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September 19, 2006

Via Fax to (916) 653-1293
and Overnight Mail
Mr. Jim Rains
California Department of Food and
Agriculture
1220 N. Street Room A-316
Sacramento, CA 95814

In re: Response to Notice of Intent to Adopt a Negative Declaration for
Amendments to the CDFA Milk Stabilization Plan

Dear Mr. Rains:

This law firm has been retained by the Milk Producers Council to respond to the Notice of Intent to Adopt a Negative Declaration that the CDFA issued regarding amendments to the Milk Stabilization Plan. It is the position of the Milk Producers Council that under the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 et seq.), and the Guidelines adopted thereunder (California Code of Regulations Section 15000 et seq.), the CDFA must conduct a full environmental review pursuant to the preparation of a comprehensive Environmental Impact Report ("EIR") to determine the environmental impacts that would flow from the subject amendments to the Milk Stabilization Plan.

In the CDFA's proposed Negative Declaration, the CDFA acknowledges that the proposed amendments to the Milk Stabilization Plan, which change the formulas for establishing the regulated minimum prices that California milk processors must pay to California dairy farmers constitute a "project" under CEQA and that CDFA is the lead agency under CEQA for this project. This is consistent with the broad definition of project under CEQA which includes the "whole of an action which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines Section 15378(a); Public Resources Code Section 21065.) Additionally, by defining project to include the "whole of an action," an agency is prohibited from dividing a project into small segments in order to avoid preparing an EIR. (Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263.) Furthermore, the CDFA's action in changing the formulas under the Milk Stabilization Plan does not fall within any statutory or categorical exemption, and the CDFA does not appear to be claiming any such exemption.

In 1970, the California Legislature enacted CEQA to force public agencies to document and consider the environmental impacts of their decisions. (See Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 254-56; No Oil, Inc. v. City of Los Angeles (1975) 13 Cal.3d 68, 73-75; San

Mr. Jim Rains
California Department of Food and Agriculture
In re: Response to Notice of Intent to Adopt a Negative Declaration for
Amendments to the CDFA Milk Stabilization Plan
September 19, 2006

2

Francisco Ecology Center v. City and County of Los Angeles (1975) 48 Cal. App. 3d 584, 589-591.) The general policy statements that preface the statute's specific provisions evince a strong commitment to environmental protection, even though considerable time and expense might thereby be required. (Public Resources Code Sections 21000, 21001.)

Since 1970, the Act has been amended to impose on public agencies certain *substantive* duties to protect the environment. CEQA's primary functions are now regarded as the following: (1) to inform government decision makers and the public about the potential environmental effects of proposed activities; (2) to identify methods for avoiding or significantly reducing environmental damage; (3) to prevent significant, avoidable environmental damage by requiring changes in projects, either by the adoption of alternatives or the imposition of mitigation measures; and (4) to disclose to the public the reasons a project was approved notwithstanding significant environmental effects. (CEQA Guidelines Sections 15000 et seq., 15002(a).)

CEQA requires public agencies to prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project *may* have a significant effect on the environment. (Laurel Heights Improvement Association v. Regents of University of California (1993) 6 Cal. 4th 112, 1123 (citing Public Resources Code Sections 21100, 21151, 21080, and 21082.2); No Oil, supra, 13 Cal. 3d 68, 75; Friends of "B" Street v. City of Hayward (1980) 106 Cal. App. 3d 988, 1001; Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 310, 311.)

Only if there is *no* substantial evidence before the agency that the project may have a significant adverse impact on the environment may a negative declaration be prepared instead of an EIR. (Public Resources Code Section 21080(c); Guidelines Section 15070(a).) As stated by the Court in Friends of "B" Street, supra:

"If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation on an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact." (106 Cal. App. 3d at 999.)

Here, CDFA acknowledges in the proposed Negative Declaration that the change in the formulas is intended to decrease the amount of money milk processors are required to pay milk producers thereby reducing the processors' costs of manufacturing. This will result in the transfer of an estimated \$80,000,000 per year from the milk producers to the milk processors. One of the reasonably foreseeable results of the transfer of this much money to the milk processors is that they will seek to use the money to increase their production capacity. The inevitable increase in production capacity for the processors will fuel the need for an increase in the milk supply which will require additional milk production by the State's dairy farms. Not every increase in production capacity by the processors and producers will necessarily generate their own environmental review. Therefore, it is necessary that an EIR be performed at this time to assess the environmental impacts from the CDFA's action.

At Page 12 of the proposed Negative Declaration, the CDFA acknowledges that within the Dairy Industry of California's petition, it argued that "the increase in the cheese make allowance was necessary to encourage construction of additional facilities to process milk into cheese." However,

Mr. Jim Rains
California Department of Food and Agriculture
In re: Response to Notice of Intent to Adopt a Negative Declaration for
Amendments to the CDFA Milk Stabilization Plan
September 19, 2006

3

at Page 13 in the proposed Negative Declaration, the CDFA takes the naive position that it would be speculative to try to assess whether any particular processor will increase its production capacity as a result of the increased make allowance or whether any particular producer will increase its production to meet the increased processing capacity. That position ignores the reality of supply and demand in the economy. With increased processing capacity, there is an increased demand for milk which will inevitably lead to an increase in milk production to meet the demand. These actions will necessarily result in environmental impacts that need to be assessed.

The CDFA also takes the position that an increase in production by producers or processors will generate their own environmental reviews. However, that is not always going to be the case.

While any new construction of plants to increase production capacity would involve a separate environmental review, there may be some existing plants that could increase their production capacity without constructing an entirely new plant or adding another phase to an existing plant. Rather, they may already have excess production capacity in their existing plant or could add to it without changing the existing physical plant. This would increase the production and would not necessarily generate a separate environmental review. Any increase in production at existing plants would necessarily have environmental impacts that need to be assessed.

Additionally, in order to satisfy the increase in production capacity, dairy farmers will look for ways to increase their own production. This would not necessarily require establishing new dairy farms. Rather, existing farms could increase their production by the purchase of additional dairy cows. Obviously, with an increase in the number of cows on any particular farm, there could be increased impacts on the environment. At a minimum, an increase in production by dairy farms could result in additional impacts to the air and ground water.

By ignoring the reasonably foreseeable indirect physical changes in the environment caused by the change in the Milk Stabilization Plan formulas, the CDFA is essentially taking a "wait and see" position on adverse environmental impacts which is contrary to the requirements of CEQA.

Thus, it appears that the CDFA has attempted to avoid its CEQA responsibilities by "fragmenting" the project and undertaking its environmental review thereof on a "piece-meal" basis, thereby preventing a complete assessment of all of the project's potential impacts. By examining only portions of the entire project (rather than the project as a whole), the resulting environmental documentation will neither fully nor accurately examine the potential direct, indirect, and cumulative effects associated with the proposed project, nor will the resulting document explore the potential range of alternatives and mitigation measures which could be derived from a more thorough examination of all project-related (and project-relevant) activities. This "truncated project concept" results in the "fallacy of division" which causes the CDFA's Negative Declaration to overlook the cumulative impacts of the project as required by CEQA.

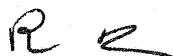
Mr. Jim Rains
California Department of Food and Agriculture
In re: Response to Notice of Intent to Adopt a Negative Declaration for
Amendments to the CDFA Milk Stabilization Plan
September 19, 2006

4

Therefore, the Milk Producers Council respectfully requests that the CDFA delay implementation of the amendments to the Milk Stabilization Plan until a complete environmental review of the environmental impacts can be determined pursuant to the preparation of a comprehensive EIR for the project. Such an action is mandated both by the language of CEQA, the CEQA Guidelines and the cases interpreting the law.

Very truly yours,

BRUNICK, McELHANEY & BECKETT



WILLIAM J. BRUNICK

WJB/lmt

cc: William C. Van Dam
by facsimile to (208) 895-8568