

Memorandum

Date: August 5, 2014

To: Ms. Anya Starovoytov
Regional Water Quality Control Board, Region 2
1515 Clay Street
Oakland, CA 94612

From: 
Mr. Scott Wilson, Regional Manager
California Department of Fish and Wildlife – Bay Delta Region, 7329 Silverado Trail, Napa, California 94558

Subject: General Waste Discharge Requirements for Vineyards Discharges in the Napa River and Sonoma Creek Watershed, Notice of Preparation of a Draft Environmental Impact Report, SCH #2014072013, Napa and Sonoma Counties

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) provided for the draft Environmental Impact Report (EIR) for the General Waste Discharge Requirements (Project). The Project area is located on existing and future vineyard sites, which meet certain criteria outlined in the NOP relative to project size and property slope, throughout the Sonoma Creek and Napa River watersheds. The proposed Project would require dischargers to assess, plan, and implement a suite of site-specific actions and best management practices targeted towards reducing erosion. The fundamental Project objective is to regulate the Napa River and Sonoma Creek's Total Maximum Daily Load (TMDL) at established levels to achieve their vineyard discharge performance standards and to meet the TMDLs sediment allocations and targets.

During preparation of the draft EIR, please provide a complete assessment (including but not limited to type, quantity and locations) of the habitats, flora and fauna within and adjacent to the Project area, including endangered, threatened, and locally unique species and sensitive habitats. The assessment should include reasonably foreseeable direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. Rare, threatened and endangered species to be addressed should include all those which meet the California Environmental Quality Act (CEQA) definition (see CEQA Guidelines, Section 15380). CDFW recommended survey and monitoring protocols and guidelines are available at: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/Protocols_for_Surveying_and_Evaluating_Impacts.pdf.

The Biological Resources Section of the draft EIR should discuss appropriate habitat, life cycle, potential impacts and mitigation measures for special-status species which may occur such as, but not limited to: California freshwater shrimp (*Syncaris pacifica*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), western red bat (*Lasiurus blossevillii*), Swainson's hawk (*Buteo swainsoni*), western pond turtle (*Emys marmorata*), red-legged frog (*Rana draytonii*), and yellow-legged frog (*Rana boylei*). If impacted, avoidance and mitigation measures may also be appropriate in the draft EIR to address potentially significant impacts to wildlife movement of species such as, but not limited to: bobcat (*Lynx rufus*), gray fox (*Urocyon cinereoargenteus*), ringtail cat (*Bassariscus astutus*), coyote (*Canis latrans*) and mountain lion (*Puma concolor*).

While the Project would establish criteria and implement sediment TMDLs, which were developed to benefit biological resources, potentially significant adverse impacts to Biological

Resources are indicated on page 38 of the NOP. Please be advised that a California Endangered Species Act (CESA) Permit must be obtained if the project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document must specify temporary and permanent impacts, avoidance and minimization mitigation measures, and a mitigation monitoring and reporting program. If the project will impact CESA listed species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit.

The Project identifies specific criteria to be used under the General Waste Discharge Requirements process, including a minimum stream setback (i.e. established vegetated buffer) of 35 feet. Appropriate stream setbacks may be greater than 35 feet and should be defined based on site-specific conditions, watershed size, expected flows, and existing riparian resources. For any activity that will divert or obstruct the natural flow, change the bed, channel, or bank (which may include associated riparian resources) of a river or stream, or use material from a streambed, CDFW may require a Lake and Streambed Alteration Agreement (LSAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant. Issuance of an LSAA is subject to CEQA. CDFW, as a responsible agency under CEQA, will consider the CEQA document for the project. The CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for completion of the LSAA. To obtain information about the LSAA notification process, please access our website at <http://www.dfg.ca.gov/habcon/1600/>; or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 944-5500.

CDFW appreciates the opportunity to comment on the Project, and staff is available to provide technical assistance on any changes necessary to protect resources. If you have any questions, please contact Ms. Suzanne Gilmore, Environmental Scientist, at (707) 944-5536; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 944-5525.

cc: State Clearinghouse



CALIFORNIA FARM BUREAU FEDERATION

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Via Email

astarovoytov@waterboards.ca.gov

August 6, 2014

Ms. Anya Starovoytov
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612-1482

Re: *California Environmental Quality Act (“CEQA”) Scoping Comments for the General Waste Discharge Requirements for Vineyard Discharges in the Napa River and Sonoma Creek Watersheds*

Dear Ms. Starovoytov:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home, and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing nearly 78,000 agricultural, associate, and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau, on behalf of the Napa County Farm Bureau and the Sonoma County Farm Bureau, appreciates the opportunity to provide California Environmental Quality Act (“CEQA”) Scoping comments on the San Francisco Bay Regional Water Quality Control Board’s (“Regional Board”) development of General Waste Discharge Requirements for Vineyard Discharges in the Napa River and Sonoma Creek Watersheds (“Vineyard WDRs”). Farm Bureau offers the following concerns and comments regarding the scope and content of the environmental analysis and environmental documentation for the forthcoming Vineyard WDRs:

Agricultural Resources Must Be Considered During Environmental Review

Agricultural resources are an important feature of the existing environment of the State, and are protected under federal policies, such as the Farmland Protection Policy Act and National Environmental Policy Act (“NEPA”), State policies, and CEQA. Agriculture is

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the number one industry in California, which is the leading agricultural state in the nation.¹ Agriculture is one of the foundations of this State's prosperity, providing employment for one in 10 Californians and a variety and quantity of food products that both feed the nation and provide a significant source of exports.² In 1889, the State's 14,000 farmers irrigated approximately one million acres of farmland between Stockton and Bakersfield. By 1981, the number of acres in agricultural production had risen to 9.7 million.³ More recently, the amount of agricultural land in the State has declined. From 1982 to 1992, more than a million acres of farmland were lost to other uses. Between 1994 and 1996, another 65,827 acres of irrigated farmland were lost, and this trend is expected to continue at a rate of 39,000 acres lost per year.⁴

In order to preserve agriculture and ensure a healthy farming industry, the Legislature has declared that "a sound natural resource base of soils, water, and air" must be sustained, conserved, and maintained.⁵ Prior to negatively impacting agricultural lands, decision makers must consider the impacts to the agricultural industry, the State as a whole, and "the residents of this state, each of whom is directly and indirectly affected by California agriculture."⁶

One of the major principles of the State's environmental and agricultural policy is to sustain the long-term productivity of the State's agriculture by conserving and protecting the soil, water, and air that are agriculture's basic resources.⁷ Overly expansive and duplicative regulations may conflict with this policy by leading to the conversion of agricultural lands to other uses. This conversion would add to the existing statewide conversion of substantial amounts of agricultural lands to other uses, and may conflict with adopted plans of many local governments, including cities and counties, and existing habitat conservation plans or natural community conservation plans. Such conversion will have a significant impact on the region's environment, including the agricultural environment.⁸

CEQA requires analysis of significant environmental impacts and irreversible changes resulting from proposed projects.⁹ These include unavoidable impacts; direct, indirect,

¹ Food & Agr. Code, § 802(a).

² CALFED Final Programmatic EIS/EIR, July 2000, pg. 7.1-1.

³ Littleworth & Garner, California Water II (Solano Press Books 2007) p. 8.

⁴ See CA Dept. of Conservation Farmland Mapping and Monitoring Program, available at http://www.conservation.ca.gov/dlrp/fmmp/trends/Pages/stat_summaries.aspx.

⁵ Food & Agr. Code, § 802(g).

⁶ Food & Agr. Code, § 803.

⁷ Food & Agr. Code, § 821(c).

⁸ In order to recognize the importance of agriculture and the effect of overly expansive and duplicative regulations on remaining agricultural lands, Farm Bureau requests the Regional Board add appropriate statements within the Environmental Impact Report to capture this fact. Possible statements include: "The Regional Board recognizes the importance of sustaining farmland resources and the potential burden of duplicative regulations. Every effort will be made to recognize existing local regulations and avoid rules which could overly burden farmers and ranchers."

⁹ Pursuant to CEQA, "[s]ignificant effect on the environment" means, "a substantial, or potentially substantial, adverse change in the environment." (Pub. Resources Code, § 21068.) The CEQA

and cumulative effects; irreversible and irretrievable commitment of resources; relationships between short-term uses and long-term productivity; and growth-inducing impacts to the environment. Pursuant to CEQA, the physical environment includes agricultural lands and resources. Given the national and statewide importance of agriculture and the legal requirements of environmental review, Farm Bureau urges the Regional Board to properly assess all direct and indirect effects on the agricultural environment resulting from the proposed project in its environmental analysis.¹⁰

Of particular relevance for such analysis of impacts on the agricultural environment, CEQA Guidelines Appendix G, section II, Agriculture and Forestry Resources, states the following:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:

- (a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
- (b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- (c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?
- (d) Result in the loss of forest land or conversion of forest land to non-forest use?

Guidelines make it clear the "environment" in question encompasses, "any physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise and objects of historic or aesthetic significance." (Pub. Resources Code, § 21060.5.)

¹⁰ Any and all adverse environmental effects on agricultural resources resulting from the project, as well as cumulative impacts that will occur over time, must be fully assessed and disclosed under CEQA, as well as avoided or mitigated as required by CEQA.

- (e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?¹¹

Regulations of Waste Discharges From Irrigated Lands Must Be Feasible

In formulating regulations of waste discharges from irrigated lands, such as waste discharge requirements, the Regional Board should seek to develop the most efficient and feasible program that accomplishes water quality goals.¹² Given the diverse array of geography, topography, local conditions, and agricultural commodities grown in the Napa and Sonoma counties, water management and monitoring programs must be flexible and allow for necessary adaptations, both for localized areas and throughout the region. In addition to being flexible, future regulations and project alternatives must be feasible such that they are “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”¹³ All components of feasibility must be fully analyzed within the Regional Board’s environmental analysis of the regulations and its impacts to agriculture.

Scope of Regulations of Waste Discharges From Irrigated Lands

The true goal of the Vineyard WDRs is to improve water quality over time. The State Water Code and the Regional Board Basin Plan provide authority for the Regional Board to impose regulations on dischargers to improve water quality. Farmers are equally concerned about water quality and the environment. However, there is no need for the Regional Board to impose arbitrary restrictions on commercial agriculture so long as farmers take necessary steps to demonstrate water quality improvement over a scientifically feasible timeline with intermediate milestones.¹⁴ In order to reach this goal, the primary focus of maintaining and improving water quality over time should remain. To aid in reaching this goal, the Regional Board should evaluate water quality data and sediment data collected and use such data to implement and adjust management practice implementation. Further, problem areas should be identified by reviewing the respective TMDL studies, in particular the Limiting Factor Analysis and Sediment Source Analysis reports, of both the Napa River and the Sonoma Creek watersheds. The process of designing and adopting a new agricultural discharge program will take time and further collaboration between the Regional Board and agriculture will be necessary to develop a workable long term solution.

¹¹ Cal. Code Regs., tit. 14, § 15000 et seq, (“CEQA Guidelines, Appendix G).

¹² Pub. Resources Code, § 21061.1.

¹³ *Ibid.*

¹⁴ The agricultural community has been taking necessary steps to demonstrate water quality improvements.

Scope of Vineyard WDRs Should be Focused on the Problem Areas Rather Than Applicable to all Properties Regardless of Water Quality Impacts

As currently drafted, the Road Performance Standard for the Vineyard WDRs covers the entire vineyard property, not just the vineyard facility. It also covers all roads and does not prioritize the areas with high- and moderate-high- priority erosion sites, distance from surface waters, or parcel size or planted acres. As proposed, the Road Performance Standard is overly extensive and will be extremely expensive. Given the concern about the financial hardship of meeting such an extensive regulation, please provide the estimated cost per mile to assess and improve the road system to reduce road-related sediment delivery, and an analysis of the potential to achieve the target sediment reductions. Further, in order to adequately capture applicable costs and associated impacts versus benefits, alternatives for the Road Performance Standard must be analyzed that look at 1) the entire vineyard property, 2) the vineyard facility, and 3) areas identified as high priority erosion areas.

Specific Environmental Concerns That Must Be Analyzed in the Regional Board's Environmental Review

Upon review of the Notice of Preparation and Initial Study, Farm Bureau has identified several specific concerns relating to agricultural resources that should be analyzed in the environmental review, as follows:¹⁵

1. **Accurate and Complete Identification of Agricultural Resources:** The agricultural lands surrounding the Project must be accurately and completely depicted. The California Department of Conservation, through the Farmland Mapping and Monitoring Program ("FMMP"), monitors changes in Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance. The environmental analysis should incorporate the FMMP Maps as a basis for its analysis. The acreage of farmland that will be converted and/or impacted from this project must be included in the environmental review. Additionally, any other changes in the existing environment due to the project which, due to their location or nature, could result in conversion of agricultural to nonagricultural use must also be examined.

Farm Bureau also recommends that any agricultural impact discussion for areas outside existing Important Farmland Map boundaries be based on the agricultural land definition in the Williamson Act.¹⁶ This would also be in accordance with the definition of "agricultural land" in CEQA. Public Resources Code Section 21060.1 provides:

¹⁵ Note: this list is not exhaustive.

¹⁶ The California Land Conservation Act of 1965 (Gov. Code, §§ 51200 *et seq.*), commonly known as the "Williamson Act."

- (a) “Agricultural land” means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.
 - (b) In these areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), “agricultural land” means land that meets the requirements of “prime agricultural land” as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of section 51201 of the Government Code.
2. **Accurate and Complete Analysis of All Impacts:** The impact analysis must not be limited to direct impacts from the regulations. The analysis should consider all direct, indirect, and reasonably foreseeable cumulative impacts.
3. **A Full Range of Alternatives Must be Examined:** The Regional Board shall identify and rigorously examine all reasonable alternatives for the project.¹⁷ The range of alternatives must be feasible and must avoid or substantially lessen the project’s significant environmental effects¹⁸ “*even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.*”¹⁹ A feasible alternative is one that is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”²⁰ Additional alternatives that should be analyzed within the Environmental Impact Report (“EIR”) include:
- (a) The EIR should fully consider the project as proposed in the draft 2012 Conditional Waiver (Conditional Waiver of Waste Discharge Requirements For Discharges From Vineyard Properties in the Napa River and Sonoma Creek Watersheds, Tentative Order 2012-XXX). The draft 2012 Conditional Waiver covered the following vineyards:
 - i) Contains a **Vineyard Facility** with a **Slope** less than 5 percent located on one or more parcels totaling 40 acres or more, where 5 or more acres are a planted vineyard; or
 - ii) Contains a **Vineyard Facility** with a **Slope** of 5 percent or greater located on one or more parcels totaling 20 acres or more, where 5 or more acres are a planted vineyard; or
 - iii) Is identified by Water Board staff as discharging or proposing to discharge waste that could affect water quality and the Water Board staff finds that regulation of such vineyard through this Conditional Waiver will result in compliance with applicable water

¹⁷ 40 C.F.R. §§ 1500.2 subd. (e), 1501.2 subd. (c), 1502.1, 1502.14 subd. (a), 1502.15 subd. (d).

¹⁸ Pub. Resources Code, §§ 21002, 21001.1(a), 21100(b)(4), 21150.

¹⁹ Cal. Code Regs., tit. 14, § 15126.6, subd. (b), *emphasis added*.

²⁰ See Pub. Resources Code, § 21061.1; Cal. Code Regs., tit. 14, § 15364.

quality standards, such that regulation through individual or general WDRs is not necessary.²¹

Given that the Technical Advisory Committee concluded that the eligibility criteria “captures an estimated 85 percent of vineyard parcels and cultivated acres in the Napa River and Sonoma Creek watersheds and takes into consideration parcel size, vineyard size, slope, geology, and soil erosion potential,” the 2012 Conditional Waiver eligibility criteria is a viable alternative that captures the goals of the Vineyard WDRs.²² Thus, the EIR should fully consider and analyze the eligibility criteria from the 2012 Conditional Waiver as an alternative.

(b) Mean Annual Sediment Delivery (tons/yr) by sediment source should be estimated for each alternative in a similar manner as shown in Tables 3 and 4 of the Initial Study. (See Initial Study, p. 18.) Sediment input sources as well as sediment reductions are crucial sets of information that are needed for evaluating the relative merits of the alternatives.

(c) Stewardship Tier—Farm Bureau supports the concept of the Stewardship Tier and recommends that it should be included in all alternatives.²³

4. **All Impacts to Agricultural Resources Must be Fully Mitigated:** All feasible mitigation measures that are analyzed in the environmental review documents need to address the impacts to agricultural resources, must be fully described, and must mitigate for the impacts. A project of this magnitude has the potential to negatively impact agricultural lands, leading to the conversion of significant amounts of agricultural land to non-agricultural use.²⁴

²¹ Conditional Waiver of Waste Discharge Requirements For Discharges From Vineyard Properties in the Napa River and Sonoma Creek Watersheds, Tentative Order 2012-XXX, p. 2.

²² *See id.* p. 6.

²³ As currently drafted in the Notice of Preparation, the permittees are eligible for the “Stewardship Tier” if they have completed “all BMPs and demonstrate[ed] continued compliance with the General WDRs. (Notice of Preparation, p. 10.) Given that BMPs change over time, are site specific, and since the Regional Board cannot dictate the manner of compliance or the BMPs used (see Water Code section 13360(a)), Farm Bureau respectfully requests that the Stewardship Tier description be revised so that permittees are eligible if they have completed **those BMPs that are applicable or appropriate.**

²⁴ The Regional Board should consult with applicable county and local governments to assess local agricultural mitigation measures. For example, San Joaquin County and Yolo County have adopted ordinances to preserve agricultural land through the use of agricultural easements for agricultural land lost to development. San Joaquin County requires a 1:1 mitigation ratio for any “General Plan amendment that changes the designation of any land from an agricultural to a nonagricultural use” or any “Zoning Reclassification that changes the permitted use from agriculture to a nonagricultural use, regardless of the General Plan designation.” (*San Joaquin County General Plan*, Section 9-1080.3(a),(c).) Yolo County requires a 1:1 mitigation ratio for any “conversion or change from agricultural use to a predominantly non-agricultural use....” (*Yolo County General Plan*, Section 8-2.2416(3).)

5. **Social and Economic Impacts Must be Analyzed Under CEQA:**²⁵ Although impacts that are solely economic in nature do not constitute “significant effects on the environment,” economic or social impacts that will or have the potential to cause a physical change should be considered.²⁶ The term “significant effect on the environment” is defined in Section 21068 of CEQA as meaning “a substantial or potentially substantial adverse change in the environment.”²⁷ This focus on physical changes is further reinforced by Sections 21100 and 21151.²⁸ Despite the implication of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern.²⁹ Thus, in certain situations such as the adoption of an expansive regulatory irrigated lands discharge program, economic and social effects of the project must be used to determine the significant effects on the environment.³⁰ A cumulative effect of environmental regulations can be the loss of some farmland either by regulatory restrictions or by the compliance cost burden casualty. The loss of farmland is unquestionably an environmental impact, although its magnitude is hard to predict. The EIR should, in the very least, estimate the percentage of the potentially productive land barred from cultivation and the dollar value of the vineyard owners’ or operators’ cost for the WDR compliance. Such figures, when added to those from other regulations, will give the public a proper scope of potential and cumulative impacts and an initial estimate of the amount of farmland that would be lost.
6. **Economic Costs Must be Analyzed Under the Porter-Cologne Water Quality Control Act:** The requirement to consider economics under the Porter-Cologne Water Quality Control Act (“Porter-Cologne”) is absolute. Water Code, section 13141 explicitly mandates:

State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such

²⁵ CEQA requires analysis of a proposed project’s potential impacts to agriculture, but social and economic changes are not considered environmental impacts in and of themselves under CEQA, although they may be used to determine whether a physical change is significant or not. CEQA also permits discussion of social and economic changes that would result from a change in the physical environment and could in turn lead to additional changes in the physical environment (Cal. Code Regs., tit. 14, § 15064 subd. (f)).

²⁶ Cal. Code Regs., tit. 14, §§ 15064(e), 15131.

²⁷ Pub. Resources Code, § 21068.

²⁸ Discussion following Cal. Code Regs., tit. 14, § 15131.

²⁹ *Ibid.*

³⁰ *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 170, [“The lead agency shall consider the secondary or indirect environmental consequences of economic and social changes. . . . economic or social change may be used to determine that a physical change shall be regarded as a significant effect of the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment.”].

regional water quality control plans have been reported to the Legislature at any session thereof.

However, prior to implementation of any agricultural water quality control program, an estimate of the total cost of such a program, together with an identification of potential sources of financing, shall be indicated in any regional water quality control plan.³¹

Before a Regional Board can impose waste discharge requirements or conditioned water quality certification for discharges from irrigated lands, Porter-Cologne requires that it “shall take into consideration” the following factors: “the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.”³² Section 13241 in turn lists six “factors to be considered,” including “economic considerations” and “water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.”³³

Anticipated program implementation costs to the agricultural community include increases in potential fees, management practice implementation, monitoring costs, report preparation, and cost for education, as well as other costs. Given that the impacts of water quality regulations frequently take years to materialize, the Regional Board should analyze the economic costs and impacts within a dynamic framework taking into account the projected changes in the economic situation *over time*.

- 7. Impact of Reduced Sediment in San Pablo Bay Should be Addressed:** As seen from the nearly 40% decrease in suspended sediment in San Pablo Bay that began in 1999, reduced sediment results in the increased clarity of water, triggering excessive phytoplankton growth, which in turn can lead to fish kills due to deprivation of dissolved oxygen. The decrease in sediment will also hinder natural maintenance and restoration of the bayside wetlands. This is particularly troublesome in view of the predicted sea level rise.³⁴ Although the reduced sediment input from Napa River and Sonoma Creek may have little overall impact on San Francisco Bay as a whole, it could have a locally significant impact in the northern half of San Pablo Bay. The potential impact of the reduced sediment should, therefore, be addressed within the EIR and its alternatives analysis.

Thank you for the opportunity to provide our comments. We look forward to further involvement and discussion with the Regional Board on the development of regulations

³¹ Wat. Code, § 13141.

³² Wat. Code, § 13263.

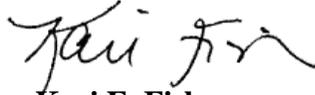
³³ Wat. Code, § 13241.

³⁴ David H. Schoellhamer, USGS, “Suspended Sediment in the Bay: Past a Tipping Point,” in “The Pulse of the Estuary 2009” (Jay Davis, Editor), San Francisco Estuary Institute, Oakland, CA., 2009.

Comment Letter re Vineyard Waiver
August 6, 2014
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concerning waste discharges from vineyard properties in the Napa River and Sonoma
Creek watersheds.

Sincerely,

A handwritten signature in black ink, appearing to read "Kari E. Fisher". The signature is fluid and cursive, with the first name "Kari" being more prominent than the last name "Fisher".

Kari E. Fisher
Associate Counsel

KEF/pkh



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David Morrison
Director

August 6, 2014

San Francisco Bay Regional Water Quality Control Board
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Oakland, Ca 94612-1482
ATTN: Anya Starovoytov

Dear Ms. Starovoytov,

The County appreciates the opportunity to provide comments on Notice of Preparation (NOP) regarding the scope and content of the environmental analysis for the proposed General Waste Discharge Requirements for Vineyard Discharges in the Napa River. The proposed project generally consists of the Water Board establishing General Waste Discharge Requirements (General WDRs) that regulate discharges of sediment and storm waste runoff originating from vineyard properties. The proposed General WDRs would require dischargers to assess, plan, and implement a suite of site-specific actions and best management practices targeted toward reducing erosion from vineyards and related facilities and road networks, gullies and shallow landslides, and points of concentrated storm water runoff.

Based on the NOP and draft Initial Study, the environmental resource topics of concern include air quality, biological resources, cultural resources, greenhouse gas emissions, and hydrology/water quality. Potential adverse impacts to these resources are anticipated to occur as a result of the implementation of General WDR program, which would involve new construction and grading activities associated with the implementation of best management practices. It is difficult for the County to provide a complete assessment of potential environmental impacts of the General WDR since the specific details have not been provided for review.

However, in an effort to minimize the potential for adverse impacts by reducing the overall scope of applicability, the County requests your consideration of an Alternative that focuses the application of the WDRs on those areas with the highest potential for erosion and concentrated runoff such as roads, vineyards on slopes greater than 5 percent that are not currently covered by a County approved erosion control plan and the restoration of riparian areas along Class I-III watercourses. The County would also like you to consider including a provision that would allow qualified County regulations or programs to serve as functional equivalents to the proposed General WDRs.

While we understand you are requesting comments solely on the potential impacts of the General WDR at this time, the County would appreciate the opportunity to provide comments on the details of

the General WDR and identify areas where the County's current regulatory framework may serve as a functional equivalent to the proposed program, among other details. The County will be in a position to provide additional details during the formal EIR comment period once the General WDR program is provided.

Regards,



Brian Bordona
Supervising Planner

Cc David Morrison, Planning Director
Laura Anderson, Deputy County Counsel
Leigh Sharp, Executive Director, Napa County Resource Conservation District



August 6, 2014

VIA EMAIL: email: astarovoytov@waterboards.ca.gov

San Francisco Bay Regional Water Quality Control Board
Ms. Anya Starovoytov
1515 Clay Street, Suite 1400
Oakland, California 94612-1482

Dear Ms. Starovoytov:

The Napa Valley Grapegrowers is a non-profit trade association representing over 690 Napa Valley vineyard owners and the majority of planted vineyard land in Napa County. We appreciate your interest in the ecological state of the Napa Valley watershed, and thank you for your time and effort in learning about the efforts, programs and regulations that Napa County implements in order to protect our watershed. We also appreciate the references to Napa County's beneficial programs and regulation noted in the Draft Environmental Impact Report for the proposed General Waste Discharge Requirements (WDR) for Vineyard Discharges in the Napa Rivers and Sonoma Creek Watersheds.

The 2014 harvest season has officially begun in Napa County, so we are concerned about the timeline of the stakeholder meetings and would like to recommend postponing these meetings until the January, February, March timeframe to ensure that our representatives, as well as those of other industry stakeholders, can continue to be involved and engaged in the discussion. We have also yet to receive the date for the August stakeholders meeting, and given the time of year, we are concerned that industry participation will be a challenge.

We thank you for acknowledging the steps we have taken and the work we have done within Napa County since the TMDL was completed. The most recent data we have seen indicates that all of our work has dramatically improved the health of the Napa River Watershed. We would encourage you to use the most recent data available to determine whether the WDRs are actually necessary or their implementation could be delayed until a full study is done.

We have reviewed the WDR and offer the following comments:

1. Limit the WDR to Vineyard Facilities and Roads related to Vineyard Operations

- The Vineyard measures in Table 4.1 of the Water Quality Control Plan for the San Francisco Bay Region ("Basin Plan") mirror the Grazing measures in Table 4.2 of the Basin Plan. Just as the Grazing Waiver focused exclusively on grazing land, the Vineyard Waiver should strictly focus on the Vineyard Facility and the Roads associated with Vineyard Operations.
- The Regional Board's response (Napa River Conditional Waiver response to Comments received in March 2012) as to why the WDR includes an entire property instead of just the vineyard facility states "that vineyard property landowners would not need to apply for another future road waiver". This should be a Landowner's choice and not a requirement of the WDR.

- Property Owners with 5 acres or more of vineyard on their property are at an equitable disadvantage compared to the same size property without a vineyard.
- The addition of rural lands (vineyard property instead of vineyard facility) to the vineyard WDR will add costs for a property owner whereas the TMDL/Basin Plan Amendment expressly stated in relation to vineyard surface erosion that “No new costs are associated with the proposed Basin Plan amendment as we rely on landowner compliance with Napa County’s Conservation Regulations to achieve sediment allocations for vineyard surface erosion.” (Napa River Sediment TMDL at 126 and 129 (Table 16.)

2. Limit application of the WDR to Vineyard properties of more than 40 acres

- The TMDL states that regulation of properties less than 40 acres is not intended (Napa River Sediment TMDL at page 77); yet the WDR’s selection of parcels as small as 5 acres with slopes less than 5% appears arbitrary and will include many *de minimus* discharges that have not been demonstrated to affect water quality.
- This WDR also appears to be inconsistent with the Regional Water Boards response to comments stating that “waivers may be implemented in phases, addressing larger sites, and sites with greater erosion potential first,” (Napa River Sediment TMDL at App. D, p.6 (Comment 2.9). The Regional Board needs to provide a nexus and scientific reasoning to support the decision to regulate parcels 80% smaller than 40 acres.
- 40-acre parcels would be more consistent with the Grazing Waiver, Order No. R2-2008-0054, which generally exempts property less than 50 acres. No explanation or justification for the 5-acre inclusion in the WDR exists and such support must be provided since this cutoff appears arbitrary.

3. Inclusion of additional “Low Sediment delivery” Exemptions – The Regional Water Boards response to comments stating that “[f]or small or de minimus discharges, we plan to create an *exemption* from requirement to submit a ROWD and/or to comply with all of the conditions of the WDR waiver program.” (Napa River Sediment TMDL at App. D, p.6 (Comment 2.9)(emphasis added.) Filing a notice of non-applicability should apply to the following sites:

- Vineyards where evidence exists that there are no discharges that could affect water quality. If there are no waterways or a vineyard could retain all water on site, then no WDR coverage should be needed.
- Vineyards that are certified under Fish Friendly Farming, Code of Sustainable Wine-Growing, or other County approved ECPs

4. Stream Definition – The WDR refers to a stream as a “Class I, II, III, or Class IV watercourse (as defined by California Forest Practice Rules) which is not consistent with local regulations. In addition, Class III and IV should be removed from the definition.

5. Stream Setbacks – The WDR attempts to create one definition for stream setbacks (whether it be Napa or Sonoma, new vineyard or replant), it is essential that compliance to the WDR would not result in inconsistencies with local regulations.

6. Remove the Nutrient and Pesticide Stormwater Runoff Performance Standard

- The Regional Water Board has made no findings or presented any evidence that vineyards or vineyard roads are substantial dischargers of nutrients or pesticides. Without showing that there is a likelihood of discharge of waste that could affect the quality of the waters of the state, no waste discharge requirements would be required under state law. (Wat. Code §13260(a)(1).)

The Napa Valley Grapegrowers encourages the Water Board to prepare the draft EIR in the spirit of the TMDL and Basin Plan amendment which focused on water quality protection while being sensitive to the creation of additional bureaucracy, including added landowner costs for complying that are already

covered by farm plans through other public and/or private entities. We recognize that it is essential to protect the watershed to ensure its health, which contributes to the success of agriculture and our livelihood.

We look forward to continuing to work with the Regional Board on development of the WDR. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "J. Putnam". The signature is fluid and cursive, with a large initial "J" and "P".

Jennifer K. Putnam
Chief Executive Officer & Executive Director
Napa Valley Grapegrowers

members

Black Stallion Winery

Cakebread Cellars

Catlin Farm

Constellation
Brands U.S.

Duckhorn Vineyards

Far Niente Winery

HALL Wines

Harlan Estate Winery

Joseph Phelps
Vineyards

Jackson Family Wines

Michael Mondavi
Family Estate

Piña Vineyard
Management

Round Pond Estate

Rombauer Vineyards

Silver Oak Cellars

Silverado Premium
Properties

Swanson Vineyards

Trefethen Family
Vineyards

Trinchero Family
Estates



WINEGROWERS
of napa county

August 6, 2014

VIA EMAIL: email: astarovoytov@waterboards.ca.gov

San Francisco Bay Regional Water Quality Control Board
Ms. Anya Starovoytov
1515 Clay Street, Suite 1400
Oakland, California 94612-1482

Re: Comments on the Initial Study for the proposed General Waste Discharge Requirements for Vineyard Discharges in the Napa River and Sonoma Creek Watersheds

Dear Ms. Starovoytov:

Winegrowers of Napa County ("Winegrowers") is a non-profit trade group consisting of twenty winery, vineyard manager, and grape grower members. Overall, our members produce a significant share of Napa County's total annual wine production and farm a sizeable portion of Napa County vineyards. The mission of Winegrowers is to promote and preserve sustainable agriculture as the highest and best use of the natural resources of Napa County. We appreciate the opportunity to comment on the Initial Study for the proposed General Waste Discharge Requirements for Vineyard Discharges in the Napa River and Sonoma Creek Watersheds.

The proposed General WDRs are overly duplicative with Napa County Conservation Regulations and impose economic impacts that have not been adequately disclosed to the public. The Basin Plan Amendment, Napa River Sediment Reduction and Habitat Enhancement Plan, Table 4.1 Required and Trackable TMDL Implementation Measures for Sediment Discharges Associated with Vineyards, at footnote 5 states that "Napa County Conservation Regulations (County Code, Chapter 18.108) are effective in the control of excessive sediment delivery resulting from vineyard surface erosion." Accordingly, any General WDR and associated environmental analysis should recognize the effectiveness of Napa County's existing regulation of vineyard development and not impose unnecessary, redundant and costly requirements on vineyard owners. The following recommendations and comments address these concerns:

1. Existing Regulatory Programs must be considered in evaluating the effectiveness and necessity of the General WDR and should be considered as alternatives

- The Napa River Sediment TMDL predicted (*without intervention from the Regional Board*) that, assuming a 20-25 year period for sediment TMDL implementation, 95% or more of the total projected hillside vineyard acreage would be permitted under the Napa County Conservation Regulations, up from the present 55%. (Napa River Sediment TMDL at page 80, n. 29.) The Basin Plan amendment also formally recognized the Fish Friendly Certification Program as an effective means of controlling pollutant discharges associated with vineyards and that approximately 7,000 acres had been certified as of 2009. (Napa River Sediment TMDL at pages 81 and 86, and at Appendix D at page 36, Comment 8.1.) In just



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- three years the number of certified acres has more than tripled to 25,660 certified acres. Yet, the proposed General WDRs ignore this progress and overlays a new and duplicative regulatory program without adequate justification or a demonstration of necessity. [See Gov't Code §§11353(b)(2)(C) and (b)(4) (incorporating, *inter alia*, the standards of necessity and non-duplication from section 11349.1(a).]
- The State Water Board's *Policy for the Implementation and Enforcement of the Non-Point Source Pollution Control Program* (May 20, 2004) ("NPS Policy"), (NPS Policy at page 4.) specifically recognizes third party programs administered by agencies *other than the Regional Board*, such as a county or Resource Conservation District ("RCD"). These agencies or entities can be linked to the RWQCB through a Memoranda of Understanding (MOUs) or Management Agency Agreements (MAAs) that delineate the roles and responsibilities of the individual entities in controlling NPS pollution. (NPS Policy at page 9-10.) Capitalizing on the success and experience of local agencies can achieve NPS control more efficiently by leveraging RWQCB limited staffing and financial resources. (*Ibid.*)

1. Statutorily mandated factors must be considered and included in the project objectives

- Before a Regional Board can implement any agricultural water quality control program for discharges from irrigated lands, Porter-Cologne requires that "an estimate of the total cost of the program, together with an identification of potential sources of financing, shall be indicated." (Wat. Code §13141.) In addition, for any water quality objectives being implemented in the Sediment TMDL and implemented through this agricultural waiver, the Regional Board must demonstrate that the factors set forth in Water Code section 13241 were considered, including "economic considerations" and "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." (Wat. Code, § 13241.) It is not clear that the underlying objectives contemplated the costs and attainability of such a regulatory program on vineyards or specifically considered each of the factors set forth in section 13241.

2. Limit the proposed General WDRs to Vineyard Facilities and Roads related to Vineyard Operations

- This approach would be consistent with the Basin Plan and in the public interest since it would build on existing programs in place, would limit new and unnecessary costs incurred by vineyard landowner/operators to achieve sediment allocations for surface erosion, and would encourage broad participation and compliance.
- The Vineyard measures in Table 4.1 of the Water Quality Control Plan for the San Francisco Bay Region ("Basin Plan") mirror the Grazing measures in Table 4.2 of the Basin Plan. Just as the Grazing Waiver focused exclusively on grazing land, the proposed General WDRs should strictly focus on the Vineyard Facility and the Roads associated with Vineyard operations. It should not include all roads located through the vineyard property.
- The Regional Board's response (Napa River Conditional Waiver response to Comments received in March 2012) as to why the WDRs include an entire property instead of just the vineyard facility states "that vineyard property landowners would not need to apply for another future road waiver". This should be a Landowner's choice and not a requirement of the WDR. In addition, a vineyard property may have vineyard operations (possibly leased or professionally managed) and non-vineyard operations (non-farmed) and it is not practical to have two different parties trying to comply with the proposed General WDRs.
- The addition of rural lands (vineyard property instead of vineyard facility) to the proposed General WDRs will add costs for a property owner whereas the TMDL/Basin Plan Amendment expressly stated in relation to vineyard surface erosion that "No new costs are associated with the proposed Basin Plan amendment as we rely on landowner compliance with Napa County's Conservation Regulations to achieve sediment allocations for vineyard



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surface erosion.” (Napa River Sediment TMDL at 126 and 129 (Table 16.) Since the proposed General WDRs go beyond what was expressly stated in the Basin Plan amendment, it would violate Water Code section 13269(a)(1) as *inconsistent* with the Basin Plan and would not be in the public interest.

3. Limit application of the WDR to Vineyards that are more than 40 acres

- The TMDL states that regulation of properties less than 40 acres is not intended, “We expect to define a minimum threshold, in terms of potential sediment delivery to channels caused by human activities from a given parcel that would trigger the requirement to prepare and implement a sediment control plan. In other words, we do not expect or intend to implement sediment control regulations or permit requirements on most small- or medium-sized landowners (e.g., < 40 acres) in the Napa River watershed, except where such lands have the potential to deliver a significant amount of human caused sediment discharges to the channel network (e.g., ground disturbing activities are occurring over large proportion of the property or in sensitive areas, there is an extensive road network, etc.). We will work with knowledgeable and interested parties to study this issue and ultimately to develop fair and defensible thresholds for responsibility to prepare and implement a sediment control plan.”(Napa River Sediment TMDL at page 77); yet the proposed General WDR’s selection of parcels as small as 5 acres with slopes less than 5% appears arbitrary and will include many *de minimus* discharges that have not been demonstrated to affect water quality.
- The proposed General WDRs also appear to be inconsistent with the Regional Water Boards response to comments stating that “waivers may be implemented in phases, addressing larger sites, and sites with greater erosion potential first,” (Napa River Sediment TMDL at App. D, p.6 (Comment 2.9). The Regional Board needs to provide a nexus and scientific reasoning to support the decision to regulate parcels 80% smaller than 40 acres.
- 40-acre parcels would be more consistent with the Grazing Waiver, Order No. R2-2008-0054, which generally exempts property less than 50 acres. No explanation or justification for the 5-acre inclusion in the WDR exists and such support must be provided since this cutoff appears arbitrary.

4. Inclusion of additional “Low Sediment delivery” Exemptions – The Regional Boards response to comments on the Napa River Sediment TMDL states that “[f]or small or diminimus discharges, we plan to create an *exemption* from requirement to submit a ROWD and/or to comply with all of the conditions of the WDR waiver program.” (Napa River Sediment TMDL at App. D, p.6 (Comment 2.9)(emphasis added.) Filing a notice of non-applicability should apply to the following sites:

- Vineyards where evidence exists that there are no discharges that could affect water quality. If there are no waterways or a vineyard could retain all water onsite, then no WDR coverage should be needed.
- Vineyards that have participated in Riparian Restoration Projects in the Napa and Sonoma Creek watersheds. The landowners who participate(d) in these projects (i.e. the Rutherford reach, the Oakville to Oak Knoll reach) should be rewarded and recognized for their voluntary collaborative restoration efforts.

5. Scope of Analysis – Project Description and analysis must quantify and discuss the reasonably foreseeable extent of the road improvements, landslide repairs, culvert replacements, detention basins, etc. that will be undertaken as a result of the proposed General WDRs in order to adequately disclose, and mitigate for construction related impacts resulting from implementation of the proposed General WDRs.

6. Clarify the sentence “The vineyard is developed on a slope \leq 5 percent.” – Does this mean the average slope of the property is less than 5% or that every slope on the property is less than 5%?



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7. **Clarify the phrase “slopes of more than 30 percent”** – The proposed General WDRs exclude new vineyards with slopes greater than 30 percent. Does this mean where any slope on the property exceeds 30%, or where the average slope of the property exceeds 30%?
8. **Stream Definition** – The proposed General WDRs refer to a stream as a “Class I, II, III, or Class IV watercourse (as defined by California Forest Practice Rules), which is not consistent with local regulations. In addition, Class III and IV should be removed from the definition.
9. **Stream Setbacks** – The WDR attempts to create one definition for stream setbacks (whether it be Napa or Sonoma, new vineyard or replant), it is essential that compliance to the proposed General WDR would not result in inconsistencies with local regulations.
10. **Remove the Nutrient and Pesticide Stormwater Runoff Performance Standard**
 - The Regional Water Board has made no findings or presented any evidence that vineyards or vineyard roads are substantial dischargers of nutrients or pesticides. Without a showing that there is a likelihood of discharge of waste that could affect the quality of the waters of the state, no waste discharge requirements would be required under state law. (Wat. Code §13260(a)(1).)

In addition to our comments above, we echo the comments reflected in the Farm Bureau’s letter dated August 6, 2014. Winegrowers encourages the Water Board to prepare the draft EIR in the spirit of the TMDL and Basin Plan amendment which focused on water quality protection while being sensitive to the creation of additional bureaucracy. We recognize that maintaining a healthy functioning watershed is essential to protecting the watershed as well as agriculture and our livelihood.

We look forward to continuing to work with the Regional Board on development of the WDR and reserve the right to offer additional comments. Thank you for your consideration.

Respectfully submitted,

Michelle Benvenuto
Executive Director
Winegrowers of Napa County

Law Offices of
THOMAS N. LIPPE, APC

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August 5, 2014

By Email

Attn: Anya Starovoytov
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California, 94612-1482
Phone: (510) 622-2506
email: astarovoytov@waterboards.ca.gov

Re: Scoping Comments re General Waste Discharge Requirements for Vineyard
Discharges in the Napa River and Sonoma Creek Watershed

Dear Ms. Starovoytov:

This office represents Living Rivers Council (“LRC”), a non-profit association, with respect to the General Waste Discharge Requirements for Vineyard Discharges in the Napa River and Sonoma Creek Watershed. I write on LRC’s behalf to submit scoping comments on the proposed General Waste Discharge Requirements and its environmental review.

As you know, LRC has previously submitted voluminous comments on the Basin Plan Amendment for the Napa River Sediment Total Maximum Daily Load (“Napa River Sediment TMDL”) including:

1. May 17, 2010 comment letter from my office to the State Board, including:
 - a. Comment letter dated August 5, 2010 from Dennis Jackson;
 - b. Comment letter dated August 17, 2010 from Patrick Higgins;
2. July 6, 2009 comment letter from my office to the Regional Board, including:
 - a. Comment letter dated July 5, 2009 from Dennis Jackson;
 - b. Comment letter dated July 2, 2009 from Dennis Jackson;
 - c. Comment letter dated July 2, 2009 from Patrick Higgins;
3. October 20, 2008 comment letter from my office to the Regional Board, including:

- a. Comment letter dated October 19, 2008 from Dr. Robert Curry;
- b. Comment letter dated October 17, 2008 from Dennis Jackson;
4. May 7, 2008 comment letter from my office to the State Board, including:
 - a. Comment letter dated April 24, 2008 from Dennis Jackson regarding the Napa River Sediment TMDL;
 - b. Comment letter dated May 7, 2008 from Patrick Higgins regarding the Napa River Sediment TMDL;
 - c. Comment letter dated May 7, 2008 from Dr. Robert Curry regarding the Napa River Sediment TMDL attached hereto as Exhibit 6.
5. August 15, 2006 comment letter from my office to the Regional Board, including:
 - a. Comment letter dated August 11, 2006 from Dr. Robert Curry;
 - b. Comment letter dated August 11, 2006 from Dennis Jackson;
 - c. Comment letter dated August 12, 2006 from Patrick Higgins.

As discussed in LRC's previous comments on the Napa River Sediment TMDL, efforts to comply with the TMDL's performance standard for controlling surface erosion often lead to increases in runoff by efficiently channeling and directing surface and subsurface flows to downstream channels; and this is a primary vector causing channel incision, channel instability, bank failures, and increases in sediment transport to low gradient reaches of Napa River tributary streams and to the Napa River. The environmental review for the waiver policy should evaluate this mechanism of impact.

LRC has also previously submitted voluminous comments on the Policy for Maintaining Instream Flows in Northern California Coastal Streams (Instream Flow Policy) including:

1. March 25, 2010 comment letter from my office to the State Board, including:
 - a. Comment letter dated March 22, 2010 from Dennis Jackson;
 - b. Comment letter dated March 23, 2010 from Dennis Jackson;

- c. Comment letter dated October 19, 2008 from Dennis Jackson regarding the DEIR for Rodgers/Upper Range Vineyard Project Conversion.
2. March 25, 2010 comment letter from Patrick Higgins to the State Board.
3. April 23, 2010 comment letter from my office to the State Board.
4. April 30, 2010 comment letter from my office to the State Board, including:
 - a. Comment letter dated April 28, 2010 from Dennis Jackson.

As you know from these comments, groundwater is the primary source of summer base flow in streams in the Policy area and in the Napa river watershed. Also, groundwater pumping, whether as a consequence of adoption on the Instream Flow Policy or otherwise, has a deleterious impact on surface flows and anadromous fish habitat where there is a hydraulic connection between wells and stream flow. For example, pumping groundwater from alluvial aquifers decreases groundwater contributions to summer base flows. In addition, groundwater is a source of cold water that moderates increases in stream flow temperature; therefore, depletion of groundwater contributions to streamflow endangers cold water fish (i.e., salmonids) by contributing to thermal pollution. Additionally, diminished flows exacerbate sedimentation impacts from agricultural operations by contributing to sediment deposition in channels at points of convergence that are often preferred spawning sites.

The environmental review of the General Waste Discharge Requirements must evaluate the extent to which the granting of waivers from Basin Plan regulations and from the General Waste Discharge Requirements will contribute to these ongoing adverse environmental conditions.

In addition, the Board apparently intends to base waivers on assurances provided by private sector consultants that are embodied in so-called "Farm Plans." This approach will out-source a large share of the burden of regulating vineyard compliance with the Basin Plan through the waiver policy to private non-governmental entities. The process as explained at the scoping meeting held on the waiver policy on April 14, 2011 represents an unconstitutional delegation of governmental authority to the regulated community. See *Bayside Timber Co. v. Board of Supervisors* (1971) 20 Cal. App. 3d 1. In addition, the extent to which the policy includes Board reliance on private sector assurances must be clearly described in the project description and the environmental impact of such reliance thoroughly evaluated.

Finally, the waiver policy will severely limit the public's ability to be informed of waiver decisions and projects that may harm the environment and to participate in the Board's decision whether to grant a waiver. Therefore, the opportunities for and constraints on public participation that will be part of the waiver policy must be clearly described in the project description and the

Anya Starovoytov
San Francisco Bay Regional Water Quality Control Board
Scoping Comments re General Waste Discharge Requirements for Vineyard Discharges in the
Napa River and Sonoma Creek Watershed
August 5, 2014
Page 4

environmental impact of limiting public participation thoroughly evaluated.

Thank you for your attention to these comments.

Very truly yours,



Thomas N. Lippe



NORTH BAY AGRICULTURE ALLIANCE

**21885 Eighth Street East
Sonoma, CA 95476
(707) 938-8888**

Representing over 35,000 acres of San Pablo Bay shorelands

August 6, 2014

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Attn: Anya Starovpytov, astrarovoytov@waterboards.ca.gov

Comment Letter:

EIR Scope on General WDRs for Napa River and Sonoma Creek Vineyard Discharges

Board Chair and Members:

North Bay Agriculture Alliance's 50-plus members represent over 35,000 acres of agricultural and environmental lands at and around the mouths of Napa River and Sonoma Creek. Most of our members are also members of the Farm Bureau. As such, we have had an opportunity to preview the comment letter being submitted by the California Farm Bureau Federation (CFBF). We fully support their observations and recommendations. Please consider the CFBF comments also as ours.

We have participated in the Sonoma Creek TMDL project for more than a decade. The project started as an effort to protect steelhead trout and, to a lesser extent, Chinook salmon and California freshwater shrimp. Excessive sediment was considered as a limiting factor for propagation of these species. Plans were then developed to control the sediment input to the stream in practicable, cost-effective, and legal manners. The proposed WDRs are presumably the best plan to attain the ultimate goal of species protection.

The aforementioned hierarchy of objectives and constraints must be kept in mind in finalizing the scope and carrying out the EIR. Ideally each alternative should be analyzed in terms of its effect on the species population and health. Where such analyses are difficult to perform, at least the sediment input by source and location should be quantified for each alternative, keeping in mind that the sediment reduction level may not directly correlate with the species propagation. At the same time, the cost-effectiveness and lawfulness of each proposed measures should be examined.

Detailed recommendations for scoping are presented in the CFBF letter. As for the Sonoma Creek watershed, the Initial Study states that only 12% of the total sediment comes from vineyards (p. 18, Table 4) while planted vineyards account for 14% of the watershed area (and vineyard parcels, 32%). We will be interested in knowing how much further reduction can be expected from each alternative, and how they will help achieve our ultimate goal at what price.

Respectfully submitted,

Tito Sasaki, President

 UNITED
WINEGROWERS
for Sonoma County

August 6, 2014

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612-1482

ATTN: Anya Starovoytov

Dear Ms. Starovoytov:

I believe in the end this should be a relatively simple and easy EIR to complete. Though the Project is yet to be defined, its focus is to have landowners utilize a suite of practices that result in them making additional improvements appropriate to their land. Each of the list of Likely Compliance Actions in Table 2 would result in benefits to the environment.

It should also be based on a solid foundation. The numbers cited for vineyards need to reflect actual acreage in the watershed. This is true as well for Roads. The TMDL reports include a number for road miles in the watershed. That number was used to form the basis for the TMDL's sediment reduction goals and numeric performance standards. However, by proposing to cover and include "road networks," the number of miles is now far different. One Project Alternative may be to exclude large parcels with only a few acres of vineyard but many miles of "road network." It too would be a benefit to the preparers of the EIR and the public to be able to access all the background materials and studies done by Trso and others for the TMDL reports.

I would encourage including all the options possible for Third Party certification.

Thank you for this opportunity to provide scoping comments.

Sincerely,



Bob Anderson, Executive Director
United Winegrowers for Sonoma County
P.O. Box 382
Santa Rosa, CA 95402

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████████████████████