



September 13, 2007

Brian Ross
Fresno County Department of Public Works and Planning
Development Services Division
2220 Tulare Street
Fresno, CA 93721

Re: Comments on third revised Draft Fresno County Ordinance Section 869,
“Regulations for the siting and operation of commercial cattle dairy/feedlot
facilities”

Dear Mr. Ross:

Once again, we appreciate the opportunity to comment on the above-referenced proposed dairy ordinance in Fresno County, on behalf of the Fresno County Farm Bureau, the Community Alliance for Responsible Environmental Stewardship (CARES), and Nisei Farmers League. FCFB represents 5,000 members in Fresno County, including more than 250 members in the dairy and beef cattle industries. CARES is an environmental coalition of California’s dairy producer and processor associations, including the state’s largest producer trade associations (*Western United Dairymen, California Dairy Campaign and Milk Producers Council*) and the largest milk processing companies and cooperatives (*including California Dairies, Inc., Dairy Farmers of America-California, and Land O’ Lakes.*) Formed in 2001, CARES is dedicated to promoting a balance of economic and environmental sustainability for California dairies. Fresno-based Nisei Farmers League represents a variety of agricultural commodities on various issues.

Our groups **support** development of an appropriate dairy ordinance in Fresno County. A conditional use permit process coupled with environmental compliance review and reasonable land use guidelines is needed. If implemented correctly, this will provide important guidance for dairy families interested in locating new operations in the county, or expanding existing facilities. However, an inappropriate ordinance may discourage dairy development in Fresno County, stalling jobs and economic activity and undermining our agricultural economy.

We appreciate your county’s work on the revised draft ordinance, including consideration of stakeholder comments. We continue to have concerns as follows and hope they can be addressed at the Planning Commission and within your staff report. We look forward to working with you to successfully implement the ordinance.

Remaining concerns

Our remaining concerns are primarily related to consistency with existing water quality and/or air quality regulations already in place for dairies, as well as citing appropriate sections of statute. We have listed our comments in the order they appear in the draft ordinance.

Opening paragraph

Comment: The term “legally existing dairy” is unclear. It should be noted that regardless of the 50 cattle per year allowable increase, the milk herd may not exceed the baseline herd established by the Regional Board by more than 15 percent at any time (unless specific permission to do so is granted by the Regional Board).

Recommendation: The term “legally existing dairy” should be defined. Revise the paragraph to make it clear that any dairy that has not exceeded the 15 percent baseline established by the Regional Board is “legally existing.”

869.2.C.1 --- VERY IMPORTANT ---

Comment: This section refers to an incorrect portion of statute (Title 22 codes for landfills). The codes cited are requirements applicable to landfills, which receive hazardous waste, and that are regulated by the Department of Toxic Substances Control (DTSC). Since the facilities regulated by the proposed ordinance are not landfills, do not dispose of hazardous waste, and are not regulated by DTSC, such requirements are inappropriate. Lagoon and retention pond design requirements are covered by Provision D-2 (Federal and State Regulations). The below-referenced Title 27 regulation contains minimum statewide retention pond design standards and the General Waste Discharge Requirements for Dairies adopted by the Central Valley Regional Water Quality Control Board contain detailed design requirements.

Recommendation: To apply these requirements to all facilities covered by the Ordinance, Section C-1 should be amended to read:

1. All proposed lagoons and retention ponds shall adhere to requirements contained in California Code of Regulations, Title 27, section 22562, together with additional requirements contained in Order No. R5-2007-0035 of the Central Valley Regional Water Quality Control Board, section B (General Specifications).

869.2.C.3

Comment: This continues to require two feet of freeboard for all retention ponds, including below-grade (below ground) ponds. This is in excess of Central Valley Regional Water Quality Control Board requirements. Two feet of freeboard should only be required on above-ground retention ponds.

Recommendation: Revise to allow 1 foot of freeboard on below-ground ponds.

869.2.C.4

Comment: Flow meters should not be required by ordinance. There are other effective methods for calculating nutrient flow. Existing regulations (Central Valley Regional Water Quality Control Board) already set performance standards for nutrient management and require a nutrient management plan, and the Regional Board does not require flow meters for this reason. It is not necessary for the ordinance to prescribe this level of detail in how the targets are met.

Recommendation: Delete this proposed requirement.

869.2.C.7

Comment: Solids separation system should not be a requirement, though many operators will choose it as a means to reach their regulatory performance targets and preserve lagoon capacity. This requirement exceeds existing water quality regulations and amounts to an unnecessary prescription. This locks producers into existing technology and doesn't allow for creative innovation.

Recommendation: Delete this proposed requirement.

869.2.C.8

Comment: This requirement is unnecessarily limiting. There are many areas of the dairy that do not need to drain through the separation ponds, such as the milk barn floor, feed storage areas, etc. This is a management decision for the dairy producer and amounts to an unnecessary prescription.

Recommendation: Delete this proposed requirement.

869.2.E.2.A

Comment: This language could unintentionally limit disposal to offsite facilities, even if other methods of on-site disposal are permitted in the future. This is a distinct possibility and may present an environmentally superior alternative in the future.

Recommendation: Change the first sentence to read: "All dead animals shall be disposed of at/by a licensed rendering facility or other permitted disposal facility, or through a permitted method."

869.2.E.2.B

Comment: The Regional Water Quality Control Board existing regulations already require reporting in the event of off-site discharges. It is not necessary to spell out the contents of such a report in the ordinance.

Recommendation: Revise this section to read:

“B. Spill prevention and contingency plan for any unpermitted, accidental off-property discharge of facility wastewater, and corresponding reporting to the Regional Water Quality Control Board within the timelines established in the General Order R5-2007-0035 regulations. A copy of written reports provided to the Regional Board for offsite discharges shall be made available to the Agriculture Commissioner and Fresno County Health Officer in the event a spill contacts crops intended for human consumption.”

869.3.B.4

Comment: There is no evidence to suggest that a 2,500-foot buffer is necessary for or would improved surface water protection. Also, “waterways used for public drinking water” is overly broad and subject to interpretation.

Recommendation: Replace with language as follows:

“All dairy/feedlot facilities shall be set back a minimum of 2,500 feet from waterways used as official community drinking water sources (to be determined by the Fresno County Department of Community Health), unless the County makes a specific finding as part of the Conditional Use Permit and California Environmental Quality Act compliance process, that information in the record demonstrates that the project will not impact community drinking water sources.”

869.3.B.6

Comment: A blanket prohibition against placing dairies near resource conservation and open space areas may be counter to good land use. Dairies and crops grown on dairies can provide incidental habitat and shelter for wildlife, and the dairies do not automatically impact these areas in a negative manner. Impacts should be investigated on a site-specific basis through the CEQA/EIR process.

Recommendation: Delete this provision.

869.3.E.1

Comment: These requirements are inconsistent with soil monitoring requirements in the General Order Waste Discharge Requirements for Existing Milk Cow Dairies, R5-2007-0035. There is no need for the county to prescribe specific soil monitoring requirements as these will be included in the Nutrient Management Plans required by the Regional Water Quality Control Board.

Recommendation: Delete this provision.

869.3.E.2.D

Comment: Quarterly sampling of groundwater wells on an ongoing basis exceeds Regional Board requirements. Increases costs without generating useful information.

Recommendation: Replace with quarterly sampling for first two years and then semi-annually following the initial sampling period.

869.3.E.2.F

Comment: A specified minimum number of monitoring wells will preclude alternative monitoring programs and other options potentially acceptable to the Regional Water Quality Control Board.

Recommendation: Revise first sentence as follows:

“A minimum of four monitoring wells or monitoring alternative acceptable to the Regional Water Quality Control Board shall be placed ...

Importance of consistent regulatory approach

In closing, we must emphasize the importance of coordinating Fresno County requirements with those of cooperating agencies such as the Regional Water Quality Control Board and San Joaquin Valley Air Pollution Control District. These agencies have adopted significant, stringent environmental rules for dairies that already present both effective control strategies and a significant burden for dairy operators. Fresno County’s role in the process is to take the lead for land use decisions and to implement the requirements of the California Environmental Quality Act (CEQA). Careful efforts should be made not to “re-invent the wheel” by creating inconsistent water quality or air quality regulations within this ordinance.

In addition, we must point out that none of the recommendations included here prevent Fresno County from placing appropriate conditions on individual projects. The CEQA process will allow individual, site-specific environmental review for all projects going forward, and the county will retain full authority to add conditions as needed on a project-by-project basis, in addition to the requirements in the ordinance.

We thank you again for the opportunity to provide these comments and as always we stand ready to provide staff support and technical resources to assist as you continue to move forward toward adoption of this important ordinance.

Sincerely,

/s/

Ryan N. Jacobsen, Executive Director
Fresno County Farm Bureau

William C. Van Dam, Chairman
CARES

Manuel Cunha, President

Nisei Farmers League