

**State Water Resources Control Board Response to Comments –
 Basin Plan Amendment to establish a Total Maximum Daily Load (TMDL) for Sediment in the Sonoma
 Creek Watershed and an Implementation Plan to achieve the TMDL and related habitat enhancement goals
 Comment Due Date: 12pm, March 22, 2010**

1. County of Sonoma Permit and Resource Management Department
2. General Public
3. Kenwood Sonoma Creek Stewardship
4. Mulas Dairy Company, Inc.
5. North Bay Agricultural Alliance
6. Sonoma County Winegrape Commission
7. U.S.EPA

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0.1	Many of the comments received by the State Board in opposition to its approval of this TMDL were submitted either verbatim or in a substantially similar format to comments submitted to Regional Board, without any explanation to the State Board as to why the Regional Board's response was inadequate.	<p>Many of the comments submitted to the State Board on this matter are identical or substantially similar to comments submitted to the Regional Board at the time the draft version of this regulation was under Regional Board consideration. During its consideration, the Regional Board received and provided written responses to all of the many significant comments. The Regional Board's responses either indicated that changes would be made to the regulatory provisions or related documentation in view of the comment (in which case corresponding changes were made), or the Regional Board's written responses indicated that that changes would not be made, and the response indicated why not.</p> <p>Where a commenter merely repeats the comment tendered below on a prior version of this regulation,</p>

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		<p>but fails to disclose what quarrel, if any, the commenter has with the response provided or the action taken by the Regional Board in response to the comment, the State Board is unable to address the comment. Specifically, in those cases where the Regional Board made changes in response to a comment, the commenter has failed to explain how the changes were allegedly inadequate. Likewise, where the Regional Board did not make changes, the commenter has failed to explain how the response or explanation that the Regional Board provided was allegedly inadequate, or even if the commenter even believes that the response was inadequate.</p> <p>Where a commenter has merely repeated the comment submitted below, or merely referred back to comments previously submitted to the Regional Board, the State Water Board cannot divine what the commenter believes has been adequately satisfied and what has not, nor can it determine the reason for any remaining dissatisfaction. Without that information, the State Board does not have a fair opportunity to understand what, if any, remaining concerns exist, and the State Board is therefore unable to use its authority under 13245 to address them. The doctrine of exhaustion of administrative remedies is intended to allow agencies like the State Water Board an opportunity to address the concerns of the commenters. The State Board cannot do so if</p>

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		<p>those concerns have not, as here, been fairly presented.</p> <p>All comments to which this response applies are identified with a reference to this comment 0.1.</p>
1.1	<p>The estimated Sediment Delivery in Table 2 of the proposed BPA includes roads and stream crossings but it is unclear what percentage of the roads assessed are County, State, or privately owned. Therefore, it is difficult to distinguish what percentage of County roads would be included in this category and if indeed those areas are a source of sediment input to Sonoma Creek.</p>	<p>Roads and stream crossings have been identified as significant sources to sediment loading in Sonoma Creek (see San Francisco Bay Regional Water Board’s Staff Report page 55). It is the responsibility of the implementing parties to identify which roads are adding to the problem and control measures to be implemented. These findings are to be submitted to the San Francisco Bay Regional Water Board for review, per Table 4.4 of the Basin Plan amendment.</p>
1.2	<p>The proposed BPA states on page 2 of the draft resolution, “In estimating costs, the Water Board has assumed that owners of agricultural businesses own 75 percent of total land area on hillside parcels, and 95 percent of the land along Sonoma Creek and lower reaches of its tributaries.” Based on this assumption, the County’s responsibility under the TMDL action plan would be minimal and should not be required to submit a WDR. As mentioned on page 2, “To demonstrate attainment of applicable allocations, responsible parties must demonstrate that they are in compliance with required implementation measures and any applicable waste discharge requirements (WDRs), WDR waiver conditions, or National Pollutant Discharge Elimination System permits.”</p>	<p>This statement regarding estimated costs was not in the Final Signed resolution adopted by the San Francisco Bay Regional Water Board on December 10, 2008.</p> <p>Staff disagrees. Each implementing party is responsible for assessing their facilities and practices, and implementing management practices to reduce sediment delivery to Sonoma Creek. Tables 4.4 and 4.5 of the Basin Plan amendment list the required implementation actions associated with sediment discharges from municipal entities, including the County. Such sediment discharges may result from roads or lands within the County’s responsibility. Staff’s assumptions in estimating costs to agriculture are not related to the County’s implementation</p>

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		actions. All responsible parties must demonstrate that they are in compliance with required implementation measures and any applicable WDRs, WDR waiver conditions, or NPDES permits.
1.3	In addition, Table 4.4 of the proposed BPA lists the Sonoma County Stormwater Management Program (SWMP) and County Transportation and Public Works as “Implementing Parties” and Table 4.5 lists compliance with our Municipal Stormwater Permit as the action for the County. As there seems to be a repetition of required action items in the implementation measures we believe that compliance with our Municipal General Permit should be the mechanism by which we are required to implement best management practices to reduce road-related erosion in the watershed.	Table 4.5 shows that the County’s Municipal Stormwater Permit does include some of the required implementation measures associated with urban land uses. However, Table 4.4 illustrates the required implementation measures associated with Parks and Open Space, and/or Municipal Public Works, not all of which are not covered under the County’s Municipal Stormwater Permit. Furthermore, the sources listed in Table 4.4 are being treated as non-point sources. It is the responsibility of the implementing parties to identify the sources of sediments due to Roads, Gullies and or shallow landslides within their jurisdictions and develop an associated management plan. This is beyond the scope of the Municipal General Permit requirements which applies to already established point sources as listed in Table 4.5.
1.4	The proposed amendment mentions Adaptive Implementation for the TMDL. Please describe how public input will be a part of any changes to the sediment TMDL in Sonoma Creek.	Public input will be included in any process that substantially changes the TMDL or TMDL implementation actions. There are public comment periods for changes to the TMDL (e.g., changes to allocations, TMDL targets), as well as for any permitting or enforcement actions. These actions would be considered at public Board hearings, which are publicly noticed. The public may comment

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		during formal comment periods, or at Board hearings.
1.5	Page 6 of the proposed BPA states, "The wasteload allocations contained in Table 3 apply to point sources of sediment that are regulated by NPDES permits. Table 4.5 shows implementation measures required of these sources, which include municipal stormwater." Please explain how the wasteload allocation was determined for point sources that are regulated under a Municipal NPDES Permit.	This information can be found in the San Francisco Bay Regional Water Board's Staff Report pages 59-61.
2.1	<p>The State Water Control Resource Board (SWRCB) proposal, Resolution 2010-, clearly overlaps the broader erosion control measures previously enacted by Sonoma County. Sonoma Creek is a part of the Sonoma County erosion control regulations. The Sonoma County program is a very active, cooperative and effective program supervised and supported by the Sonoma County Ag Commissioners Office. The program has worked effectively with the vineyard industry. Finally, the Sonoma County Regulations are achieving the intent of the proposed SWRCB Resolution 2010.</p> <p>Therefore, I believe the State Water Resources Control Board proposal is unnecessary given the existing Sonoma County erosion control regulations. Eliminating the SWRCB Resolution 2010-, could reduce industry confusion, duplication of industry/government effort/cost, resulting in the best outcome for all.</p>	<p>Staff recognizes the Sonoma County erosion control measures as a good start toward reducing sediment in the watershed. Landowners who are in compliance with the ordinance will be familiar with the actions in the TMDL implementation plan, and likely have a lot less to do (in terms of new efforts) to comply with future conditions of the TMDL. However, while compliance with the county erosion control regulations will facilitate addressing sediment impairments, it does not free the board from meeting its legal obligations.</p> <p>This TMDL is required to meet State and Regional Board's obligations under the Federal Clean Water Act and State Porter Cologne Water Quality Control Act. Specifically, the Clean Water Act requires states to identify impaired waterbodies and address these impairments through development of TMDLs. Porter Cologne gives Water Boards authority to issue discharge prohibitions, waste discharge requirements</p>

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		<p>(WDRs), and/or waiver conditions, in order to control actual and potential discharges of pollutants from point and nonpoint sources into waters of the state.</p> <p>California also regulates and controls nonpoint source pollution as specified in the <i>Plan for California's Nonpoint Source Pollution Control Program</i> (State Board and California Coastal Commission, 2000) and the Policy for implementation and Enforcement of California's Nonpoint Source Pollution Control Program (State Board, 2004). These policies require all current and future nonpoint sources to be regulated under waste discharge requirements or waivers, and/or waste discharge prohibitions (California Water Code 13369).</p>
3.1	<p>As I have commented in the previous version of this plan it has been scientifically stated that the single largest contributor to increased sediment in this watershed is the loss of it's freshwater marshland. Loss of marshland increased sediment in this watershed by three fold since 1800's. See SEC Sonoma Creek Watershed Sediment Source Analysis Oct '06.</p>	<p>See Response to Comment 0.1. The San Francisco Bay Regional Water Board worked closely with the SEC in developing this TMDL and the associated Habitat Enhancement Plan. Staff is aware that habitat loss is a key contributor to the sediment problem.</p>
4.1	<p>We own and operate 750-800 acres of land that floods every time Sonoma Creek overflows. We question if we will be compensated for damage from the sediment deposited on our soil.</p>	<p>The TMDL and associated amendment is designed to control sediment loading and eventually restore Sonoma Creek closer to natural background levels. It is not the Water Board's responsibility to</p>

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		compensate land owners.
5.1	<p>The Sonoma Creek Sediment TMDL was triggered by a two-page memo from CDFG in 1998. It expressed a concern about the steelhead population in the Bay, and suggested actions to prevent loss of essential habitat from controllable factors such as animal waste, siltation, and urban runoff. There was no data on the steelhead population decline or the sediment increase to make their suggestion more than a suggestion. Nevertheless, the SF Bay RWQCB in 2004 updated their WQCP to undertake Sonoma Creek Sediment TMDL.</p>	<p>See Response to Comment 0.1.</p> <p>Sonoma Creek has been listed as impaired by sediment since 1996; the U.S. Environmental Protection Agency (U.S. EPA) has approved the list of impaired waters several times since the original listing. The Water Board is required by the Clean Water Act to address all listings.</p> <p>The “Impairment,” is related to specific “beneficial uses” of the watershed, which are identified in the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan). Sonoma Creek watershed supports the following beneficial uses: cold freshwater habitat (COLD), warm freshwater habitat (WARM), water contact recreation (REC-1), noncontact water recreation (REC-2), fish spawning (SPWN) and migration (MIGR), wildlife habitat (WILD), and preservation of rare and endangered species (RARE), specifically steelhead trout, Chinook salmon, and California freshwater shrimp. “Delisting” must be based on scientific evidence that none of these uses is impaired by excess sediment. Based on scientific studies, we find that water quality objectives for sediment, settleable material, and</p>

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		<p>population and community ecology are not attained, and excess sediment is impairing several beneficial uses, including COLD, WARM, RARE, SPWN, MIGR, and WILD. Therefore, staff do not find it necessary to re-examine the listing.</p>
5.2	<p>As a member of the Sonoma Creek Sediment TMDL Steering Committee, North Bay Agriculture Alliance strongly suggested first that we follow the State guideline for TMDL, and re-examine the listing. Our hope was that money and time be directed to improving Sonoma Creek in a realistic and cost-effective manner rather than reducing sediment at any cost and hoping that it would lead to an abundant steelhead population. Our suggestion was overruled by your staff as were many other subsequent suggestions.</p>	<p>See Response to Comment 5.1</p>
5.3	<p>A sediment source study and a limiting factors analysis were then commissioned by the RWQCB to substantiate the sediment listing, and on their basis the staff prepared a sediment TMDL program. At the public hearing in 2008 before the RWQCB, we again opposed in vain the adoption of the TMDL on the ground of insufficient science behind the TMDL. For example, the alleged decrease in the steelhead population was based on a set of recent counts against anecdotal information on the past population while ignoring the fact that, for nearly a century until about 1960,</p>	<p>The scientific studies that informed the TMDL and Basin Plan amendment, the Limiting Factors analysis and the Sediment Source Analysis, have all undergone extensive scientific review, in accordance with the requirements of Health and Safety Code, section 57004. Current knowledge warrants the actions specified in the TMDL and implementation plan.</p>

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	tens of thousands of fish were planted in Sonoma Creek. As for the sediment load, we had only a set of recent data against “scientific estimates” for the past. The causal relation between the sediment and fish population was even shakier: all studies pointed out that sediment is but a minor factor limiting the fish population.	
5.4	Staff claims that the scientific basis for the TMDL has undergone external peer reviews with positive results. There were only two reviewers – a rather small number for normal scientific peer review. Although both reviewers accepted the reduction of sediment input to 125% of background, nothing is said about how to determine the background on specific parcels. One reviewer even wrote, “I do not believe that the TMDL plan if implemented ... will achieve a high level of success in meeting those goals (as stated on page 3 of the TMDL report)...” Additionally there has been a recent opinion by the scientists of the USGS, SFEI, and UC-Davis that the sediment level in the San Pablo Bay is now too low for optimum habitat for fish.	Peer review was conducted in accordance with Health and Safety Code, Section 57004. Furthermore, staff has designed this TMDL and habitat enhancement plan to rely on adaptive implementation, leaving it open to updates as new applicable science and data comes in. The Regional Board has provided written responses to all Peer Reviewer comments, including the comment referred to by Commenter 5. The peer reviewer continued her comment by stating that the TMDL plan is a start in meeting the goals of the TMDL. Staff agrees, and with this Basin Plan amendment, the Board is setting in motion a plan to reduce sediment and enhance stream habitat. The uncertainties in bay and ocean conditions highlight the need to improve freshwater habitat conditions for native fish, in order to achieve fish populations that are robust and resilient to bay and ocean conditions.
6.1	I am writing on behalf of grape growers in the Sonoma Creek watershed who will be impacted by the proposed amendments to the basin plan. I must question item 14 in the draft Resolution No. 2010-. I find no way to judge the	See Comment 0.1, as the Regional Board provided a written response to a similar comment (see Regional Board response to Comment RCD-2).

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	<p>economic impacts on individual growers, but I fear the projected costs of \$1.3 to 2.3 million/year for 20 years will make many farming operations uneconomic and unsustainable.</p>	<p>The projected cost of \$1.3-2.3 million per year includes the costs for habitat enhancement projects, the majority of which would come from public funding. As discussed in the Staff Report Sections 9.5 and 9.6 Economic Considerations, over the 20 year implementation period of the TMDL, we project the costs to agriculture is likely to be between \$300,000-\$600,000 per year- shared among all of the agricultural interests in the watershed. Staff does not have reason to conclude that this cost will compromise Sonoma County’s agricultural economy.</p>
6.2	<p>I also feel the assumption of 75% government grant support is optimistic given current economic conditions. It is important to keep vineyards, in particular, economically viable because a managed landscape will contribute less sediment to Sonoma Creek than unmanaged land or commercial development. Did your staff check their economic assumptions with any growers? In order for a grower to know the economic impacts, we must know the agricultural acres impacted by the proposed amendment. Specifically how many agriculture acres are assumed to be contributing the 8600 tons of sediment per year? Can you give any examples of management practices which have resulted in a 7000 ton/yr decrease or an 82% reduction in sedimentation? More importantly, growers need to know how much sediment loss per acre will meet the TMDL target. Has any watershed achieved total sediment loading of 125% of background? How can the public assess whether this threshold is reasonable or achievable at any cost?</p>	<p>See Comment 6.1 above. Many stream and habitat enhancement projects in the Sonoma Creek watershed, as well as other watersheds in the Region, have been funded by public grant funds. Staff encourages continued collaboration among public agencies and landowners, to implement projects that jointly reduce sediment discharges and enhance spawning and juvenile rearing habitat for salmonids and other native aquatic species.</p> <p>The assumptions, calculations, and information sources for the cost estimates are provided in the Staff Report Section 9.5 Economic Considerations and 9.6 Agricultural Water Quality Program Costs.</p> <p>The methodology used to estimate the current sediment load is documented in the Staff Report Chapter 6 Source Analysis. The TMDL</p>

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		<p>implementation plan does not include a maximum sediment discharge requirement for growers. Instead, the implementation plan proposes a flexible approach that allows landowners to assess their own lands and choose the management practices best suited for their land and operations. This allows landowners to choose cost-effective management practices.</p> <p>It is important to note that the allocations and targets in the TMDL are not directly enforceable. To demonstrate attainment of applicable allocations, all responsible parties must demonstrate that they are in compliance with required implementation measures and any applicable WDRs, WDR waiver conditions, or NPDES permits.</p>
6.3	<p>If I use your assumptions that 75% of costs will be for correcting channel incision and enhancing habitat conditions, including stream bank stabilization, and that 75% of those costs might be paid through government grants, that leaves nearly 50% of the costs for landowners as a best case. That does not result in \$300,000 to \$600,000 for growers, which is only 25% of the total projected costs to reduce sedimentation from agricultural lands. Are your economic analyses sufficient to meet your requirements for assessing economic impacts of proposed modification to the basin plan?</p>	<p>California Water Code section 13141, dictates that Regional Board staff must estimate the costs associated with all agricultural water quality control programs which staff completed on page 160 of the staff report.</p> <p>The Staff Report Section 9.5 Economic Considerations and 9.6 Agricultural Water Quality Program Costs provides the cost estimates and assumptions used in the calculations. These calculations show that the total costs of the sediment TMDL and related habitat enhancement could cost between \$25million to \$45 million. We conclude that at least 75 percent of the cost of these actions</p>

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		<p>will be paid for by public funds including but not limited to the grants listed in Section 9.7 of the Staff Report. Therefore, we estimate the total cost to agricultural businesses associated with efforts to reduce sediment supply and enhance habitat in Sonoma Creek is \$300,000-to-\$600,000 per year throughout the 20-year implementation period.. Tables 18 through 24 provide the cost estimates for the various sediment reduction and channel restoration actions.</p>
6.4	<p>The amendment refers to the Vineyard Erosion and Sediment Control Ordinance. That ordinance has been expanded to include grading and drainage reviews. There is also a newly released Best Management Practices for Agricultural Erosion and Sediment Control. This manual is available online at http://www.sonoma-county.org/agcomm/vesco.htm#erosion. All newly planted or replanted vineyards in the county fall under this ordinance. You will note vegetative buffer strips (setbacks) have been increased and now ephemeral streams also have vegetative buffers. These requirements along with extensive planting and maintenance of cover crops in vineyards are decreasing sediment movement from vineyards today.</p>	<p>Staff recognizes the Sonoma County Vineyard Erosion and Sediment Control Ordinance as a good start toward reducing sediment in the watershed. Landowners who are in compliance with the ordinance will be familiar with the actions in the TMDL implementation plan, and likely have a lot less to do (in terms of new efforts) to comply with future conditions of the TMDL.</p>
6.5	<p>Is it possible to include Certification under the CA Sustainable Winegrowing Program as an approved program under the WDR waiver policy? Third Party Certification begins in 2010. The process includes annual self-assessments by growers, requirement for an annual action plan to improve elements that the grower feels need to be</p>	<p>Staff supports the development of third-party programs, and is open to recognizing programs that are effective with regard to water quality protection. Water quality protection includes sediment and erosion control, runoff control, stream and riparian health, and nutrient and pesticide management. As</p>

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	<p>improved (in this case, elements affecting water quality would need to be addressed unless already performing at a very high level). Growers are audited every three years to insure assessments are accurate and action plans are implemented. There is a cost for certification in addition to the costs for implementing practices to reduce sediment movement off the property. The advantage of this program over all others I am aware of is all self-assessment data are recorded online and reports can be generated to document improvement in practices over time.</p>	<p>described in the Regional Board’s responses to comments, the State’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (“NPS Enforcement Policy”) specifies the key elements of an acceptable program to control nonpoint source pollution. Staff is open to recognizing programs that meet all five key elements specified in the NPS Enforcement Policy. Regional Board staff has met with representatives of the Wine Institute to discuss the Sustainable Winegrowing Program and what elements would be needed to qualify for a waiver.</p>
6.6	<p>I ask the board to provide growers with maximum sediment discharge per acre per year to meet the TMDL targets. If you have data on current sediment loss from vineyards, those too should be provided. If you have no such data, how valid is your projected 8600 Tons/Year? I also ask that you do more rigorous economic analyses, including scenarios that assume less than 75% grant support for in-stream restoration work. Those costs need to be compared to typical returns for grape and livestock production. Compliance with the Basin Plan amendment will further stress agricultural producers who already suffer from a weak agricultural economy.</p>	<p>The TMDL targets are not directly enforceable. Therefore, all responsible parties must demonstrate that they are in compliance with required implementation measures and any applicable WDRs, WDR waiver conditions, or NPDES permits.</p> <p>The estimated current sediment loading from human-caused surface erosion (including vineyards, grazed lands, unmanaged areas, and minor agriculture) is 8,600 tons per year. The methodology used to develop this estimate is documented in the Staff Report Chapter 6 Source Analysis. The TMDL implementation plan does not include a maximum sediment discharge requirement for growers. Instead, the implementation plan proposes a flexible approach that allows landowners to assess their own lands and choose the management practices best suited for their</p>

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		<p>land and operations. This allows landowners to choose cost-effective management practices.</p> <p>An economic analysis has been completed and documented. Staff is not required to calculate multiples cost estimates based on alternative scenarios.</p>
7.1	<p>Thank you for the opportunity to comment on the proposed approval of an amendment to the Water Quality Control Plan for the San Francisco Bay Region to establish a total maximum daily load (TMDL) and an implementation plan for sediment in Sonoma Creek. We appreciate the San Francisco Bay Regional Water Quality Control Board's hard work to develop this sediment TMDL and implementation plan for the Sonoma Creek watershed. We have reviewed the documents, and we strongly support the State Water Resources Control Board's approval of the package.</p>	<p>Comment noted.</p>
7.2	<p>We have reviewed the analyses for the TMDL and find they are detailed and appropriate. In particular, we support the numeric sediment targets for streambed permeability, pool filling, and percent fines in substrate composition. The source analysis is fully developed and the TMDL, linkage analysis, and allocations are reasonable and well-supported. In summary, we support the TMDL and urge the State Water Resources Control Board to approve the package.</p>	<p>Comment noted.</p>
7.3	<p>The TMDL also contains a detailed plan for implementing the TMDL. Current federal regulations do not define</p>	<p>Comment noted.</p>

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	TMDLs as containing implementation plans, and therefore, EPA does not take approval action on implementation plans. However, EPA supports the Regional Water Board's detailed implementation approaches.	