



SONOMA COUNTY FARM BUREAU

Affiliated with the California Farm Bureau Federation and the American Farm Bureau Federation



January 28, 2013

To: San Francisco Bay Regional Water Quality Control Board
Attention: Sandi Potter
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,

Thank you for providing the opportunity to comment on the San Francisco Bay Regional Water Quality Control Board's draft *Conditional Waiver of Waste Discharge Requirements* (Conditional Waiver). We very much appreciate the willingness of you and the Regional Water Board staff to listen and take into consideration the comments and concerns of stakeholders during this process. We have the following comments about the Conditional Waiver:

- A) In the Basin Plan chart designating beneficial uses for water from the Napa River, Sonoma Creek and San Pablo Bay (p. 3 of the Conditional Waiver), water used for agriculture is not designated as a beneficial use for Sonoma Creek and the San Pablo Bay. We strongly believe that supplying water for agriculture is a beneficial use, and would ask that the Basin Plan be amended to have it designated as such.
- B) The Conditional Waiver states that it excludes construction activities on undisturbed land that contains sensitive species from coverage. We find this language troubling for several reasons. First, the term "sensitive species" isn't defined. If undefined, we are concerned that the language could be construed to cover species that are not protected by federal and state agencies with the legislative authority to protect listed species. Also, given that species that are designated as rare, endangered, threatened or of special concern by federal and state agencies are already protected by regulations, keeping this language in the Conditional Waiver is only duplicative, placing additional burdens onto landowners without accomplishing anything of benefit. Additionally, we are concerned that the language could be construed to stop construction on parcels where "sensitive species" occur far enough away from the construction site to be undisturbed by construction activity. If that were the case, we would see no reason to exclude the entire parcel from the Conditional Waiver. To promote wide participation in the Conditional Waiver and to be consistent with federal and state laws that protect listed species, the last sentence of paragraph 29 be removed from the Conditional Waiver.

- C) On page 10, paragraphs 45, the Regional Board recognizes that there are existing vineyards plans - which are certified and operated under comprehensive farm plans – that are very similar to the Farm Water Quality Plans required by this Order. Since many of our members operate their vineyards in compliance with the *Code of Sustainable Winegrowing* Farm Plan, we would like to request that the *Code of Sustainable Winegrowing* (as modified to address specific elements within the *Conditional Waiver*) be referenced as a program that would qualify as a farm plan under the *Conditional Waiver*.
- D) The *Conditional Waiver* states (p. 13) that any Vineyard Facility that is located on a slope of less than 5%, and which contains established setbacks from a Class I or Class II stream, would not be likely to affect water quality and is therefore eligible to file a Notice of Non-Applicability. We request that the Regional Water Board staff consider allowing any vineyard property which is located at a distance that is far enough away from any waters of the state to ensure no possibility of sediment or pesticides discharges also be eligible to file a Notice of Non-Applicability.
- E) On page 14, in Section D.1. (a), the second sentence reads that the Plan should “be available for review by or submitted to Water Board staff upon request.” We would like to see the words “or submitted to” be deleted, as we are concerned that if the language remains as drafted, the Farm Plan could be considered a public record. On page 1 of Attachment D, in the second paragraph, the language states only that a copy of the plan must be kept at the Vineyard Facility and “be available for review by Water Board staff upon request.” We respectfully request that the language “or submitted to” be deleted from Section D.1.(a), so that it conforms with what is required in Attachment D and doesn’t leave the Farm Plans open to being interpreted as a part of the public record.
- F) The *Conditional Waiver* states that any construction of new structures or facilities is prohibited on undisturbed land that contains “candidate, sensitive, or special status species, habitats and sensitive natural communities identified in local or regional plans, policies or regulations or by the California Department of Fish and Game or the U.S. Fish and Wildlife Service.” We are concerned that this language is overly broad, and oversteps what is required by federal and state policies. Our recommendation is in Comment B above.

Sincerely,



John Azevedo, Chair,
Natural Resources & Environment Committee



Tito Sasaki
President