing permit. *See* Citizens for a Better Environment – California v. Union Oil Co. of California, 83 F.3d 1111, 1120 (9th Cir. 1996). Consistent enforcement of all compliance schedules would send a clear message to all permittees that Regional Board permits are deliberate, considered and will be enforced.

In conclusion, Waterkeeper appreciates the amount of effort the Regional Board and staff have dedicated towards the development of the Dairy Permit. This Dairy Permit builds on some of the successes of the previous permit and seeks to advance the industry in our region and ensure it remains a critical part of an economically and environmentally successful Inland Empire.

On behalf of Waterkeeper, I look forward to working with you on the Dairy Permit. If you have any questions or comments, then please do not hesitate to contact me directly at (714) 850-1965 ext. 307 or email me at [colin@iewaterkeeper.org](mailto:colin@iewaterkeeper.org).

Regards,



Colin Kelly  
Staff Attorney  
Inland Empire Waterkeeper