



Southern Sonoma County Resource Conservation District  
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January 18, 2013

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

**RE: Conditional Waiver of Waste Discharge Requirements for Discharges from Eligible Vineyard Properties in the Napa River and Sonoma Creek Watersheds**

Dear Ms. Potter,

The Southern Sonoma County Resource Conservation District (RCD) appreciates the opportunity to comment on the proposed Conditional Waiver of Waste Discharge Requirements for Vineyard Properties in the Napa River and Sonoma Creek Watersheds (Vineyard Waiver). RCD staff has committed a considerable amount of time working with the Technical Advisory Committee and the Stakeholder Advisory Group convened by Water Board staff during formulation of the proposed Waiver. We thank you and Mr. Ponton for your efforts to meet with stakeholders and to better understand vineyard management practices and local regulations.

The RCD is a non-regulatory, Special District that was established in Southern Sonoma County in 1947. We serve our community through providing technical and financial assistance for implementation of conservation practices and offering natural resource education opportunities in Southern Sonoma County. We have been a leader in the development and implementation of such practices in our area for the last two decades.

While the current draft of the Vineyard Waiver is significantly improved from earlier versions, we continue to believe that the tentative order, as currently written is complex, redundant with existing regulations, and have the potential to be very costly to landowners. We have spent a considerable amount of time discussing the Vineyard Waiver with local agricultural industry leaders and we share many of their concerns. We support adoption of a reasonable vineyard waiver program but do not support adoption of the vineyard waiver as currently drafted. Please consider the following:

Sonoma County is at the forefront of implementing practices and projects for water quality and environmental protection.

Additional complex regulatory compliances will be counterproductive to current conservation actions. Sonoma County and its agricultural community have long been at the forefront of implementing resource conservation practices that have reduced sediment inputs to streams and

improved water quality in the Sonoma Creek watershed. In 2000, the County enacted the Vineyard Erosion and Sediment Control Ordinance (VESCO), which require engineered erosion control plans for new and replanted hillside vineyards and precluded new development near streams. In 2012, the County adopted an addition to this ordinance named “Tree Removal and Erosion Control.”

In 1993 the RCD completed a vineyard conservation plan document, called “The Vineyard Manual- A Grapegrower’s Manual for Vineyard Development and Maintenance” with wide participation throughout the Sonoma Creek Watershed. In addition, the agricultural community in Sonoma County and its industry groups are leaders in supporting, participating in, and operating programs and projects that promote resource protection and sustainability. Implementation of local regulations and voluntary actions undertaken in the Sonoma Creek watershed and throughout the County are working to protect and enhance the resources in the Sonoma Creek watershed. We are concerned that the Vineyard Waiver will be an additional complex regulatory requirement with potentially significant punitive measures that will undermine and be counterproductive to past and current conservation actions.

Over the last several years, many vineyard landowners/operators have already established management practices which improve water quality either because it is right thing to do and/or it is required by County ordinances, grazing waiver implementation, etc. These management practices may have included reducing the percentage of roads on the Vineyard Property that are hydrologically connected to receiving waters. We’d like to request that previous water quality improvements be applied to compliance requirements in this Vineyard Waiver.

The current eligibility criteria are confusing and should mirror local regulations to assist the grower community with compliance

We would like to recommend the following changes to reconcile the conditions in the Vineyard Waiver to the Sonoma County Vineyard and Erosion Control Ordinance:

- 1) **Slope definition:** Sonoma County defines slope by the tightest contour of the cultivated area; however, the Vineyard Waiver describes eligibility for coverage relative to slope of the Vineyard Facility.
- 2) **Small vineyard cutoff:** We would like to request that the waiver language clarify if the small vineyard cutoff of less than 5 acres is specific to less than 5 *planted acres* or specific to *Vineyard Facilities* of less than 5 acres.
- 3) **Vineyard Re-Plants Item 2 A) (pg. 13):** We would like to request that this exclusion be removed from the Vineyard Waiver language and a condition be added after **Conditional Waiver Water Quality Requirements 3b)** stating that: *re-planting of vineyards on over 30% slope and on highly erosive soils will comply with conditions stated in the Sonoma County Vineyard and Erosion Control Ordinance.*
- 4) **Set-backs:** Vehicle areas that are planted and meet the definition and benefits of a stream setback should be included in the setback width and length determination.

Requirements of the Vineyard Waiver may be an economic hardship for landowners and the burden of the requirements puts our local agricultural industry at a disadvantage when compared to similar industries and businesses within the San Francisco Bay Region. Additional analysis regarding the cost to comply with the Vineyard Waiver needs to be conducted.

We are concerned that the Vineyard Waiver, in its current format, will be a significant financial hardship to many landowners. We have recently completed a road erosion reduction project in neighboring Mark West watershed where the work was focused on addressing high- and moderate-high- priority erosion sites and chronic road surface erosion in proximity of those sites. The cost of the construction work alone, not including planning, permitting, environmental review, oversight, monitoring, etc., was \$46,000/mile. The construction cost to implement road-erosion reduction as described in the Vineyard Waiver will be significantly higher since the waiver does not specifically target high-priority erosion sites but rather takes a broader approach to treat considerably more erosion sites and 50% of hydrologically connected road lengths.<sup>1</sup> We request that you revisit assumptions related to the cost of compliance with the Vineyard Waiver and include more realistic cost estimates. In addition, given current and projected State and Federal budgets and the extremely competitive nature of grant funds, it is not realistic to assume, as stated in the Basin Plan Amendment, “that at least 75 percent of the cost of these actions will be paid for with public funds.” It is important that the Regional Board continue to provide financial assistance, but assuming that 75% of the cost of implementing the full Vineyard Waiver will be available from public funds is not realistic or practical.

Timelines for meeting performance standards are not reasonable and do not provide for flexibility to respond to changing circumstances.

Very little direct landowner/operator outreach has been conducted by the Water Board staff in the Sonoma Creek Watershed on the basic concepts and requirements of the Vineyard Waiver. Although we appreciate the efforts of Water Board staff in conducting stakeholder group meetings, our grower community has expressed serious concerns about the lack of knowledge by growers in the watershed about the waiver and its requirements. Because of this we are recommending an extension from 12 to 18-24 months for landowners/operators to complete their farm plans. This will allow Water Board staff time to conduct much needed outreach about the waiver and its requirements and allow landowners/operators the time and resources to complete their plans.

Farm Water Quality Plan (farm plan) implementation and timelines therein need to be reasonable and flexible so that landowners can responsibly manage their finances and respond to changing circumstances (e.g., environmental, financial, project feasibility, etc.). Without flexibility to adaptively manage and update farm plans, it is conceivable that landowners will be held to unreasonable expectations and may face violations if they are not able to implement their farm plan according to schedule. In our experience, many of the implementation actions recommended in the Vineyard Waiver require detailed engineering and design, environmental review, multiple permits with conditions of their own, and they can be cost prohibitive. Any of these circumstances can delay a project. It is not realistic to assume that all or most actions to meet required performance standards can be implemented in a period of five years, specifically actions to meet performance standards for *gullies and shallow landslides and storm runoff*.

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<sup>1</sup> This is only one example; additional cost estimates for other management practices may be available through the Petaluma Field Office of the Natural Resources Conservation Service.

Expectations of and requirements of Third Party Technical Assistance Groups need to be respectful of the relationship between participants and the organizations operating the groups. Third Party Technical Assistance Groups must not be required to report compliance and non-compliance to the Water Board.

The RCD has a long history of working with landowners in Southern Sonoma County and providing them with technical assistance to meet local regulations and to undertake voluntary restoration projects. The agricultural industry groups and many individual growers have expressed interest in obtaining our assistance to prepare and implement farm plans required under a regulatory waiver program. The Water Board has identified the RCD as a possible “Third Party Technical Assistance Group” to assist landowners and the RCD has received a 319h grant to provide such services in Sonoma Creek. The RCD intends to provide technical assistance and help with farm plan preparation regardless of whether or not we become an approved Third Party Technical Assistance Group. However, the RCD will not act as informants to the Water Board regarding non-compliance as part of “tracking” and “evaluating” third-party group participants or as part of any other requirement. As currently written, we are not assured that Third Party Technical Assistance Groups will not be required to perform non-compliance reporting. Please change the language in **Compliance Monitoring and Reporting 7 e)** to state that: *“ The Landowner/Operator of Vineyard Facilities shall submit an electronic compliance form annually to the water board, certifying whether their facility meets the conditions of the Conditional Waiver and that the Farm Water Quality Plan is being implemented according to all milestones and schedules.”*

In attachment C under Role of Approved Third Party Group we recommend the following language on the role of the third party group as it pertains to annual reporting and compliance:

*“Description of process for assisting landowner/operator of Vineyard Facilities with completing annual compliance forms.*

*-A Third Party Technical Assistance Group may assist landowner/operator with submitting their individual annual compliance form electronically to the Water Board. Third Party Technical Assistance Groups are not required to report who is, or isn't, in compliance with the Conditional Waiver to the Water Board. “*

In addition, the RCD would like to reiterate the importance of keeping farm plans at the vineyard properties and not submitting farm plans directly to Third Party Technical Assistance Groups, Discharger Groups, Farm Plan Certification Programs and/or the Water Board. We would like an opportunity to work with staff to revise the Vineyard Waiver, including Attachment C, so that the RCD can continue to maintain confidential and trusting relationships with landowners and also meet the requirements of a Third Party Technical Assistance Group.

A fair and equitable process for Third Party Group approval needs to be developed and the timeline for NOI submittal needs change.

The short timeline currently provided for growers to file an NOI is insufficient. Unlike the grazing waiver which was implemented in the Napa and Sonoma Creek watersheds, the proposed waiver requires fees and sets forth a structured “Third Party Group” approval process. Third Party Groups need time to develop application materials responsive to the waiver and would benefit from a fair and equitable review process. Growers need time to consider their compliance options and review Third Party Groups.

To ensure a fair and equitable approval process for Third Party Group applicants, we recommend that you follow a process similar to typical grant submittal processes:

- 1) After the waiver is adopted, release a notice seeking applicants,
- 2) Provide 30 days for groups to apply,
- 3) Conduct review of applicants and assist applicants to meet requirements,
- 4) Publically announce approved third party groups,
- 5) After announcement of approved groups, provide 60 days for NOI submittal.

The roles, responsibilities, and process of becoming a Discharger Group need to be articulated prior to approval of the tentative order.

Given the fee schedule established by the State Water Board and the fee-based nature of the Vineyard Waiver, “discharger groups” (as identified in “Annual Fees”) will undoubtedly be formed on behalf of “Landowners/Operators” to assist with fee collection and payment. The proposed Vineyard Waiver does not establish the requirements of and process to become a “discharger group.” As an organization potentially interested in fulfilling this role, we request that you clarify the roles, responsibilities, requirements and process of becoming a “discharger group” prior to approval of the tentative order.

Compliance Monitoring and Reporting should provide clarifying language about landowners/operators in flood prone areas

The southern portion of the Sonoma Creek watershed is heavily impacted by floodwaters from upstream activities and the impacts of San Pablo Bay. We would like to request the following language be added to **Compliance Monitoring and Reporting 7b**) to state that: *“Properties in flood prone areas will not be penalized for lack of site readiness or subject to inspection after flood events.”*

Requirements of the farm plan are confusing, complex and redundant.

We recognize the challenge of drafting farm plan requirements and we appreciate your efforts to incorporate stakeholder input to focus the content of the farm plan to address water quality conditions. While improvements have been made, we believe that the document (Attachment D) is still confusing, complex, and redundant (redundant within the document and with current regulations). We recommend that you make additional changes to the farm plan requirements to reduce the complexity of each of the elements and to minimize the amount of redundancy with other existing regulations

With regard to the “Road Management Element” of the farm plan, we support requiring actions to minimize the potential for stream crossings to fail and actions to manage runoff so that it is not concentrated or directed onto unstable areas or directly discharged to receiving waters. However, we discourage you from requiring quantification of the percentage of roadway length that is “hydrologically connected” to receiving waters. Rather than quantification of hydrologically connected road length, we recommend that you encourage landowners to prioritize their road treatment actions so that locations where sediment delivery (or potential sediment delivery in the case of a failure) is high are treated in the near term.

To be successful, it is important that the Vineyard Waiver be mindful of our agricultural industry, be well thought-out, demonstrate clear environmental benefit and cost-effectiveness, and be well understood by the community. We would be happy to work with you and members of the Water Board to further refine the Vineyard Waiver so that it is compatible with our natural resources and with agricultural community.

Please do not hesitate to contact Kara Heckert on our staff if you have any questions about these comments.

Sincerely yours,

Southern Sonoma County RCD Board of Directors

cc: Members of the San Francisco Regional Water Quality Control Board  
Sonoma County Board of Supervisors  
Senator Noreen Evans  
Assemblymember Marc Levine  
Congressman Mike Thompson  
Sonoma Valley Vintners and Growers Association  
Sonoma County Winegrape Commission