



CALIFORNIA
ASSOCIATION
of WINEGRAPE
GROWERS



November 25, 2024

Mr. Greg Guisti, Vice Chair
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

RE: Comments Regarding Proposed General Order for Waste Discharge Requirements for Commercial Vineyards in the North Coast Region

Dear Mr. Guisti:

We are writing to provide additional comments on the North Coast Regional Water Quality Control Board's proposed General Order for Waste Discharge Requirements for Commercial Vineyards (Vineyard Order). Our members own and manage significant acreage within the North Coast region and will be tasked with implementing what is proposed in the Vineyard Order. We appreciate the opportunity to provide further comments and make recommendations on changes to the Vineyard Order that will improve the clarity of the Vineyard Order, simplify its implementation for vineyard managers, and ensure water quality objectives are met.

Wine Institute is a public policy advocacy group representing approximately 1,000 California wineries and affiliated organizations responsible for 85 percent of the nation's wine production. The California Association of Winegrape Growers (CAWG) is the only statewide organization dedicated exclusively to protecting and promoting the interests of California winegrape growers, representing approximately 800 grower and associate members statewide.

California's wine industry contributes \$73 billion to the state's economy, employs 422,000 Californians, and pays \$7.9 billion in federal, state, and local taxes. In addition to the economic value that California winegrape growers and wineries create, our members are committed to sustainability. In 2003, Wine Institute and CAWG formed the California Sustainable Winegrowing Alliance (CSWA) to promote the benefits of sustainable winegrowing practices, enlist industry commitment and assist in implementation of the Sustainable Winegrowing Program. Today CSWA manages the largest third-party sustainable wine program in the U.S., Certified California Sustainable Winegrowing (CCSW). CCSW currently certifies 45 percent of California winegrape acreage and 90 percent of wine produced in California comes from a CCSW certified winery. Additionally, when other sustainability certification programs are included, approximately 60 percent of all California vineyard acres are certified sustainable.

We would like to acknowledge the numerous positive changes that have been made to the proposed Vineyard Order since we commented on the previous draft in our letter dated August 29, 2023. For example, the elimination of the specific winterization requirements, the delay in development of high vulnerability groundwater areas, and adjusting groundcover requirements to better match erosion risks. We also want to express our appreciation for the significant time that staff took to visit numerous North Coast vineyards over the winter and spring to better understand the implications of the requirements being proposed in the Vineyard Order. We recognize that numerous changes to the proposed Vineyard Order were made in response to concerns raised by vineyard owners and managers and we appreciate those changes.

Despite these improvements, the current proposal should not be adopted in its current form. Several necessary changes remain to clarify permit requirements and ensure that vineyard owners and managers understand what is requested of them to achieve compliance. For example, we are currently working with the State Water Resources Control Board (State Board) and numerous Regional Water Quality Control Boards on implementation of the statewide General Order for Winery Waste (Winery Order). The State Board adopted the Winery Order without including important clarifying edits that were recommended during the rulemaking process, which has led to challenges. There are numerous elements in the Winery Order that are unclear, which has resulted in significant time for both wineries and State Board staff to try to determine what the language intended. We urge you to make clarifying changes to the Vineyard Order prior to adoption to save time for all parties once the Vineyard Order is adopted.

Needed Definitions

Sediment Management Unit: The proposed Vineyard Order includes a definition for “sediment management area,” however it does not define “sediment management unit” and refers to sediment management units in three places in the Vineyard Order (pages 48 and 50). It is unclear if sediment management units are meant to be the same as sediment management areas or if they are meant to be a subset of sediment management areas. We recommend clarifying the difference between the two references.

Management Practices: The proposed Vineyard Order makes numerous references to management practices but does not include a definitive definition. We appreciate that the proposed Vineyard Order does not mandate specific practices, and instead allows vineyard managers to choose management practices that best work in their specific situations. However, we would appreciate clarification on how to apply the management practices in the CEQA document as well as clarification that the management practices are not limited to what’s included in the CEQA document.

Specifically, the definition of *Ground Disturbing Management Practices* includes “watering for dust control, establishing perimeter silt fences, and/or placing fiber rolls,”

none of which seem to be ground disturbing activities. The proposed Vineyard Order requires compliance with all mitigation measures in Attachment E during construction of ground disturbing management practices. Item HWQ-1 in Attachment E includes the following mitigation measures: “Implement practices to prevent erosion of exposed soil and stockpiles, including *watering for dust control, establishing perimeter silt fences, and/or placing fiber rolls*” (emphasis added). It appears that the proposed Vineyard Order will require vineyard managers and their employees to follow the mitigation measures in Attachment E when they are watering for dust control and the mitigation measure in Attachment E is the same as the activity. We would recommend that the definition of Ground Disturbing Management Practices exclude those items that are also mitigation measures included in Attachment E.

Needed Clarifications

Vegetated Buffers

The proposed Vineyard Order prohibits certain activities within vegetated buffers but allows existing structures to remain. We appreciate the allowance for existing structures, however if a pump house that is currently located within a vegetated buffer needs to be rebuilt, it is unclear if that activity would be allowed. We request clarification that rebuilding existing pump houses be allowed, as those structures need to be located near points of diversion. Further, there may be other existing structures that should be allowed to be repaired or rebuilt and we request a grandfathering in of existing structures that need repair.

Monitoring Requests and Clarifications

It is unclear what monitoring is required for vineyards without agricultural drainage structures. If a vineyard does not have any agricultural drainage structures to sample, what monitoring is required? Does a vineyard without any agricultural drainage structures achieve compliance if it meets the thresholds of:

- 50% Ground Cover on slopes less than 10%, or
- 75% Ground Cover for slopes over 10%, or
- Develop and implement a Sediment and Erosion Control Plan (SECP) either individually or through an approved Voluntary Sediment Control Program (Voluntary Program)

Additional clarification of monitoring requirements for vineyards without agricultural drainage structures would be appreciated. The proposed Vineyard Order would also benefit from clarity around whether drainage structures that are used exclusively for groundwater removal are excluded from the definition of agricultural drainage structure.

It is unclear to us why “filter stormwater runoff” is included in the definition of agricultural drainage structure. This would seem to include buffer strips in the definition of agricultural drainage structures. Features that filter stormwater runoff are unlikely to be channelized, which would make collecting runoff to conduct turbidity monitoring extremely difficult. We recommend excluding “filter stormwater runoff” from the definition of agricultural drainage structure.

The proposed Vineyard Order requires turbidity monitoring of agricultural drainage structures unless a vineyard has a certified Sediment and Erosion Control Plan (SECP) or meets the 90 percent planted or rooted ground cover requirement by December 15. However, in drought years with limited qualifying storm events (QSE) how is monitoring compliance determined for QSEs that occur prior to December 15 if the ground cover requirement is not yet in place? How do enrollees or a coalition determine which locations need to be monitored prior to December 15?

We believe that it will be extremely difficult for vineyards to meet a 90 percent planted and rooted ground cover requirement by December 15 due to temperature requirements for germination as discussed further below. Thus, additional clarification is needed around when and where monitoring is required.

Photo Point Monitoring

We appreciate the inclusion of photo point monitoring as a possible option for vineyards who either create a SECP certified by a qualified professional or meet the 90 percent ground cover requirements. However, the requirements for meeting the 90 percent ground cover are so steep that it is likely not an option that can actually be utilized by vineyard owners or managers. The climate on the North Coast is not generally warm enough for plants to germinate and produce significant cover by December. As a result, vineyards with annual cover crops would not be able to meet the 90 percent planted or rooted groundcover requirements to be eligible for photo point monitoring. This will force vineyard managers to irrigate in October and November, while it is still warm enough for germination. This seems like an unforced error for achieving water conservation. Moreover, even with irrigation, enough growth is unlikely to occur by December 15 to meet the 90 percent standard.

Our conclusion regarding the inability to achieve the proposed 90 percent threshold is supported by a study conducted by E.B. Brennan *et al.*¹ of rye and legume-rye cover crop mixtures for vegetable production on California’s Central Coast (Hollister and

¹ Brennan, E.B., N.S. Boyd, R.F. Smith, and P. Foster. 2011. Comparison of Rye and Legume-Rye Cover Crop Mixtures for Vegetable Production in California. *Agron. J.* 103:449-463.
(https://www.researchgate.net/publication/261145684_Comparison_of_Rye_and_Legume-Rye_Cover_Crop_Mixtures_for_Vegetable_Production_in_California/download - Accessed November 21, 2024)

Salinas). In the study, seed mixes were planted in early November and irrigated with sprinklers during the week following seeding. Measurements of ground cover were taken 35 to 43 days after planting and ground coverage ranged from 29 to 54 percent depending on the seed mix. The ground cover in the study didn't reach 90 percent cover until approximately 60 days after planting. While this study was not in vineyards, it clearly documents the challenge that any grower would face in meeting the 90 percent planted and rooted ground cover standard to be eligible for photo point monitoring.

While we appreciate the clarification that the 90 percent requirement is for "ground cover that must be *primarily* comprised of planted or rooted material," even with the distinction that the standard is primarily made up of planted or rooted material, it seems unlikely that vineyards could meet that standard not only due to limited germination early in the season, but also due to limitations around equipment for seeding beyond typical vineyard avenue spacing.

Instead, we recommend a menu approach that achieves the high standard intended for photo point monitoring eligibility but is realistically achievable for vineyards. We recommend the following:

Photo Point Monitoring Compliance Options (Choose one from below:)	Ground Cover Requirement	Verification	Other Practices
Minimum Ground Cover between Feb. 28 – Apr. 1	85 percent, primarily planted and rooted	Provide documentation of seeding ground cover by Nov. 15 in annual compliance report and conduct photo point monitoring to confirm ground cover after germination (by Feb. 28). For perennial cover crop systems provide documentation of original seeding ² and conduct photo point	

² If original documentation is not available, provide photo documentation of establishment of perennial cover crop prior to first mowing (late March, early April).

		monitoring of presence of cover crop by Dec. 15.	
Ground Cover Planting Verification and Herbicide Reduction	80 percent, primarily planted and rooted.	Provide documentation of seeding ground cover by Nov. 15 in annual compliance report and conduct photo point monitoring to confirm ground cover after germination (by Feb. 28). For perennial cover crop systems provide documentation of original seeding ³ and conduct photo point monitoring of presence of cover crop by Dec. 15.	Eliminate herbicide spraying between Sept. 1 – Feb. 28 to increase presence of rooted material in the vineyard. Confirmation available in Pesticide Use Reports.

Please note that the reduced herbicide alternative has several benefits in addition to less chemical usage. This alternative results in fewer tractor passes, so less soil compaction occurs, as well as lower greenhouse gas emissions from diesel.

It is important to recognize that these recommended compliance options are a very high standard and will be a challenge for many vineyards to implement. We recognized the intent of the proposed Vineyard Order to limit photo point monitoring to only those meeting high standards for ground cover and believe that our alternative options also meet these high standards.

Other Concerns

Voluntary Programs

We appreciate the inclusion of voluntary programs as an option for vineyard compliance with the proposed Vineyard Order. We have a number of questions that would benefit from additional clarity within the Vineyard Order. It is unclear who is responsible for

³ If original documentation is not available, provide photo documentation of establishment of perennial cover crop prior to first mowing (late March, early April).

verifying if the SECP is completed. Is that done during the audit, or is it expected to happen during a separate process? Is the Regional Board expecting voluntary programs to provide additional workshops or technical assistance for growers choosing to complete a SECP, or is the normal process a voluntary program provides for vineyards participating in their programs all that is required? Most vineyard sustainability certification programs have specific requirements for sediment and erosion control included, however it is unclear if they would meet the standards required in the proposed Vineyard Order.

It is important that the standards being audited are clear. For example, auditors are not guiding growers on how to implement specific practices, instead they are simply documenting whether a specific practice has been completed or the necessary paperwork is on file. We request clarity about what is the responsibility of the voluntary program as compared to the responsibilities of the enrollee.

Sediment and Erosion Control Plans

Some vineyards may decide to conduct photo point monitoring as their monitoring system and gain eligibility through the use of a SECP certified by a qualified professional. Given that vineyards are established for at least 20-years, it seems odd to require recertification of a SECP every five years. Developing a certified SECP will be costly, especially given that licensed professionals typically charge between \$250-350 per hour and a site visit to some vineyards could easily require eight hours, meaning development of the entire plan is likely to be over 40 hours (i.e., over the \$10,000 estimated in the cost section of the Vineyard Order).

As an alternative approach, we recommend that the vineyard owner and/or manager sign an affidavit certifying that they have reviewed the plan to ensure nothing has changed and that they will continue to implement the plan as originally drafted. The Regional Board could require that this affidavit be submitted either individually or to the third party every five years. We also recommend the same review process for non-certified SECPs.

VESCO

Sonoma County has a strong program in place to limit sediment and erosion from new and replanted vineyards in its Vineyard and Orchard Site Development Ordinance (VESCO). We request that engineered plans developed by new and replanted vineyards be recognized as SECPs for parcels that have completed VESCO plans. Sonoma County is currently in the early stages of updating the best management practices document for VESCO and could incorporate references to the North Coast Region's Basin Plan to ensure that it would meet the standards required by the Regional Board.

Additionally, we request that the prohibitions for activities involved with planting and replanting vineyards more closely match the allowances under VESCO. There are planting activities that can occur during the winter period that do not pose significant risks to water quality. VESCO currently allows final planting work and final replanting work to occur between October 1 and April 30. We request including the definitions of final planting work⁴ and final replanting work⁵ within the proposed Vineyard Order and allow those activities over the winter. This will ensure that vineyard owners and managers can complete their planned planting and replanting activities in a timely manner.

Confidentiality of Reporting

Courts have agreed with decisions by the Central Valley Regional Water Quality Control Board (Region 5) and State Board allowing water quality coalitions to anonymize grower information required by Irrigated Lands Regulatory Programs to be submitted to third-party water quality coalitions before submitting it to the Regional Board⁶. We support the allowance of third-party coalitions to anonymize grower information prior to submitting it to the Regional Board and appreciate the inclusion in Attachment B of anonymous Enrollee IDs. However, we would request clarification regarding the inclusion of Township, Range, and Section (TRS) in the annual submittal of management practice data by third-party coalitions. The inclusion of TRS is likely to provide detailed information that could allow the public to identify specific vineyards. Data submitted to Region 5 by water quality coalitions anonymizes TRS information and we would request that the proposed Vineyard Order be clarified to allow this⁷.

Guidance

We request that the Regional Board develop a flow chart to assist vineyard owners and managers in understanding the specific requirements that are applicable to their vineyards. For, example we sincerely appreciate the exclusion from enrollment, monitoring, and reporting for vineyards outside of the Big-Navarro-Garcia, Gualala-Salmon, and Russian River watersheds and for all vineyards that don't exceed five acres.

⁴ **Final Planting Work.** The work undertaken as part of the final phase of new vineyard or orchard development, including laying out of vineyard or orchard blocks and vine or tree rows, construction or modification of aboveground vineyard or orchard infrastructure, planting of grapevines or orchard trees, and other similar work. (Sonoma County Ordinance No. 6338)

⁵ **Final Replanting Work.** The work undertaken as part of the final phase of vineyard or orchard replanting, including laying out of vineyard or orchard blocks and vine or tree rows, construction or modification of aboveground vineyard or orchard infrastructure, planting of grapevines or orchard trees, and other similar work. (Sonoma County Ordinance No. 6338)

⁶ Environmental Law Foundation, *Protectores Del Agua Subterranea, Monterey Coastkeeper et al. v. State Water Resources Control Board* (2023) Cal. App. 3rd (<https://www.courts.ca.gov/opinions/archive/C093513M.PDF> see pages 25-30) Accessed November 21, 2024

⁷ Page 22 of Attachment B: Monitoring and Reporting Program for Enrollees in a Coalition, Section V. 7) b).

However, those exclusions are buried within the document and would be more obvious on a simple flow chart.

Conclusion

We appreciate all the time staff invested in visiting vineyard owners and managers over the winter and spring to better understand the impacts the Vineyard Order will have on North Coast vineyards. It is clear that effort provided substantial benefit as numerous positive changes were made from the earlier draft Vineyard Order. We respectfully request the Board adopt the changes and clarifications we recommend in this letter to ensure that the Vineyard Order can be implemented with minimal disruptions to vineyard operations, is clear for enrollees, and will address water quality concerns. Please do not hesitate to contact us (michael@cawg.org or ncremers@wineinstitute.org) if you have any questions.

Sincerely,



Michael Müller
Director of Government Relations
California Association of Winegrape Growers



Noelle G. Cremers
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CC: Members, North Coast Regional Water Quality Control Board