

STAFF REPORT

DATE: September 2, 2011

TO: Bruce Wolfe, Executive Officer

FROM: Rico Duazo, P.E., WRCE
Planning Division

SUBJECT: **Staff Report for Resolution Adopting Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Napa River and Sonoma Creek Watersheds in the San Francisco Bay Region**

Introduction

This Staff Report presents supporting information for the Revised Tentative Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Napa River and Sonoma Creek Watersheds (waiver of WDRs) that will be considered by the Water Board on September 14, 2011.

The Water Board is charged by the California Water Code (CWC) with protecting the quality of ground and surface waters of the State within the Region. One of the methods by which the quality of surface and ground waters of the State within the Region are protected is by the issuance of Waste Discharge Requirements (WDRs). Section 13263 (a) of the CWC requires the Water Board to prescribe WDRs for any existing or proposed waste discharge within its jurisdiction. WDRs implement relevant water quality control plans to protect the uses of receiving waters, and consider, among other things, the beneficial uses of receiving waters, the appropriate water quality objectives that protect those uses, consideration of other waste discharges, and nuisance prevention. WDRs can be issued to a specific person or entities or for categories of discharge that satisfy certain criteria as discussed in Section 13263(i) of the CWC.

Section 13269 of the CWC gives the Water Board the authority to waive the requirement that dischargers obtain WDRs for specific discharges and specific types of discharges, if waiving such requirements is not against the public interest and certain conditions are satisfied. Waivers can also relieve dischargers of the requirements to submit a Report of Waste Discharge (ROWD). Waivers are at the discretion of the Water Board, which also has the authority to terminate waivers at any time. The existence of a categorical waiver does not excuse a discharger from any other legal requirements nor does it permit the violation of water quality objectives or the impairment of beneficial uses.

The Water Board is pursuing the use of a waiver of WDRs, as it reflects Board staff's expectation of compliance by the majority of the dischargers, it is protective of beneficial uses, and it is the most efficient permitting route given limited staff resources. The Water Board would still retain the right to issue individual WDRs on an as-determined basis.

The proposed waiver of WDRs implements the Napa River Pathogen Total Maximum Daily Load (TMDL), the Napa River Sediment TMDL, the Sonoma Creek Pathogen TMDL, the Sonoma Creek Sediment TMDL, and California's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Enforcement Policy). It is also intended to help address the anticipated requirements of future nutrient TMDLs in the Napa River and Sonoma Creek watersheds, as it requires that landowners/operators of grazing operations in the watershed implement multi-objective pollutant management practices.

For the purposes of this draft waiver of WDRs, the term ‘grazing operation’ will refer to those facilities where animals are fed or maintained on irrigated vegetation or rangeland forage for a total of 45 days or more in any 12-month period, and vegetation forage growth is sustained over the lot or facility during the normal growing season. The grazing operation includes auxiliary facilities such as roads, reservoirs, etc. This definition was recommended by staff at the University of California Cooperative Extension.

Background

The proposed waiver of WDRs will cover existing grazing and potential future operations in the Napa River and Sonoma Creek watersheds, which are located in the northern portion of San Francisco Bay in Napa and Sonoma counties.

Napa River Watershed

The Napa River watershed is located in the California Coast Ranges north of San Pablo Bay, covering an area of approximately 426 square miles (Figure 1). The main stem of the Napa River flows approximately 55 miles in a southeasterly direction through the Napa Valley before discharging to San Pablo Bay. Numerous tributaries enter the main stem from the mountains that rise abruptly on both sides of the valley.

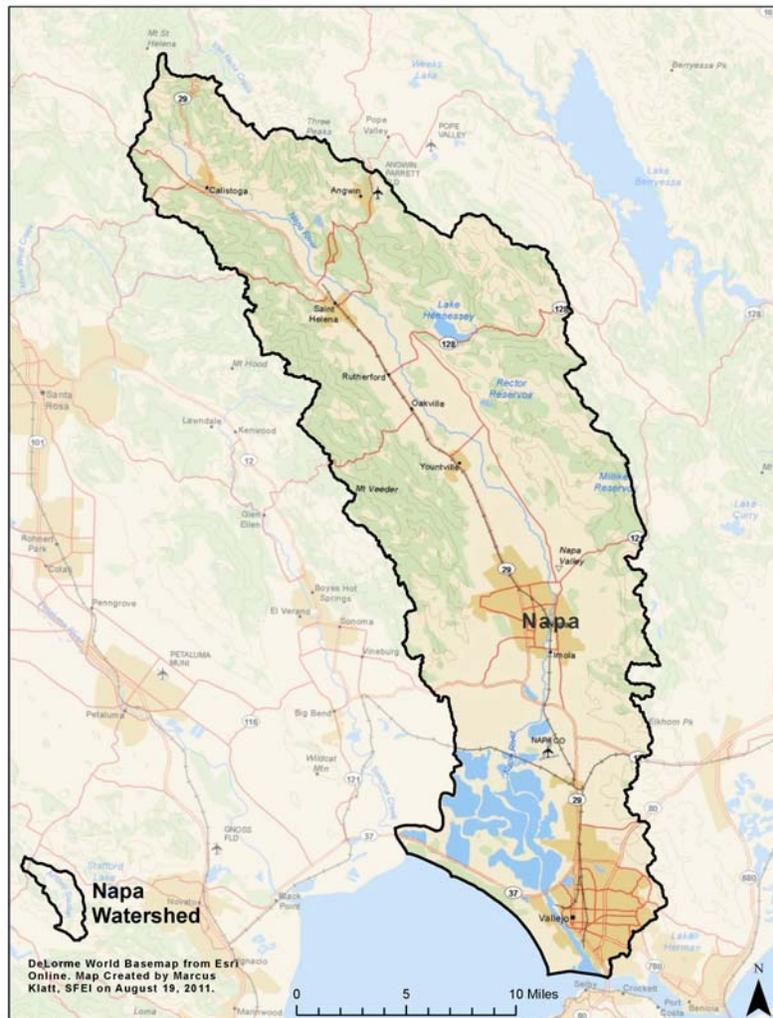


Figure 1 - Napa River Watershed

Major land cover types in the Napa River watershed (Figure 2) are forest (approximately 35%), rangeland (23%), agriculture (19%), and developed land—residential, industrial, or commercial (8%).

Beneficial Uses, as defined by the Basin Plan include: agricultural supply; cold freshwater habitat; warm freshwater habitat; water contact recreation; noncontact water recreation; fish migration; municipal and domestic supply; preservation of rare and endangered species; fish spawning; warm freshwater habitat; and wildlife habitat. The Napa River watershed provides habitat for several aquatic species of concern, including steelhead trout and Chinook salmon.

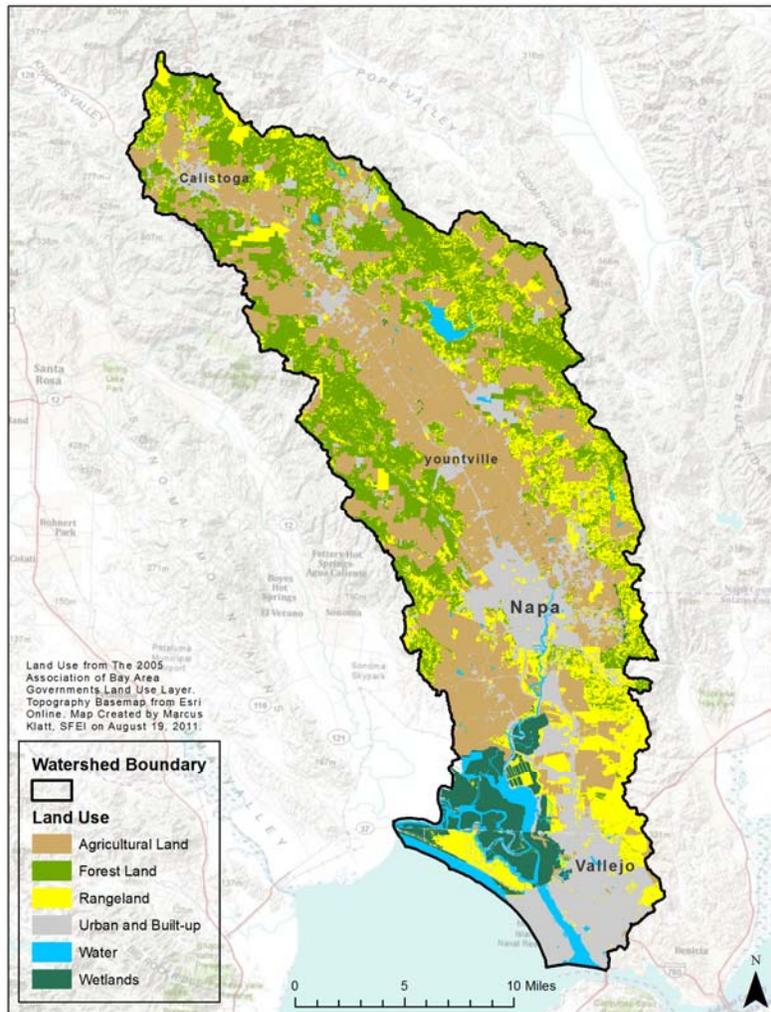


Figure 2 – Napa River Watershed Land Use

Sonoma Creek Watershed

The Sonoma Creek watershed is located in the California Coast Ranges north of San Pablo Bay, covering an area of approximately 166 square miles (Figure 3). The mainstem of Sonoma Creek flows in a southeasterly direction from headwaters on Sugarloaf Ridge through the Sonoma Valley before discharging to San Pablo Bay. Numerous tributaries enter the main stem from the mountains that rise on both sides of the valley.

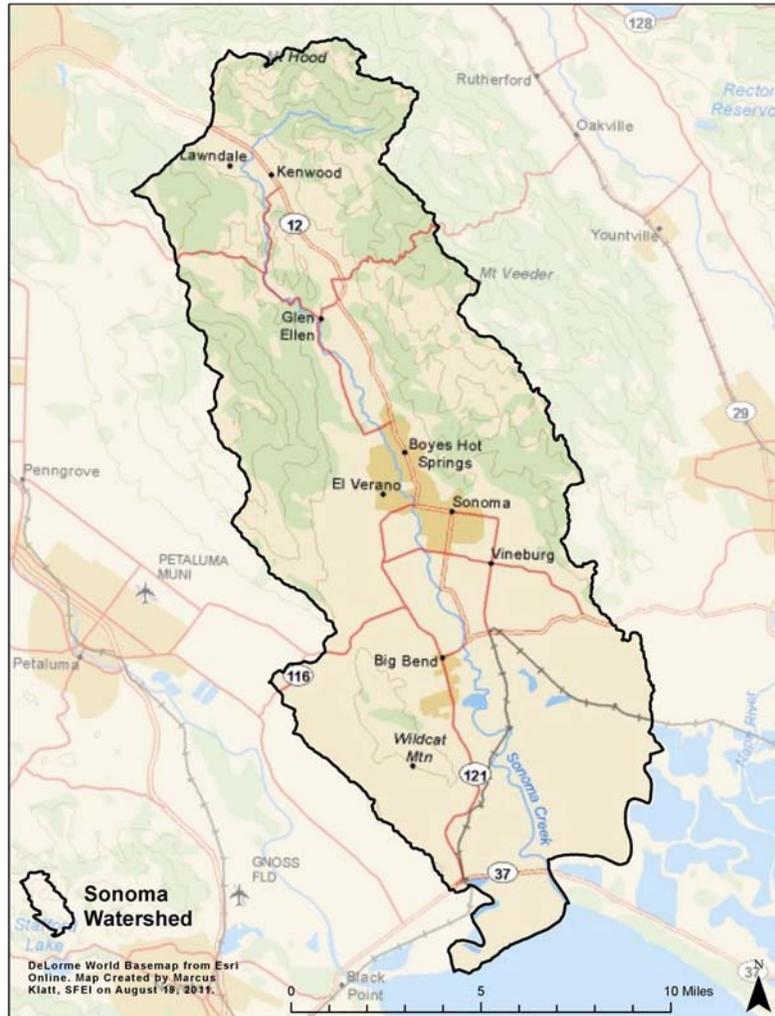


Figure 3 – Sonoma Creek Watershed

Major land cover types in the Sonoma Creek watershed (Figure 4) are forest (approximately 30 %), rangeland (20 %), agriculture (30 %), wetlands and sparsely vegetated-land (5 %), and developed land—residential, industrial, or commercial (15 %).

Beneficial Uses, as defined by the Basin Plan include: cold freshwater habitat; warm freshwater habitat; water contact recreation; noncontact water recreation; fish migration; preservation of rare and endangered species; fish spawning; warm freshwater habitat; and wildlife habitat. The Sonoma Creek watershed provides habitat for several aquatic special status species of concern, including steelhead trout, Chinook salmon, and California freshwater shrimp.

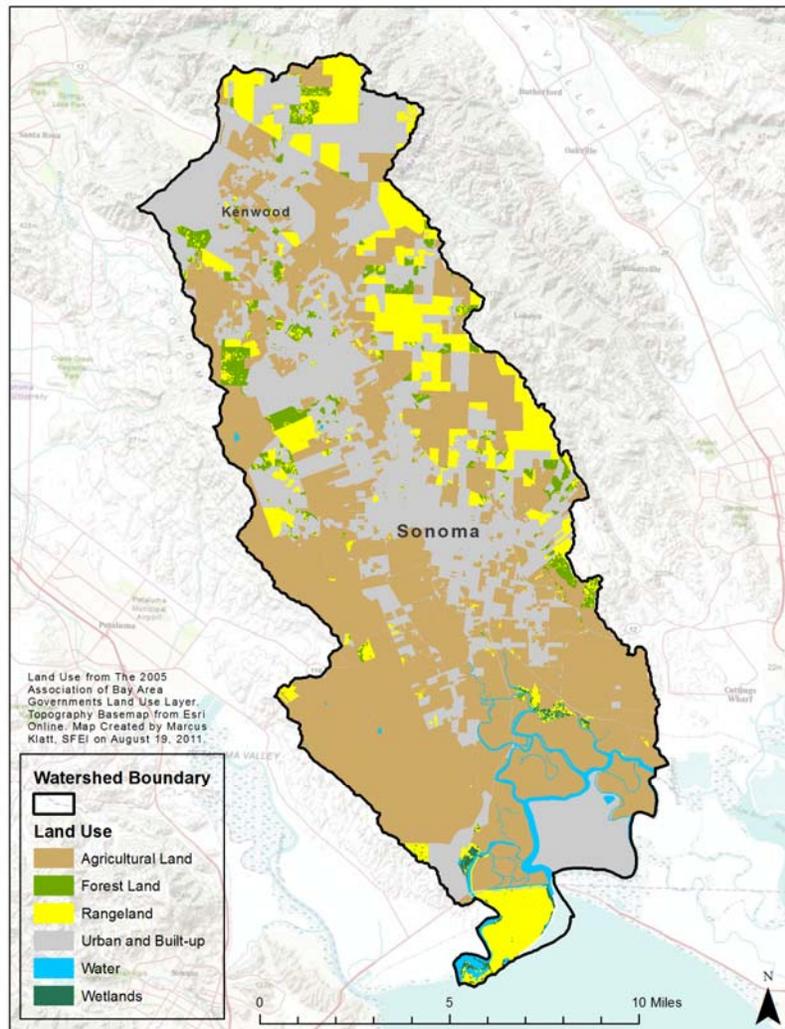


Figure 4 – Sonoma Creek Watershed Land Use

If improperly managed, grazing operations can pose a threat to both surface and ground water quality, irrespective of herd size. Animal waste discharges, including contaminated storm water, may contribute pathogens, ammonia, salts, and excess sediment to nearby streams. The deleterious properties of animal wastes to aquatic organisms have been well documented, contributing to decreased in-stream dissolved oxygen levels, and causing acute and chronic toxicity due to un-ionized ammonia levels. Furthermore, grazing operations located on steep hillsides and/or near creeks and streams require diligent management practices to protect water quality.

Napa River, Sonoma Creek, and their tributaries have been identified as impaired for nutrients, sediment, and pathogens; and have been placed on the Clean Water Act 303(d) list. The Water Board has adopted four Total Maximum Daily Loads (TMDLs) as follows:

- 1) Napa River pathogens TMDL
Adopted by the Water Board on November 15, 2006, and approved by USEPA on February 29, 2008

- 2) Napa River sediment TMDL
Adopted by the Water Board on September 9, 2009, and approval by USEPA on January 21, 2011
- 3) Sonoma Creek pathogens TMDL
Adopted by the Water Board on June 21, 2006, and approved by USEPA on February 29, 2008
- 4) Sonoma Creek sediment TMDL
Adopted by the Water Board on December 10, 2008, and approved by USEPA on September 8, 2010

In these TMDLs, the Water Board considers that the discharge of nonpoint source pollution from agricultural grazing operations within the Napa River and Sonoma Creek watersheds is a discharge of waste that could affect the quality of waters of the State, as defined in Section 13260 of the California Water Code (CWC). Furthermore, these TMDLs require management actions for grazing operations to protect water quality and restore beneficial uses.

The required implementation measures for grazing operations include evaluation of operating practices; development of comprehensive site-specific pathogen and sediment control measures; an implementation schedule for installation of identified management measures; and, submittal of annual progress reports documenting actions undertaken to reduce or eliminate animal waste and sediment runoff.

To comply with the TMDL Implementation Plans, grazing lands' landowners and lessees must submit to the Water Board a ROWD or other submittal in lieu of a ROWD. Grazing lands' landowners and lessees must also comply with all applicable WDRs or Waivers. These reports must be submitted individually or jointly or through a third party.

2008 Conditional Waiver for Grazing Operation in the Tomales Bay Watershed

On July 8, 2008, the Water Board adopted a Conditional Waiver for Grazing Operations in the Tomales Bay Watershed. The Tomales Bay conditional waiver was a product of extensive stakeholder outreach and consultation with a Technical Advisory Group comprised of representatives from the University of California Cooperative Extension, the Natural Resources Conservation Service, the Marin County Resource Conservation District, and the Western United Dairymen to ensure that the waiver conditions were reasonable and feasible for all parties while still protective of water quality.

Since adoption of the Tomales Bay conditional grazing waiver, approximately 95 percent of eligible enrollees have enrolled in the program and annual report submittals have ranged from 85 percent to 97 (the initial reporting rate was 65 percent but through the issuance of Notices to Comply letters in combination with outreach provided by our watershed partners, reporting rate increased to 97 percent. More information on the status of the Tomales Bay grazing waiver can be found at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2011/June/6_SSR.pdf.

In addition, adoption of the Tomales Bay conditional waiver made the Tomales Bay watershed eligible for State funding under the 319 (h) Program. Since the adoption of the Grazing Waiver in 2008, the State Board has awarded substantial funding aimed at helping ranchers comply with the Grazing Waiver's requirements. Two 319 (h) grants totaling \$1.425 million have been awarded to the Marin RCD and a 319 (h) grant in the amount of \$455,000 was awarded to the Point Reyes National Seashore to implement several grazing management practices in ranches within the Seashore.

The proposed waiver of WDRs will continue to build on the successes of the Tomales Bay conditional waiver and incorporate lessons learned. All the major elements of the Tomales Bay waiver that were acceptable to grazing community have been carried into the proposed waiver of WDRs for continuity and consistency.

Stakeholder Outreach and Establishment of Technical Advisory Group

We have made a concerted effort to maintain our communication and general availability to the grazing-related industry. On December 10, 2009, and February 24, 2010, Board staff convened and met with a Technical Advisory Group including representatives from the University of California Cooperative Extension, the Natural Resources Conservation Service, Resource Conservation District staff from Sonoma and Napa Counties, and the Western United Dairymen; many of whom were also involved with the Tomales Bay grazing waiver. Water Board staff distributed a copy of the draft waiver of WDRs language to the technical advisory group and we received no substantial comments.

On June 22, 2010, we gave a presentation at the North Bay Watershed Association (NBWA) Watershed Council meeting. Later that week, on June 24, 2010, we gave a similar presentation at the Napa Watershed Information Center & Conservancy's (WICC) Board meeting. The presentations provided an introduction to the draft waiver of WDRs program, and described the framework and main elements of the program. The presentations also focused on the development of a Ranch Water Quality Plan, a requirement of the draft waiver of WDRs, to address surface erosion, storm water runoff, sediment delivery from roads, and protection of stream areas.

On January 12, and July 21, 2011, we held public workshops at the Schell-Vista Fire Station in Sonoma, where the draft waiver of WDRs language and the appropriate means to comply with the proposed draft waiver of WDRs were discussed, and formal public comments were taken.

New Regulatory Program for Grazing Operations in the Napa River and Sonoma Creek Watersheds

The proposed waiver of WDRs contains conditions that include basic visual monitoring and compliance monitoring reporting. It contains the requirement to submit an annual certification of compliance. Additionally, landowners/operators of the ranch facility are required to develop and implement a Ranch Water Quality Plan that includes an assessment of facility conditions, an inventory of resources and management practices, and a schedule for implementation of new management practices that reduce nonpoint source pollution due to grazing. The Ranch Water Quality Plan will be maintained at the facility and must be made available to Board staff at the time of site inspections.

The proposed waiver of WDRs would apply to those grazing operations expanding 100 acres or more in size. Based on comments from the technical advisory group, ranches that span 100 acres or more make up the bulk of grazing operations in the Napa River and Sonoma Creek watersheds. Those grazing operations smaller than the 100 acre threshold are still expected to effectively manage their facilities, and may be required to obtain individual WDRs on a case-by-case basis, if the potential for water quality impacts are found.

Board staff will initially focus its resources on bringing eligible grazing operations under the waiver of WDRs. Regular facility inspections and annual report reviews will be used to verify compliance with the waiver of WDRs. As necessary, we will focus inspections and oversight on any non-complying facilities, providing assistance and guidance to ranchers towards achieving waiver standards.

Third Party Program

The NPS Enforcement Policy encourages the Water Boards to “be as creative and efficient as possible in devising approaches to prevent or control nonpoint source pollution.” This includes development of third-party programs, including coalitions of dischargers in cooperation with a third party representative, organization, or government agency to assist the dischargers in complying with the requirements and assure the Water Board and the public that actions have been taken to reduce nonpoint source pollution. The third party role is restricted to entities that are not actual dischargers under the State Water Board/Regional Water Board permitting and enforcement jurisdiction.

In July 2010, the State Water Board and the California Land Stewardship Institute finalized a grant agreement for the implementation of a \$500,000 Prop 50 Agricultural Water Quality Grant, “Implementing water quality improvements on agricultural rangelands in Mendocino and Napa Counties”, which expands the Fish Friendly Farming program to rangelands, and implements the sediment and pathogen TMDLs on rangelands in Napa and Mendocino counties. We remain open, and will continue, to encourage the formation of other third party programs in implementing this waiver of WDRs.

California Environmental Quality Act

The Water Board is the lead agency for this project under the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) (CEQA). The Water Board will consider a mitigated negative declaration for adoption pursuant to CEQA.

Comments Received

Comments on the draft waiver of WDRs were provided in person at two public workshops held at the Schell-Vista Fire Station and via e-mail. We received written comments from two different parties. The main issues raised in the written comments related to concerns about cost and over-regulation, the negative effects of overgrazing and the need for criteria to evaluate best management practices identified in the Ranch Water Quality Plan and installed and maintained at the site.

Other issues raised in the public comments related to clarification of requirements required by the draft waiver of WDRs and the means of compliance. Board staff has updated the language of the draft waiver of WDRs in response to these comments by highlighting Residual Dry Matter, a proven and accepted method in grazing management, as a tool to be used to manage animal use areas to minimize sediment/pathogen/nutrient runoff to watercourses. Assessment of Residual Dry Matter is now required as part of the Ranch Water Quality Plan and reporting on Residual Dry Matter to be included in the Annual Certification of Compliance document .

Concerns were also raised regarding the regulatory and financial burden of the waiver of WDRs. Board staff believes that the conditions set forth in the waiver of WDRs provide an even balance between actions mandated by law and actions required to protect and restore water quality, while recognizing the regulatory and financial burden placed on the ranching community. With respect to the regulatory burden, the proposed waiver conditions and program elements are analogous to those adopted in the 2008 Conditional Waiver for Grazing Operations in the Tomales Bay Watershed, which allow for flexibility and recognizes resource constraints. It should be noted that to date, we have not received any reports that ranchers were driven out of business by the requirements imposed by the Tomales grazing program. With respect to the financial burden of the proposed regulations, history shows that grants totaling \$1.88

million have been awarded in the Tomales Bay watershed to help ranchers comply with the grazing program. A more through discussion can be found in Board staff's response to comments document.

Recommendation

In accordance with the above, in order to implement the Napa River Pathogen TMDL, the Napa River Sediment TMDL, the Sonoma Creek Pathogen TMDL, the Sonoma Creek Sediment TMDL, and the NPS Enforcement Policy, I recommend that the Board adopt the Resolution conditionally waiving Waste Discharge Requirements for Grazing Operations in the Napa River and Sonoma Creek Watersheds.

Concur:

James D. Ponton, P.G.,
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