



Item 5-A, Horsepark Ad-Hoc Committee Report

Background:

In December 2020, the 22nd District Agricultural Association (22nd DAA) announced a pause of equestrian uses at Horsepark. As reported at the January Board meeting, there were a series of events that led to this decision outlined below:

- 2015 – State Water Resources Control Board adopted a new Industrial General Permit (IGP) that included equestrian facilities greater than 499 horses (Large CAFO – Concentrated Animal Feeding Operations).
 - This applied to the 22nd DAA’s main campus due to horse racing and eventually led to the Water Quality Improvement project currently underway.
- May 2019 – The Regional Water Quality Control Board (RWQCB) adopted Conditional Waiver for Low Threat Discharges which requires enrollment for equestrian facilities of between 150 to 499 horses (Medium CAFOs).
- September 2019 – The 22nd DAA submitted its notice of intent to enroll in the Conditional Waiver. The notice of enrollment included a commitment to cease hosting horse shows in excess of 499 horse, thereby avoiding the Large CAFO classification.
 - The 22nd DAA estimated that the cost of the remediation necessary to comply with the Conditional Waiver would be approximately \$3 million.
- January 2020 – The 22nd DAA ceased hosting large horse shows in excess of 499 horses at Horsepark.
- March 2020 – The 22nd DAA obtained coverage for Horsepark under the Low Threat Conditional Waiver and agreed to a schedule of improvements – again, estimated to cost approximately \$3 million.
- April 10, 2020 – San Diego Regional Board (Regional Board) notified two similar Medium CAFOs in Orange County that they are required to obtain coverage under the Industrial General Permit (IGP) unless they can demonstrate that there are no “Discharges pollutants (including manure or process wastewater) into waters of the United States through a man-made ditch, pipe, or similar device. (40 C.F.R. § 122.23, subd. (b)(6).)”.
 - November 11, 2020 – Equestrian Services, another similar Medium CAFO in Orange County, entered into a consent decree requiring it to enroll in the IGP and develop a Nutrient Management Plan that includes a 10 year/24-hour retention standard to address the requirements of the Low Threat Waiver. The consent decree was reviewed and approved by District Court and the Department of Justice. The Regional Board did not voice any objections.
 - January 1, 2021 – Rancho Sierra Vista, another similar Medium CAFO in Orange County, entered into a consent decree requiring it to enroll in the IGP and develop a Nutrient Management Plan that includes a 10 year/24-hour retention standard to address the requirements of the Low Threat Waiver. The consent decree was reviewed and approved by the District Court and the Department of Justice. The Regional Board did not voice any objections.
- Given the similarity of the previous mentioned facilities in Orange County to Horsepark, the 22nd DAA took the responsible course of action to protect itself from possible third party civil actions and paused equestrian activities at Horsepark in 2021 while it seeks answers to these latest developments in order

to determine if the 22nd DAA will be subject to enrolling Horsepark in the IGP. As of yet, the Regional Board has given no indication or assurances otherwise.

- Best estimate to address the requirements of the Industrial General Permit for the 22nd DAA at Horsepark (remaining a medium facility) or to demonstrate non-discharge to a Water of the United States is in the range of an additional \$3 to \$5 million *in addition* to costs to address the requirements of the Low Threat Waiver – for a total of \$6-8 million.

Also at the January Board meeting, the Horsepark Ad-hoc Committee was appointed to work with staff and the community and to hold a public workshop to allow the community to express their thoughts and interests regarding Horsepark in order to allow a fuller and further discussion about regulatory requirements, fundraising interests, etc. The workshop was held on January 29, 2021, and the committee brought the input received back to the full board at their meeting on February 9 and sought further direction from the board to properly identify next steps and set expectations, recognizing that decisions about Horsepark must be made within the context of a strategic planning process and broader discussion of the 22nd DAA's ultimate long-term Master Plan of facilities.

Direction received from the board at that meeting was to gather additional information and provide regular updates to the board, including a better understanding of the range of cost estimates, ongoing operational costs associated with the 22nd DAA continuing to operate Horsepark, historic profit and loss of Horsepark operations, past capital investments/improvements, estimated costs for needed future capital investments/improvements including deferred maintenance, consideration for the potential changes in requirements associated with RWQCB permits, and funding opportunities.

Process and Approach:

The committee and staff continue to move with deliberate speed to define a path forward, providing updates and information at regular intervals to the board, with the goal of presenting several scenarios for the full board's consideration this summer. At this time, three potential scenarios that have previously been mentioned and may be presented for final consideration include:

- 22nd DAA operates Horsepark
- Public/Private partnership
- Third-party operator

First and foremost, in order to directly address the uncertainty regarding what may be required at Horsepark, the attached letter was sent to Regional Board staff so that they can provide clarification that will allow the board to make an informed decision on a path forward.

In the meantime, following up to some of the requests made by the board at their February 9th meeting, the following definitions and information are provided.

Concentrated Animal Feeding Operation

The National Pollutant Discharge Elimination System (NPDES) regulations define a concentrated animal feeding operation (CAFO) as any Animal Feeding Operation (AFO) that either meets a certain animal population threshold, or, regardless of population, is determined to be a significant contributor of pollutants to waters of the United States by the appropriate authority [40 C.F.R. § 122.23(b)(2)]. CAFOs are the best fit for equestrian uses and apply to all types of animals including cattle, swine, chicken, and dairy cows. For the 22nd DAA's purposes of equestrian uses, there are three CAFO classifications:

- Small – up to 149 horses
- Medium – 150 to 499 horses
- Large – more than 499 horses

Range of Costs

The primary reason for the large differences in costs are related to several different potential scenarios. The 22nd DAA based its costs off the implementation of the Waiver permit, plus these scenarios. As a reminder, the original estimate associated with the Waiver was approximately \$3 million.

- Compliance with the existing Waiver - ~**\$3 million**
- Waiver + IGP at a 85th percentile Storm Event (.65"), Medium CAFO only -**\$3-\$4 million**
- Waiver + IGP at a 10-year Storm Event (2.5"), Medium CAFO only -**\$4-\$6 million**
- Waiver + IGP at a 25-year Storm Event (3.25"), Large CAFO permissible - **\$6-\$8 million**

Additionally, these costs could change based on the design and layout of the facility. Current cost estimates are based on continuance of 2020 operations of 499 or less horses with all stabling, both permanent and temporary, in their historic locations. A design that consolidated stabling areas could potentially reduce costs.

On-Going Research

Staff met, via Zoom, with Laura Demarco and Carla Echol-Hayes to discuss their stated willingness to help with fundraising efforts given their stated lack of interest to become an operator of Horsepark. The meeting resulted in the need to gather more information by both parties and to reconvene to discuss. A second meeting date has not yet been identified.

Staff has also begun researching grant opportunities including Prop. 1, San Diego County Water Authority, and private funding sources. Most of the funding sources accept applications in two cycles annually. Grants available through state and local agencies prefer that environmental clearances already been obtained and, if not yet obtained, the application will receive a lower score. Additionally, these funding sources often require matching funds. More detailed information will be provided in subsequent reports and presentations.

A presentation of additional information to complement that provided in this report will be given at the March 9, 2021 board meeting.

Environmental/Coastal Commission Review:

None at this time.

Fiscal Impact:

The complete fiscal impact of water quality improvements, capital improvements, and ongoing operational expenses are unknown at this time.



March 1, 2021

Ms. Laurie Walsh, P.E.
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San Diego Regional Water Quality Control Board
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By US Mail and E-mail

RE: Regulatory requirements for storm water associated with equestrian activities at Horse Park

Dear Ms. Walsh:

The 22nd District Agricultural Association Board of Directors (22nd DAA) has temporarily paused equestrian operations at Horse Park while it considers how to address its water quality obligations pursuant to the federal Clean Water Act and Porter Cologne. The 22nd DAA Board is working diligently with its counsel, consultants, and the equestrian community to find a way to renew equestrian operations at Horse Park while assuring compliance with all relevant water quality regulations and statutes and reducing potential third-party citizen suit litigation. However, as a public agency, and in order to avoid enforcement for any perceived violations by the RWQCB or through a citizen enforcement action, the 22nd DAA requires clarification regarding regulatory requirements for storm water discharges associated with any contemplated equestrian activities at Horse Park. Specifically, the 22nd DAA seeks responses to the following two questions:

1. Will Horse Park be deemed in compliance with Order No. R902019-0005 (Waiver 6) if it is unable to implement the Best Management Practices (ex. Manure management BMP's, drainage improvements) set forth in its enrollment application and if so, for how long?
2. Must Horse Park enroll in the Industrial General Permit (IGP) if it stables or confines between 150 and 499 horses pursuant to the time frames defined for Animal Feeding Operations (AFO); and Discharges pollutants (including manure or process wastewater) into waters of the United States through a man-made ditch, pipe, or similar device. (40 C.F.R. § 122.23, subd. (b)(6)?

In in order to assist you in providing a response to these questions, I have provided the following chronology for your consideration.

- September of 2019, the 22nd DAA submitted a Notice of Intent (NOI) for coverage under the conditional waiver Order No. R9-2019-0005. The NOI proposed the implementation of several structural BMPs regarding manure management, barn improvements, treatment BMPs for stormwater from various CAFO areas and a schedule for implementation of the improvements.
- On March 27, 2020 the RWQCB enrolled the Horse Park facility in Order No. R902019-0005. The enrollment letter stipulated that: "The NOI and Technical Information Report contain the operation plan for implementing best management practices for the management of storm water and waste discharges associated with the Del Mar Horse Park. . . The Discharger must ensure the discharge complies with the waiver conditions specified in sections B, C.2, and C.3 of the Animal Operations Waiver."

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- On April 10, 2020 the RWQCB wrote to Rancho HHO Land Corporation (Rancho) and Equestrian Services II, Inc. (Equestrian), two equestrian facilities similar in size and confined horse populations to those being conducted at that time at Horse Park. In that letter you wrote “The San Diego Water Board intends to regulate Sycamore Trails Stables and Rancho SVEC as medium CAFOs under the National Pollutant Discharge Elimination System (NPDES) regulatory program, unless each facility can demonstrate that it does not discharge pollutants to a water of the United States.” That is, Rancho and Equestrian were required to file for coverage under the Industrial General Permit unless they could demonstrate that there was no discharge of a pollutant to a water of the United States.
- On May 22, 2020 the 22nd DAA notified the RWQCB that as a result of the COVID-19 pandemic, the 22nd DAA would be unable to meet the waiver conditions by building the storm water improvements described in its NOI due to a lack of funds.
- On August 27, 2020 the RWQCB responded to the 22nd DAA’s notice of inability to meet the requirements of the waiver. In his response, Mr. Gibson, the RWQCB Executive Officer stated in part “Based on its review, San Diego Water Board staff found that neither Waiver No. 6, the March 27, 2020 Notice of Enrollment, or the Phase II MS4 Permit specify a compliance schedule or require the discharger to submit an implementation schedule for storm water and manure BMPs. As such, the schedule to improve onsite storm water and manure BMPs was voluntarily submitted to the San Diego Water Board, and not in response to a Water Board order or requirement. As the 22nd DAA’s improvement schedule is self-imposed, there is no required regulatory action to be taken by the San Diego Water Board in response to the 22nd DAA’s request for regulatory relief during the COVID-19 emergency.” However, Mr. Gibson’s response did not address the question of whether Horse Park would be deemed in compliance with the Waiver if the 22nd DAA failed to build the BMPs described in the NOI.
- On December 17, 2020, due to a lack of clarity regarding its regulatory obligations associated with storm water discharges from a medium CAFO, and in an abundance of caution as a public agency, the 22nd DAA announced its temporary pause of equestrian operations at Horse Park.
- On January 12 and 29, and February 9, 2021, the 22nd DAA and its Horse Park subcommittee held public hearings to discuss how to proceed. However, neither the 22nd DAA Board or the subcommittee have been able to reach any specific conclusions and now recognize that additional feedback is needed from the RWQCB to move the process along.

Your response to these questions above will assist the 22nd DAA in addressing questions and comments from the equestrian community at its next public meeting on March 9, 2021, as it attempts to fashion a reopening plan for Horse Park. In addition to your written clarifications to these questions, you are invited to attend this meeting via Zoom, where you will have an opportunity to provide verbal comments or explanations to board members and the public. We look forward to your written response to this inquiry and please let me know if you will be able to attend the board meeting on March 9 so a participant link can be provided to you.

Sincerely,



Carlene F. Moore
Chief Executive Officer

CC: David Gibson, Ian Adam, S. Wayne Rosenbaum, Dustin Fuller