

## LETTER 20 - Michael Marsh, Western United Dairymen

### Response to Comment 20-1

The comment is noted for the record.

### Response to Comment 20-2

The comment is noted for the record. The commentor's support of and contribution to the development of the Element are appreciated.

### Response to Comment 20-3

The Element reviewed by the PEIR includes numerous policies that serve as performance standards for future dairy development projects in Kings County. These policies were developed, in part, in response to the analysis of potential significant environmental impacts related to the construction and operation of dairies. Some of the impacts are mitigated partially or fully by enforcement of existing laws and regulations enforced by local, State, and Federal regulatory agencies. The Element and the PEIR considered and discussed existing regulations in the evaluation of each environmental impact. As part of the evaluation, consideration was given to whether the existing regulations and their enforcement would reduce the impacts within Kings County to a less-than-significant level. If additional feasible mitigation was identified to reduce or eliminate impacts, then additional policies providing specific performance standards were developed and included in the PEIR.

For example, the Regional Water Quality Control Board is responsible for regulating potential sources of surface or subsurface water quality degradation. Specific to bovine dairies, the RWQCB is required to enforce the requirements of Subchapter 2 ("Confined Animals") of The California Code of Regulations Title 27, Division 2, Subdivision 1, Chapter 7. These requirements are discussed in Section 4.3 ("Water Resources") of the PEIR. Policies contained in the Element incorporate [**Policy DE 3.2k (now 3.2j)**] and expand upon these requirements to ensure that, at a minimum, dairy projects in the County conform with these requirements. Additional policies (e.g., **Policies DE 3.2a, 3.2b, 3.2c, 3.2h, and 3.2i**) are included in the Element that relate to the specific hydrologic and water quality conditions in the County. The environmental analysis performed in the development of the Element and the PEIR determined these policies to be necessary to ensure the protection of water resources in the County.

Other aspects of dairy development and operation are regulated by other State and Federal agencies. Dairy design and construction are regulated by the California Department of Food and Agriculture under Title 3 of the California Code of Regulations. These regulations include provisions for milk processing, packaging, and handling, sterilization,

and product inspection. In addition, the regulations (Article 22) address the design of dairy facilities. Dairies are required to submit design plans to the DFA Milk and Dairy Foods Control Branch for review and approval. It is the responsibility of the DFA to determine if the dairy design meets the requirements of these regulations. The Element (**Policy DE 4.1aB.2**) and PEIR (Impact 4.3-7) acknowledge the applicability of some of the regulations in reducing environmental impacts (i.e., potential water quality degradation). In conformance with Article 21, the dairies are inspected by the Tulare County Environmental Health Department, a licensed milk inspection agency under contract with Kings County. However, these regulations alone would not reduce the identified impacts to less than significant.

#### **Response to Comment 20-4**

The commentor is referred to Responses to Comments 20-5 through 20-57.

#### **Response to Comment 20-5**

**Policies DE 1.2a** and **1.2b** have been modified to reflect this comment. In the case of an existing dairy that is expanding, the policies of the Element only apply to the expansion area, not to the previously existing facility.

#### **Response to Comment 20-6**

Please refer to Responses to Comments 1-6, 23-8, and 23-9.

#### **Response to Comment 20-7**

Please refer to Response to Comment 23-11.

#### **Response to Comment 20-8**

**Policy DE 1.2g** has been modified to allow for an application of a conditional use permit for further reduction by expansion of an existing dairy into the buffer zone around schools. For additional discussion, the commentor is referred to Response to Comment 23-12.

#### **Response to Comment 20-9**

Please refer to Response to Comment 23-13.

#### **Response to Comment 20-10**

In response to the comment, **Policy DE 1.2h** has been modified to allow for an application of a conditional use permit for a dairy expansion that encroaches into the one-half mile buffer between residential zones and existing dairies.

### **Response to Comment 20-11**

The comment is noted for the record. Please refer to Response to Comment 23-14.

### **Response to Comment 20-12**

The text of **Objective DE 2.1** has been modified in response to the commentor's suggested edits.

### **Response to Comment 20-13**

The text of **Policy DE 2.1b** has been modified in response to the comment.

### **Response to Comment 20-14**

**Policies DE 2.1c** and **2.1d** have been edited in response to the commentor's requested revisions to clarify that only the new portions of a dairy expansion project would be subject to site plan review.

### **Response to Comment 20-15**

The text of **Objective DE 2.2** has been modified in response to the commentor's suggested edits.

### **Response to Comment 20-16**

The comment is noted for the record. Please refer to Response to Comment 23-20.

### **Response to Comment 20-17**

The comment is noted for the record. However, the text of **Policy DE 3.1b** has not been modified in response to the comment as the change would not affect the intent of the policy.

### **Response to Comment 20-18**

In response to the comment, **Policy DE 3.1c** has been modified to provide the option to an expanding dairy that cannot meet the requirements of the policy to submit a conditional use permit.

### **Response to Comment 20-19**

**Policy DE 3.1e** has been modified in response to the commentor's suggestion.

#### **Response to Comment 20-24**

The comment is noted for the record. **Policy DE 6.1h** (now **6.2f**) has been modified to indicate that water quality monitoring shall comply with all requirements and orders of the RWQCB. It is noted that the State regulations for dairies enforced by the RWQCB are minimum statewide standards. The policies of the Element regarding water quality protection were developed to address the specific hydrogeologic conditions in Kings County and to establish feasible and specific mitigation measures required by CEQA to reduce or eliminate to the extent possible all significant adverse impacts.

#### **Response to Comment 20-25**

The comment submits into the record the Partnership Agreement entitled *Dairy Waste Management: An Integrated Approach to Education and Compliance*. The preparers of the PEIR acknowledge the benefit and merit of this document and the associated U.C. Cooperative Extension program in providing guidance to California dairy operators for the management of "dairy waste." However, the voluntary participation by dairy operators in the California Dairy Quality Assurance Program cannot serve as a mitigation measure for all of the potential significant impacts identified in the PEIR. The guidance does not provide performance standards that the County could use to verify that participating operators are in compliance.

In response to the comment, the text of **Goal DE 4** has been modified to strike the word "system."

#### **Response to Comment 20-26**

The term "Comprehensive Nutrient Management Plan" referred to in the Element has been changed to "Manure Nutrient Management Plan," as suggested in the comment.

#### **Response to Comment 20-27**

The changes suggested by the comment have been made to **Policy DE 4.1a**.

#### **Response to Comment 20-28**

The text of **Policy DE 4.1a.B.1** has been modified in response to the comment.

#### **Response to Comment 20-29**

The change suggested by the comment is noted for the record. The County cannot assume that NRCS technicians are licensed professionals or that NRCS is willing to assume responsibility for lagoon design and inspection.

### **Response to Comment 20-20**

The commentor's suggestion to revise the minimum setback from 150 feet to 100 feet between manured areas at dairy facilities and wells is noted for the record. The recommended setback exceeds the setback required by the California Well Standards. The setback for dairy facilities is similar to that required by the Kings County Division of Environmental Health Services for the setback of open cesspools from domestic wells. By increasing the minimum setback of dairy facilities from wells, additional protection of human health is provided. The preparers of the PEIR consider it important to not differentiate between domestic and agricultural water supply wells. In part, the setback is intended to provide protection against the potential for either type of well to act as a conduit for vertical migration of contaminants.

**Policy DE 3.2c** has been added to address the commentor's concerns regarding setback of manured areas from water bodies. The new policy requires that dairy facilities be designed and constructed to ensure that no runoff from manured areas flows into water bodies. The policy acknowledges that construction of barriers (e.g., dikes or berms) can be implemented to achieve the goal of the policy. It is important to note that **Policy DE 4.1b.C** requires that operators of new or expanded dairies submit an irrigation management program that "ensures that irrigation water and runoff from fields at each dairy unit would not be allowed to migrate away from the site or into surface water features.

### **Response to Comment 20-21**

The text of **Policy DE 3.2h** has been edited to provide the clarification sought by the commentor.

### **Response to Comment 20-22**

The text of **Policy DE 3.2i** has been edited to provide the clarification sought by the commentor.

### **Response to Comment 20-23**

The comment is noted for the record, as is the commentor's suggestion that the Natural Resource Conservation Service (NRCS) is the appropriate agency for conducting biological assessments for new and expanded dairy projects. Although NRCS employs scientists capable of conducting such surveys, the County cannot assume that that agency would be willing or have the authority to conduct the assessments. However, **Policy DE 3.3a** has been modified to clarify that, if biological assessments at a proposed dairy facility identify impacts on biologic resources, the proposed dairy would be required to apply for a conditional use permit.

### **Response to Comment 20-30**

Please refer to Response to Comment 20-20.

### **Response to Comment 20-31**

Please refer to Response to Comment 20-28.

### **Response to Comment 20-32**

The edit proposed by the comment is noted, and although treatment technologies are evolving, it is necessary under CEQA to present a specific performance standard for the required manure treatment. For clarification, **Policy DE 4.1a.B.4** has been modified to ensure compliance with **Policy DE 5.1c**.

### **Response to Comment 20-33**

The text of **Policy DE 4.1b.B** was not changed as proposed by the comment. Spray irrigation will increase the potential for volatilization of residual ammonia in treated process water.

### **Response to Comment 20-34**

The comment is noted for the record. The purpose of **Policy DE 4.1c** is to promote agricultural practices that would reduce the potential for soil erosion on cropland. The PEIR acknowledges that the storage capacity of process water collection systems must be adequate to contain the 25-year storm runoff, precipitation, and process water generated during winter months. Larger events could result in runoff from the dairy facilities.

### **Response to Comment 20-35**

It is important to retain the requirement for a Dead Animals Management Plan. Operators shall be required to identify the specific method for dead animal removal as part of the dairy permit application process. However, **Policy DE 4.1d** has been modified to be consistent with the 72-hour mandate for carcass removal.

### **Response to Comment 20-36**

The comment is noted for the record. The “Comprehensive Dairy Process Water Application Plan” (CDPWAP) referenced in **Objective DE 4.2** provides options to dairy operators for on- or off-site application of manure and process water. However, staff does not agree with the commentator’s position that the requirements of the CDPWAP are duplicative of the requirements of the Manure Nutrient Management Plan (MNMP). The CDPWAP is included to provide for tracking of on- and off-site applications of manure and process water.

### **Response to Comment 20-37**

In response to the comment, the text of **Policy DE 4.2a** has been modified for clarification. Specifically, the policy has been modified to better distinguish the requirements for documentation of on-site and off-site application of manure and process water. The requirement of the policy for the dairy operators to provide documentation of agreements for off-site application of manure and process water is retained. It is important for the County to have access to records of where and when these materials are applied to cropland to ensure mitigation monitoring.

### **Response to Comment 20-38**

The commentor's opinion that **Policy DE 4.2a.A.2** should be eliminated is noted. Without an accounting of the amount and location of reuse of the nutrients, it would not be possible to determine if the applications were consistent with requirements for applying the nutrients at agronomic rates. Requiring documentation of reuse of manure and treated process water would not appear to present a serious disincentive for off-site use of nutrients. Furthermore, no evidence is presented in the comment that documentation of the reuse of dairy process water at off-site locations would "cast a cloud on title to the property." Therefore, the policy has been edited and reorganized to provide clarification.

### **Response to Comment 20-39**

The commentor is correct in stating that Best Available Control Measures (BACM) for air emissions at dairies have not been fully developed or adopted by any regulatory agency to date. Therefore, **Policy DE 4.2b** has been modified to replace the term Best Available Control Measures with "advanced manure treatment technology, as required by **Policy DE 5.1c**." Feasible measures for reducing air emissions from dairies were discussed at length in the PEIR.

With respect to the commentor's suggestion regarding lagoon capacity and "clean" runoff diversion, please refer to Response to Comment 20-28.

### **Response to Comment 20-40**

The text of **Policy DE 4.3b** has been modified in response to the commentor's suggestion.

### **Response to Comment 20-41**

The comment is noted for the record.

### **Response to Comment 20-42**

The comment is noted for the record. As indicated in the Draft PEIR (page 4.2-33), the estimation of ROG emissions was based on the 1988 *Selected Uninventoried Sources in the*

*State of California* prepared for CARB by Radian Corporation. It was noted in the PEIR that the emission factor was based on limited available information. However, the emission factor has been adopted by CARB and is included in CARB's Emission Inventory Procedural Manual. Although future research will likely refine the ROG emission factor for livestock waste, the County considered it important to estimate ROG emissions using the best available information.

### **Response to Comment 20-43**

The comment is noted for the record. It is uncertain whether the SJVUAPCD or CARB will develop regulations regarding air emissions from confined animal facilities. If such regulations are developed, it is uncertain as to when they would be developed, adopted, and implemented. The analysis presented in the PEIR demonstrates that air emissions related to dairy development are significant adverse environmental impacts. It is the County's responsibility under CEQA to develop and implement feasible mitigation measures to reduce or eliminate these adverse effects. It is not justifiable to defer mitigation until such time that new air regulations are put in place.

### **Response to Comment 20-44**

The comment is noted for the record. As discussed in Response to Comment 20-43, the SJVUAPCD has not yet developed regulations for control of air emissions from dairy facilities. Therefore, the mitigation measures presented in the PEIR are not redundant relative to existing regulations. The mitigation measures are not "based on uncertain anecdotal information." Considerable scientific research has been completed concerning air emissions from confined animal facilities and this information was used in the analysis of impacts and the development of mitigation measures. The preparers of the PEIR acknowledge that additional research will refine the ability to more accurately characterize the magnitude of the impacts due to air emissions. However, CEQA requires that significant impacts be mitigated to the extent feasible.

### **Response to Comment 20-45**

**Policies DE 5.1a** and **5.1b** have been retained. These policies were developed to provide specific mitigation for significant impacts identified in the PEIR: odor, ROG, ammonia, hydrogen sulfide, and methane emissions. The mitigation provided by the policies is feasible and effective in substantially reducing the air emissions. The policies were developed, as suggested by the commentor, with consideration of "holistic standpoint." In fact, the Odor Management Plan (**Policy DE 5.1b**) and Manure Treatment Management Plan (**Policy DE 5.1c**) complement each other; control of emissions of ammonia, hydrogen sulfide, and reactive organic gases promotes odor control. The treatment of organic wastes (including livestock manure) for odor control has been practiced for many years. The



comment suggests potential water quality impacts that may result from implementation of the policies but does not identify what those impacts would be.

**Response to Comment 20-46**

Please refer to Response to Comment 23-49.

**Response to Comment 20-47**

The commentor is correct in pointing out that SJVUAPCD's Regulation VIII does not specifically address particulate matter generated in unpaved corrals. However, this aspect of dairy management was identified in the PEIR as the most significant source of fugitive dust emissions. CEQA requires that the particulate matter emissions be controlled to the extent feasible. The requirements of **Policy DE 5.1e** are necessary and feasible mitigation for particulate matter emissions from unpaved corrals.

**Response to Comment 20-48**

Please refer to Response to Comment 23-51.

**Response to Comment 20-49**

Please refer to Response to Comment 23-52.

**Response to Comment 20-50**

Deletion of **Policy DE 5.1h** (now **5.1g**) is not recommended since it includes a necessary and appropriate approach to reducing particulate matter emissions. As discussed in Response to Comment 20-47, Regulation VIII does not cover all potential sources of particulate matter emissions from dairy operations. The policy allows individual dairy operators to develop a particulate matter management plan that best suits their facility.

**Response to Comment 20-51**

In response to the comment, the text of **Policy DE 5.1i** (now **5.1h**) has been modified.

**Response to Comment 20-52**

Please refer to Response to Comment 23-56.

**Response to Comment 20-53**

Please refer to Response to Comment 23-57.

**Response to Comment 20-54**

Please refer to Response to Comment 23-57.

**Response to Comment 20-55**

Please refer to Responses to Comments 23-57 and 23-58.

**Response to Comment 20-56**

The Dairy Conformance Program has been eliminated from the Element.

**Response to Comment 20-57**

The Dairy Conformance Program has been eliminated from the Element.