

Conditional Waiver for Discharges from Vineyard Properties

Comments to the Bay Area Regional Water Quality Control Board draft Ag Waiver on Irrigated Lands

Submitted by Nick Frey, President, Sonoma County Winegrape Commission

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I appreciate the opportunity to comment on the draft Ag Waiver on Irrigated Lands in the Sonoma Creek watershed. The Commission represents all grape growers in Sonoma County, with approximately 400 vineyard owners in the Sonoma Creek Watershed. My comments are in italics.

- The regulations cover all vineyards in the Sonoma Creek watershed unless
 - The vineyard has <5% slope on a parcel of <40 acres where 5 or more acres are planted.
 - The vineyard has >5% slope on a parcel of 20 acres or more where 5 or more acres are planted.
 - *Acreage minimums should be increased. A 5-acre vineyard poses minimal risk to water quality and provides insufficient income to pay for the costs of this program. I suggest that the vineyard acreages be increased to 50% of the parcel for each slope category.*
 - *Is the slope determination only for the planted vineyard and not the entire parcel?*
- The regulations are to meet water quality objectives for toxicity (pesticides), bio-stimulatory substances (fertilizers), settleable materials (sediment), and population and community ecology.
 - *These regulations duplicate existing regulations by other agencies and should not be part of this waiver, e.g. pesticides by DPR and local Agricultural Commissioner, and population and community ecology by CA Department of Fish and Game and National Marine Fisheries or Fish and Wildlife. Those regulations are consistent with the water quality objectives and are in practice today as evidenced by your TMDL which did not identify pesticides as a water quality issue. Grapes do not require high fertilizer applications and rural septic systems and animal waste are likely sources of nitrogen, in particular.*
- The Water Board finds that this Order is in the public interest because it:
 - Provides efficient and effective use of Water Board resources while protecting beneficial uses.
 - *This regulation is not efficient for growers or Water Board staff. Annual fees are proposed to pay for the cost of Water Board oversight and monitoring. Those fees, plus the cost to develop Farm Plans and implement mitigations to repair unstable area and to hydrologically disconnect roads place significant financial burdens on growers. I encourage you to minimize the scope of the requirements to focus on sediment and water quality.*

- This Order excludes from coverage **New Vineyards** and **Vineyard Replants** of one acre or greater with vineyards planted on **Slopes** of 30 percent or greater and have soils with high erosion hazard ratings. Discharges from such areas are more appropriately regulated through WDRs (Waste Discharge Requirements) due to their higher water quality threats. It also excludes from coverage construction activities on undisturbed land that contain sensitive species.
 - *These WDR permits require a multi-month application process, fees that are several thousand dollars and require a public hearing before the Regional Board.*
 - *These restrictions go beyond VESCO requirements which have been in place since 2001 and projects developed over that period have successfully controlled erosion. The regulation should defer to county requirements under VESCO and not require WDRs on 30% to 50% slopes*
 - *Regulations relative to sensitive species are outside the scope of the Water Board and duplicate regulations of other agencies. Removing this requirement from this regulation does not relieve the landowner of any responsibility to other agencies.*
- Development of new vineyards presents a greater risk for sediment production and changes to storm runoff than existing and replanted vineyards because they typically involve the conversion of open space with grassland or forest ground cover to cultivated ground cover. **New Vineyard** development may reduce the amount of vegetative cover, create bare soil, concentrate flow, or increase the timing and rate of runoff. Therefore, **New Vineyards** not excluded from coverage under this Order must be designed so that they do not result in excessive soil loss or increase in peak flows over pre-development conditions.
 - *The assumptions made in this statement are questionable. Firstly, VESCO addresses the issues raised. Secondly, very few forest conversions to vineyards have been done and VESCO now includes new requirements when ½ acre or more of tree canopy is removed. Thirdly, vineyards are a managed landscape, i.e. people check vineyards during and after rain events to insure intakes do not clog and corrective actions are taken if erosion is observed. This is not done in pastures or open space. New vineyards have cover crops to provide vegetative cover. New vineyard designs are minimizing drainage pipes and maximizing sheet flow.*
- Monitoring is to verify the adequacy and effectiveness of the waiver's conditions. Monitoring results will be made available to the public.
 - *What will be the cost of monitoring for growers? Does the Regional Board have staff to do upslope effectiveness monitoring? Have local governments agreed to do in-channel effectiveness monitoring? If so, who will bear the costs? What will the cost be for turbidity monitoring at 5 locations and macroinvertebrate monitoring and physical water quality parameters at 11 locations on Sonoma Creek?*
- Water Code section 13269 authorizes the Water Board to include as a condition of a conditional waiver the payment of an annual fee.
 - *Fees and the costs to reduce hydrologically connected roads, to repair unstable areas and gullies, and to repair unstable stream banks are huge burdens to the owners of approximately 10,000 acres of vineyard in the Sonoma Creek watershed.*

- *Has the authority to charge fees been confirmed with legal counsel at the state?*
- The Farm Water Quality Plan (Schedule D)
 - *This plan should be simplified to save time and to comply with Paper Reduction requirements. Specifically, focus the plan on sediment reduction, since that is the primary impairment affected by vineyards. Supplying VESCO erosion control plans and site maps are appropriate for vineyards planted after 2000. Sending copies of pesticide information already supplied to the Agriculture Commissioner is redundant and unwarranted given no impairment for pesticides. This includes submitting an IPM plan. Does Water Board staff even have the expertise on IPM to evaluate the materials supplied? The Farm Plan should only contain information critical to sediment reduction and measures to reduce peak flows.*
- Page 15, 3b & c: Vineyard Replants and New Vineyards
 - *Sonoma County's VESCO addresses these issues and should not be included in this draft waiver.*
- Page 16, 5: Required CEQA Mitigation Measures
 - *These measures are not related to the TMDL and should not have been included in the negative declaration or in the draft waiver. These are responsibilities of other agencies, not the Water Board. In addition, those agencies often cannot agree on issues. Unless the Water Board gets a MOU from all the agencies that requires them to resolve interagency differences within 30 days or the project can proceed, leave this section out. This being deleted would not impact the other agencies' regulatory authority and it would prevent interagency gridlock that delays corrective actions from being taken.*
- P 17, 6 Exclusion ... on impacts to Special Status Species, Habitat & Sensitive Natural Communities.
 - *These measures, which are required when planting on undisturbed land only apply to new vineyards. VESCO currently requires growers to be notified if the parcel is mapped for Special Status Species or Habitat and Sensitive Communities. If not, VESCO already requires engineered erosion and sediment control plans on parcels with over 10 or 15% slope, depending on soil erodibility ratings.*
- Fees
 - *There will be annual fees to recover costs of this program. Those fees plus the costs to implement the farm plan to hydrologically disconnect 50-75% of roads from streams, to repair unstable areas, including gullies, and to repair unstable stream banks places a heavy financial burden on growers. Those costs cannot be passed on in the price of grapes so they will directly affect grower profitability. Also, unstable stream banks are often the result of practices that are not associated with vineyards.*
 - *It is unclear if fees are only on vineyard acres or the entire parcel. They should be on vineyard acres. Hillside vineyards in particular typically occupy only 20 to 50% of the total acreage.*
 - *Are dry farmed vineyards exempt since this applies to irrigated lands?*

I ask the Board to consider a more collaborative rather than strictly regulatory approach to address sediment issues in the Sonoma Creek watershed. I believe vineyard owners share the Board's desire to

reduce sedimentation and improve water quality. Collaboration to address the problems might lead to better outcomes and at less cost than a strict regulatory approach.