APPENDIX B

Response to Comments on the Notice of Preparation

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APPENDIX B

NOTICE OF PREPARATION COMMENT LETTERS

Appendix B includes comment letters received during the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) comment period. Comment letters are organized chronologically.

Letters were received from the following agencies and individuals:

- Stanislaus County Planning and Community Development; August 16, 2022.
- Native American Heritage Commission (NAHC); August 24, 2022.
- Central Valley Regional Quality Control Board; September 9, 2022.
- California Department of Fish and Wildlife (CDFW); September 12, 2022.
- Leadership Council for Justice & Accountability; September 12, 2022.

From: Jeremy Ballard <BALLARDJ@stancounty.com>
Sent: Tuesday, August 16, 2022 10:56 AM
To: Lowrance, Diana <Diana.Lowrance@countyofmerced.com>
Cc: Teresa McDonald <MCDONALDT@stancounty.com>
Subject: NOP for CUP21-011

Diana,

Stanislaus County will not have a comment on this referral. Thank you.

Jeremy Ballard
Associate Planner
Stanislaus County Planning and Community Development
1010 10th Street Suite 3400
Modesto, CA 95354
(209) 525-6330

Stanislaus County Planning and Community Development
May 20, 2022

This letter in response to the Notice of Preparation states that the Stanislaus County Planning and Community Development has no comment on the referred project.

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

PARLIAMENTARIAN
Russell Attebery
Karuk

SECRETARY
Sara Dutschke
Miwok

COMMISSIONER
William Mungary
Paiute/White Mountain Apache

COMMISSIONER
Isaac Bojorquez
Ohlone-Costanoan

COMMISSIONER
Buffy McQuillen
Yokayo Pomo, Yuki, Nomlaki

COMMISSIONER
Wayne Nelson
Luiseño

COMMISSIONER
Stanley Rodriguez
Kumeyaay

EXECUTIVE SECRETARY
Raymond C. Hitchcock
Miwok/Nisenan

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

STATE OF CALIFORNIA — Gavin Newsom, Governor

NATIVE AMERICAN HERITAGE COMMISSION

August 24, 2022

Diana Lowrance
County of Merced
2222 M Street
Merced, CA 95340

Re: 2022080190, Silva Dairy Farms Expansion Project, Merced County

Dear Ms. Lowrance:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- **a.** A brief description of the project.
- **b.** The lead agency contact information.
- **c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- **d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- **a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- **a.** Alternatives to the project.
- **b.** Recommended mitigation measures.
- **c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- **a.** Type of environmental review necessary.
- **b.** Significance of the tribal cultural resources.
- **c.** Significance of the project's impacts on tribal cultural resources.
- **d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- **a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
- **b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or

b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

a. Avoidance and preservation of the resources in place, including, but not limited to:

i. Planning and construction to avoid the resources and protect the cultural and natural context.

ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

i. Protecting the cultural character and integrity of the resource.

ii. Protecting the traditional use of the resource.

iii. Protecting the confidentiality of the resource.

c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).

e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).

f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.

b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.

c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
    a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
    b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: http://nahc.ca.gov/resources/forms/.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
    a. If part or all of the APE has been previously surveyed for cultural resources.
    b. If any known cultural resources have already been recorded on or adjacent to the APE.
    c. If the probability is low, moderate, or high that cultural resources are located in the APE.
    d. If a survey is required to determine whether previously unrecorded cultural resources are present.

2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
    a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
    b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
   a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
   b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
   a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
   b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
   c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Pricilla.Torres-Fuentes@nahc.ca.gov.

Sincerely,

Pricilla Torres-Fuentes

Pricilla Torres-Fuentes
Cultural Resources Analyst

cc: State Clearinghouse

Native American Heritage Commission (NAHC)
August 24, 2022

This letter in response to the Notice of Preparation states that the effects of the proposed project on historic and cultural resources, including tribal cultural resources, must be evaluated. The letter also outlines the regulatory environment surrounding impacts to cultural resources. An evaluation of potential effects on cultural resources and tribal cultural resources associated with the proposed Silva Dairy Farms Expansion project is included in Chapter 7, *Cultural Resources and Tribal Cultural Resources,* of this Draft EIR.

CALIFORNIA Water Boards

GAVIN NEWSOM
GOVERNOR

YANA GARCIA
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

9 September 2022

Tiffany Ho, Planner I
Cameron Christie, Planner I
County of Merced
Department of Community and Economic Development
2222 'M' Street, Merced, CA 95340

COMMENTS ON NOTICE OF PREPARATION AND INITIAL STUDY (NOP/IS) FOR THE SILVA DAIRY FARMS EXPANSION PROJECT (CONDITIONAL USE PERMIT NO. CUP21-011), STATE CLEARINGHOUSE NUMBER 2022080190

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) is a state agency with the statutory responsibility to protect water quality in California's Central Valley. (Wat. Code., § 13000 et seq.) In support of this mission, the Central Valley Water Board regulates discharges of waste, including from dairies, that have the potential to affect surface water and groundwater. The Central Valley Water Board has established a regulatory program that regulates discharges of waste from dairy facilities throughout the Central Valley.

The Central Valley Water Board, in its role as responsible agency, has reviewed the NOP/IS prepared for the Silva Dairy Farms Expansion Project. Consistent with the Central Valley Water Board's obligations as a responsible agency, this comment letter reviews the scope and content of the environmental information germane to the Board's statutory responsibilities that should be included in the environmental impact report for the expansion project.

Project Description/Summary

The NOP/IS describes the merger of two dairies in Merced County into a single facility and includes an expansion of the dairy herd size and facilities. The dairies are the Silva Dairy Farms #3A at 1499 North Edminster Road and the Silva Dairy Farms #3B at 1904 Edminster Road, both in Stevinson. The dairies are on ~25, and ~18 acres respectively. There are reportedly 364 acres of cropped acres associated with 23 parcels that receive liquid and solid manure from the dairy facilities (Land Application Area or LAA). One of the cropped parcels will be reduced from 13 acres to 6 acres to allow its conversion to dairy facilities. Thirteen parcels totaling 169 acres are leased, and 18 acres are pasture. The proposed project would result in the expansion of the existing combined dairy herd size of 2,953 animals to 7,300 animals, including 4,000 milk cows, 500 dry cows, and 2,800 support stock.

Liquid manure is applied to the LAA. Solid manure is reportedly applied to the LAA, used

for bedding, or sold to brokers and hauled off-site to fields in the project vicinity. The IS indicates approximately 9,300 tons of manure are exported and applied to off-site fields not owned by the dairy operator. With the expansion, the amount of exported manure would increase to 49,000 tons annually.

While the dairy facilities are currently regulated as two separate facilities enrolled under *Order R5-2013-0122, Reissued Waste Discharge Requirements General Order for Existing Milk Cow Dairies* (the Dairy General Order), the NOP/IS correctly indicates that the Silva Dairy Farms would need to obtain individual Waste Discharge Requirements (WDR) for the proposed expansion, since expansions cannot be authorized under the existing Dairy General Order. The NOP/IS also notes Silva Dairy Farms is a member of the Central Valley Dairy Representative Monitoring Program (CVDRMP).

The NOP/IS Initial Environmental Checklist, *Section X, Hydrology and Water Quality*, indicates that dairy facilities pose several potential risks to water quality, primarily related to the amount of manure and process water that they generate. It goes on to state:

> "While the existing and proposed waste management systems would act to prevent groundwater contamination, the operation of the Silva Dairy Farms Expansion project may result in degradation of groundwater resources and potential adverse effects to surface water quality. In addition, increased solid manure exports to off-site fields associated with the proposed dairy expansion could result in off-site impacts to water quality. These potentially significant impacts will be evaluated further in the EIR for the proposed project. The EIR will include a water quality characterization and impacts analysis based on water quality data available from both on-site and nearby wells, and nearby water wells."

Water quality concerns related to the operation of dairy facilities, and mitigation measures to mitigate adverse impacts, will need to be discussed extensively in the EIR. Information provided to the Central Valley Water Board pursuant to the CVDRMP's Summary Representative Monitoring Report (Revised*) (2019) indicates that the types of management practices described in the NOP/IS (Waste Management Plans and Nutrient Management Plans) have not been adequate to prevent groundwater pollution in groundwater underlying dairy facilities and lands receiving dairy wastes. The proposed increases in herd size, reduction of land application area, and substantial increase in manure applied to off-site lands may be expected to exacerbate these adverse impacts.

Waste Discharge Requirements (WDRs)

Currently, the dairies are separately regulated under the Dairy General Order that was issued by the Central Valley Water Board in 2013. Discharges from the proposed merged and expanded dairies are not eligible for continued coverage under the Dairy General Order, since expanded dairies fall beyond the scope of facilities covered under the Dairy General Order. The NOP/IS notes that the expanded discharges would require individual WDRs.

However, the State Water Resources Control Board (State Water Board) is currently conducting a review of the Dairy General Order and has signaled that its review is likely to result in an order that will direct the Central Valley Water Board to reconsider significant aspects of its confined animal facilities program. Anticipating these changes, the Central Valley Water Board is deferring the issuance of new individual WDRs while its regulatory program is under review. It will therefore be some time before the proposed expanded discharges could be regulated under individual WDRs.

Further, the NOP/IS indicates that the project proponent will conduct a water quality characterization and an impacts analysis based on water quality data available from both on-site and nearby wells. Data from existing wells may not be sufficient to adequately characterize existing conditions and whether the proposed discharge will degrade or pollute groundwater quality. Any characterization and analysis of potential groundwater impacts should quantify anticipated degradation and/or pollution of groundwater in the aquifers underlying lands receiving dairy wastes as well as the facilities themselves, not simply wells in the vicinity. The State Water Board notes that the current practices detailed in Waste Management Plans and Nutrient Management Plans have not proven adequate to prevent pollution of underlying aquifers. The EIR should therefore provide a detailed description of additional mitigation measures to mitigate these impacts.

Salt and Nitrate Control Programs

In 2018, the Central Valley Water Board adopted Basin Plan amendments (Resolution R5-2018-0034) that established valley-wide Salt and Nitrate Control Programs. For more information about the Salt and Nitrate Control Programs, visit the Central Valley Water Board's website and the Central Valley Salinity Coalition's website at:

https://www.waterboards.ca.gov/centralvalley/water_issues/salinity/

https://www.cvsalinity.org/public-info

The Nitrate Control Program is a prioritized program that will require facilities that discharge nitrates at levels that are causing exceedances of drinking water standards (including most dairies) to upgrade their facilities and/or waste management practices

over a timeframe that may extend as long as 35 years. While upgrades are being developed and implemented, facilities responsible for adverse nitrate impacts are required to supply impacted communities with replacement drinking water. Facilities such as dairies may comply with the Nitrate Control Program individually or may elect to participate in Management Zones, which are collectives of permitees that collaborate on enhancing water quality management practices while providing affected communities replacement drinking water. Regulatory requirements under the Nitrate Control Program are triggered by the issuance of a Notice to Comply. For the purposes of compliance with the Nitrate Control Program, the project is in Priority Area 2, which is expected to receive Notices to Comply in early 2023.

The 2018 Basin Plan Amendments also established a Salt Control Program to address ongoing accumulation of salts in the soils and groundwater of the Central Valley. The Salt Control Program is a phased program, and the first phase requires nearly all permitted facilities (including all dairies) to participate in an extensive, collaborative study of salinity management practices throughout the basins that form the Central Valley. Currently, both dairies comply with Salt Control Program by maintaining membership in CVDRMP. The Central Valley Water Board would expect that compliance would be maintained following the integration of the two dairies.

The proposed EIR should describe measures that the merged dairy will take to comply with the regulatory requirements established by both the Nitrate and Salt Control Programs.

Construction Storm Water General Permit

A National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (NPDES General Permit No. CAS000002) is required when a project includes, but is not limited to, demolition, clearing, grading, grubbing, excavation, or any other similar land disturbance. Currently, construction/land disturbance activity requires coverage under the Construction Storm Water General Permit if it involves one or more acres, or less than an acre where the activity is part of a larger common plan of development or sale of one or more acres.

If construction/land disturbance associated with the subject project will disturb one acre or more, Silva Dairy Farms will need to obtain permit coverage under the Construction Storm Water General Permit. Before construction begins, the proponent must submit a Notice of Intent (NOI) to comply with the permit to the State Water Resources Control Board and a Storm Water Pollution Prevention Plan (SWPPP) must be prepared. For more information on the Construction Storm Water General Permit, please visit the State Water Resources Control Board website at:

https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html
Thank you for the opportunity to comment on the NOP. If you have questions about these comments, please contact me at (916) 464-4724 or by email at Daniel.Gamon@waterboards.ca.gov.

Daniel Gamon, PG, CHg
Senior Engineering Geologist

cc: State Clearinghouse, state.clearinghouse@opr.ca.gov

Central Valley Regional Water Quality Control Board
September 9, 2022

This letter in response to the Notice of Preparation identifies the Central Valley Regional Water Quality Control Board as a state agency with the statutory responsibility to protect water quality in California's Central Valley.

The letter also reviews the scope and content of the environmental information germane to the Board's statutory responsibilities that should be included in the environmental impact report for the proposed project. Evaluations of potential effects on the environmental topics raised with respect to the proposed Silva Dairy Farms Expansion project are included in Chapter 10, *Hydrology and Water Quality,* of this Draft EIR.

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

September 12, 2022

Diana Lowrance, Planner III
County of Merced, Community and Economic Development Department
2222 M Street
Merced, California 93540
diana.lowrance@countyofmerced.com

Subject: Silva Dairy Farms Expansion Project (Project)
Notice of Preparation (NOP) of a Draft EIR
State Clearinghouse No. 2022080190

Dear Diana Lowrance:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Merced County Department of Community and Economic Development for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id*., § 1802). Similarly, for purposes of CEQA,

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Silva Dairy Farms

Objective: The Project proposes to modify and expand the existing dairy to house a total of 7,300 animals, including 4,000 milk cows, 500 dry cows, and 2,800 support stock, and to officially merge the two existing separate dairy facility permits into a single permit. The proposed Project would include construction of supporting buildings and features at the dairy facility, including five new freestall barns, two loafing barns, commodity barn, milking parlor expansion, a shop, and dry manure storage and calf hutch area. With construction of the proposed facilities, approximately 7 acres of cropped acreage would be converted to active dairy facilities. The remaining acreage would continue to be cultivated with dairy feed crops.

Location: The Project site located at State Route 140 and Edminster Road, approximately 2.4 miles west-southwest of the Stevinson community in unincorporated Merced County.

Timeframe: Unspecified.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Merced County Department of Community and Economic Development in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the EIR for this Project.

The EIR that will be prepared will determine the likely environmental impacts associated with the Project. CDFW is concerned regarding potential impacts to special-status species from the ground disturbance development activities, including but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), and the State threatened tricolored blackbird (*Agelaius tricolor*).

Swainson's Hawk (SWHA)

SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat.

The Project includes approximately 7 acres of cropped acreage to be converted to active dairy facilities. CDFW recommend compensation for the loss of Swainson's hawk foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG, 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

SWHA are known to travel for miles to forage. Therefore, CDFW recommend surveys be conducted as part of the biological technical studies conducted in support of the DEIR following the survey methods developed by the Swainson's Hawk Technical

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Advisory Committee (SWHA TAC 2000) and that they be conducted by a qualified wildlife biologist again prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Tricolored Blackbird (TRBL)

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

TRBL have the potential to nest within the Project site; there are several California Natural Diversity Database (CNDDB) occurrence records within and adjacent to the Project site (CDFW 2022). Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist determine if suitable habitat is present as part of the biological technical studies conducted in support of the DEIR on or adjacent to the Project site. If suitable habitat is present, CDFW recommends a qualified wildlife biologist conduct surveys for nesting TRBL as part of the biological technical studies conducted in support of the DEIR and then repeat those surveys no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during the biological technical studies or pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined

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that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW recommends conducting additional pre-activity surveys within 10 days prior of Project initiation to reassess the colony's areal extent. If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

Lake and Stream Alteration: The Project site is bordered by the San Joaquin River to the south. Also, a canal runs through the Project site and feeds into the San Joaquin River. Therefore, the Project may be subject to notification under Fish and Game Code Section 1602. Fish and Game Code section 1602 requires the Project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. If a Lake or Streambed Alteration Agreement (LSAA) is needed, CDFW is required to comply with CEQA in the issuance of an LSAA. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or by electronic mail at R4LSA@wildlife.gov.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDB. The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

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CDFW appreciates the opportunity to comment on the Project to assist the Merced County Department of Community and Economic Development in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: CDFW LSA/1600; R4LSA@wildlife.ca.gov

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California Department of Fish and Wildlife (CDFW)
September 12, 2022

This letter in response to the Notice of Preparation states CDFW's role as Trustee Agency for fish and wildlife resources in the state of California. The letter also submits comments as a Responsible Agency under CEQA regarding: impacts to special-status species from ground disturbance development activities; project alternatives analysis; and lake and stream alteration. An evaluation of potential effects on biological resources associated with the proposed Silva Dairy Farms Expansion project is included in Chapter 6, *Biological Resources,* of this Draft EIR.



September 12, 2022

Cameron Christie
County of Merced
Department of Community and Economic Development
2222 'M' Street, Merced, CA 95340
(209) 385-7654

Submitted electronically via email to: cameron.christie@countyofmerced.com and brian.guerrero@countyofmerced.com

Comments re: Notice of Preparation of a Draft Environmental Impact Report for the Silva Dairy Farms Expansion Project (Conditional Use Permit No. CUP21-011)

Dear Cameron Christie and Brian Guerrero:

We are writing to provide comments on the Notice of Preparation of a Draft Environmental Impact Report for the Silva Dairy Farms Expansion Project. Our organization works closely with residents of Merced County, including members of the Central Valley Defenders for Air & Water Quality, a group of residents who are impacted by dairy operations in and around their community and who are concerned about increasing herd sizes and their associated impacts to air pollution, global warming, groundwater contamination, groundwater depletion, overall quality of life, and environmental justice. We are providing comments regarding the Notice of Preparation for the proposed Silva Dairy Farms Expansion project because this proposed project would worsen the existing impacts to air and water which residents are seeking to resolve, increase other negative environmental impacts, and continue to place a disproportionate pollution burden on communities of color in the San Joaquin Valley. The Draft Environmental Impact Report (EIR) must accurately assess impacts that the project, as proposed, would have on residents' health and environment, include necessary mitigation measures to address such impacts, and assess alternative projects including a no project alternative. Additionally, the County must provide effective public participation processes prior to project approval.

I. Merced Must Hold a Scoping Meeting Prior to Undertaking Environmental Review

Merced County must hold a scoping meeting prior to conducting environmental review of the proposed project. Scoping meetings are a critical component of environmental review, as they provide an opportunity for impacted residents to voice their concerns, promoting inclusive decision-making and community engagement in local land use planning.

According to Gov. Code § 21083.9, scoping meetings must be conducted for "project[s] of statewide, regional, or areawide significance[1]." Additionally, according to CEQA guidelines, section 15206, lead agencies shall find that a project is over statewide, regional, or areawide significance if the project would "interfere with attainment of regional water quality standards.[2]" The project would exponentially increase the amount of manure produced by the dairy while also reducing available cropland. It is also unclear from the Initial Study if the dairy's existing wastewater retention ponds are adequately lined to prevent risks to water quality. Additionally, it is unclear where the manure that is proposed to be exported will be applied offsite, and solid manure exports are projected to increase from 9,300 to 49,200 tons.[3] The project has the capacity to significantly threaten regional groundwater quality standard attainment and thus requires a scoping meeting. The project would also potentially create significant surface water quality impacts to the San Joaquin River, would have a significant global impact on greenhouse gas emissions, and would have a significant regional impact to groundwater supply as well as air quality. Due to the significance of regional environmental impacts, a scoping meeting is required for this project.

II. The Environmental Impact Report Must Analyze the Cumulative Impacts of the Several Diaries Currently Pursuing CUPs for Expansion

We are currently tracking a trend of dairy expansion proposals in Merced County. Silva Dairy Farms is one of ten dairies that have applied in recent months for a CUP for massive herd size expansions. Each on its own, and together cumulatively, they impact environmental quality in the area and region and impact the ability of California to meet its climate goals, of the Merced Subbasin to meet its groundwater sustainability targets under SGMA, of the San Joaquin Valley to come into attainment pursuant to the Clean Air Act, and of Merced County to comply with California fair housing law. The Environmental Impact Report should address the cumulative greenhouse gas emissions, air quality, groundwater supply, groundwater quality, surface water and hydrology, odor, traffic, vector, and other impacts of all of the proposed dairy expansions would have on the entire region.

III. The Environmental Impact Report Must Adequately Analyze and Propose Adequate Mitigation Measures for Expected Impacts

The project would significantly exacerbate the following environmental impacts. As a result, we remind the County that the EIR must accurately assess and propose adequate and feasible mitigation measures for each of the following environmental impacts. Lead agencies must also consider project alternatives that avoid and reduce impacts, including a no project alternative and a scaled back expansion. If there remain significant impacts even with proposed mitigation

[1] Cal. Public Resources Code § 21083.9 (a)
[2] Cal. Code Regs. tit. 14 § 15206 (b) (6)
[3] *Initial Study*, Project Description. Page 17.

measures and project alternatives, the County may be required to reject the Conditional Use Permit.

A. Air Quality, Odors, and Truck Traffic

Residents of several Merced County communities experience air pollution and odor from dairy operations such that enjoying outdoor activities is often impossible. Additionally, many residents cannot open their windows in order to prevent the foul odors from the dairy's operations from penetrating their homes. Air pollution, including air pollution from dairy operations, results in a variety of health impacts including heightened rates of asthma.[4] Residents surrounding the proposed project and in the nearby community of Stevinson are at particular risk of increased air quality and odor impacts from the proposed expansion from both dairy operations and increased truck and vehicular traffic.

The Environmental Impact Report must also analyze air quality impacts stemming from an increase in truck traffic due to the proposed herd size increase. The Initial Study states that exported manure would increase from 9,300 tons to 49,200 tons, which would vastly increase truck traffic in the area, creating a significant amount of air quality emissions[5]. The Environmental Impact Report must clearly outline the existing and projected truck trips from the project site and accordingly provide an analysis of the air quality impacts of the project as proposed. Similarly, the Environmental Impact Report must assess the air quality impacts of the increased quantities of manure itself, including the manure that remains onsite and the manure that is exported.

Accordingly, the Environmental Impact Report must fully assess the potential air quality impacts from the proposed expansion; fully assess potential odor impacts from the proposed expansion; fully assess the impacts of all construction and dairy operation impacts including impacts from manure, enteric emissions, dust, feed, and vehicular traffic; and propose adequate mitigation measures to address these impacts. Additionally, as noted earlier, the EIR must include a robust cumulative impacts analysis that assesses greenhouse gas emissions in the context of several past and pending proposed dairy expansions.

B. Greenhouse Gas Emissions

In addition to the direct, significant impacts to human health caused by air emissions from the dairy, the project would worsen the already significant methane emissions from Silva Dairy Farms.

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[4] The Merced County Department of Public Health's 2016 Community Health Assessment indicated that, at the time of the study, over 26% of Merced County children had been diagnosed with asthma, a rate much higher than the overall statewide child asthma rate of 15.2%.

[5] *Initial Study*, Project Description. Page 17.

Correctly, the NOP states that the proposed dairy expansion would have significant impacts on greenhouse gas emissions including methane. Several components of dairy operations contribute to greenhouse gas emissions, including methane emissions from both enteric emissions and manure. The EIR must fully assess greenhouse gas emissions from construction and operations, including from enteric emissions, manure, feed, cropland, pesticide use, vehicular travel, machine operations, water extraction and other energy usage. Additionally, as noted earlier, the EIR must include a robust cumulative impacts analysis that assesses greenhouse gas emissions in the context of several past and pending proposed dairy expansions.

C. Hazards and Nuisance - Insects

Residents across Merced County are concerned with the increased insects that an expansion would draw to their homes and neighborhoods. Our organization has heard from many residents that flies from the various dairies in the county create a significant nuisance in their community, and Stevinson residents already experience severe insect nuisance impacts stemming from animal confinement operations in and around the community.. Upon hearing of the significant number of applicants in Merced County seeking a Conditional Use Permit for expansion of herd size, many residents were astounded that the County would consider these expansions given that the existing nuisance and other impacts are already so significant and unmitigated. The EIR must, as a result, provide an analysis of additional insect, odor, and other nuisance impacts from the proposed herd size expansion, and propose adequate mitigation measures to prevent these nuisances. Additionally, as noted earlier, the EIR must include a robust cumulative impacts analysis that assesses greenhouse gas emissions in the context of several past and pending proposed dairy expansions.

D. Hydrology and Water Quality

The increase in manure and groundwater pumping associated with the proposed herd size expansion also threatens to further exacerbate nitrate contamination in the groundwater that nearby communities rely on for drinking water. According to the Central Valley Regional Water Quality Control Board's Summary Representative Monitoring Report,[6] *all* dairies included in the report were *actively* polluting groundwater. There is no reason to believe that Silva Dairy Farms is positioned differently from the dairies chosen to represent the industry as a whole in this report, as, industry-wide, large-scale dairies have more manure than can be safely disposed of on available cropland. As a result, the EIR must provide a detailed analysis regarding the additional nitrate contamination risks affiliated with the proposed herd size growth, and a manure management plan that will prevent groundwater and surface water contamination. Adequate mitigation measures must be included in the draft environmental impact report and must not be

[6] 2019 Summary Representative Monitoring Report, revised. Central Valley Regional Water Quality Control Board.

delegated to other processes, including but not limited to the nutrient management plan referenced in the Initial Study.

The EIR must also include a clear plan and complete impact analysis of manure exports. The Initial Study states that the proposed expansion would vastly increase manure production while taking away cropland from the dairy, meaning that the manure management plan would rely heavily on manure exports. The EIR must clearly outline this plan and analyze the air quality, groundwater quality, traffic, and other environmental impacts of the manure exports.

Additionally, the EIR must also analyze the water quality impacts relating to other groundwater contaminants such as arsenic, that can be linked to dairy operations. (An increase in groundwater overdraft to accommodate a growing herd could likely contribute to the concentration of arsenic in residents' water in nearby communities like Stevinson.)

The EIR must also assess the water quality impacts associated with all relevant construction activities and dairy operations including but not limited to wastewater storage in lagoons, land application of manure, transport of manure offsite, and groundwater pumping.

In addition to groundwater contamination risks, an increase in herd size would mean a very significant increase in groundwater *extraction* on the dairy and/ or for dairy operations, posing a significant threat to drinking water access to households in Stevinson and in other nearby communities as groundwater levels continue to drop. The Initial Study states that this dairy is heavily dependent on groundwater, and with a proposed 147% increase in herd size, the project as proposed would drastically increase groundwater extraction. As a result, the EIR should present clear calculations on the additional groundwater needs of the dairy should the herd size expand, and the County must coordinate with local Groundwater Sustainability Agencies to determine if this would present a conflict with local Sustainable Groundwater Management Act (SGMA) goals. SGMA requires local Groundwater Sustainability Agencies (GSAs) to bring water use into sustainability by 2040, which should include robust water use limitations.

Lastly, the EIR must fully analyze the possible impacts to any nearby surface water from rivers and streams and propose necessary mitigation measures and alternatives including a no project alternative. This analysis is crucial considering the dairy's proximity to the San Joaquin River and to important ecological sites, as well as the fact that the dairy is partially dependent on surface water.

IV. **Conclusion:**

As mentioned above, the proposed herd size expansion would exacerbate severe impacts to air quality, groundwater, global warming, and residents' quality of life in Merced County. As a result, our organization and the Central Valley Defenders for Air and Water Quality urge Merced County to thoroughly evaluate these impacts in the pending study, and propose adequate

mitigation measures. We ultimately urge the County to reject the Conditional Use Permit for this project given its local, regional, and global environmental impacts which, as an accurate environmental review will demonstrate, cannot be fully or adequately mitigated.

Respectfully,

Central Valley Defenders for Air and Water Quality

Madeline Harris
Regional Policy Manager
Leadership Counsel for Justice & Accountability

Leadership Council for Justice & Accountability
September 12, 2022

This letter in response to the Notice of Preparation states that the effects of the proposed project on air quality, groundwater, global warming, and residents' quality of life in the area surrounding the Silva Dairy must be evaluated. Evaluations of potential effects on the environmental topics raised with respect to the proposed Silva Dairy Farms Expansion project are included in Chapter 5, *Air Quality and Odors,* Chapter 8, *Greenhouse Gas Emissions and Energy Use,* Chapter 10, *Hydrology and Water Quality,* and Chapter 11, *Land Use Compatibility* of this Draft EIR.

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