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January 18, 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") is an environmental non-profit organization dedicated towards advocacy, education, restoration, and enforcement in the Santa Ana River watershed. Waterkeepers' members use and enjoy the unique waterways of the Inland Empire and rely on our region's groundwater on an everyday basis. For those reasons, we have focused our attention on the 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.")

The following are Waterkeeper's principle comments on the draft Dairy Permit and reflect many of the issues raised during the December 2012 public workshop. Waterkeeper, and our members, strongly encourage the Regional Water Quality Control Board – Santa Ana Region ("Regional Board") to schedule at least one additional public workshop in order to discuss these issues in detail with the Regional Board members and the community at large.

I. THE REGIONAL BOARD'S DAIRY PERMIT VIOLATES CALIFORNIA'S ANTIDEGRADATION POLICY BECAUSE IT PROVIDES FOR THE CONTINUED DISCHARGE OF POLLUTANTS THAT CAUSE OR CONTRIBUTE TO AN EXCEEDANCE OF WATER QUALITY OBJECTIVES, DOES NOT PROVIDE A MECHANISM TO DETERMINE COMPLIANCE, AND FAILS TO REQUIRE BEST PRACTICABLE TREATMENT OR CONTROL.

The Dairy Permit provides for the continued discharge of pollutants that cause or contribute to an exceedance of water quality objectives in the receiving waters specified in the Basin Plan. Dairy Permit, I.A.3. The Dairy Permit violates California's antidegradation policy because the Regional Board failed to provide an adequate mechanism to ensure that no degradation of groundwater would occur as a result of the dairy industry's operations; and because the Regional Board does not require discharges to undergo the best practicable treatment or control. 40 C.F.R. §131.12; Resolution No. 68-16 F.

When undertaking an anti-degradation analysis, the Regional Board must compare the baseline water quality (the best that has existed since the adoption of Resolution No. 68-16) to the water quality objectives. If, the baseline water quality is better than the water quality objectives, then the state's antidegradation policy is triggered and the baseline water quality must be maintained, absent a finding by the Regional Board otherwise. *AGUA* at 1270.

The Dairy Permit argues that an antidegradation analysis is not warranted because the discharges covered by the "Order are not permitted to adversely affect water quality and therefore are consistent with the antidegradation provision of 40 CFR 131.12 and State Board Resolution No. 68-16." R8-2013-0001, Attachment D, VII. G. This language is borrowed from similar permits issued by the State and Regional Boards. In interpreting this language, Waterkeeper agrees with the California Court of Appeal when they stated, "[n]ot only is this reasoning circular, the mechanism for ensuring that groundwater will not be further degraded is the monitoring plan, which… is inadequate." *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board*, 210 Cal.App.4th 1255, 1280 (2012)(hereinafter referred to as "AGUA").
The Regional Board also concludes that a "further antidegradation analysis is not necessary for this general permit" because "the Regional Board approved the "Max Benefit" water quality objectives after a detailed antidegradation analysis." R8-2013-0001, Attachment D. VII. G. That is partially true. No antidegradation analysis has occurred for the San Jacinto River Basin. As such, the antidegradation analysis provided in the Dairy Permit for the San Jacinto River Basin is inadequate.
The court in AGUA concluded that the antidegradation policy applies to milk cow dairies and that the Regional Board essentially had two options. First, it could implement an adequate monitoring system to ensure that no degradation of groundwater would occur as a result of the dairy industry. Alternatively, it could require any activity resulting in a discharge "use the best practicable treatment or control necessary to avoid a pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State." *See* State Board, Guidance Mem. (Feb. 16, 1995) p. 2.

The Dairy Permit's only mechanism for enforcement is self-monitoring by the dischargers of surface water.

There are no provisions for assessing the impact dischargers have on ground water in the Management Zone. Furthermore, federal Clean Water Act ("CWA") requires that a permittee undertake a self-monitoring program sufficient to determine compliance with its NPDES permit. 40 CFR § 122.44(i)(l). Dischargers under the Dairy Permit cannot determine compliance with the prohibition against causing or contributing to an exceedance of a water quality objective specified in the Basin Plan for nitrate due to insufficient monitoring requirements.

a) <u>The Dairy Permit provides for continued discharge of pollutants that cause or contribute to exceedance of water quality objectives.</u>

The Dairy Permit states, "[t]he discharge of wastes to the ground shall not cause or contribute to an exceedance of any applicable water quality objectives specified in the Basin Plan." Dairy Permit, Section. II.E. California's antidegradation policy applies after a determination that a receiving water is high quality water and an activity will discharge waste into that receiving water. *AGUA* at 1272. The water quality objectives for the Perris North Management Zone in the San Jacinto River Basin for nitrate as nitrogen is 5.2 mg/L. Basin Plan at Table 4-1. Similarly, the water quality objective for TDS in the Canyon Management Zone is 230 mg/L. Id. According to the San Jacinto Watershed Integrated Regional Dairy Management Plan, ("IRDMP") the nitrate as nitrogen ambient data for Perris North in 1997 was 4.7 mg/L. Table 2-6. This result is 0.5 mg/L below the water quality objective for nitrate as nitrogen at for Perris North. Additionally, the Canyon Management Zone's TDS data for 1997 showed 220 mg/L. Id. This was 10mg/L below the water quality objective. These data sets establish that at least these groundwater Management Zones are high quality water.

The Regional Water Quality Control Board – Central Valley Region argued that the antidegradation policy did not apply because groundwater had degraded from its policy in 1968. Id. at 1269. The court responded by first affirming that, "[t]he baseline quality of the receiving water determines the level of protection….and is defined as the best quality of the receiving water that has existed since 1968." Id. at 1270 (citing APU-90-004.) The court went on to state that, "[w]ith respect to polluted groundwater, a portion of the aquifer may be polluted while another portion of the same aquifer may not be….[t]he unpolluted portion is high quality water within the meaning of Resolution No. 68-16." Id. at 1269. Table 2-6 of the IRDMP shows that at least some of the San Jacinto River Basin groundwater is high quality water under the meaning of California's antidegradation policy.

These results show that the water quality objectives in the Basin Plan are not being met, and the Dairy Permit provides for the continued discharge of pollutants known to cause or contribute to an exceedance of water quality objectives. Dairy Permit, I.B.2. For example, the Dairy Permit does not address issues surrounding existing storage ponds, despite their known potential to cause or contribute to groundwater degradation. Without additional information to determine whether a specific discharger is contributing to groundwater degradation, the Dairy Permit cannot conclude the dairies are not causing or contributing to an exceedance of a groundwater water quality objective.

b) <u>The Dairy Permit does not provide an adequate mechanism to determine compliance with the Dairy Permit's directive.</u>

In AGUA, the California Court of Appeal found the Central Valley Regional Board's more developed monitoring plan was inadequate to determine compliance. *AGUA* at 1261. As the court held, "[g]iven that there will be some discharge of waste to groundwater, the Regional Board's decree that the Order does not permit further degradation of groundwater is meaningless without an effective method to determine whether a discharge has resulted in a degradation of groundwater quality." Id. at 1286. In the Central Valley, the Regional Board required both agricultural and domestic supply wells be tested for nitrate, electrical conductivity and phosphorus. The Executive Officer had that authority to order additional monitoring wells at his discretion and require additional testing for pH, ammonia and general minerals. Id. at 1277. Despite this authority, the court concluded that without proper supply well monitoring to determine whether nitrate, or any other pollutants are contaminating groundwater, the Executive Officer cannot first detect the problem and order the installation of monitoring wells. Id.

As we have stated, the Dairy Permit states, "the discharges covered by this Order are not permitted to adversely affect water quality and therefore are consistent with the antidegradation provision of 40 CFR 131.12 and State Board Resolution No. 68-16." As the Court aptly put it in AGUA, "the wish is not the father to the action." Id. at 1260. The Dairy Permit prohibits the degradation of groundwater without providing the Regional Board with the means (monitoring wells) by which degradation can be measured. Id. at 1261. As with the Central Valley dairy permit, our permit does not require monitoring wells. The Dairy Permit does not even require groundwater sampling from existing monitoring wells in the region. In that regard, the monitoring requirements for the Central Valley are more comprehensive than our own requirements and provide the regulators with the tools necessary to properly protect groundwater.

This Dairy Permit relies on dischargers to monitor surface water and self-report violations and corrective actions taken or planned. Dairy Permit, X. A. 3. The Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA") requires that a permittee undertake a self-monitoring program sufficient to determine compliance with its NPDES permit. 40 CFR § 122.44(i)(l). Dischargers are required to report the results of their surface water monitoring activities once per year. These monitoring requirements purport to prohibit the "discharge of waste containing TDS and/or Nitrogen concentrations in excess of the underlying groundwater management zone objectives." Dairy Permit, II. B. As written, dischargers under the Dairy Permit cannot determine compliance with the prohibition against causing or contributing to an

exceedance of a water quality objective specified in the Basin Plan for pollutants due to insufficient monitoring requirements.

c) The Regional Board should require dischargers to use the best practicable treatment or control to avoid pollution and to maintain the highest water quality consistent with the maximum benefit to the people of the State.

When California's antidegradation policy applies, the existing quality of waters must be maintained unless degradation is justified based on specified findings. Dairy Permit, I.P.; *AGUA* at 1286. The Regional Board is authorized to allow discharge of waste into high quality waters only if it makes specified findings; the findings require two steps. *AGUA* at 1278. First, the board must find that any change to high quality water is consistent with the maximum benefit to the people of the State, does not unreasonably affect present and anticipated beneficial uses, and does not result in water quality less than that prescribed in the policies. *AGUA* at 1278. Second, any activities that result in discharges are required to use the best practicable treatment or control of the discharge necessary to avoid pollution or a nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the state. Id.

The Regional Board does address step one of the antidegradation policy, arguing that because the Board approved the "Max Benefit" water quality objectives after a detailed antidegradation analysis, "further antidegradation analysis is not necessary for this general permit." Dairy Permit, Attatchment D.VII.G. Beneficial use protection/maximum benefit demonstrations were made for the Chino North, Chino 1-3, Beaumont, San Timoteo, Yucaipa and Cucamonga Management Zones. Dairy Permit, Attachment D.VII.C. However, there are five distinct management zones in the San Jacinto River Basin and a maximum benefit analysis has been completed for one Management Zone, conducted by the Eastern Municipal Water District as a part of its Salinity Management Program in the San Jacinto Basin. Dairy Permit, II A. There are 28 CAFO facilities in the San Jacinto River Basin, with a total of 57,000 animals. Dairy Permit, Attachment D.IV. No beneficial use protection/maximum benefit analysis occurred for the San Jacinto River Basin, therefore the Regional Board's antidegradation analysis described in the Dairy Permit as support of their findings is inadequate.

There have been changes to the quality of water in the San Jacinto River basin and these changes remain unjustified by the Regional Board's findings in the Dairy Permit. The IRDMP illustrates changes in ambient nitrate levels as seen over the 30-year period between the historical and 2003 periods. *See* IRDMP Table 2-6. Only the Canyon Management Zone shows a decrease in nitrate-N concentrations while all other management zones in the San Jacinto River Basin show increases in nitrate-N and TDS. IRDMP, Table 2-7. The changes in the high quality water of the San Jacinto River Basin are not justified because the Regional Board failed to make the requisite findings required by the California's antidegradation policy. Resolution No. 68-16.

Whether or not the Regional Board determines that any degradation is justified through its findings, Waterkeeper urges the Board to focus on the second step of the antidegradation policy and require operators subject to the Dairy Permit to use the best practicable treatment or control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State. *See* St. Water Res. Control Bd., Guidance Memorandum (Feb. 16, 1995). The State Board has promulgated regulations establishing "statewide minimum standards for discharges of animal waste at confined animal facilities. *AGUA* at 1262; (citing Cal. Code. Regs. tit. 27, § 22560, subd. (a).) The Regional Boards are directed to "impose additional requirements, if such additional requirements are necessary to prevent degradation of water quality or impairment of beneficial uses of waters of the state." Id.

The Regional Board failed to address the degradation that has occurred under the previous Dairy Permit, relying instead on its assessment that the waste load is decreasing since operators are relocating their facilities outside the region. Dairy Permit, D.VII.G. Although the number of dairies in the region declined from 1997-

2007, San Bernardino and Riverside Counties rank ninth and tenth in California for milk producing counties. Cal. Dept. Food & Ag., 2012 Mid-Year Review. Similarly, last year saw some of the largest production from the state's dairies. For example, March 2012 saw the highest monthly milk production on record at 3.8 billion pounds. Id. Additionally, as the Dairy Permit acknowledges, while the number of dairies is slightly shrinking the industry will be in the region for the long term.

To evaluate the best practicable treatment or control method, the discharger should compare the proposed method to existing proven technology; evaluate performance data, e.g., through treatability studies; compare alternative methods of treatment or control; and/or consider the method currently used by the discharger or similarly situated dischargers. St. Water Res. Control Bd., Guidance Memorandum (Feb. 16, 1995) 5–6. "Thus, the agency [Regional Board] should consider current technologies and cost and may, where appropriate, consider federal requirements setting forth the best available technology." *AGUA* at 1282.

The IRDMP, comprehensively details current technologies and costs of best management practices. The IRDMP details management practices for source reduction (such as phytoremediation and precision feeding); structural improvements (such as constructed wetlands, pond lining and a cooperative or regional digester); and specialized practices (such as Vibratory Shear Enhanced Processing (VSEP®)). The Regional Board should include some of these recommendations in the Dairy Permit. IRDMP 5.4.4. Adopting some of the best management practices recommended in the IRDMP would fulfill the Regional Board's duties under the second step of the State's antidegradation policy because the Board would then be requiring dischargers to use the best practicable treatment or control necessary to avoid pollution or a nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the state. *AGUA* at 1282, citing St. Water Res. Control Bd., Guidance Memorandum (Feb. 16, 1995).

The Dairy Permit only contemplates the IRDMP in one section, titled "Salt and Nutrient Management Provisions." Dairy Permit, III.F. The Dairy Permit merely requires dischargers to "select the most appropriate control measures and develop a work plan to implement those measures." Dairy Permit, III.F. The Dairy Permit does not require full implementation of said work plan until March 13, 2018. In order to comply with the antidegradation policy, the Board should require the best practicable treatment and control of the discharge necessary to avoid pollution or a nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the state.

II. THE REGIONAL BOARD'S DAIRY PERMIT VIOLATES THE FEDERAL PROHIBITION AGAINST BACKSLIDING BY ADOPTING A COMPLIANCE SCHEDULE THAT IS LESS STRINGENT THAN THE PREVIOUS PERMIT.

The Dairy Permit violates the federal prohibition against backsliding in NPDES permits by adopting effluent limitations, standards or conditions that are less stringent than in the previous Order. When NPDES permits are "renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit." 40 C.F.R. 122.44(l)(1). As the general NPDES permit pursuant to Section 402 of the CWA, any violation of the previous permit constitutes a violation of the CWA and the California Water Code ("CWC") and would be grounds for enforcement action, for permit termination or denial of permit renewal. *See* Dairy Permit, Section VII.A.2.a.; R8-2007-0001, Attachment A, I.A.1 [citing 40 C.F.R. § 122.41(a)]. U.S. EPA has determined the federal prohibition against backsliding in NPDES permits is not limited to numerics, but applies similarly to the provision of "additional time to complete a task that was required by the previous permit" and constitutes a "less stringent condition and violates the prohibition against anti-backsliding." Ltr. From Jon M. Capacasa, Director, Water Protection Division, U.S. EPA Reg. III, to Jay Sakai, Water Management Administration, Re: Specific Objection to Prince George's County Phase I Municipal Separate Storm Sewer System (MS4) Permit MD0068284, 4 (Aug. 8, 2012).

The Dairy Permit contains at least one provision which violates this principle. For example, the previous Dairy Permit held dischargers subject to a compliance time schedule for "Effluent Limitations and Discharge Specifications V.B. of [the] order" that required dischargers to meet effluent limitations in the "San Jacinto Basin by September 6, 2012." R8-2007-0001, Section VII.C.4. If dischargers failed to fully implement a "final Work Plan" by September 6, 2012, then the discharges were required to "cease the discharge of process wastewater and land application of manure within the San Jacinto River Basin." Id. The Dairy Permit seeks to change the previous permit's compliance date from September 6, 2012 to March 13, 2018 to allow dischargers additional time to complete the same task. Dairy Permit, Section III.F.1.a.; *see also* Attachment D.VIII. The addition of over five years to perform a task required to have been completed by a previous permit is a less stringent effluent limitation and is not permitted under the CWA.

Therefore, any individual dairy in the San Jacinto River Basin that has discharged wastewater or applied manure to land is in continuous and ongoing violation of the CWA and the CWC since September 6, 2012. If the Regional Board fails to enforce the applicable requirements the U.S. EPA may impose civil or criminal penalties on dischargers in violation of its NPDES permit. 33. U.S.C. § 1319(b)-(d). Furthermore, private citizens retain the right to require dischargers to comply with the effluent limitations contained in their NPDES permits through the citizen suit provisions of the CWA. 33 U.S.C. § 1365(a)(1), ("any citizen may commence a civil action on his own behalf against any person…who is alleged to be in violation of [an] effluent limitation….The district courts shall have jurisdiction…to enforce such an affluent standard or limitation….") As such, **The Regional Board must direct enforcement staff to notify dischargers in the San Jacinto River Basin that each discharger is in noncompliance with the Dairy Permit and subject to civil and criminal liability**. Waterkeeper recommends Regional Board staff conclude a discharge is taking place that violates requirements prescribed by the Regional Board and require San Jacinto River Basin dairies to submit for approval of the Regional Board, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of the requirements. *See* CWC § 13300.

III. THE REGIONAL BOARD'S DAIRY PERMIT VIOLATES THE STATE ANTIDEGRADATION POLICY BY ALLOWING A DISCHARGER TO RETAIN CONTAMINATED SOIL AFTER THEY SUBMIT A NOTICE OF TERMINATION TO THE REGIONAL BOARD.

Section I.D. of the Dairy Permit violates Resolution No. 68-16 when it fails to require the removal of contaminated soil that overlies high quality ground water and discharges or threatens to discharge to such high quality ground water or surface water before approving a Notice of Termination. Resolution 68-16 requires such a discharge to be subject to best practicable treatment or control, which in the case of contaminated soil, would include removal. St. Water Res. Control Bd., Guidance Memorandum, 13 (Feb. 16, 1995). Section I.D. of the Dairy Permit mandates that discharger "ensure the facility has been completely cleaned out and there is no remaining potential for a discharge of pollutants from the facility, including manure, litter and process wastewater." The Dairy Permit continues by stating that "standard procedures may include…filling in the containment pond(s) with clean dirt." Id. The addition of "clean dirt" to otherwise contaminated soil does not, in and of itself, eliminate the potential for the discharge of pollutants from a dairy to high quality groundwater.

Where contaminated soil discharges or threatens to discharge to non-high quality water, then the Regional Board retains the authority under California Water Code Section 13304 to require the discharger to cleanup and abate the discharge or threatened discharge so as to protect the beneficial uses of waters of the State. St. Water Res. Control Bd., Guidance Memorandum (Feb. 16, 1995) 13-14; *see also* SWRCB Resolution No. 92-49.

Waterkeeper recommends the revision of Section I.D. of the Dairy Permit to add "contaminated soil" to the list of potential pollutants in the first sentence. The revised sentence would read:

> "Upon ceasing operation at a facility, the Discharger shall ensure that the facility has been completely cleaned out and there is no remaining potential for a discharge of pollutants from the facility, including manure, litter, *contaminated soil*, and process wastewater." (emphasis added.)

Additionally, Waterkeeper recommends the revision of the second sentence in Section I.D. of the Dairy Permit to require the removal of contaminated soil from containment ponds prior to "filling in…with clean dirt." This would apply to those areas where contaminated soil overlies high quality water as understood in Resolution No. 68-16.

IV. THE REGIONAL BOARD MUST ADOPT A DAIRY PERMIT THAT PROTECTS SURFACE AND GROUND WATER QUALITY FROM POLLUTANTS KNOWN TO IMPACT WATER QUALITY.

The Regional Board must adopt a final dairy permit that seeks to understand and regulate the true impacts of the dairy industry on our regional water quality by collecting data on each of the likely pollutants that impact our waters. California dairies are an essential part of the state's future, but also a principle source of severe groundwater pollutants such as nitrates, salts, bacteria, such as E. coli, and pharmaceuticals like antibiotics and hormones. *See* Dairy Permit, Attachment D.IV. Currently, the Dairy Permit requires dischargers to sample and analyze for total dissolved solids (TDS), total coliform bacteria, E. coli, total nitrogen, total phosphorus and total suspended solids (TSS). Dairy Permit, Attachment B.IV. Waterkeeper acknowledges the addition of this section to this version of the Dairy Permit, however, the Regional Board should seek additional information in order to gather an accurate representation of our water quality.

Waterkeeper recommends the addition of hormone and antibiotic testing to the Dairy Permit. Hormones are commonly injected into beef and dairy cows to increase productivity. The cows excrete physiologically active steroidal hormones in their waste which ends up in manure lagoons. Animal waste has been found to contain estrogen, estradiol, progesterone, testosterone, and synthetic hormones. "What's in the Water?: Industrial Dairies, Groundwater Pollution and Regulatory Failure in California's Central Valley," Food & Water Watch, (citing *Kolodziej, Edwards, et al. "Dairy wastewater, aquaculture and spawning fish as sources of steroid hormones in the aquatic environment." Environmental Science and Technology. Vol. 38. 2004 at 6377-6384.*) Manure containing hormones is then spread on cropland. The USDA's Agricultural Research Service has determined that "clearly, CAFOs provided elevated releases' of endocrine-disrupting chemicals, including hormones, into the environment." Id. (citing *Rice, Cliff. "CAFOs and hormones: Overview of ARS research." Presentation at "Fate and Effects of Hormones in Waste from Con. An Fe. Op," U.S. EPA workshop, Chicago IL. August 20-22, 2007 at 3."*)

In surface water, hormones have been linked to male fish feminization. Id. Groundwater testing has identified higher concentrations of hormones down gradient from dairy operations. Id. (citing Arnon, Shai, et al. "Transport of testosterone and estrogen from dairy-farm waste lagoons to groundwater." Environmental Science and Technology. Vol. 42 2008 at 5521-5526.) The impacts of hormones to aquatic life are being seen, but the larger connection between those same hormones and human impacts are less concrete. Human exposure to these types of hormones has been linked to reproductive and metabolic abnormalities and cancers. Id.

Antibiotics have been found in groundwater beneath dairies and are a vehicle for human exposure to antibiotic-resistant pathogens. Id. at 10. A 2007 USDA study of dairy producers in California and other major dairy producing states, found widespread antibiotic use throughout the life of the cow. Antibiotics are used to treat respiratory diseases, mastitis, and non-therapeutic purposes. Id. These antibiotics, including tetracycline, penicillin and ionophores, are excreted by cows in both metabolized and unmetabolized forms. Id. These constituents of emerging concern can persist in the "environment for extended periods of time; for example, erythromycin has been found to persist for longer than one year." Id. (citing *Zuccato, E., et al. "Presence of therapeutic drugs in the environment." Lancet. Vol. 355, iss. 9217. 2000 at 1789.*)

The Dairy Permit's sampling and testing requirements are an improvement over the existing Dairy Permit. However, Waterkeeper encourages the Regional Board to strengthen the Dairy Permit by requiring regular sampling and testing of pollutants known to exist on dairies statewide and nationally in order to properly prepare the Regional Board for the next dairy permit.

V. THE REGIONAL BOARD SHOULD REQUIRE ALL DISCHARGERS ELECTRONICALLY SUBMIT ALL ANNUAL REPORTS AND ELECTRONIC DATA TO THE REGIONAL BOARD.

The Regional Board should require the mandatory electronic submittal of Annual Reports and other materials by dischargers. The State Board and Regional Boards are transitioning from a traditional paper submittal process to an electronic submittal process through secure online systems like the Storm Water Multiple Action and Report Tracking System ("SMARTS") or the California Integrated Water Quality System ("CIWQS"). The Dairy Permit grants the Regional Board or the State Board the ability, at any time and after proper notice, to require a discharger to electronically submit Self-Monitoring Reports using CIWQS. Dairy Permit, Attachment B.X.A.2. Currently, if a member of the public wished to comment on a discharger's Nutrient Management Plan or Engineered Waste Management Plan, both foundational documents directly impacting water quality, then they would need to travel to the Regional Board's office in Riverside. This runs counter to the state's desire to improve transparency and public participation.

Publicly accessible electronic databases provide the public with an opportunity to review important water quality data and act as more effective watershed stewards. In furtherance of transparency and good governance, Waterkeeper recommends that the Regional Board mandate the electronic submittal of dischargers Self-Monitoring Reports.

VI. CONCLUSION

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.

Waterkeeper remains concerned that the Regional Board has not fully reflected on the demands of the environment and the recommendations put forward by the industry itself. The existing permit contains serious deficiencies regarding compliance with California's anti-degradation policy and the state and federal government's backsliding prohibition. Similarly, the Dairy Permit fails to responsibly position the Regional Board to address constituents of emerging concern (e.g., hormones and antibiotics) originating from area dairies for the next Dairy Permit. The Dairy Permit also affirms the policy of hard copy submission of Annual Reports and similar data to the Regional Board despite California's trend towards electronic submission of information. Finally, Waterkeeper strongly encourages the Regional Board to revisit the industry recommendations made in the San Jacinto Watershed Integrated Regional Dairy Management Plan and attempt to incorporate some of the practical solutions put forward by local dairymen that already have industry support. For example, the implementation of a Manure Manifest System should be considered and seriously discussed.

The Dairy Permit is a foundational document for the Inland Empire and will govern the direction of the industry in this region for at least five years. The Regional Board owes the people of the Inland Empire develop a well-reasoned and transparently negotiated Dairy Permit that responsibly addresses ground and surface water quality. Therefore, Waterkeeper reiterates our request for at least one additional Regional Board workshop to discuss the issues surrounding this Dairy Permit.

On behalf of Waterkeeper, I look forward to working with you on the Diary 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.

Regards,

Colin Kelly
Staff Attorney
Inland Empire Waterkeeper