WESTERN**UNITED**DAIRIES

May 29, 2026

Lauren Sanchez
Chair
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Steven Cliff
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Information Solicitation to Inform Implementation of the Dairy and Livestock Provisions of Senate Bill 1383

Dear Chair Sanchez & Executive Officer Cliff:

Western United Dairies (WUD) submits the following comments in response to the California Air Resources Board Information Solicitation to Inform Implementation of the Dairy and Livestock Provisions of Senate Bill 1383 (SB 1383). WUD is California's largest dairy farmer trade association, representing dairy families from Del Norte to Riverside Counties and reflecting the diversity of California dairy production, including conventional and organic pasture-based operations. WUD members have been active partners in the State's efforts to reduce livestock methane emissions and have made substantial investments in projects and practices that reduce or capture manure methane emissions.

California dairy families have demonstrated a long history of environmental stewardship and continuous improvement. Over the past several decades, dairy farmers have invested heavily in practices and technologies that have improved water quality, air quality, nutrient management, renewable energy production, and greenhouse gas reductions. The progress achieved under methane reduction programs reflects this broader pattern of collaboration between dairy farmers and state agencies to achieve meaningful environmental improvements through practical and workable solutions.

Statutory Scope of SB 1383 Authority

WUD believes the solicitation interprets SB 1383 more broadly than the authority granted by the Legislature regarding livestock methane emissions. SB 1383 specifically directs CARB to adopt regulations addressing "methane emissions from livestock manure management operations and dairy manure management operations." The statute does not authorize CARB to broadly regulate all livestock methane emissions, including enteric methane emissions, absent the additional statutory findings and conditions expressly identified by the Legislature.

Two formal opinions issued by the California Legislative Counsel support this interpretation and are attached to these comments as Attachments A and B.

In Attachment A, Legislative Counsel concluded that Health and Safety Code section 39730.7 does not authorize CARB to require reductions in methane emissions from livestock and dairy manure management operations greater than 40 percent below 2013 manure management emissions levels. Legislative Counsel further concluded that CARB does not have authority to use enteric methane emissions as a rationale for requiring manure-management methane reductions beyond those statutory limits.

In Attachment B, Legislative Counsel concluded that CARB "may not mandate reductions in enteric emissions" until the Board determines that a cost-effective and scientifically proven reduction method is available and that implementation would not damage animal health, public health, or consumer acceptance.

WUD therefore believes it is important that implementation of SB 1383 accurately reflect both the statutory language enacted by the Legislature and the limitations placed on CARB's authority regarding enteric methane emissions and manure management reduction requirements.

Progress Achieved Through Voluntary Incentive Programs

California dairy families have made substantial progress reducing methane emissions through voluntary and incentive-based programs. Programs administered by the California Department of Food and Agriculture (CDFA), including the Dairy Digester Research and Development Program (DDRDP) and Alternative Manure Management Program (AMMP), have successfully accelerated adoption of methane reduction technologies and practices across the state.

California's experience demonstrates that incentive-based and collaborative approaches can achieve substantial methane reductions while maintaining the economic viability of dairy operations. The success of programs such as DDRDP and AMMP should serve as a model for future efforts because they encourage innovation, participation, and durable emissions reductions without creating unnecessary economic disruption.

CARB's 2022 Final Analysis of Progress toward Achieving the 2030 Dairy and Livestock Sector Methane Emissions Target documented that more than half of the sector's 2030 reductions were already identified or in place, with dairy digesters and alternative manure management practices accounting for the manure-management methane reductions achieved to date. Since that analysis was released, additional manure-management projects have continued to come online across California, and substantial new state and federal funding has been committed to accelerate them. Read together with the narrow statutory interpretation confirmed by the attached Legislative Counsel opinions, under which the obligation runs to manure management operations rather than to total sector emissions, WUD believes the dairy sector is on track to satisfy, and may already

have satisfied, the manure-management reductions contemplated by SB 1383 as properly construed.

Prior to developing additional regulatory requirements, CARB should formally evaluate whether the reductions already achieved in manure management emissions satisfy the statutory targets established under SB 1383.

Evaluating Methane Emissions Data

Of the three categories identified in the solicitation, WUD believes the discussion regarding methane emissions data and emissions quantification is the most appropriate area for continued agency focus given the substantial progress already achieved.

It is important that emissions reductions already achieved are accurately quantified and that reporting systems appropriately reflect ongoing reductions. At the same time, any additional reporting requirements should be narrowly tailored to data that are demonstrably necessary for emissions quantification and program implementation.

California dairy operations already provide substantial amounts of information to multiple local, state, and federal regulatory agencies. CARB should utilize existing reporting systems and available agency data wherever possible to minimize duplicative reporting burdens on dairy operations. Additional reporting obligations that do not materially improve emissions quantification or implementation of SB 1383 are unlikely to provide meaningful public benefit while increasing administrative and economic burdens on dairy families.

WUD agrees that sound science and accurate data are important to evaluating methane emissions and tracking progress. However, data collection efforts should remain proportional to the precision necessary to evaluate compliance with SB 1383 and should recognize the operational diversity of California dairy systems.

Methane Mitigation Strategies

The solicitation appropriately acknowledges the substantial efforts undertaken by dairy producers, state agencies, researchers, and other stakeholders to reduce methane emissions over the past decade. Those efforts have demonstrated that voluntary, incentive-based approaches can achieve significant reductions while allowing flexibility for differing dairy operational models and regional conditions.

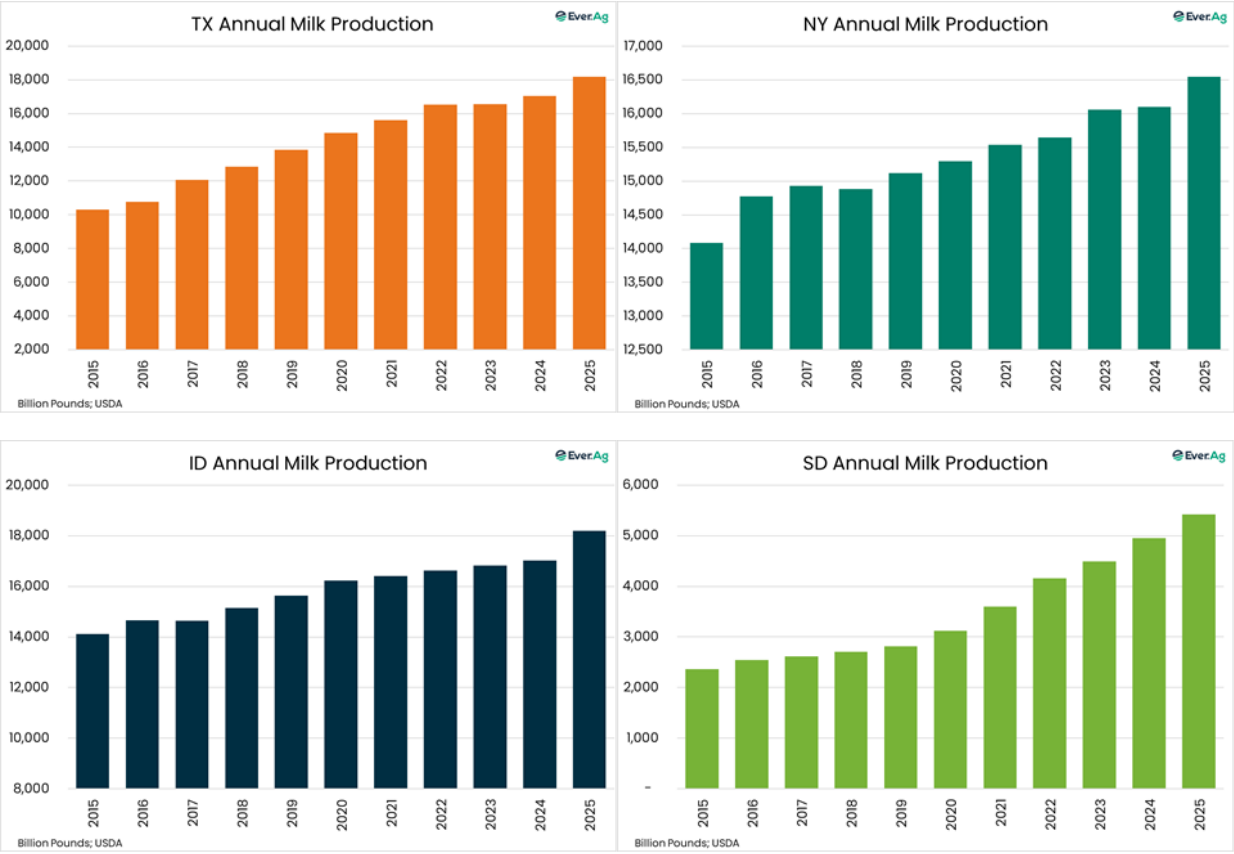
Future methane mitigation efforts should build upon these successful collaborative approaches. Continued support for incentive-based programs, technology development, infrastructure investment, and research partnerships is more likely to achieve durable and cost-effective emissions reductions than rigid prescriptive mandates.

WUD supports continued research and voluntary development of enteric methane reduction strategies. However, implementation must remain consistent with the limitations and safeguards established by the Legislature in SB 1383. Enteric methane reduction technologies have not yet satisfied the statutory conditions identified in SB 1383 for mandatory implementation. Available technologies remain limited, questions regarding long-term feasibility and consumer acceptance remain unresolved, and options are particularly constrained for California's organic dairy sector, which cannot utilize certain synthetic feed additives.

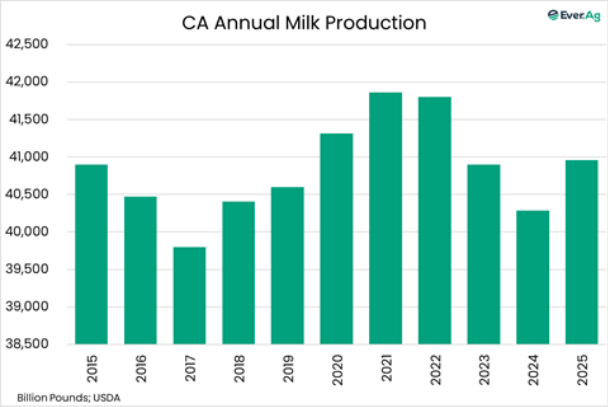
Leakage and Global Emissions Impacts

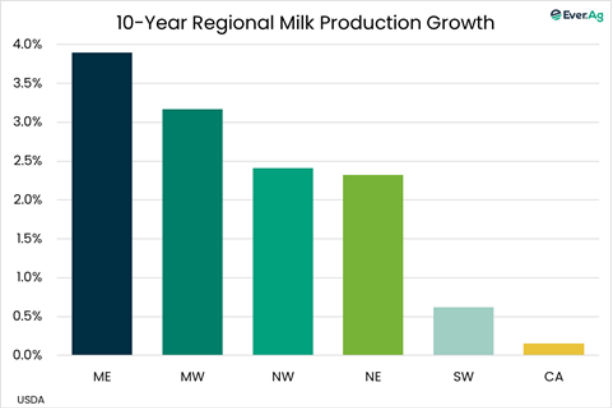
Health & Safety Code § 39730.7 chaptered by SB 1383 expressly requires CARB to minimize leakage and out-of-state production shifts. This issue is critically important for California dairy producers and for the State's broader climate objectives.

Global demand for dairy products continues to increase, and milk production in many competing dairy states continues to expand in response to that demand, as demonstrated by the charts below.



California milk production, by comparison, has remained relatively stagnant despite California remaining the nation's leading dairy-producing state, as depicted in the chart on the left below. This trend is further illustrated by comparative milk production growth data across major dairy-producing regions as depicted in the chart on the right below.





Excessive regulatory burdens that constrain California dairy production in concert with increases in consumer demand risk shifting milk production to other states and countries with less stringent environmental standards. Such leakage would undermine the climate objectives of SB 1383 by increasing global methane emissions rather than reducing them.

California dairy farmers provide substantial environmental and economic benefits to the State, including local employment opportunities, many in disadvantaged communities, production of fresh and nutritious dairy products close to consumers, renewable energy generation, and utilization of agricultural byproducts as livestock feed that might otherwise require disposal.

CARB recently released the California Dairy and Livestock Database and held a Dairy Sector Workshop evaluating whether dairy digesters contribute to dairy expansion. WUD appreciates CARB staff's conclusion that digesters are not driving dairy expansion within California. However, analysis of leakage should also evaluate broader national and global production trends and compare California production trends to competing dairy regions where environmental regulations may be less stringent.

Conclusion

WUD appreciates the opportunity to provide these comments and looks forward to continued engagement with CARB and other stakeholders as the State evaluates implementation of SB 1383.

California dairy families remain committed to environmental stewardship and to pursuing practical, science-based approaches that reduce emissions while maintaining a viable in-state dairy sector. WUD respectfully requests that CARB accurately reflect the scope of authority granted under SB 1383 and carefully consider the substantial methane reductions already

achieved through voluntary and incentive-based manure management programs before pursuing additional regulatory requirements.

Sincerely,



Anja Raudabaugh
Chief Executive Officer

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Attachment A

Short-Lived Climate Pollutants: Dairy and Livestock Industry: Methane Emissions Reductions

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November 21, 2019

Honorable Jim Wood
Room 6005, State Capitol

SHORT-LIVED CLIMATE POLLUTANTS: DAIRY AND LIVESTOCK INDUSTRY: METHANE EMISSIONS REDUCTIONS - #1915885

Dear Mr. Wood:

You have asked whether Health and Safety Code section 39730.7 authorizes the State Air Resources Board to adopt regulations that would require, by 2030, the livestock and dairy industry to reduce methane emissions produced by livestock and dairy manure management operations to more than 40 percent below the amount of methane emissions produced by livestock and dairy manure management operations in 2013. You also asked whether the State Air Resources Board has the authority to use methane emissions from enteric fermentation as a rationale to adopt regulations requiring, by 2030, the livestock and dairy industry to reduce methane emissions produced by livestock and dairy manure management operations by more than 40 percent below the amount of methane emissions produced by livestock and dairy manure management operations in 2013.

Background

1. California Global Warming Solutions Act of 2006

In 2006, the Legislature granted the State Air Resources Board (hereafter ARB) broad authority to regulate greenhouse gas emissions, which includes methane emissions,[1] when it enacted the California Global Warming Solutions Act of 2006 (hereafter GWSA).[2] In 2014, the Legislature added Health and Safety Code section 39730[3] to the GWSA, requiring ARB to

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[1] Methane is a short-lived climate pollutant, which is a class of air pollutants that heat the atmosphere in the short term. (ARB, Short-Lived Climate Pollutants, at <https://ww2.arb.ca.gov/our-work/programs/short-lived-climate-pollutants/about> [as of Aug. 27, 2019].) Methane is commonly emitted by the livestock and dairy sectors.

[2] Health & Saf. Code, §§ 38500 & 38510; see also Assem. Bill No. 32 (Stats. 2006, ch. 488).

[3] All further section references are to the Health and Safety Code, unless otherwise indicated.

complete a strategy for reducing emissions of short-lived climate pollutants.[4] ARB published its first proposed "Short-Lived Climate Pollutant Reduction Strategy" (hereafter strategy) in April of 2016, its revised proposed strategy in November of 2016, and its final strategy in March of 2017.[5]

In September of 2016, the Legislature further amended the GWSA by enacting Senate Bill No. 1383 (2015-2016 Reg. Sess.)[6] (hereafter SB 1383), which, among other things, added section 39730.5 to the GWSA. Section 39730.5 required ARB, by January 1, 2018, to approve and begin implementing the strategy to achieve a reduction in methane emissions statewide by 40 percent below 2013 levels by 2030 (hereafter statewide reduction requirement).[7] SB 1383 also added section 39730.7 to the GWSA, which requires ARB to adopt regulations to reduce the methane emissions from dairy and livestock industry (hereafter industry) manure management operations "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030,"[8] requires enteric emissions reductions be achieved only through incentive-based mechanisms,[9] and prohibits ARB from adopting methane emissions reduction regulations controlling industry emissions except as provided for in that section.[10]

2. ARB's strategy for reduction of dairy and livestock methane emissions

The majority of methane emissions produced by the industry is from two primary sources: enteric fermentation[11] and manure management operations[12] (hereafter MMOs). In the final strategy, ARB calculated that total methane emissions from the industry constituted

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[4] Sen. Bill No. 605 (Stats. 2014, ch. 523).

[5] See ARB's resources on short-lived climate pollutants published on its website at <https://ww2.arb.ca.gov/our-work/programs/short-lived-climate-pollutants/resources> (as of Sep. 27, 2019).

[6] Stats. 2016, ch. 395.

[7] § 39730.5, subd. (a).

[8] § 39730.7, subd. (b)(1).

[9] § 39730.7, subd. (f).

[10] § 39730.7, subd. (g).

[11] Enteric fermentation refers to the digestive process in ruminant animals that emits methane as a by-product mostly in the form of belching but also by way of expelling from the intestines. (U.S. Environmental Protection Agency, AP-42: Compilation of Air Pollutant Emission Factors (5th ed. Feb. 1998) vol. 1, ch. 14, § 14.4-1, at <https://www3.epa.gov/ttn/chief/ap42/ch14/final/c14s04.pdf> [as of Sep. 27, 2019].)

[12] The term "manure management operations" is commonly understood within the industry to mean the management of manure produced by dairy livestock within the industry through the use of certain processes, including anaerobic digesters and nondigester methane management practices like scrape conversion and solid separation technologies that reduce the methane emissions from manure waste. (See Food & Agr. Code, § 412; ARB website, Manure Management (July 2014), at <https://ww3.arb.ca.gov/ag/manuremgmt/manuremgmt.htm> [as of July 3, 2019].)

about 55 percent of the total statewide methane emissions in 2013.[13] Of the 55 percent produced by the industry, ARB calculated that 25 percent was from dairy MMO methane emissions, and 20 percent was from dairy enteric fermentation emissions.[14]

Also in the final strategy, ARB estimated that in order to reach the statewide reduction requirement, a reduction equivalent to 26 metric tons of methane in the dairy and livestock sector's emissions would need to be achieved.[15] The 26 metric tons appears to have been calculated using the industry's total amount of methane emissions in 2013 not just methane emissions produced by MMOs.[16] In addition, the reduction would come entirely from MMO methane emissions as the final strategy concedes that further research is needed before enteric fermentation emissions can be regulated.[17]

In sum, it appears ARB used the total amount of methane emissions produced by both enteric fermentation and MMOs in 2013 in order to estimate how many metric tons of methane the industry will be required to reduce from MMOs by 2030. By setting the amount to be cut based on both methane emissions rates in 2013, MMO methane emissions would have to be cut by more than 40 percent from their 2013 levels in order to meet the 26 metric ton reduction goal.

Currently, ARB has not adopted regulations requiring any reduction in methane emissions by the industry. However, because of the information in the final strategy described above, you have asked us to assume for the purposes of this opinion that ARB intends to adopt regulations requiring the industry to cut 26 metric tons from its MMO methane emissions,

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[13] ARB, Cal. Environmental Protection Agency, Short-Lived Climate Pollutant Reduction Strategy (Mar. 2017) Figure 4, p. 56, at <https://ww3.arb.ca.gov/cc/shortlived/meetings/03142017/final_slcp_report.pdf> [as of July 17, 2019] (hereafter SLCP Reduction Strategy).

[14] SLCP Reduction Strategy, *supra*, Figure 4, p. 56.

[15] SLCP Reduction Strategy, *supra*, Table 2, p. 12; see also *id.*, Table 8, p. 63.

[16] ARB does not detail how it arrived at the 26 metric ton reduction amount it proposes in the final strategy, but it appears to have calculated it in the following manner. According to ARB, 118 metric tons of methane was emitted statewide in 2013. (SLCP Reduction Strategy, *supra*, Table 1, p. 6.) Forty percent of 118 metric tons is 47.2 metric tons. Thus, 47.2 metric tons of methane would need to be reduced in order to meet the statewide reduction requirement. The industry, including manure and enteric fermentation emissions, accounted for approximately 55 percent of the state's total methane emissions in 2013. (SLCP Reduction Strategy, *supra*, Figure 4, p. 56.) Twenty-six metric tons is approximately (rounded up) 55 percent of 47.2 metric tons.

If ARB had calculated the amount of MMO methane emissions to be cut based only upon the 25 percent that MMO methane emissions represented in 2013, the amount cut would be approximately 12 metric tons (25 percent of 47.2, rounded up). In addition, the total amount of MMO methane emissions in 2013 seems to be 29.5 metric tons (25 percent of 118). Thus, the 26 metric ton reduction amount would be almost all of the industry's MMO methane emissions in 2013, and that is a reduction of more than 40 percent of its 2013 MMO methane emissions.

[17] SLCP Reduction Strategy, *supra*, at p. 70.

which would be more than 40 percent of the MMO methane emissions levels for 2013.[18] Accordingly, assuming those calculations to be true, you have asked us whether ARB has the authority to require the industry to reduce methane emissions produced by MMOs by more than 40 percent below the 2013 level of methane emissions produced by MMOs.

Analysis

1. **Does section 39730.7 give ARB the authority to adopt regulations requiring the industry, by 2030, to reduce methane emissions from MMOs by more than 40 percent below the level of methane emissions produced by MMOs in 2013?**

In order to answer this question we must first look at the words of the statute. Section 39730.7 states in pertinent part:

> "(b)(1) The state board,[19] in consultation with the department,[20] shall adopt regulations to reduce methane emissions from livestock manure management operations and dairy manure management operations, *consistent with this section and the strategy*,[21] by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030.
>
> "[¶] ... [¶]
>
> "(f) *Enteric emissions reductions shall be achieved only through incentive-based mechanisms* until the state board, in consultation with the department, determines that a cost-effective, considering the impact on animal productivity, and scientifically proven method of reducing enteric emissions is available and that adoption of the enteric emissions reduction method would not damage animal health, public health, or consumer acceptance. Voluntary enteric emissions reductions may be used toward satisfying the goals of this chapter.
>
> "(g) Except as provided in this section, the state board shall not adopt methane emissions reduction regulations controlling the emissions of methane from dairy operations or livestock operations ... ." (Emphasis added.)

The fundamental task of statutory construction is to ascertain the intent of the Legislature in order to effectuate the purpose of the statute.[22] When construing statutes, a court looks first to the words of the statute, which should be given their usual, ordinary, and

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[18] The analysis in this opinion is specific to these assumed facts, and any change to those facts could change the analysis and conclusions of this opinion.

[19] The term "state board" is defined as the "State Air Resources Board." (§ 39053.)

[20] The term "department" is defined as "Department of Food and Agriculture." (§ 39730.7, subd. (a)(1).)

[21] The term "strategy" is defined as "the strategy to reduce short-lived climate pollutants developed pursuant to Section 39730." (§ 39730.7, subd. (a)(4).)

[22] *Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135.

commonsense meaning.[23] However, "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible."[24] When the language of a statute is clear and unambiguous, the court ends the analysis.[25]

However, the terms of a statute may be deemed ambiguous when more than one grammatically plausible interpretation can be tendered.[26] If a statute's terms are ambiguous, courts may look to a variety of extrinsic aids, including the ostensible objects to be achieved, evils to be remedied, legislative history, public policy, contemporaneous administrative construction, and statutory scheme of which the statute is a part.[27]

Turning to your question, the first part of section 39730.7, subdivision (b)(1)[28] makes clear that the industry reductions in methane emissions shall come only from "methane emissions from livestock manure management operations and dairy manure management operations." What is not clear is whether the word "levels" in the final phrase of that sentence, "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" refers to the levels of methane emissions produced by the MMOs in 2013 or whether the word "levels" refers to the total levels of methane emissions produced by the industry in 2013.

Accordingly, in our view, there are two grammatically plausible interpretations of subdivision (b)(1). First, methane emissions from industry MMOs are required to be reduced, by 2030, by up to 40 percent below the 2013 levels of methane emissions caused by industry MMOs (hereafter the narrow interpretation). Second, methane emissions from industry MMOs are required to be reduced, by 2030, by up to 40 percent below the 2013 levels of the total methane emissions caused by the industry (hereafter the broad interpretation). As a result, we believe that subdivision (b)(1) is ambiguous. Thus, we will next analyze which interpretation is more likely to prevail in court.

1.1 Argument in favor of the narrow interpretation

The phrase "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" can be read narrowly to apply to the 2013 levels of methane emissions produced by the MMOs. The statutory scheme of which subdivision (b)(1) is a part can be construed as supporting the narrow interpretation. By its plain language, the only source of methane emissions mentioned in subdivision (b)(1)'s requirement to reduce methane emissions is MMOs. Moreover, subdivision (b)(4)(B) and (D) prohibits ARB from implementing any regulations under the authority of subdivision (b)(1) unless they determine a market exists for products generated by MMO methane emissions reductions projects and include in the regulations provisions to minimize and mitigate potential leakage of methane to other states or

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[23] *People v. Mejia* (2012) 211 Cal.App.4th 586, 611.

[24] *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

[25] *People v. Mejia, supra,* 211 Cal.App.4th at p. 611.

[26] *Collins v. Sutter Memorial Hospital* (2011) 196 Cal.App.4th 1, 14.

[27] *In re M.M.* (2012) 54 Cal.4th 530, 536.

[28] All further subdivision references are to section 39730.7, unless otherwise specified.

countries.[29] Thus, the focus here appears to be on the development of markets for biomethane created from manure.

In addition, subdivision (b)(4)(A) and (C) prohibits ARB from implementing any regulations under the authority of subdivision (b)(1) until it determines the regulations are technologically feasible and cost effective. And subdivision (f) assumes that there is no existing cost-effective way to reduce methane emissions produced by enteric fermentation. The subdivision specifically prohibits ARB from regulating enteric emissions reductions, except through incentive-based mechanisms, until certain conditions are fulfilled.[30] Thus, when these two subdivisions are read in conjunction, it further supports the argument that the Legislature intended subdivision (b)(1) to require a reduction of methane emissions produced only by MMO methane emissions when it referred to "levels."

A review of the legislative history also supports the narrow interpretation.[31] Both the analysis by the Senate Committee on Environmental Quality and the Senate Rules Committee state that SB 1383 "Requires ARB, in consultation with the California Department of Food and Agriculture (CDFA) to adopt regulations to reduce methane emissions from livestock and dairy manure management operations by up to 40% below 2013 levels by 2030."[32] Additionally, the Assembly Committee on Natural Resources and Senate Third Reading analyses, in discussing SB 1383, state that it "Requires ARB to adopt regulations to reduce methane emissions from dairy and livestock manure management operations, subject to the following conditions: [¶] i) Reductions are limited to 40% below 2013 levels by 2030."[33]

Finally, adopting the broad interpretation may lead to absurd results and a court would disfavor a construction leading to an absurd result.[34] In that regard, if the term "levels" within the phrase "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" were interpreted to mean total levels of methane emissions produced by the industry, the industry would be required in meeting the 26 metric ton reduction to reduce its

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[29] And ARB is required, in consultation with certain state agencies, to establish energy infrastructure development and procurement policies to encourage dairy biomethane projects to meet the goals identified for industry methane emissions reductions. (Subd. (d).)

[30] As was previously discussed, ARB appears in its final strategy to acknowledge that those conditions have not yet been fulfilled. (See SLCP Reduction Strategy, *supra*, at p. 70.)

[31] See *Matus v. Board of Administration* (2009) 177 Cal.App.4th 597, 606; see also *Toyota Motor Corp. v. Superior Court* (2011) 197 Cal.App.4th 1107, 1118, fn. 7 (Committee and floor analyses are properly considered in determining a statute's meaning).

[32] Sen. Com. on Environmental Quality, Analysis of SB 1383, as amended Aug. 31, 2016, p. 3 (hereafter Sen. Com. EQ analysis of SB 1383); Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business Analysis of SB 1383, as amended Aug. 31, 2016, p. 3 (hereafter Sen. floor analysis of SB 1383).

[33] Assem. Com. on Natural Resources, Analysis of SB 1383, as amended Aug. 19, 2016, p. 6 (hereafter Assem. Com. Nat. Res. analysis of SB 1383); Assem. Floor Analysis, Sen. 3d reading analysis of SB 1383, as amended Aug 31, 2016, p. 3 (hereafter Sen. 3d reading analysis of SB 1383) (makes the same statement with a nonsubstantive change).

[34] See *People v. Johnson* (2007) 150 Cal.App.4th 1467, 1483.

MMO methane emissions by an amount very close to the entire amount of methane emissions produced by the MMOs in 2013. That may result in a regulation that is neither technologically feasible, economically feasible, nor cost effective as required by section 39730.7, and therefore could not be implemented. In sum, the narrow interpretation finds support in the statutory scheme and legislative history, and the broad interpretation may lead to an absurd result. Thus, we believe that a court would favor the narrow interpretation.

1.2 Argument in favor of the broad interpretation

The phrase "by up to 40 percent below the dairy sector's and livestock sector's 2013 levels by 2030" can also be read broadly to apply to the 2013 levels of methane emissions produced by the entire industry. In support of the broad interpretation, several committee analyses for SB 1383 state that amendments to the bill would "limit the dairy sector's reduction obligation to 40% below 2013 levels"[35] without specifying that those 2013 levels only refer to the MMO 2013 levels.

In addition, the statutory framework of section 39730.7 does not explicitly exclude the broad interpretation, and in some respects implies that the broad interpretation is proper. As the industry is the largest single emitter of methane in the state and ARB does not have the power or technology to regulate enteric emissions,[36] meeting the statewide reduction requirement[37] would require the reductions to MMO methane emissions to exceed 40 percent of their 2013 levels. Subdivision (b)(2)(C) specifies that ARB is empowered to conduct or consider research on dairy methane emissions reduction projects like "scrape manure management systems, solids separation systems, and enteric fermentation." Most of these potential projects are MMO related, but it also includes consideration of enteric fermentation related projects. The inclusion of enteric fermentation research as a way to reach the reduction goal specified in subdivision (b)(1) supports the application of the broad interpretation.[38]

Also, subdivision (f) and certain committee analyses state that voluntary reductions of enteric fermentation emissions may be used toward reduction goals identified for the dairy and livestock sectors.[39] The only reduction goals identified for the livestock and dairy sectors are within subdivision (b)(1). And if voluntary enteric fermentation emission reductions count

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[35] Assem. Com. Nat. Res. analysis of SB 1383, *supra*, at p. 7; Sen. 3d reading analysis of SB 1383, *supra*, at p. 6; Sen. Com. EQ analysis of SB 1383, *supra*, at p. 10.

[36] SLCP Reduction Strategy, *supra*, at pp. 56, 62, 63 & 70.

[37] As stated previously, the Legislature set a statewide reduction requirement of a 40 percent reduction in methane emissions below 2013 levels by 2030. (§ 39730.5, subd. (a).)

[38] Also, if ARB were to rely on section 39730.7 as authority to adopt a duly enacted regulation requiring a more than 40 percent reduction of methane emissions from MMOs, a court may give some deference to that interpretation. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10-11.) However, since ARB has not yet adopted any regulation on this topic, we are unable to consider the analytical strength of such an interpretation for the purpose of weighing the arguments in favor of the broad interpretation.

[39] See Sen. Com. EQ analysis of SB 1383, *supra*, at p. 4; Sen. floor analysis of SB 1383, *supra*, at pp. 4-5.

toward the reduction goals in subdivision (b)(1), that could also support the broad interpretation. In sum, each of these points lend support for the broad interpretation.

1.3 Conclusion regarding Question No. 1

As discussed above, however, an adoption of the broad interpretation may lead to absurd results. Moreover, each of the statements in committee analyses offered to support the broad interpretation occur after the unambiguous statement that the MMO methane emissions reduction requirements would be up to 40 percent of the 2013 MMO levels. Thus, in our view, the narrow interpretation finds greater support within the legislative history, and the statutory scheme itself gives greater weight toward the narrow interpretation. Accordingly, we think a court would be more likely to find the argument supporting the narrow interpretation persuasive. Thus, in our opinion, subdivision (b)(1) does not authorize ARB to adopt regulations that require the industry to reduce MMO methane emissions by more than 40 percent below the level of methane emissions produced by MMOs in 2013.

2. Does ARB have the authority to use methane emissions from enteric fermentation as a rationale to adopt regulations that require, by 2030, the industry to reduce MMO methane emissions by more than 40 percent below the level of methane emissions produced by MMOs in 2013?

In general, an administrative agency has only those powers that have been granted expressly or impliedly by Constitution or statute.[40] Upon review by a court, an administrative regulation "'comes before the court with a presumption of correctness and regularity.'"[41] With respect to the requirement that an agency's regulations comply with its underlying statutory authority, Government Code section 11342.2 states, in pertinent part, that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." Therefore, in an agency's determination of the scope of its own power with regard to a particular regulation, there are two basic considerations: (1) whether the regulation is consistent with the enabling statute, and (2) whether it is reasonably necessary to effectuate the purpose of that statute.[42]

Because we have concluded that a court would likely find that section 39730.7 only authorizes ARB to require the industry to reduce MMO methane emissions by no more than 40 percent below the 2013 levels of methane emissions produced from industry MMOs, a regulation requiring a larger reduction would not be consistent with the enabling statute. Accordingly, we conclude that ARB does not have the authority to use the level of methane emissions produced by enteric fermentation as a rationale for requiring the industry to reduce, by 2030, the methane emissions produced by MMOs by more than 40 percent of the level of methane emissions produced by MMOs in 2013.

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[40] *Stiger v. Flippin* (2011) 201 Cal.App.4th 646, 651.

[41] *Tomlinson v. Qualcomm, Inc.* (2002) 97 Cal.App.4th 934, 941.

[42] *County of Santa Cruz v. State Bd. of Forestry* (1998) 64 Cal.App.4th 826, 834-835.

Conclusions

In our opinion, Health and Safety Code section 39730.7 does not authorize the State Air Resources Board to adopt regulations that would require, by 2030, the livestock and dairy industry to reduce methane emissions from livestock and dairy manure management operations by more than 40 percent below the level of methane emissions produced by livestock and dairy manure management operations in 2013. Additionally, in our opinion, the State Air Resources Board does not have the authority to use methane emissions from enteric fermentation as a rationale for adopting regulations that require, by 2030, the livestock and dairy industry to reduce methane emissions produced by livestock and dairy manure management operations by more than 40 percent below the level of methane emissions produced by livestock and dairy manure management operations in 2013.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By (on behalf of
Sue-Ann Peterson
Deputy Legislative Counsel

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WESTERN**UNITED**DAIRIES

Attachment B

Methane Emissions Reductions

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July 5, 2021

Honorable Jim Wood
Room 6005, State Capitol

METHANE EMISSIONS REDUCTIONS - #2115661

Secured Copy

Dear Mr. Wood,

You have asked us whether the language in Health and Safety Code section 39730.7, subdivision (f)[1] prohibits the State Air Resources Board from mandating reductions in enteric emissions until a cost-effective, scientifically proven method of reduction, which takes into consideration the impact on animal productivity, is available.

1. Analysis

The fundamental task of statutory construction is to ascertain the intent of the Legislature in order to effectuate the purpose of the statute.[2] When construing statutes, a court looks first to the words of the statute, which should be given their usual, ordinary and commonsense meaning,[3] and construed in their statutory context.[4] When the language of a statute is clear and unambiguous, the court ends the analysis.[5]

Examining the plain language of the relevant statute, section 39730.7, subdivisions (f) and (g) (hereafter subdivisions (f) and (g), respectively) state:

> "(f) Enteric emissions reductions shall be achieved only through incentive-based mechanisms until the state board, in consultation with the department, determines that a cost-effective, considering the impact on animal productivity, and scientifically proven method of reducing enteric emissions is available and that adoption of the enteric emissions reduction method would not

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[1] All further section references are to the Health and Safety Code.
[2] *Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 135.
[3] *People v. Mejia* (2012) 211 Cal.App.4th 586, 611.
[4] *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.
[5] *People v. Mejia, supra*, 211 Cal.App.4th at p. 611.

> damage animal health, public health, or consumer acceptance. Voluntary enteric emissions reductions may be used toward satisfying the goals of this chapter.
>
> "(g) Except as provided in this section, the state board shall not adopt methane emissions reduction regulations controlling the emissions of methane from dairy operations or livestock operations … ."

This language is plain on its face. The term "shall" is mandatory.[6] Thus, subdivision (f) limits the State Air Resources Board to reducing enteric emissions "*only through incentive-based mechanisms* until the state board, in consultation with the department, determines that a cost-effective, considering the impact on animal productivity, and scientifically proven method of reducing enteric emissions is available and that adoption of the enteric emissions reduction method would not damage animal health, public health, or consumer acceptance."[7] Additionally, subdivision (g) prohibits the State Air Resources Board from adopting regulations outside of the provisions of section 39730.7, which includes subdivision (f).

2. Conclusion

In our opinion, the State Air Resources Board may not mandate reductions in enteric emissions until a cost-effective, scientifically proven method of reduction, which takes into consideration the impact on animal productivity, is available. Additionally, the board is prohibited from mandating these reductions until such time as the adoption of the enteric emissions reduction method would not damage animal health, public health, or consumer acceptance.

Secured Copy

Very truly yours,

Cara L. Jenkins
Legislative Counsel

By
Alyssa R. Kaplan
Deputy Legislative Counsel

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[6] § 16.

[7] Emphasis added.