



Napa County Resource Conservation District
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*Promoting responsible watershed management through voluntary community stewardship
and technical assistance since 1945*

January 31, 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 Napa 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 and Directors have committed a considerable amount of time working with Water Board staff through the Technical Advisory Committee and the Stakeholder Advisory Group convened by Water Board staff during formulation of the proposed Waiver. We commend Water Board staff, particularly you and Mr. Ponton, for your efforts to meet with stakeholders and to better understand vineyard management practices and local regulations.

For context, as you know, the RCD is a non-regulatory, Special District that was established in Napa County in 1945. We serve our community through providing technical assistance for implementation of conservation practices, offering natural resource education opportunities, and conducting scientific research regarding natural resource issues in Napa County. We also operate a small demonstration vineyard so are intimately familiar with the interface of natural resource and vineyard management. We have been engaged in the topic of water quality in the Napa River watershed for over three decades and we share your goal of ensuring quality waters to support a myriad of beneficial uses.

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 has the potential to be very costly to land owners. We have spent a considerable amount of time discussing the Vineyard Waiver with the local agricultural industry groups 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:

Napa 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.

Napa 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 Napa River watershed. In 1991, the County enacted the Conservation Regulations, which require engineered erosion control plans for new and replanted hillside vineyards and preclude new development near streams. In 2008, the County updated its General Plan and adopted policies to avoid increases in peak runoff and soil loss from new hillside vineyards, and provided for increased attention to wetlands, oak woodlands, and other sensitive resources. These regulations on agricultural practices, for the primary purpose of resource protection, are among the strongest in the nation. In addition, the agricultural community in Napa County and its industry groups are leaders in supporting, participating in, and operating programs and projects that promote resource protection and sustainability (e.g., Agricultural Preserve, Napa River (Living River) Flood Project, Rutherford Restoration Project, fish barrier removal, Napa Sustainable Winegrowing Group, Watershed Information Center & Conservancy of Napa County, Napa Green, watershed stewardship groups, etc.). Implementation of local regulations and voluntary actions undertaken in the Napa River watershed are working to protect and enhance the resources in the Napa River 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 current conservation actions.

Requirements of the Vineyard Waiver may be an economic hardship for land owners. 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 land owners. We have recently completed a road erosion reduction project in the Napa River 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 estimated at \$50,000 per 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. As written, the waiver requires a 50% reduction in sediment loads from roads and requires that no more than 25% of roads be “hydrologically connected”.¹ 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, 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.

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

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

Farm Plan implementation and timelines therein need to be reasonable and flexible so that land owners 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 land owners 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, which 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*.

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

The RCD has a long history of working with land owners in Napa 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 Group” to assist land owners. The RCD intends to provide technical assistance and help with farm plan preparation regardless of whether or not we become an approved “Third Party Group.” Whether or not we apply is dependent upon the requirements of Third Party Groups. 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 Groups” will not be required to perform non-compliance reporting. We would like an opportunity to work with staff to revise Attachment C so that the RCD can continue to maintain confidential relationships with landowners and also meet the requirements of a “Third Party Group.”

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 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.

Third Party Groups and Discharger Groups (collectively referred to as Groups) should be approved in advance of the NOI filing.

The short timeline currently provided for growers to file an NOI is insufficient. Growers will need to determine whether they are a part of a Group (Third Party or Discharger) prior to filing. Unlike the grazing waiver which was implemented in the Napa and Sonoma Creek watersheds, the proposed waiver requires fees which are different depending upon your affiliation with a Group. Groups need time to develop application materials responsive to the waiver. Growers need time to consider their compliance options.

To ensure that there is adequate time for establishment of authorized Groups, we request that you delay the requirement to file an NOI until sufficient Groups have been established. We further request that you provide a clear process and timeline for group application submittals and review.

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 Water Quality 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.

We urge you to take into account the results of our ongoing monitoring .

As you know, the RCD coordinates a fisheries monitoring program within the Napa River watershed focusing on salmonids (steelhead and salmon). The purpose of the monitoring program is to better understand steelhead and Chinook populations as well as the overall composition of the fish community in the Napa River watershed. Specifically, the program aims to understand the health and condition of those target species, explore the genetic makeup of salmonid populations in the system, and track ecological responses to ongoing habitat restoration. From 2004 to 2012 the RCD conducted annual adult salmon and steelhead spawner surveys and juvenile snorkel surveys. From 2009 to 2012, we conducted outmigrant (smolt) trapping with a rotary screw trap (RST) in the mainstem Napa River. In 2012, we conducted smolt trapping with fyke nets in two important steelhead tributaries: Milliken Creek and Napa Creek.

This type of monitoring and analysis is consistent with the “Key Questions to be considered in the course of Adaptive Implementation” as adopted in the Water Board’s Basin Plan Amendment. This

information was not available at the time when the TMDL was written and the Basin Plan Amendment adopted. We urge that you take into account the results of our ongoing monitoring and analysis efforts, bulleted below:²

- **Steelhead smolt production is fairly consistent in the Napa River watershed.** Catch rates of steelhead smolts in the RST have been stable or slightly increasing during the past four years, suggesting that the Napa River consistently produces steelhead smolts from one year to the next despite significant variability in environmental conditions, including rainfall amounts and timing as well as seasonal flow patterns. **Therefore, the assumption that the Napa River steelhead population is continuing to decline is not supported by recent monitoring data.**
- **Steelhead smolts in the Napa River watershed tend to be large (>150mm).** Steelhead smolt length during the past four years of sampling has averaged 187mm (7.4 inches). The size and range of steelhead smolts has varied little during the past four years despite significant variability in environmental conditions. Stillwater Sciences conducted a two year steelhead growth study from 2005 to 2007 in the Napa River watershed and found that juvenile steelhead attained an average size of 171mm (6.7 inches) prior to smolting. **Therefore, the assumption that steelhead smolts in the Napa River watershed are undersized is not supported by recent data.**
- **Steelhead smolt survival in the ocean is likely relatively high.** Several studies have found a strong correlation between steelhead smolt size and ocean survival rates, with larger smolts having greater odds of returning as adults. Given their large size, we would expect Napa River steelhead smolts to have relatively high ocean survival rates, perhaps 15-25% based on literature. **Therefore, the assumption that Napa River steelhead experience low ocean survival rates due to a lack of fitness is not supported by recent monitoring data.**
- **Adult Chinook salmon returns to the Napa River are highly variable from year to year.** Chinook salmon return to the Napa River to spawn in the fall, when winter baseflow is usually not well-established, and flows are naturally very flashy (i.e. subject to rapid increases and decreases). As a result, Chinook salmon migration is often limited both temporally and spatially by natural variability in rainfall and runoff. For the past eight years, at least, Chinook salmon have returned to the Napa River. However, the number of adult fish that successfully migrate upstream to spawn appears to be highly dependent upon fall precipitation patterns. **Therefore, natural climatic variability exerts a tremendous limiting force on the Chinook population, and expecting consistently high runs each year may not be realistic given the life history of this species.**
- **Chinook salmon in the Napa River appear to be strays from other river systems (Central Valley).** Limited genetic and otolith analysis conducted by RCD in coordination with the National Marine Fisheries Service and UC Davis has not found evidence that smolts in the Napa River are the progeny of adult Chinook from the Napa River system. Additional genetic and otolith analysis should be conducted to more fully explore the regulatory goal to “establish a self-sustaining Chinook population,” particularly given current available information and lack of historic information.

² Detailed annual monitoring reports are available at <http://www.naparcd.org/fishresources.html>.

- **The Napa River supports an unusually diverse fish community, dominated by native species.** Between 2009 and 2012, a total of 32 fish species were captured in our RST, including 15 native species and 17 exotic species. Native fish species comprised over 98% of the total RST catch during that period. The three most common native species collected during the four-year monitoring period were Chinook salmon, California roach, and steelhead/rainbow trout. **These data suggest that the Napa River watershed supports a healthy native fish community.**

Thank you again for the opportunity to comment on the draft Vineyard Waiver and to provide additional information related to the status of steelhead and Chinook salmon in the Napa River watershed. Napa County has made significant progress in improving and protecting watershed conditions over the past 20 years through local regulations and through voluntary actions. The community has shown strong and nearly unanimous commitment to sustainable agriculture and commitment to the health of the natural resources within the Napa River watershed. The Napa River watershed supports a healthy native fish community. To be successful, it is important that the Vineyard Waiver take into account existing local efforts and our agricultural industry's demonstrated commitment to improve the health of the watershed. The Vineyard Waiver should consider both environmental benefit and cost-effectiveness of new requirements and provide clear information regarding both the Farm Plan and compliance standards.. We support adoption of a Vineyard Waiver but cannot support the Waiver as currently written. We would be happy to work with you and members of the Water Board to further refine the Vineyard Waiver to address our concerns.

Please do not hesitate to contact us or Leigh Sharp on our staff if you have any questions about these comments.

Sincerely yours,



Mitchell Klug,
RCD Vice President



Beth Painter
RCD Director

cc: Members of the San Francisco Regional Water Quality Control Board
Napa County Board of Supervisors
Senator Volk
Assemblymember Yamada