

September 14, 2016

VIA EMAIL: [mnapolitano@waterboards.ca.gov](mailto:mnapolitano@waterboards.ca.gov)

Mike Napolitano  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612

Dear Mr. Napolitano:

River Run Vineyards and Bean Family Vineyards (collectively, "Vineyards") appreciate the opportunity to submit the following comments on the Draft Environmental Impact Report ("DEIR") prepared by the San Francisco Bay Regional Water Quality Control Board ("Regional Board") for the Regional Board's General Waste Discharge Requirements for Vineyard Properties Located in the Napa River and Sonoma Creek Watersheds ("Vineyard WDRs") pursuant to the California Environmental Quality Act ("CEQA").

### Project Description

#### *The Project Description is Inadequate*

The DEIR's description of the project lists numerous reasonably foreseeable compliance actions anticipated to be carried out as a result of the project. The DEIR does not, however, provide the contextual information necessary to inform the readers of the actual scope of the project and its environmental impacts. In order to adequately evaluate the impacts of the project, the analysis must disclose and evaluate the scale and extent of the stated physical changes likely to result from the proposed Vineyard WDRs. (See, e.g., CEQA Guidelines Sections 15378(a), 15064(b), and 15063). For example, the DEIR identifies installation of engineered subsurface drainage pipes as a likely compliance action. (DEIR, p. 55.) The DEIR also indicates that many vineyards already use subsurface drainage pipes to control erosion. But without further quantification or explanation (such as setting forth the actual number of vineyard properties that currently use such drains compared to the number of vineyards that may install such drains as a result of the project), the reader can only guess to what extent installation of new subsurface pipes will actually occur. Accordingly, no grounds exist upon which any conclusions regarding the impacts of this anticipated compliance action can be drawn.

A CEQA lead agency must "use its best efforts to find out and disclose all that it reasonably can" regarding a project's impacts. (Guidelines, § 15144.) The DEIR cannot serve as a meaningful informational document without informing the public of the extent to which the various

foreseeable activities that will occur as a result of the project will be carried out. Absent such information, the DEIR's analysis of the impacts of the project is a mass of speculation that cannot inform the public, the Regional Board, or anyone else of the environmental consequences of approving the project. This problem is compounded when paired with the other informational deficiencies of the DEIR described herein. These flaws permeate the entire DEIR.

#### *Timing of Compliance Work*

The various temporal limitations on compliance activities found throughout the DEIR could concentrate such work into a short window of time that corresponds to the wine grape harvest, yet this result and the attendant environmental consequences are not addressed in the description of the project or in the environmental analysis. As a result of the incomplete, and thus inaccurate, description of the project, the DEIR's analysis of the project's environmental impacts is not based on substantial evidence.

The standard work window for compliance actions under the Vineyard WDRs is June 15 to October 15. (DEIR, p. 189.) But construction within 75 feet of established riparian vegetation is to be avoided during the period of February 15 to August 15. (*Ibid.*) This means that any construction activities occurring within 75 feet of established riparian vegetation will typically take place during the period of August 15 to October 15, and the impacts of such work will be concentrated accordingly. The DEIR's analysis of the project's impacts does not acknowledge this small work window and thus does not address the consequences of condensing certain compliance activities into an eight-week period that also corresponds with the wine grape harvest season, when vineyard activities (and their consequent effects) peak.

The concentration of work during the harvest period has implications for potential impacts to air quality, biological resources, water quality, and population/growth inducement, but the DEIR does not acknowledge or analyze this issue, and thus does not fulfill CEQA's purpose of informing decision-makers and the public of the environmental consequences of the proposed Vineyard WDRs.

#### *Description of Economic Characteristics*

While Chapter 2.4 of the DEIR notes that CEQA requires a general description of the project's technical, economic, and environmental characteristics (DEIR, p. 53), that chapter includes virtually no economic information. Economic information is particularly necessary for this EIR, because potential conversion of farmland due to the project's economic consequences has already been flagged for the Regional Board as a matter of considerable local concern. In other words, this case presents a situation in which the economic effects of the project could foreseeably result in environmental consequences, and so analysis of the economic effects is necessary for a complete environmental review of the Vineyard WDRs.

The EIR does provide a summary of economic considerations in Chapter 3.3, but the summary is both too conclusory and too thin to provide a basis for analysis of environmental impacts driven by financial concerns. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 404 [Conclusory comments in support of environmental conclusions are generally inappropriate].) For example, the DEIR sets forth the baseless assumption that because some vineyards have been able to implement BMPs, it should not be an economic burden for the vineyards that have not yet implemented BMPs to do so. (DEIR, p. 87.) But this ignores the possibility that it is the very economic burdens of implementing BMPs that have prevented some vineyards from doing so. The DEIR's complete disregard for this possibility is especially egregious in light of the comments regarding costs the Regional Board has already received. (E.g., DEIR, p. 86.)

#### Description of the Baseline/Environmental Setting

The DEIR indicates that the primary purpose of the Vineyard WDRs is to address regulatory gaps related to road-related erosion and storm runoff increases from hillslope vineyards. (DEIR, pp. 37, 38.) But the DEIR does not set forth the information regarding the baseline conditions of roads and hillslope vineyards in the project area necessary for a meaningful environmental analysis. The DEIR must include baseline information, such as the estimated number and/or mileage of roads that will be affected by the project, the acreage of hillslope vineyards as compared to valley floor vineyards, and the scope and nature of existing vineyard operations. The DEIR must also explain why vineyard roads are different and more being more heavily scrutinized and regulated than other non-vineyard roads. Without this information, the DEIR cannot properly assess the potential impacts of the project, and thus cannot inform decision-makers or the public of the environmental consequences of approving the Vineyard WDRs.

#### Analysis of Impacts

##### *Agriculture and Forestry Resources*

The DEIR concludes that the project will have a less-than-significant impact with respect to conversion of farmland to non-agricultural uses. (DEIR, p. 111.) This conclusion is not supported by analysis or evidence. In general, it is clear that the loss of productive farmland could occur either directly or indirectly due to the compliance activities and practices growers must conduct in response to the conditions established by the proposed Vineyard WDRs. Given this impact to agriculture and agricultural lands, the DEIR should acknowledge that "the loss of productive farmland may occur due to increased regulatory costs and management practices growers must implement to comply with" the Vineyard WDRs and acknowledge that such impacts do not qualify as "less-than-significant." More specifically, the DEIR's conclusion that the BMPs listed in the DEIR are "compatible" with agricultural production (DEIR, p. 111) does not answer the question of whether the BMPs will result in the conversion of farmland. Taking lands currently in agricultural production and turning them into riparian lands, vegetative

setbacks, or buffers amounts to the conversion of farmland to non-agricultural use that should be analyzed in the DEIR.

The analysis of potential conversion of farmland due to the costs of compliance is also inadequate, and does not support the “less-than-significant” determination. It is not clear whether the analysis of the costs of compliance includes the costs various mitigation activities that landowners will need to implement. Even if those costs are included, the DEIR’s determination that compliance activities do not pose an economic burden that could lead to conversion because some compliance activities yield long-term cost savings leaves open the possibility that the short-term capital costs of the compliance activities will drive growers out of business, and the DEIR does not address that possibility in any meaningful way. In addition, the DEIR fails to address local factors that could propel conversion of farmland, such as demand for additional housing. Without such information, the conclusion that financially burdened growers will simply sell their property to another grower cannot stand.

#### *Air Quality, Biological Resources, and Hydrology/Water Quality*

The flaws in the DEIR’s description of the project and environmental baseline render the DEIR’s analysis of impacts to air quality, biological resources, and hydrology and water quality inadequate. For example, because the DEIR does not directly acknowledge that compliance activities will be concentrated into a short period of time that overlaps with the wine grape harvest and crush, the DEIR fails to analyze the impacts of such concentration. In addition, the DEIR fails to recognize that the recommended regulation might not be needed if other regulated entities, such as some of the local wastewater treatment facilities, were required to comply with their wastewater discharge permits, which may be causing impacts worse than those presupposed from vineyards.

#### *Cumulative Impacts*

“Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past, current, and probable future projects. (CEQA Guidelines Section 15064(h)(1)). An impact may be individually limited, yet still be cumulatively considerable, and an agency may not rely on the fact that a particular project’s impacts are small in comparison to a large environmental problem to find that no cumulative impact exists. (*Communities for a Better Environment v. California Resources Agency* (3<sup>rd</sup> Dist. 2002) 103 Cal. App. 4<sup>th</sup> 98, [agency may not employ a *de minimis* rationale when evaluating cumulative impacts].)

The analysis of cumulative impacts to agriculture and forestry resources is non-existent. (DEIR, p. 264 [“No analysis required” for cumulative impacts to agricultural resources.]) The apparent reason for this omission is the conclusion that local land use regulations protect agricultural lands. This conclusion is not adequate. The DEIR must examine whether the activities needed to comply with the Vineyard WDRs will, when added to existing and expected future regulations

on the same lands, will contribute to the conversion of farmland either by using farmland for compliance activities, such as constructing artificial wetlands, or by creating economic burdens that will drive wine grape growers out of business.

### *Growth Inducement*

Section 11.1, "Growth Inducing Impacts," acknowledges that the Vineyard WDRs will have an effect on population growth and states, in a conclusory fashion with no reference to a threshold of significance, that this acknowledged impact will be "less than significant." The discussion of growth inducement must state a threshold of significance and explain why or why not the project meets that threshold. In the context of this project, and due to the concerns stated above regarding the temporal limitations on compliance activities, the analysis of growth inducement should include information specifically regarding the need for growth to accommodate additional workers when compliance work overlaps with the wine grape harvest.

### General Comments

- There is a heading for Table 2-2 on page 51, but no table.
- We suggest adding "Groundwater Sustainability Agency approvals" to the list of potential agencies that may utilize the EIR. (DEIR, p. 82.)

### Conclusion

The flaws identified above call for the DEIR to be revised to include an adequate, holistic description of the project and environmental baseline and an expanded analysis of the project's potential impacts. Then, the DEIR must be recirculated for additional public review. If the Regional Board refuses to recirculate the DEIR for additional review and comment, the Vineyards request an opportunity to comment on the Final EIR and a copy of the Regional Board's responses to these comments prior to the Regional Board's certification of the Final EIR.

Respectfully submitted,

Downey Brand LLP



Melissa Thorme

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