



UNITED  
WINEGROWERS  
for Sonoma County

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VIA EMAIL: SMPOTTER@WATERBOARDS.CA.GOV

February 2, 2013

Chairman John Muller  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, California 94612

RE: Vineyard and Roads Waiver

Dear Chairman Muller and members of the Board:

Our request is that you conclude as we have that 1) the recommendations before you are flawed and 2) a different approach is required in order to have a Waiver that works for vineyards and roads in the Napa River and Sonoma Creek watersheds.

We find that:

- **The record before you does not support the requested action.**
- **The proposed approach is wrong for these times and the TMDLs' goals.**
- **The road requirements need review by rural landowners and public works.**
- **It is not clear how a property will be excluded, covered or denied access.**

**Record:**

In 2011 the Regional Board completed a field study evaluating the current state of storm runoff. This review of eight hillslope vineyard properties was by the consultant who did the 2003-4 work which formed the basis for the Napa River Sediment Budget. Both studies were completed by Martin Trso, an Engineering and Environmental Geologist/Geomorphologist.

In his 2011 report, Trso wrote:

“ ...at most vineyard drainage outlets, we observed no erosion or only a moderate amount of erosion (e.g., small gullies, small slide scar(s),...All points of storm runoff discharge, where erosion was observed, were treated to control sediment delivery by armoring scars (where they occurred) or extending the point of discharge to a channel at grade....Since 2004, all of the large sediment sources (e.g., active gullies and shallow landslides) were treated to control erosion...

We conclude that the proportion of land-use related sediment delivery to channels likely is much lower at present than documented in 2003-4 period (emphasis added)."

As identified in the 2009 Staff Report, the target for the Napa River TMDL is to reduce the annual average sediment supply by about one-third from current value to approximately 325 metric tons per km<sup>2</sup> per year (1.46 tons/ac/yr) at Soda Creek (p. 71). Given Trso's recent work, it is true much has been accomplished already. What amount in the sediment budget is assumed met and covered by the Vineyard and Roads Waiver?

It is key we know at the start how our efforts will be measured.

Sonoma Creek's target is set at 180 metric tons/ km<sup>2</sup> per year (a number 45% more restrictive or demanding than Napa River's). It is a measure of the sediment passing monitoring points on the mainstem, just downstream of the Fowler/Carriger Creek confluence, and the freshwater portions (above tidal influence) of Schell, Ramos, Carneros, and Merazo Creeks (p. 62). Vineyards (14,700 acres), grazed lands (8,700 acres) and minor agriculture all taken together are set to contribute 13 percent of the reduction needed and all roads 17%. Reduction in channel incisions are to contribute 67%, with a total sediment reduction for the watershed of 52,400 tons per year (p.60).

The 2005 Sonoma Creek TMDL staff report states, "a large portion of vineyards in the Sonoma Creek watershed already implement best management practices...(i.e., 80 percent of needed actions are already implemented or required by VESCO) (emphasis added)" (p.148).

Based on the record showing that practices already exist in both watersheds, we do not see the basis or need for a significant new regulatory sediment reduction program targeting vineyards.

### **Approach:**

Fish Friendly Farming (FFF) is cited numerous times in the TMDL documents as an example of the kind of program that would satisfy the Regional Board's requirements. During the CEQA workshop at the Napa Library, Board staff made the point that the Napa County Conservation Ordinance was not sufficiently broad but said a Farm Plan program like FFF would be. It is an accepted fact that a large percentage of individual growers already participate in such programs.

However, the draft Waiver has been expanded to include a host of conditional requirements that reach beyond FFF, the TMDL and the water quality impacts of present-day vineyard operations. What began with a Limiting Factors Analysis based on fine sediment has since morphed into a draft Waiver with less-than-clear requirements for nutrient management, compost storage, pesticide storage, onsite water infiltration, cover crop/tillage/mulch, vegetated filter strips, disconnecting roads (over the next 20 years) and practices that slow, spread, sink and reduce storm runoff. Getting to look more like the White House Christmas tree.

If constructing new sediment basins, the draft Waiver also imposes requirements to protect sensitive species. This suggests to us the need to actually control sediment is actually not controlling rather the Waiver has given priority to non-sediment concerns. A vineyard could

demonstrate full compliance with the requirements contained in Table 2. Yet, due to the language elsewhere for sensitive species, find that it is outside the Waiver and denied coverage.

The approach in the draft Waiver is to develop individual Farm Plans and pay an annual fee. Programs like FFF work because of the involvement, action and cooperation of individual landowners. However, the measures of success to meet the TMDL's sediment reduction targets are set for the whole of the watershed, not for individuals. It is not clear how these two different approaches end up getting the Regional Board/TMDL and growers to the same place.

Going forward, knowing how growers are, they will do all that is required and then a little more. Yet, if the watershed sediment reduction targets are not fully met, will participating growers be held harmless to remedial action five and ten years down the road or not? It needs to be clearly stated that the Regional Board and cooperating agencies agree that the approach taken in the Waiver means individual participation will be accepted as fully satisfying all the needs and expectations of the regulation.

### **Roads:**

Anyone driving rural roads knows well their poor current state. And, anyone looking at the County's road budget knows too the demands far exceed limited maintenance funds. Imposing an additional management requirement that no more than 25% of Roads are still receiving waters within the TMDL's 20-year implementation timeframe is at best another unfunded liability for local landowners' and public works' budgets.

You can count the miles, you can inventory the crossings and we can all dream what we'd like to see done. But, the fact remains, achieving that level of improvement, improvements that meet the requirement that 75% of the public's roads are to be disconnected from the rain that falls on them, represents a very tall order in these hard economic times.

And, we hope you don't see an option that if you impose this requirement on roads on vineyard owners in this Waiver, it will be possible later to do something different for all other entities with roads in these same watersheds. Our advice, before setting the 75% precedent, best make sure all the affected parties are involved and the requirement can reasonably be achieved.

### **Coverage:**

We note that the Waiver excludes a certain class of vineyards from having to seek a Waiver. On the other end, it outright denies access to the Waiver to another whole class of existing vineyards. And, in a third case, Regional Board staff may in the future decide either to cancel the exclusion and require an individual's participation or simply to deny access.

Eventually tough questions will follow. Enforcement actions proposed: Who's in, who's out. Interpretations will have to be made. What are the criteria for a parcel to qualify and meet the less-than-five percent slope (plus the additional qualifications that it is not near a stream and has adequate riparian setbacks)? Or, what determines an existing vineyard exceeds the 30 percent

threshold? Is that an exclusion for all or part? What happens in the case of disease? What if the footprint or drainage system does not change? What if management practices are undertaken that will meet the Table 2 requirements to “slow, sink, spread and otherwise reduce storm runoff” per the Farm Plan? Are there no instances that work? From the outset, there must be criteria for use by any vineyards excluded from this Waiver that clearly outlines what they can do to be in compliance when having to replant. What analysis was done to warrant denying coverage to a whole class of existing agricultural operations?

The Waiver states that landowners will have to decide by April 13<sup>th</sup> if they are in or out. It is less than clear the basis for how they are to make that decision or how the Regional Board will dispute those who may make what the Board thinks was a wrong decision. If it is a straight forward technical determination – black or white – there should be a map to show where each vineyard belongs. We do know the way it works is that trouble starts as soon as one makes the wrong decision and fails to file.

### **Summary:**

In the end, we find that not everything fits: Vineyards contribute only a small portion of the sediment budget. Your consultants, and the record, support our conclusion that current vineyard practices are currently being very protective of water quality. Targets for sediment reduction are watershed wide; though, the draft Waiver is based on developing individual Farm Plans. In these economic times, there aren't agency resources to support working at the individual property level. In these two watersheds, a successful stewardship framework exists already. Both counties are unique and have years of experience requiring vineyards to submit plans and subjecting their on-the-ground improvements to inspection. A variety of voluntary land stewardship programs are also up and running and have attracted widespread participation.

To be successful, the Waiver needs to expand on those partnerships: We believe all will be well-served if you do not approve the draft. We urge you to take the time and develop a simpler, more cooperative approach. Do that and you will see long-lasting benefits for the Regional Board, landowners and public. Taking a different approach will assure that all parties work together and, in the process, end up doing a better job of protecting the natural resources in these two watersheds.

On behalf of the Board of Directors of United Winegrowers for Sonoma County,

Sincerely,



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