

**North Coast Regional Water Quality Control Board (Regional Water Board)**  
**Agricultural Lands Discharge Program (Program)**  
**Advisory Group Meeting #4**  
**Sonoma, Marin, Mendocino Sub-Regional Meeting**  
**Meeting Summary**  
**5/4/2012**

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## **ATTENDEES**

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#### **Advisory Group Members/Staff**

Sam Magill, CCP  
Carolyn Wasson, Kendal Jackson Wines  
Kari Fisher, CA Farm Bureau Federation  
Margo Parks, CA Cattlemen's Association  
Carol Mandel, NRCS  
John Nagle, The Wine Institute  
Steve Elliott, Potter Valley Irrigation District  
Shelly Janek, Mendo RCD  
Chuck Morse, Mendocino Co Ag Commissioner  
Julia Correria, Medical Marijuana representative  
Jovita Pajarillo, RWB Volunteer  
Rebecca Fitzgerald, RWB Staff  
Ben Zabinsky, RWB Staff  
Mark Neely, RWB Staff  
Gail Davis, Sonoma Co Ag Commissioner  
David Leland, RWB Staff  
Alan Levine, Coast Action Group  
Valerie Minton, Sotoyome RCD  
Joe Dillon, NOAA Fisheries  
Laurel Marcus, CA Land Stewardship Insitiute  
Glen McGourty, UCCE  
Dave Koball, Mendocino Co Farm Bureau

#### **Public**

Sandi Potter, San Francisco Regional Water Board staff  
Tito Sasaki, Sonoma Co Farm Bureau  
Ryan Pierce, Kendal Jackson Wines  
Jim Doerkson, Sonoma Co Farm Bureau  
Kimberly Burns, Green Valley Ck Restoration  
Virginia Potter, Russian River Watershed Association  
Nick Frey, Sonoma Wine Grape  
Scott Gergus, RWB staff  
Bob Anderson, United Winegrowers of Sonoma County

## ACTION ITEMS/ITEMS OF AGREEMENT

1. Participants agreed that the concept of a risk-based tiering system for the Program framework makes sense.
2. Samantha Olson will develop a memo/outline of the Regional Water Board's legal opinion about the ability to specify management practices for the Program. This memo/outline will be available at the next Sonoma, Marin, and Mendocino sub-regional meeting for discussion.
3. Advisory Group members will provide written comments on the Program scope and framework to Regional Water Board staff no later than May 18, 2012. Staff will use this information to revise the framework for discussion at the June 26<sup>th</sup> full Advisory Group meeting in Redding.

## SUMMARY

**\*\*All presentations and meeting materials referenced below are available online at [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/irrigated\\_lands/](http://www.waterboards.ca.gov/northcoast/water_issues/programs/irrigated_lands/)\*\***

## INTRODUCTIONS, MEETING LOGISTICS, AGENDA REVIEW

David Leland opened the meeting and thanked participants for attending. Sam Magill provided meeting logistic information, reviewed the agenda, and walked through ground rules for the meeting. After a review of the agenda, Advisory Group members and members of the public introduced themselves.

## PRESENTATION & DISCUSSION OF PROGRAM SCOPE

Ben Zabinsky presented the Regional Water Board staff-developed DRAFT Program scope. This scope outlines the land use types/activities intended for inclusion within the Program, and discusses those agricultural activities specifically excluded from the scope. Mr. Leland asked participants to think of whether or not small animal feeding operations should be included in the scope of this Program, or if they should need a separate permit under an as yet undefined program. After the presentation, the following discussion was recorded:

- Glen McGourty asked if private access roads for vineyards will be included in the Program scope. Mr. Zabinsky said they would be. Valerie Minton suggested that only those roads on an agricultural parcel should be included, since access roads may serve multiple properties outside of the scope of this Program. Joe Dillon said that private roads used solely for accessing agricultural activities should be covered, but that another permit for rural *residential* roads may need to be developed. Mr. Leland confirmed that the Regional Water Board would like to cover private rural residential roads in a separate permit in the future.
- Alan Levine asked if maps (including elevation contours and soil types) could be generated to define the scope. Mr. Leland responded that this type of activity would be needed for risk assessment once the Program framework is determined.
- Participants noted that monitoring will be a major component of the Program, and raised concerns about monitoring types, cost, and fairness between growers. Regional Water Board staff confirmed that specific discussions on monitoring requirements for the Program will have to be held, but the Program scope and framework must be determined first. **NOTE:** Participants held an extensive discussion of what monitoring requirements might be; staff confirmed that no

monitoring requirements have been developed yet, and that Advisory Group members will be asked to help define the monitoring component of the Program at a later date.

- Ms. Minton cautioned staff against designing the scope to overlap with other land uses that are already permitted under other Programs (namely dairies and grazing). Mr. Leland confirmed that there may be some activities not explicitly covered under this Program, and that it is not intended to cover dairies or dryland grazing. He then asked the Advisory Group if small animal feeding operations (AFOs) not covered by other programs but associated with agricultural activities should be included in the scope of this Program. Mr. Dillon suggested that the Regional Water Board can add activities (like AFOs) into the Program at a later date as needed; the important thing is to get large agricultural activities included in the scope at this early stage. Shelly Janek suggested that in addition to small scale cow, pig, and sheep AFOs, horses be included as well. Other participants did not weigh in on the AFO question.
- Ms. Janek noted that Mendocino County does not have any existing Total Maximum Daily Loads (TMDL), and asked what this Program will look for since there aren't any explicitly impaired waters in the area. Mr. Zabinsky said that the Regional Water Board is tasked with looking at all sources of waste discharge, not necessarily only those that discharge to a stream or river. Additionally, the Regional Water Board is charged with protecting high quality waters, not just improving impaired waters. Mr. Dillon noted that Mendocino counties has several TMDLs, including the Navarro River Sediment and Temperature TMDLs.
- Dave Koball noted that the Program must be designed in such a way that vineyard owners receive incentives for joining the Program/there must be a return on the investment for implementing best management practices (BMPs).
- Kari Fisher noted that the fee schedule developed by the State Water Resources Control Board (SWRCB) applies only to irrigated lands, not roads and dryland farming. She suggested that the Regional Water Board will have to be very specific in its Notice of Intent (NOI) for the Program about which lands are included as irrigated lands and which are not.
- Chuck Morse asked for additional clarification of what is meant by "dryland farming" (specifically, what type of discharges will come off of a dryland vineyard since irrigation doesn't occur or only at very low levels). He also noted that upstream illegal marijuana cultivation may be responsible for a majority of the waste discharges in the Sonoma, Marin, and Mendocino sub-region. Mr. Leland responded that stormwater on vineyards causes erosion and generates sediment loads.
- Mr. Levine noted that some confusion exists about the purpose and authorities for the Program. He suggested that a written section be developed on why the Program is being developed and what the authority of the Regional Water Board is to implement it. Finally, he noted that if a land owner/operator is discharging any type of waste, they have a legal responsibility to fix the issue.
- Mr. Magill asked meeting participants if the Program scope as defined in the presentation covers the correct agricultural land uses in the Program. No participants objected; one member of the public explicitly agreed.
- Julia Carrera cautioned staff about including all medical marijuana cultivation in the scope of the Program, even if it is very low acreage or has little effect on water quality as this could limit people's access to prescribed medication.
- A member of the public asked if the Regional Water Board has ever prosecuted anyone for violations of nonpoint source regulations. Mr. Leland confirmed that while the Regional Water Board does not prosecute people in court, it has issued cleanup abatement orders, as well as administrative civil liabilities. Ms. Fisher added that other regions with similar agricultural lands programs have taken large and small enforcement actions against waste dischargers.
- Participants discussed having an acreage threshold for inclusion/exclusion from the Program. The following acreage-related comments were recorded:

- Mr. McGourty suggested that small market gardens less than an acre be excluded from the Program.
- Sandi Potter noted that the San Francisco Bay Regional Water Quality Control Board sets a minimum threshold of 5 acres for its vineyard waiver program.
- Mr. Levine suggested that there be an acreage cutoff for flat vs. sloped land; sloped land generates more runoff potential and should have a lower acreage threshold.
- Mr. Dillon suggested that United States Geological Surveys (USGS) maps be used to determine parcel size and slop amounts, and asked whether there are specific GIS layers in the Russian River watershed that could help on a local scale.
- Mr. Leland asked if land ownership patterns in Sonoma and Mendocino counties is radically different than in Napa. Nick Price confirmed that there are more small parcels in Sonoma and Mendocino than in Napa.
- Mr. Zabinsky repeated that only the farmed acreage of a property will be included in the Program, not the entire property. He suggested one possibility for determining acreage thresholds could be to include different thresholds for different types of crops. Mr. Leland confirmed that staff will propose specific numbers for different crop acreage thresholds.
- Ms. Janek asked if there will be different requirements in the Program for the different sub-regions. Mr. Leland responded that staff have suggested treating the entire region the same, but noted that it could change if needed.
- Ms. Potter noted that it could be useful to see what county programs exist to control sediment discharge and ensure that this Program doesn't overlap them too much.

## **PRESENTATION & DISCUSSION OF RISK-BASED TIERS**

After the discussion of Program scope, Mr. Zabinsky delivered a presentation on the DRAFT Program framework. The framework was described as a DRAFT work product for discussion purposes only, and was developed by Regional Water Board staff at the request of Advisory Group members to provide a starting point for discussions.

The framework is divided into three risk-based tiers. If a grower's operation falls within the general scope of the Program, s/he would enroll in one of the tiers depending on the level of water quality risk posed by their operation and the management practices/plans they have in place to mitigate that risk. Although not explicitly captured in the presentation, Mr. Leland noted that a "Tier 4" could be considered for high risk agricultural activities. Furthermore, he commented that the Regional Water Board retains the authority to bring growers into the Program at any time if there is a risk to water quality. After the presentation, the following discussion was recorded:

- Mr. Magill began the conversation by asking participants if the tiering structure conceptually makes sense. Participants generally supported the concept of risk-based tiers; no members opposed the concept (**see Action Item #1**).
- Ms. Fisher noted that some concepts proposed in the draft framework are being petitioned to the SWRCB (specifically around the Central Coast Regional Water Quality Control Board's irrigated lands program). She suggested that the Regional Water Board and the Advisory Group read these petitions to avoid similar challenges to the Program.
- Participants suggested that additional incentive may be needed in Tier 2 to make it more attractive for growers who do not qualify for inclusion in Tier 1. A "reward" for successful farm management within Tier 2 could be the eventual elimination of fees.
- Ms. Fisher asked for a definition of the term "drainwater".
- Ms. Fisher asked who at the Regional Water Board will make the decision to move growers up/down between the tiers. Mr. Leland responded that this will probably be delegated to the Executive Officer.

- Participants noted that although tiering makes sense conceptually, additional clarity is needed on:
  - The difference between Tier 1 and “lands excluded from scope”
  - The definition of “associated facilities”
  - The distinction between Tier 2 and 3.
  - What an individual permit (outside of the Program) could look like.
- Participants had a general discussion about Tier 1. Specifically, some Advisory Group members asked if Tier 1 could be based on something besides physical properties, such as ability to meet all applicable water quality standards. Samantha Olson commented that the intention of Tier 1 is to have easily identifiable (i.e., no monitoring/testing required) characteristics to determine an operation’s risk to water quality. Ms. Potter noted that if this is the case, cover crops and pesticide use should be removed from the Tier 1 requirements. Mr. Leland agreed that if some criteria in Tier 1 are not easily identifiable, they should be revisited.
- Ms. Fisher and Ms. Olson had a discussion about whether or not the Regional Water Board can dictate management practices (such as the planting of cover crops) for the Program. Ms. Olson will develop a legal opinion from the Regional Water Board for discussion at the next sub-regional meeting (**see Action Item #2**).
- Mr. Dillon suggested that Tier 1 criteria be included in the “outside of scope” activities.
- Mr. Dillon suggested a number of specific criteria for the tiers, including mention of class 1, 2, and 3 streams (instead of “blue line streams) and the ability to hydrologically disconnect discharge from streams. A road density of 2 miles per square mile of production/farmed acreage could be a threshold for Tier 1.
- Bob Anderson asked if there is a Tier 4 (high risk) for the Program. Mr. Zabinsky responded that an individual permit could be considered Tier 4; the Regional Water Board always maintains the authority to require individual permits for dischargers if the risk to water quality warrants such action.
- Mr. Anderson asked what the defining characteristic of Tier 3 is. Mr. Zabinsky responded that Tier 3 includes those agricultural operations that pose a risk to water quality, but do not have a plan or management practices in place to mitigate that risk.
- John Nagle asked why frost water is included in the scope of the Program, since no pesticide/nutrient application or mowing are occurring in the winter when frost protection occurs. Mr. Zabinsky responded that other pollutants (including sediment) could be carried away by frost water runoff. Ms. Janek noted that there should be a mechanism in place to allow for frost water runoff if that runoff doesn’t include any pollutants.
- Mr. Nagle asked if tailwater includes sheet flows off land, or if a system to allow only sheet flow would be acceptable within the Program. Mr. Zabinsky responded that tailwater does not include “sheet flows” composed of stormwater runoff.
- Mr. Koball asked what the definition of “riparian area” is. Mr. Zabinsky responded that definition of riparian area is still needed. Conceptually, the idea is to limit any encroachment of riparian areas by farming activities.
- Mr. McGourty asked if different acres within a single property could be placed in different tiers. Staff responded that they have thought about it, but that it may be too confusing from a Program implementation perspective. Mr. Zabinsky responded that monitoring and inspection could be limited to those parts of a property that pose a greater risk to water quality; Mr. Levine noted that this is essentially a mapping exercise.
- Ms. Minton asked if the Regional Water Board is considering an implementation timeline for the Program. Ms. Fisher confirmed that many other regions in the state have implementation schedules.
- Mr. McGourty noted that using the terms “nutrient management plans” and “apply fertilizers at agronomic rates” as criteria/standard provisions for the permit is very vague. Ms. Mandel noted

that currently, the Natural Resources Conservation Service (NRCS) determines agronomic rates of fertilizer application for different crops. Mr. Nagle suggested that a vague definition of these terms is useful for growers so they can determine how to best meet standards for their own operations. Mr. Leland agreed that this “vagueness” could be useful for the Program.

- Ms. Marcus asked how the Regional Water Board will determine which pesticides will be covered by the Program, since most waters in the region are not listed as pesticide impaired. Mr. Morse suggested close coordination with the Department of Pesticide Regulation (DPR) to develop this list. Mr. Dillon noted that DPR already has a list of highly mobile pesticides; ensuring that the Program is in compliance with this list could be valuable. Mr. Morse did note that while appropriate pesticide management is critical, there are times when landowners are required or asked to spray for invasive species, and asked that the Program be designed to allow for these situations without bumping landowners into a higher tier automatically.
- Mr. Koball asked if grazing management plans will only be required for Tier 3 properties. Mr. Zabinsky responded that they will be needed for Tier 2, since Tier 2 requires management plans to address all discharges and controllable water quality factors, but not Tier 1, since Tier 1 does not have a planning requirement.
- Ms. Carrera suggested that staff and the Advisory Group design the Program such that encourages growers to be more aware of the effect their operations have on the environment generally. The program should be designed in such a way that it encourages sustainable farming practices, as well as an education component for growers.

### **Next Steps**

After discussion of the Program framework and risk-based tiers, staff discussed next steps. Advisory Group members were asked to submit any specific comments on the Program framework via email to Mr. Zabinsky no later than May 18<sup>th</sup>. These comments will be compiled by staff and used to create the next version of the document for discussion at the June 26<sup>th</sup> Advisory Group meeting (**see Action Item #3**). Mr. Zabinsky encouraged participants to focus their comments on examples specific to this sub-region.

### **ADJOURN**