



napa valley vintners



**WINEGROWERS**  
*of napa county*



September 14, 2016

Mr. Mike Napolitano  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
Via email: [mnapolitano@waterboards.ca.gov](mailto:mnapolitano@waterboards.ca.gov)

**Re: Draft EIR Comments**

Dear Mr. Napolitano:

The Wine Institute, Napa Valley Vintners, Winegrowers of Napa County, California Association of Winegrape Growers, Napa County Farm Bureau, Sonoma County Farm Bureau and Napa Valley Grapegrowers provide the following comments on the Draft Environmental Impact Report (DEIR) prepared for the Draft General Waste Discharge Requirements for Vineyard Properties in the Napa River and Sonoma Creek Watersheds (General WDRs). Our organizations recognize that maintaining a healthy functioning watershed is essential to protecting agriculture, our livelihoods and a healthy ecosystem. However, we have concerns with the DEIR's lack of analysis of various impacts that the General WDRs will have on the environment, and with the DEIR's inadequate alternatives analysis. Specific comments on the DEIR are as follows:<sup>1</sup>

**I. Policy Context of the Project**

CEQA requires that the EIR identify the policy and planning context in which the project is proposed. Here, the planning context is clear: the Porter-Cologne Water Quality Control Act requires that "prior to implementation of any agricultural water quality control program, an estimate of the total cost of the program, together with an identification of potential sources of financing, shall be indicated." (Cal. Wat. Code § 13141.) More generally, any Water Board adoption of water quality requirements "shall take into consideration" "economic considerations." (Cal. Wat. Code § 13241, 13263.) Although CEQA does not require analysis of economic impacts (as noted in section 3.3 of the DEIR), CEQA's requirement for identification of the policy and planning context mandates

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<sup>1</sup> While the comments contained herein focus on the DEIR, some of the comments pertain to the General WDRs themselves. Given that comments are not due on the General WDRs until December 12, 2016, such comments will not be exhaustive and may be resubmitted in a separate comment letter focused on the General WDRs.

that the DEIR should reflect that consideration of economic impacts is required under Water Code sections 13141, 13241 and 13263. Furthermore, the consideration of economic impacts pursuant to Water Code section 13141, even if required in the General WDRs, should include examination of broader economic impacts on property owners related to compliance with the General WDRs, and financing sources that could assist property owners in complying. With respect to economic considerations under Water Code section 13263, the Regional Board is required to consider the factors specified in Water Code section 13241 when it adopts waste discharge requirements, which includes consideration of costs to the discharger. In contrast, the DEIR's discussion of economic impacts pertains only to the conversion of vineyard land into other land uses. (DEIR, pp. 87–88.)

## II. Environmental Impact Analyses

### *GIS Analysis of Best Management Practice Impacts*

The DEIR analysis of the impact of the Best Management Practices (BMP) is based on GIS analysis that “estimates planted vineyard and total property acreage that would be enrolled in the proposed General Permit (i.e., all vineyard properties where 5 acres or more are planted in vineyard).” (DEIR Appendix B.) In addition to containing significant data gaps, this analysis fails to account for impacts associated with lands contiguous to vineyard parcels that are under the same ownership. These lands are currently within the scope of applicability for the General WDRs. Accordingly, the DEIR has failed to analyze any impacts of including these non-vineyard properties for coverage under the General WDR.

In addition to other significant data gaps, the GIS analysis of roads only included parcels with vineyard plantings in the estimation of the scope of actions needed to meet road sediment discharge performance standards. (DEIR, Appendix B; DEIR Figure 2-2; DEIR p. 31.) It does not include any data about roads on parcels contiguous to vineyard parcels, which would be subject to the General WDR if under the same ownership as the vineyard parcel.<sup>2</sup> (General WDR, p. 1, ¶ 2.) Failing to include these parcels in the DEIR's analysis of environmental impacts generally creates an inaccurate portrayal of the General WDRs' impacts on road construction, air quality, and biological resources. Additionally, although not an environmental impact, the DEIR's analysis of the impacts based on the GIS data and estimates in Appendix B grossly underestimates the scale of the work that landowners must undertake and the economic impacts on property owners if the General WDRs are adopted as currently drafted.

In order to address this issue, the General WDRs should be revised to apply only to those parcels containing greater than five acres of vineyard, because the GIS data considered in the EIR accurately reflects these lands. Alternatively, the DEIR should be revised with additional data on contiguous parcels to better represent the true scope of impacts that the General WDRs will have on the environment.

### *Agricultural Impacts*

The DEIR concludes that there are no impacts to agricultural resources or that they are “less-than-significant” because land is not converted from agricultural uses to non-agricultural uses. (DEIR, p. 111.) The DEIR concludes that the General WDRs will not convert any prime, unique, or

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<sup>2</sup> The General WDR's definition of Vineyard Properties would include some lands considered Rural Lands, as defined in the TMDLs. (San Francisco Bay Regional Water Quality Control Board [RWQCB], Resolution R2-2009-0064, Exh. A, p. 12; RWQCB, Resolution R2-2008-0103, Exh. A, p. 14.) The TMDLs separately discussed Vineyards. (*Id.*)

statewide important farmland to non-agricultural use based on the fact that “BMPs that may be employed in farming areas...already have been implemented at many properties... and have been found to be compatible... and don’t require a significant reduction in footprint of the farm and... BMPs that would be implemented on unpaved roads will result in an overall reduction in road maintenance costs.” (DEIR, Table E-1, Impact 4.1.) This conclusion is erroneous, not supported by any evidence, and ignores the actual analysis required to be conducted under CEQA.

The DEIR must consider whether prime farmland, unique farmland, or farmland of statewide importance would be converted to a *non-agricultural use*. (Cal. Code Regs., tit. 14, § 15387, App. G.) First, the DEIR does not identify how many affected acres of land would be considered prime, unique, or of statewide importance. (See DEIR, p. 111.) This provides no context for the DEIR’s discussion of impacts to these agricultural resources. Additionally, the DEIR only considers the total conversion of parcels into non-agricultural uses and ignores the fact that converting portions of parcels into riparian lands, vegetative setbacks, detention ponds, or buffers is the conversion of farmland to non-agricultural use. Because the General WDRs may require this kind of conversion, it must be disclosed and analyzed under CEQA.

It is irrelevant that other vineyards have already implemented some of the BMPs since those are part of the existing conditions, not project impacts. Although the historical trends cited in the DEIR indicate that farmland will not be converted to non-agricultural uses, those past trends cannot provide a reliable prediction of effects under the General WDRs, as the context is quite different: the “BMPs employed in farming areas” cited in the DEIR were voluntary; the BMPs to be employed under the General WDRs are not. It is entirely possible that the non-voluntary nature of BMPs to be employed under the General WDRs will result in more conversion of farmland to non-agricultural uses. Accordingly, the DEIR should analyze the impacts of future implementation of BMPs that could convert some farmland acreage into a non-agricultural use. Further, a reduction in road maintenance costs is also irrelevant to the conversion of agriculture to other uses, since economic impacts are not impacts on the physical environment. (Cal. Code Regs., tit. 14, § 15131.) The General WDRs will result in the direct conversion of agricultural land to non-agricultural uses, and the scope and nature of these impacts should be disclosed and analyzed.

### *Forestry Impacts*

The DEIR concludes that there are no impacts to forest land or timberland resources because the General WDRs do not authorize discharges if BMP construction or activity would involve the conversion of forest lands. (DEIR, Table E-1, Impacts 4.2, 4.4, and 4.5.) However, this conclusion is not supported by substantial evidence or consistent with the language in the General WDR. In fact, the DEIR contains absolutely no analysis to support the conclusion that Impact 4.5 results in no impact. (See DEIR, Section 4.3.1, p. 113.) In addition, the conclusions for these impacts all are premised on the fact that the General WDRs do not provide regulatory coverage for projects that involve the conversion of forestland or timberland.<sup>3</sup> However, the definitions for timberland and forest land differ significantly, such that the assumption that the General WDRs will not affect forest land is unfounded.

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<sup>3</sup> The General WDR states that it does not apply to any new Vineyard Property where vineyard development involves a timber conversion plan or permit. (General WDRs, p. 1, ¶ 5.)

Under CEQA, "Forest land" is land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits. (Pub. Resources Code, § 12220(g) incorporated to CEQA through Cal. Code Regs., tit. 14, § 15387, App. G.) Although the DEIR assumes that no forest land will be impacted, the General WDRs do not expressly exclude projects that could involve conversion of forest lands. (DEIR, pp. 49, 113.) In fact, if all forest lands were excluded from the General Permit, it would most likely remove most if not all new vineyard projects from coverage, as well as many existing vineyards requiring native tree removal to implement BMPs or conduct road improvements. For this reason, the DEIR must be revised to analyze the impacts that the General WDRs will have on forest lands.

Additionally, the General WDRs only exclude those projects that convert timberland pursuant to a Timber Conversion Plan, which does not account for projects that would qualify for a less than three-acre timber conversion exemption. (General WDRs, p. 1, ¶ 5; see also Cal. Code Regs., tit. 14, § 1104.1a.) The impacts associated with new vineyards using this exemption to convert timberland are not analyzed or discussed in the DEIR. (DEIR, p. 113.) Accordingly, the DEIR conclusions regarding impacts to both forest lands and timberlands is inadequate. Additional analyses and information for these impacts is needed.

#### *Traffic Impacts*

Farm Plans, prepared under the General WDRs, directly and indirectly require site evaluations, construction activities related to BMP implementation, and site visits by various professionals. These activities require additional vehicle trips in order to comply with the General WDRs. However, the DEIR does not address traffic impacts. This is surprising, because the Initial Study for the General WDRs states that the project "may result in an increase in truck traffic" and that the construction required on some parcels will temporarily increase vehicular traffic. (General WDR, Initial Study, pp. 66 and 67.) There is no evidence or study cited to support of the conclusion in the Draft General WDRs Initial Study that there would be no impact on traffic. (See *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151 (holding that an initial study must disclose the data or evidence relied upon).) The DEIR should have disclosed and analyzed potential impacts on traffic, and made conclusions based on that analysis.

### **III. Alternatives Analysis**

The DEIR states that the purpose of the General WDRs is to address shortcomings in current regulatory programs, such as the Napa County Conservation Regulations Erosion Control Plan and similar Sonoma County regulations. (DEIR, pp. 36–38.) The DEIR states that current county-level regulations lack the ability to retroactively control erosion (only plantings since 1991 must have erosion control plans), do not address road-related erosion sources in vineyards, and do not address hillslope erosion. (DEIR, pp. 37–38.) However, the DEIR rejects project alternatives that would target these issues without sufficient explanation.

For instance, the DEIR rejected an alternative that would have focused the General WDRs on those properties without an approved Erosion Control Plan pursuant to the Napa County Conservation Regulations. This alternative was inappropriately rejected based on its failure to meet the fundamental project objective of implementing the TMDLs. (DEIR, p. 279.) The DEIR rejects

this alternative without explaining how it fails to satisfy the General WDRs' goal of addressing the shortcomings in the current regulatory scheme, stating that the focus on roads and hillside vineyards would not sufficiently reduce erosion. (*Id.*) It is unclear how the General WDRs, as they currently stand, would afford significantly more erosion control than a combination of existing regulations and a waste discharge requirement that focuses on only those unrelated areas, particularly when existing regulation has improved the health of the Napa River Watershed. It appears that the alternative proposed in DEIR section 10.2.5 would meet the project objectives, and would result in reduced environmental impacts due to its narrower scope. The DEIR does not adequately justify why this alternative was rejected.

#### IV. Conclusion

We appreciate the opportunity to comment on the DEIR for the General WDRs and hope to continue working with the San Francisco Bay Regional Water Quality Control Board as it develops the General WDRs. We seek a manageable and cost-effective regulatory program that encourages participation, compliance, and protects the public interest, while controlling sediment. We advocate a program that moves the ball forward in terms of water quality protection, but does not create duplicative bureaucracy and unnecessary activities and costs that detract from or usurp resources that would otherwise go towards completing projects and implementing programs that address areas of concern where tangible benefits can be achieved -- such as the Napa River Rutherford Reach and Oakville to Oak Knoll Reach Restoration Projects. We hope that the Regional Board will not adopt the General WDRs in their current form, but continue to work toward final action reasonably addressing water quality concerns while simultaneously promoting a program acceptable to all interested parties.

Finally, we reserve the right to offer additional comments at the hearing.

Sincerely,



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