North Coast Regional Water Quality Control Board

EX PARTE DISCL SURE REQUIREMENTS FOR PENDING GENERAL ORDERS

The prohibition against ex parte communications no longer applies to general waste discharge requirements (including NPDES permits), general waivers and general Clean Water Act section 401 water quality certifications. A "general order" does not name specific dischargers, but instead allows eligible dischargers to enroll. The following information will help the public comply with the requirement to meet statutory disclosure requirements. For more information, see Water Code section 13287 and http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

Must I disclose ex parte communications with board members regarding pending neral orders?

You must provide written disclosure if you are in one of these categories:

- Potential enrollees (including their representatives or employees)
- Persons with a financial interest (including their representatives or employees). For a definition of "financial interest," consult the Political Reform Act (Gov. Code, § 87100 et seq.) and implementing regulations (Cal. Code of Regs., tit. 2, § 18700 et seq.), or the Fair Political Practices Commission website (http://www.fppc.ca.gov/index.php?id=51)
- Representatives acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association

What must I isclose?

The attached form lists the information that must be disclosed to document a meeting, telephone call or other conversation. For written communications, a complete copy of the letter or email with all attachments is adequate.

When is the isclosure due?

Water Board staff must receive the disclosure within seven (7) working days after the board member receives the communication (generally, the date of a phone call or meeting with a board member).

Who must receive my disclosure documents?

Unless the board member(s) provided you with a different contact person, please send your materials to: NorthCoast@waterboards.ca.gov

What will the Water Board do with my disclosure?

The Water Board is required to post the disclosure on its website and to distribute it via any electronic distribution list for the proposed order. There is no requirement to distribute the disclosure to board members or to prepare responses. If you want to submit written comments or evidence on a proposed general order, you must provide the comments or evidence following the procedure and timelines provided in the notice for the board's proceeding.

May other interested persons respond to a disclosure notice?

The Water Code does not require that interested persons be allowed to respond to disclosure notices. Any such responses should be included in formal comments submitted during the order's written comment period, included in oral comments at the hearing, or both.

NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD
EX PARTE COMMUNICATIONS REGARDI G ENDI NG GENERAL ORDERS
DISCLOSURE FORM

Note: This form is intended to assist the public in providing the disclosure required by law. It is designed to document meetings and phone calls. Written communications may be disclosed by providing a complete copy of the written document, with attachments. Unless the board member(s) provided you with a different contact person, please send your materials to: NorthCoast@waterboards.ca.gov. Use of this form is not m ndatory.

1. Pending General Order that the communication concerned:

2. Name, title and contact information of person completing this form:
   Note: Contact information is not mandatory, but will allow the Water Board to assist you if additional information is required. If your contact information includes your personal residence address, personal telephone number or personal email address, please use a separate sheet of paper if you do not want that information posted on our website. However, this information may be provided to members of the public under the Public Records Act.

3. Date of meeting, phone call or other communication:
   Time:
   Location:

4. Type of communication (written, oral or both):

5. Names of all participants in the communication, including all board members who participated:

6. Name of person(s) who initiated the communication:

7. Describe the communication and the content of the communication. Include a brief list or summary of topics discussed at the meeting, any legal or policy positions advocated at the meeting, any factual matters discussed, and any other disclosure you believe relevant. The Office of Chief Counsel recommends that any persons requesting an ex parte meeting prepare an agenda to make it easier to document the discussion properly. Attach additional pages, if necessary.

8. Attach a copy of handouts, owerPoint presentations and other materials any person used or distributed at the meeting. If you have electronic copies, please email them to facilitate web posting.

December 3, 2024

North Coast Regional Water Quality Control Board
5550 Skylane Blvd, Suite A
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Submitted via email to: NorthCoast@waterboards.ca.gov; Brenna.Sullivan@waterboards.ca.gov; Chris.Watt@waterboards.ca.gov; David.Kuszmar@waterboards.ca.gov; Valerie.Quinto@Waterboards.ca.gov

RE: Comments on Proposed Vineyard Order

Regional Water Board Members and Staff:

On behalf of Russian Riverkeeper ("RRK"), we welcome the opportunity to submit these comments on the proposed "General Waste Discharge Requirements for Commercial Vineyards in the North Coast Region, Order No. R1-2024-0056" ("the Proposed Order"). RRK is a local nonprofit that has been successfully protecting the Russian River watershed since 1993. We actively pursue the protections and restoration of the river's mainstem, tributaries, groundwater, and watershed through focused scientifically based advocacy, public outreach, and direct engagement with the Russian River community. Our mission is to protect and restore our watershed environment for the benefit of current and future generations.

We were members of the North Coast Regional Water Quality Control Board's ("RWB") Environmental TAG, along with other environmental interest groups and individuals for the drafting of this important order, and we are interested in ensuring that the water quality of North Coast Region waterways are of a high quality sufficient to meet the needs of *all* beneficial uses, especially the needs of our most sensitive salmonid species.

I. INTRODUCTION

In recent decades, vineyards have exploded in the North Coast Region with high concentrations throughout the Russian, Gualala, and Navarro Watersheds. Until now, there has been no regulatory method in place to address the negative environmental impacts of these vineyards on our regional watersheds despite being a primary pollutant contributor. As our region continues to deal with a multitude of new demands, from extreme drought and floods to increased temperatures and loss of critical habitat, it is vital that manageable water quality impairments be addressed so that our waterways and impacted species have a chance at resiliency. Our overmanaged riparian systems need their environmental functions returned so that beneficial uses and our most sensitive salmonid species are restored. To do this, a strong and transparent water quality monitoring and reporting program is necessary to inform effective adaptive management practices, ensure interim measures are met, and to protect all beneficial uses.

By adopting a strong permit program for vineyards, the most prolific agricultural industry in the Russian River Watershed, the RWB will help ensure that vineyard discharges are not continuing to contribute to ongoing pollutant impairments and harms. While we are largely in support of the

program currently proposed by RWB Staff, we still have some concerns, including but not limited to, ensuring effective feedback mechanisms are in place To help aid in achieving a stronger permit that is more protective of our environment and vital water resources, we have laid out our concerns, our recommendations, our reasoning, and our key areas of support below.

Summary of Main Issues:

The RWB maintains the 250NTU benchmark for determining effectiveness of management practices.
All Photo-Point Monitoring must be submitted to the RWB as part of the Annual Compliance Report.

3. Certified SECPs drafted by Qualified Professionals must have an established monitoring baseline and subsequent representative monitoring of Agricultural Drainage Structures (less than required of non-certified SECPs) to demonstrate effectiveness and overall Order compliance.
4. Certified SECPs include an inspection by the Qualified Professional during the winterization period.
5. There is a prohibition against driving on saturated soils unless some limited exception applies (e.g., unscheduled well or water pump maintenance).

II. NVIRONMENTAL AND REGULATORY BACKGROUND

A. The North Coast Region is Home to Federally and State Listed Species that are Sensitive to Sediment and Temperature Impairments.

The Russian River Watershed is unique in its ability to support an expansive combination of rural, urban, agricultural, recreational, and environmental needs in a modern California. Today, the watershed encompasses 1,500 square miles of forests, agricultural lands, and urban areas within Sonoma and Mendocino Counties, of which, about 95% of lands remain privately owned. The watershed consists of the Russian River's 110 mile-long mainstem, an estimated 238 creeks, streams, and tributaries, and a network of interconnected groundwaters. These waterways are a vital resource to the continued well-being of the North Coast and San Francisco Bay Area Nature Regions as they are responsible for providing: water for over 6 ,000 area residents and numerous agricultural uses; a favorite tourist and summer escape for over a million people each year; and key habitat for thirty-four species of fish, including three federally listed salmonid species, birds, plants, and mammals alike. Though smaller in scale, the Navarro and Gualala River watersheds are similarly home to several endangered species, including coho and chinook salmon, and steelhead trout.

Historically, these and other watersheds in the North Coast Region supported robust salmonid populations, due to the presence of cool, clean waters for spawning and juvenile rearing. However, sedimentation and warmer water temperatures caused by vineyard management practices (e.g., tilling, vegetation removal), and now exacerbated by climate change, threaten their survival. Coho and chinook salmon, in particular, are listed as endangered in the region, with only a few remaining populations.

Extensive conservation efforts are ongoing, including habitat restoration projects and fish passage improvements, but these efforts cannot be successful without changes in land management that result in water quality improvements necessary to support the recovery of salmonid and other sensitive specie populations.

B. Key Salmonid Habitat within the North Coast Region has been Negatively Impacted by the Vineyard Industry's Unregulated Non-Point Source Pollutants, like Sediment and Temperature, for Decades.

Despite numerous beneficial uses, the Russian, Navarro, and Gualala River Watersheds are continually plagued by water quality issues with algal blooms, polluted runoff, high water temperatures, pesticides, high turbidity, altered streambed compositions, and other impairments.[1] In dryer periods these water quality issues and their negative impacts are further exasperated due to increased pollutant concentrations. In fact, the majority of waters in the North Coast are 303(d) listed for temperature, sediment, and pesticide impairments, amongst others; and have been for decades. This puts our important natural, cultural, human, and tribal resources at risk for permanent degradation and possibly extinction if significant changes in land disturbance are not made soon. While some watersheds, like the Navarro, have sediment and other TMDLs in place meant to address some of these harms, the Russian River Watershed does not. However, as vineyards are one of the last unregulated industries in the North Coast Region,[2] this proposed Order has the potential to play a significant role in addressing ongoing sediment, temperature, and other impairments throughout the region.

Sediment impairments caused by poor land management practices that increase erosion have had a significant negative impact on the region's salmon populations, particularly coho and chinook salmon, because they are heavily reliant on clean, oxygen-rich water for spawning and juvenile rearing. Excess sediment can smother salmon eggs and reduce their chances of survival. Fine particles in the water can also clog the gills of fish, impairing their ability to breathe and increasing stress levels. Additionally, sedimentation can degrade critical habitat features, such as gravel beds, that are essential for reproduction. When these habitats are covered by sediment, adult salmon struggle to find suitable places to lay their eggs, and juvenile fish have fewer areas to take refuge from predators or strong currents. The turbidity caused by sedimentation also reduces the amount of sunlight reaching aquatic plants, disrupting the food web and further diminishing the overall health of a river ecosystem.

Similarly, warmer waters caused by loss of riparian refugia, climate change, and over prescribed water supply can increase metabolic stress for salmon, impairing their ability to grow, reproduce, and migrate effectively. Elevated temperatures also reduce dissolved oxygen levels, making it harder for fish to breathe and increasing their vulnerability to disease. For salmon, particularly

[1] Note: In the last decade, numerous vineyards have flouted the regulatory rules that apply to them. From clear-cutting native species, using fire management as cover for creating stream crossings and cutting into riparian foliage, and sheering steep hillsides for new vines, several vineyard properties have shown they will do what they want without fear of consequence; and these are only the few that have been caught.

[2] Note: The North Coast Region is one of the most prolific grape growing areas in the state, with even more grapes than Region 2.

during critical life stages like spawning and early development, temperature increases can lead to reduced egg viability, slower growth rates in juveniles, and higher mortality rates. In extreme cases, high water temperatures can cause fish to migrate prematurely, leaving them exposed to predators or unsuitable conditions downstream. These cumulative impacts have contributed to the decline of salmon populations, already threatened by climate change, overfishing, and habitat loss.

These negative impacts have contributed directly to the decline of salmon populations in the North Coast. Effective temperature and sediment management and habitat restoration is essential for salmonid population survival and restoration, yet regulatory frameworks to do so have largely not been implemented at any level of effectiveness.

. **The Non-Point Source Policy and Regional Water Board Duties Require Effective Feedback Mechanisms are Adopted and that the Adopted Program is Likely to Achieve Water Quality Objectives and Beneficial Use Protections.**

Throughout this drafting process, the RWB has been primarily guided by its own regulatory duties and the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (the "NPS Policy").

. *Duties, Obligations, and Responsibilities of the North Coast Regional Water Quality Control Board.*

The Regional Boards have been tasked with ***preserving, enhancing, and restoring*** **the quality of California's water resources and drinking water** ***for the protection of the environment, public health, and all beneficial uses*****, and to ensure proper water resource allocation and efficient use,** ***for the benefit of present and future generations*****. It is the Regional Board's mission to** develop and enforce water quality objectives and implementation plans *that will best protect the State's waters*, recognizing local differences in climate, topography, geology and hydrology.

This means that it is the RWB's duty to develop an effective vineyard permit that will ensure water quality is protected based on the needs of all beneficial uses, not on the costs or potential business impacts of the vineyard industry. Vineyards and the RWB must remember there is no legal right for vineyards to discharge pollutant filled waste into our public waters of the State, it is merely a privilege granted by the State that is conditioned by the need to protect all beneficial uses. The health and well-being of our waterbodies must be protected for the benefit of present and future generations.

. *The State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program.*

The NPS Policy is meant to protect the quality of water resources from the adverse effects of non-point source water pollution, including those caused by vineyard discharges.

Implementation of the NPS Policy is governed by five key elements, as noted by RWB Staff in the Proposed Order:

> Key Element 1: An NPS control implementation program's ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.
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> This element further requires that any NPS control implementation program (a WDR in this case) be specific as to the water quality requirements it is designed to meet. For example, if the program relies upon dischargers' use of management practices, there should be a strong correlation between the specific management practices implemented and the relevant water quality requirements. The program should also require measures that assist the RWB in identification of participant dischargers. The RWB must be able to ensure that all the significant sources of the NPS discharges of concern are addressed.
>
> Key Element 2: An NPS control implementation program shall include a description of the management practices and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose(s), the process to be used to select or develop management practices, and the process to be used to ensure and verify proper management practices implementation The Regional Water Board must be able to determine that there is a high likelihood that the program will attain water quality requirements. This will include consideration of the management practices to be used and the process for ensuring their proper implementation.
>
> This element further requires that management practices be tailored to a specific site and circumstances, and that when an management practice has not previously been used, documentation to substantiate its efficacy must be provided by the discharger. The RWB must have an actual basis for believing there is a high likelihood an management practice will be successful.
>
> Key Element 3: Where the Regional Water Board determines it is necessary to allow time to achieve water quality requirements the NPS control implementation program shall include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements.
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> Alternative processes the RWB can use to ensure water quality requirements are achieved in furtherance of this element are: identification of measurable long term and interim water quality goals; a timeline for achieving these goals; provision for maintenance of the implementation actions; and/or provision for additional actions if initial actions are inadequate.
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> Key Element 4: An NPS control implementation program shall include sufficient feedback mechanisms so that the Regional Water Board, dischargers, and the public can determine whether the program is achieving its stated purpose(s) or whether additional or different management practices or other actions are required.
>
> Verification measures to determine whether an NPS control implementation program is meeting its stated purpose is a key element of all NPS control implementation programs.

In addition to verification of proper management practice implementation (Key Element 2), feedback mechanisms are needed to clearly indicate whether and when additional or different management practices or management practice implementation measures must be used, or other actions taken. Designing the appropriate types and frequency of verification and feedback measures (e.g. reporting, inspection, monitoring, etc.) is an integral part of implementation program development and success

In all cases the NPS control implementation program should describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the management practices are being properly implemented and are achieving the program's objectives, and/or to provide feedback for use in adaptive management necessary to determine whether the program is on time and on track in achieving its goals. Regardless of which approach is used, all monitoring programs should be reproducible, provide a permanent/documented record, and be available to the public.

Key Element 5: Each Regional Water Board shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program's stated purpose.

The RWB must be able to explain how significant non-compliance can be addressed in Third-Party Programs. This explanation should include information as to the criteria for measuring program success, what constitutes failure, and the actions that may be taken in response to failure. Individual dischargers need to be informed as to what individual discharger actions or inactions will lead to individual enforcement. Options short of individual enforcement actions could include RWB actions such as changing a program to remove some autonomy, or developing sequential enforcement phases related to triggering events built into the program.

. **A Strong Order Must be Adopted to Protect Water Quality Resources from the Adverse Effects of Non-point Source Water Pollution, So that Negatively Impacted Resources are Preserved, Enhanced, and Restored.**

In conclusion, adopting a strong vineyard permitting order is essential to protect water quality resources in the North Coast from the adverse effects of non-point source water pollution. Vineyards, if not properly managed to protect water quality, can contribute to sediment runoff, nutrient leaching, and pesticide contamination, all of which degrade water quality and harm aquatic ecosystems, including critical salmonid populations. By implementing a comprehensive permitting system, vineyard operations can be required to adopt sustainable practices that minimize environmental impacts, such as erosion control, responsible pesticide use, and improved irrigation techniques. This approach would not only safeguard the integrity of water resources but also help preserve, enhance, and restore the health of aquatic habitats that are vital for both biodiversity and local communities. A well-enforced vineyard permitting order, with strong adaptive management and effective feedback loops, represents a proactive and necessary step toward balancing agricultural growth with environmental stewardship, ensuring that the watershed's water quality is protected for future generations.

III. PROPOSED VINEYARD ORDER REQUIREMENTS

A. Establishing a set Numeric Threshold to Determine Effectiveness of Management Practices is in Furtherance of RWB Duties and Preservation of the North Coast's most Sensitive Beneficial Uses.

We strongly support and appreciate the continued use of 250 NTU by the RWB in this WDR to be used as an initial benchmark for measuring effectiveness of management practices and subsequent adaptive management measures.

Turbidity, measured in NTU, is a critical water quality parameter that can significantly affect salmonid species when found at high levels and is an effective measure to determine sediment pollution because it directly reflects the concentration of suspended particles in the water. Further, monitoring turbidity provides a quantifiable metric to track sediment levels in real-time, making it easier to assess whether water quality is improving or deteriorating due to sediment runoff. Therefore, turbidity is a useful, readily measurable indicator of sediment pollution coming off a vineyard property that can effectively help guide both immediate adaptive management actions and long-term restoration strategies.

Establishing a set numeric turbidity threshold to assess the effectiveness of management practices is a crucial step in protecting sensitive salmonid species in the North Coast. By setting a scientifically supported NTU limit, the RWB can more effectively gauge whether current vineyard management practices are reducing sedimentation and improving water clarity to levels that are conducive to salmon health, our most sensitive beneficial use. Adoption of a 250NTU threshold provides a clear benchmark for evaluating the success of sediment and erosion control measures, stormwater management, and riparian habitat restoration efforts. It also allows for targeted interventions when turbidity levels exceed the set limit, ensuring that corrective actions can be implemented in a timely manner. Therefore, a defined NTU threshold ensures that management practices are continually refined based on measurable outcomes, directly contributing to the protection and recovery of salmon populations in the watershed which is required by NPS Policy Element #4.

However, we do believe that stronger protections are ultimately necessary to protect our most sensitive salmonid species that have historically called our region home. As demonstrated by studies demonstrating how turbidity more than 50 NTU can cause significant impacts to salmonid health and survivability, it is important that the RWB have a program in place to eliminate sediment impairments and achieve water quality that is protective of all beneficial uses, including our most sensitive and endangered ones. Because high turbidity levels can smother salmon eggs, decreasing hatching success and survival rates of juvenile fish, clog gills, impairing breathing and increasing stress, reduces foraging success, and increases disease vulnerability, it is key to salmonid restoration that an effectiveness feedback loop be tied to eventual species recovery.

As such, we request that the RWB include in this order a clear plan to ramp adaptive management triggers to at least 50 NTU, down from 250 NTU.[3] This would most easily be done by establishing a pre-determined re-opening date for the WDR so that the most recent Best Available Science and Technology can be integrated into an updated WDR. Further, because regional resources are limited, it is important that this review be built into the WDR itself so that this does not become a one-and-done permitting program with no effectiveness review for decades like other regional programs are currently suffering from.

There must be a clear plan to ensure that all beneficial uses will be protected from further harms caused by vineyard practices, and it is reasonable to set a timeline that helps achieve that goal. There are management practices available to vineyards that will help reduce sediment laden runoff from entering our waterways. In addition to this established timeline, we request that there be continued innovation around how incentives can be used to achieve 50 NTU without sacrificing the need for continued verification and enforcement to ensure the incentivized conditions continue to be met. We request that the RWB include a timeline for requiring future measurable turbidity reductions that aim to meet a water quality level that is protective of all beneficial uses.

Lastly, while the RWB is currently proposing 250NTU for effectiveness monitoring and will likely receive substantial pushback on this numeric by vineyard industry, it is important that the RWB consider the importance of critical habitat needs and its related beneficial uses when considering the state Antidegradation Policy, as it is not just the vineyard industry that benefits from regional waterways. Rather, the continued degradation and sediment listing of our waters is also negatively impacting the state commercial fishing industry and is impactful to our robust recreational economy, neither of which is consistent with maximum benefit to the people of the State.

Due to known and ongoing sediment impairments, risk to our sensitive ecosystems, conformity with other discharge programs, and available management practices, we will not support any vineyard program that allows for a higher benchmark.

Recommendation: Add language to the Proposed Order stating that the Program will be reopened by a set date so that updates can be made to reflect most recent Best Available Science and Technology.

B. Adopting Timely and Effective Feedback Loops to Inform Adaptive Management Practices is Key to Complying with the State NPS Policy and Achieving the Protection of Beneficial Uses.

[3] Bash and Berman, Effects of Turbidity and Suspended Solids on Salmonids, November 2021, https://www.wsdot.wa.gov/research/reports/fullreports/526.1.pdf (finding that salmonids can find it difficult to locate food resources at 20NTU due to being visual feeders, as well as other related impacts tied to NTU); North Coast Regional Water Quality Control Board, Desired Salmonid Freshwater Habitat Freshwater Conditions for Sediment-Related Indices, July 28, 2006, p. 25, https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/sediment_tmdl_implementation/110504/060728_desired_conditions_report.pdf (describing different observed impacts within 25-150NTU on salmonids).

We strongly support the inclusion of an effective feedback loop mechanism that results in actions that will immediately address an observed issue via adaptive management measures. This iterative process, with effective monitoring, reporting, and necessitated corrective actions is absolutely necessary to ensuring there is a "high likelihood the [management practice(s)] will be successful"—i.e., that the Proposed Order will achieve water-quality objectives and protect beneficial uses.

However, we do strongly encourage that the RWB require any monitoring due to an adaptive management action be reported the month after any QSE occurs. Any other timeline would equate to an unnecessary delay and cause impediment to the RWB's ability to ensure effective feedback loops and informed actions are occurring in accordance with the NPS Policy. Timely reporting is also necessary to ensure that enforcement actions are not happening more than a year after the event and harmful discharges are allowed to continue for that entire period.

. **Providing Compliance Options that are Based on Effective Feedback Loops and Incentivize Adoption of Known Best Practices and Solutions in a Timely Manner are Key to Addressing the Negative Impacts of Vineyard Pollutant ischarges.**

. *Certified Sediment and Erosion Control Plans ("SECPs") must establish a monitoring baseline and require some representative monitoring of Agricultural Discharge Structures to establish Order compliance and determine effectiveness.*

Because the requirements for a Certified SECP are currently vague and have no proven basis for achieving 250NTU, it is important that the RWB expand the proposed incentive so that effectiveness is measurable and readily apparent to the RWB and public via objective monitoring results. To do this and due to the nature of an SECP, it is important that an initial baseline monitoring event occurs so that an effective SECP can be drafted based on a clear, data-driven understanding of the current conditions at a specific site. By assessing factors such as soil composition, erosion rates, sediment transport, and existing water quality levels, baseline monitoring helps identify the most critical areas of vulnerability and the sources of sedimentation. This information is crucial for designing targeted erosion control measures, selecting appropriate vegetation for stabilization, and setting realistic goals for reducing sediment runoff. Additionally, baseline monitoring serves as a benchmark for future comparisons, enabling the RWB and enrollees to track progress, adjust methods as needed, and ensure that erosion control efforts are achieving the desired outcomes.

Secondly, because a Certified SECP will likely have a range of different management practices, with varying proven efficiencies, photo-point monitoring on its own is not sufficient to demonstrate overall compliance and program effectiveness. Especially since fine sediment may result in over 250NTU, while appearing relatively clear in a photo. As such, it is important that the RWB require some periodic and representative sampling of Agricultural Drainage Structures to confirm the Certified SECP is compliant with the Order and meeting the 250NTU benchmark. To ensure this option still provides incentive to enrollees, one acceptable option for subsequent

monitoring would be to require 20% every five years, instead of 20% annually—in addition to the photo-monitoring requirements. Whatever the requirement may ultimately be, the most important piece is that there is some objective showing that the 250NTU benchmark is being met on site as a result of the Certified SECP.

Further, it is important that this incentive option require the Qualified Professional do an inspection in the middle of the wet season so that they are preparing the next five-year plan based on informed visual inspections of the property and actual observed parcel characteristics. As currently drafted, the Qualified Professional only must visit the property sometime during the year which does not provide sufficient information to prepare and inform an effective SECP.

Recommendation #1: Implementation Standard for Photo-point Monitoring: The Enrollee shall develop and implement a SECP that is certified and signed by a Qualified Professional. The Certified SECP shall be re-certified every five years, which shall include an on-site ~~visit~~ inspection by the Qualified Professional between December 15th and April 1st.

Recommendation #2: Add the following language at Proposed Order, pg. 49 ¶ 12(h).

Establish Baseline and Periodic Effectiveness Monitoring (Certified SECP Only): A monitoring baseline shall be established during the first implementation year of a Certified SECP via representative Agricultural Drainage Structure Monitoring. From that point forward, representative Agricultural Drainage Structure Monitoring shall occur every 5 years to provide an objective measure of effectiveness in meeting 250 NTU. Monitoring results shall be appended to the Certified SECP.

D. Streamside Areas Provide Important Environmental Functions that Must be Restored and/or Preserved Under this Proposed Vineyard Order if the RWB is to Adequately Address Ongoing Sediment and Temperature Impairments.

. *Proposed Streamside Areas are insufficient to protect water quality as they do not ensure that important environmental functions are restored.*

Streamside Areas play a crucial role in maintaining the health of aquatic ecosystems, and the space required within this zone for native plant establishment is essential for both water quality and temperature regulation. In order for these important environmental functions to prosper though, there must be sufficient space for diverse native vegetation to grow and become established, so that these important communities can help stabilize streambanks, reduce erosion, and ultimately help reduce both temperature and sediment impairments.

As such, it is important that the vegetated buffer widths be re-evaluated so that they are based in science and what is actually necessary to protect sensitive waterways from the negative impacts of temperature increases, nitrogen, pesticide, and sediment run-off. For several years now, the EPA, other regulatory agencies, and scientists have known and been able to demonstrate that buffers over 150 feet in width are necessary to consistently prevent pollutants from entering

waterways.[4] It is also important to point out that ephemeral and intermittent streams both provide critical habitat to some of our most sensitive beneficial uses and act as conduits for pollutants to other waterways. Thus, it is important that these streams are given more protections than in the Proposed Order. The buffer zone should not include any areas within the active channel of a stream and should be measured from the top of bank for streams. As such, we request that all Streamside Area widths be expanded in accordance with the best available science.

We further recommend that the RWB consider adding an additional management tier to the order such that those vineyard properties that have more than a 10% slope within 100 feet of a waterway be required to implement a wider vegetated buffer to protect water quality. A wider setback for these property types is reasonable because it is well-established that higher sloped properties are more prone to increased erosion due to increased flow velocity running down the slope unless sufficient management practices are in place. Requiring an increased setback for properties with this type of characteristic would help ensure that flow velocity has time to reduce and settle before reaching a waterway.

We do support the inclusion of a vegetated buffer for hydrologically connected undesignated channels as this will further help capture pollutants before entering any above ground drainage structures and other non-NHD designated channels.

. *Both lawful and unlawful fire management activities are increasing throughout the region and should be considered for incorporation into this Proposed Order.*

We recognize the importance of fire fuel management practices and support this work within the Streamside Management Area so long as clear boundaries are in place to prevent abuses. There must be necessary noticing, permitting, and oversight requirements that ensure that native riparian vegetation and important canopy is not removed for any reason other than necessary permitted fuel management and done in a pre-determined manner with clear limitations. We have frequently observed huge clear-cutting incidents within the North Coast Region under the guise of fire protection, but it is really done to make way for new stream crossings, expand new plantings, construct new roads, and other self-serving reasons that are not related to actual fire management. This then results in increased erosion and contamination of our waterways.

Recommendation #1: Add language to noting that all necessary regulatory permits are required for any fire management within the Streamside Area.

Recommendation #2: Add language to establish noticing requirements, images of proposed management area, description of proposed management action, a statement as to why there are no available alternatives, and images of work once completed. There must be effective enforcement action to deter any abuses.

[4] https://nepis.epa.gov/Exe/ZyPDF.cgi/2000O182.PDF?Dockey=2000O18 .PDF

. **Reporting Requirements Must Provide the Regional Water Board with Information Necessary to Ensure and Verify Implementation of Proper Management Practices, and Not Hinder or Unnecessarily Delay Compliance and nforcement Actions by the Regional Water Board.**

Under the NPS Policy, the RWB must have effective feedback loops and related requirements in place to evaluate whether the Proposed Order is working. This means that an order must "describe the measures, protocols, and associated frequencies that will be used to verify the degree to which the [management practices] are being properly implemented and are achieving the program's objectives, and/or to provide feedback for use in adaptive management." That is, the Proposed Order must do more than report what management practices are at work; it must also allow the RWB, enrollees, *and* the public to determine "whether and when additional or different [management practices] or [management practice] implementation measures must be used, or other actions taken," to ensure that water quality objectives are met. In effect, this means that sufficient monitoring data needs captured and subsequently reported to the RWB so that necessary determinations can be made.

The RWB must not unnecessarily delegate its authority and duty to protect and to prevent adverse impacts by allowing program requirements that are insufficient to show compliance or by introducing unnecessary delays that hinders efforts to protect beneficial uses and determine effectiveness. This generally means that all required monitoring and reporting must be available for public review so that individuals can ascertain whether, where, and by whom surface and ground waters are being polluted. It also means that the permit should require sufficient interim measures, progress updates, and enforcement actions that the public is informed and assured that improvements to water quality are going to be achieved. These efforts must be clearly documented, as well as the responses to each, especially when related to an exceedance.

. *Photo-point monitoring results must be shared with the RWB as part of the Annual Compliance Report in order to comply with NPS Policy Key Element #4.*

NPS Policy Key Element 4 mandates that an NPS control implementation plan must "include sufficient feedback mechanisms" for the RWB, enrollees, and the public to "determine whether the program is achieving its stated purpose,"[5] and all monitoring programs should be reproducible and provide a permanent and documented record that is available to the public. This feedback mechanism helps the RWB identify in a timely manner where additional adaptive measures, program changes, and possibly enforcement actions, are needed. As such, it is important that the RWB require monitoring sufficient to assure that management practices are properly applied and are effective in attaining and maintaining water quality standards.

Under the Proposed Order, photo-point monitoring is currently permitted in limited circumstances where there is an expectation that certain heightened requirements will result in

[5] *Policy for Implementation and Enforcement of the Nonpoint Sourc Pollution Control Program* , STATE W TER RESOURCES CONTROL BOARD, C LIFORNIA EPA, https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf.

little to no turbidity readings. However, the RWB only requires individual enrollees that avail themselves of the 90% covercrop option to submit any of the monitoring photos and instead, allows those part of coalitions to maintain all photos on-site and only available to the RWB upon specific request. First, this is an unreasonable reporting discrepancy between individual and coalition based enrollees. Second, this omission presents a significant hurdle to the RWB and the public in being able to identify whether 90% coverage is actually being met and the incentive is operating as intended with little to no water quality impacts.

With modern-day technology, the RWB can easily run submitted photos through AI programs to confirm 90% coverage compliance is being met of all electees in mere minutes. If issues are flagged, RWB staff can do additional reviews and reach out to individual enrollees or coalitions for next steps. This would provide an immediate and extremely effective feedback loop to the RWB while ensuring that the 90% covercrop incentive is being complied with and acting as intended.

As such, we request that the RWB require all photo-point monitoring results, regardless of enrollee type, be submitted to the RWB as part of the Annual Compliance Report.

- *Due to the significant reduction in monitoring requirements provided to enrollees that choose to implement 90% rooted covercrop, it is important that a pre-season compliance showing be made or severe consequences for failure to comply upon inspection of Annual Compliance Reports occur.*

As currently drafted, the Proposed Order does not require that enrollees availing themselves of the 90% rooted covercrop option demonstrate their compliance pre-winterization period. Instead, the RWB simply trusts that necessary requirements are being met which unfortunately opens up room for potential abuses and errors. Because the incentive is so big, it is paramount that all requirements are being met so that the expected outcome and Order compliance are guaranteed to occur. While this oversight can be minimal in nature, it must occur to ensure all regulatory requirements are being met.

Further, once the RWB has established our recommended effective feedback mechanisms to determine compliance with the Order, we suggest that the RWB clarify and/or remove the need to also monitor each QSE at Agricultural Drainage Structures and provide that no linear sediment controls are necessary outside of the winterization period. This will help further incentivize the best known management practice for protecting water quality—permanent, rooted covercrop with no-till.

- *The Navarro River Watershed has a Sediment TMDL that allocates an 80% load reduction to vineyards and there is no clear showing as to whether requirements of the Proposed Order will comply.*

As noted within the Proposed Order:

> The Navarro River was added to the 303(d) list for sedimentation/siltation in 1994 citing agriculture as one of many sources of sediment. A TMDL was approved by the U.S. EPA in December 2000 which identified vineyards as approximately two percent of the watershed area and estimated a seven percent contribution to the anthropogenic sediment load. Vineyards as a potential source of sediment can be locally significant in sub-watersheds where vineyard density is high. *The TMDL assigned vineyards a watershed wide 80 percent load reduction in sediment Emphasis added.*

However, it appears that at no other point in the Proposed Order, the EIR, or other supplemental documents issued for this permitting program, is the relationship between this TMDL requirement and the Proposed Order been established or discussed. While the Proposed Order purportedly is meant to help fulfill the TMDL's requirement of an 80% sediment load reduction from vineyards, there is nothing that shows whether this has been calculated to be true or to what extent the requirement may be met. The Navarro is not subject to different program requirements under this Proposed Order and there is no alternate regulatory program that would otherwise address vineyard sediment discharges to meet the necessitated 80% load reduction. As such, it is paramount that the RWB address this issue and potentially establish a plan to necessitate additional measures within the Navarro Watershed so that the 80% load reduction is met.

. *Insufficient surface water monitoring parameters prevents the RWB from understanding whether the Proposed Order's requirements are effective in meeting the programmatic goals.*

The proposed order is missing several parameters that must be given further consideration for the RWB to determine permit effectiveness as necessitated by NPS Policy Key Element #4.

Temperature – Waters in the proposed application area are listed as impaired on the Clean Water Act 303(d) list for temperature. Listed salmonids as well as other aquatic species that inhabit these rivers and their tributaries are dependent on protective water quality objectives for temperature for survival. The North Coast Region's Temperature Policy, the Basin Plan, and the NPS Policy all require that temperature objectives be addressed in WDRs. Optimal and lethal limits for temperature for salmonids and other aquatic species are well documented yet, this Proposed Order does not require monitoring to determine effectiveness and inform responses to proposed mitigation measures.

The Proposed Order lacks sufficient requirements and enforcement measures to ensure necessary restoration and protection of the Streamside Area. Restoration of the this area is important for several reasons: a healthy canopy cover helps keep solar radiation from heating surface waters (i.e., necessary to protect COLD, SPWN, RARE beneficial uses); wide vegetated buffers and riparian vegetated areas filter fine sediment, pesticides, herbicides and other toxins from surface waters; essential habitat and food sources for terrestrial species (WLD beneficial use) are provided; and they help maintain essential fluvial geomorphic functions.

Although succession planting is often recommended, planting native trees is essential as our climate is rapidly heating. Riparian vegetated areas have been identified as vital climate adaptation tools. Solar radiation is the primary factor affecting summer stream temperatures and riparian vegetated areas with adequate shade canopy are the most effective means of preventing lethal water temperatures for salmonids, especially when in their juvenile stages. Adequate stream flow, deep pool habitats, and protective refugia, all supported by healthy Streamside Areas, are also essential to preventing high water temperatures To ensure temperatures are being effectively addressed under this Proposed Order, there must be temperature monitoring in place.

This monitoring is particular important when considered in conjunction with alternative riparian compliance plans, as there does not appear to be any restriction on how these alternative compliances plans may or may not concentrate in themselves in certain areas of a HUC-8 (e.g., all in the lower portions with no temperature improvements upstream).

Dissolved Oxygen – There are several waterbodies in the proposed application area that are also listed as impaired for low dissolved oxygen. Listed salmonids as well as other aquatic species that inhabit these rivers and their tributaries are dependent on protective water quality objectives for dissolved oxygen for survival. Optimal and lethal limits for dissolved oxygen for salmonids and other aquatic species are well documented, yet this Proposed Order does not require monitoring for dissolved oxygen, let alone require mitigation measures that will help protect against resulting harms.

The TMDL for the Navarro River watershed, included under this Proposed Order, requires: "At a minimum, waters shall contain 7.0 mg/L at all times. Ninety percent of the sample collected in any year must contain at least 7.5 mg/L. Fifty percent of the monthly means in any calendar year shall contain at least 10.0 mg/L."[6] Yet, dissolved oxygen is not mentioned in the CEQA documents nor the WDR. As dissolved oxygen levels are temperature dependent and dissolved oxygen levels in a creek determine the health and survival of aquatic species, it is important this key parameter is not omitted. The RWB's own policies support the need for inclusion: "401 certifications, NPDES permits, **waste discharge requirements,** or waivers of waste discharge requirements issued by the RWB set conditions to address concerns associated with temperature factors such as reduction in shade [e.g., dissolved oxygen], changes in cross sectional configuration, temporary dewatering impacts, and/or sediment deliveries."

Pesticides –We generally support the proposed process for pesticide testing. However, it is important that the permitting program and proposed monitoring schedule be able to capture operational changes across new ownership and management changes so that no monitoring loopholes are created in these circumstances.

Further, because pesticides accumulate in sediment and are known to disrupt fish reproduction, cause species death, and can negatively impact human health it is important that all pesticides

[6] NCRWQCB Technical Support Document for the TMDL for Temperature, (July 28, 2000), Table 3-2 Numeric Water Quality Objectives

[7] "Policy to Implement the Water Quality Objectives for Temperature, State Water Resources Control Board Resolution No. 2015-0020" (for the Mattole, Navarro, and Eel Rivers).

and soil additives utilized by vineyards are incorporated into this permit. For this reason, we recommend the following pesticides be added to the monitoring list as they are in the top 5 of applied pesticides for our region and are known to have significant impact on health: 1. 4-nonylphenol, formaldehyde resin, propoxylated and 2. 1,3 dichloropropene. We also recommend monitoring and reporting be expanded to include copper which is commonly used by vineyards to address bacteria and fungi growths, which means it falls within the proposed pesticide definition. As one of the few deterrents available to organic certified vineyards, it is important that copper be monitored for to ensure our waters are drinkable and safe for all beneficial uses. Copper in high enough concentrations is known to impact fertility, damage red blood cells, and reduce the blood's oxygen carrying capacity.

- **Appurtenant Roads are Known Sources of Sediment Pollutants within a Vineyard and Must be Addressed in a Timely Manner with Quantifiable Milestones Designed to Measure Progress Towards Reaching the Specified Requirements.**

- *Existing roads should not be grandfathered into this Proposed Order as they are a known contributor to water quality impairment.*

Existing seasonal roadways should not be grandfathered into Vegetated Buffer areas due to their significant contribution to sedimentation and complete lack of functional benefit to controlling such sedimentation. Seasonal roads rarely have proper erosion control measures, are frequently compacted throughout the year, and instead act like conveyor belts for runoff. Allowing these roads to remain within a Vegetated Buffer, no matter their location within that buffer or if it fills the complete required vegetated width, only takes away from the entire purpose of having such areas—to help slow and settle sediment laden waters.

While the Proposed Order will require things like linear sediment controls during QSEs, there is no requirement that these controls be frequently cleaned out and unclogged throughout a season, and as such, are more subject to failure.[10] As we continue to experience more extreme rain events sediment movement will continue to increase, and these linear controls will be easily overrun by run-off. Further, because the 90% cover requirement during the winterization period does not have to be rooted, it is unlikely such cover will result in meaningful protections to water quality. In fact, there is a chance that the placement of straw and mulch on these roads will merely result the materials being washed directly into our waterways instead of preventing erosion.

Recommendation: The RWB should require that existing seasonal roadways, that would otherwise be within a Vegetated Buffer width, be moved upon replant.

- *Requirements for existing appurtenant road segments must include interim benchmarks to ensure the RWB has sufficient oversight over this part of the Proposed Order and the public is reasonably assured such requirements will be met by the deadline.*

https://www.sciencedirect.com/science/article/abs/pii/S00456535_004823_
https://www.cdpr.ca.gov/docs/pur/pur21rep/top5lists/top_5_commodity_then_chemical_pounds_applied.pdf

[10] https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/training/cgp_review_4.0.pdf

We have known for many years now that a large source of fine sediment discharges from vineyard properties stem from the extensive use of appurtenant agricultural roadways, unmaintained culverts and drains, and poorly designed pathways. These roadways are also known to help convey harmful pollutant discharges containing elevated pesticide, oil, and nutrient levels to our waters. Vineyard roads frequently act to channel water flows further increasing rates of road erosion themselves through rutting and sheer volume, while vineyard avenues may be contoured to guide flow straight down a slope, picking up any disturbed sediment along the way. As many vineyard roads are hydrologically connected or designed to slope towards our water bodies, these pollutants are being directed straight to our waters without mitigation measures sufficient to address the harms caused.

For appurtenant roads that have longer compliance timelines, it is important that the RWB implement specific interim measures, preferably precise numeric limits, that can be used to accurately demonstrate implementation and long-term goal progress. These interim measures help provide necessary feedback mechanisms to the RWB to ensure that the program is working as intended and that water quality goals will be achieved in a timely manner. Without these measures, the RWB has no real way to determine effectiveness of the permit and ensure improvements are being made progressively. There is no way for the RWB to determine there is a "*high likelihood*" of attaining water-quality objectives without interim measures demonstrating and supporting that progress.

Recommendation: Existing commercial vineyards should not be allowed to wait a decade to show any level of road compliance under this Order. Rather, the RWB must include specific interim measures and progress reports that demonstrate clear effort by the enrollee to improve roadways and implement best practices on their properties over the entire compliance period such that dischargers can readily show they are on track to meet all requirements within the set period, while also making targeted progress along the way. Without such a requirement, few if any protective measures will be put in place until year 10, and then either extensions will be asked for or enrollees will simply not be in compliance with little concern for actual recourse and penalty. The RWB cannot allow a known cause of significant pollutants to persist and continue to impair water quality for an entire decade without some measurable progress.

Further, by failing to include interim measures and progress, it is difficult for the RWB to identify specific pollutant sources via sampling and fulfill NPS Policy Key Element #4's "feedback mechanism" requirements. Dischargers should also be required to include in their Annual Compliance Reports all measures taken to improve roadways and photo-point monitoring during QSE to demonstrate progress and effectiveness

One example of interim measures is the use of a phased approach with the higher risk roads near creeks and drainages, as well as those on steep slopes, being prioritized first within a property. For example, the 20% of roadways deemed highest risk must be addressed within the first two years. The next 20% within the next two years and so on until all roadways are addressed within the 10-year period. Although costs are always raised as a factor by vineyards, that does not mean they are more beneficial than our environmental and human health needs and should not be

required to invest in their operations such that they are good stewards of our finite and already severely degraded resources—it is not their right to continue impairing our waters. The cost to our environment is continually compounding and the negative impacts will continue to get worse.

IV. OTHER MISCELLANEOUS COMMENTS

A. nrollment of Newly Developed Commercial Vineyards

As currently proposed, commercial vineyards developed on an existing Appurtenant Agricultural Road network are allowed 10 years from enrollment to comply with related road requirements. We request the RWB reconsider this proposed timeframe because it, in effect, completely discounts any management efforts made prior to that by prior vineyard owners. This is problematic for two reasons: 1. If a vineyard plans to sell in less than 10 years, it could be disincentivized to do necessary improvements under the Proposed Order—especially since no interim benchmarks are currently required; and 2. It potentially allows up to 20 years for certain roads to properly managed and come into compliance with this Proposed Order. As such, the RWB should establish some formula for determining compliance timelines for new commercial vineyards where existing road networks exist. We would suggest that this formula equate to some total time period since this Proposed Order was first applicable, plus two to three years to allow for the new commercial vineyard to complete what has already been started. This alternate method would provide incentive for existing enrollees to stay on track with management practices because it may impact eventual buyer interest.

B. Run-On

Ultimately, all sheet flow, run-on, and pollutant filled discharges will enter our waterways and continue to contribute to existing impairments unless actively addressed, regardless of where the pollutants source from. As such, we ask the RWB and Staff to ensure that review of any run-on situations also consider how an enrollee's own management practices and/or specific property characteristics exacerbates the potential for increased erosion on-site. For example, if the enrollee has bare dirt on that property edge, the enrollee's property begins to naturally slope more at that location, or the enrollee has historically failed to maintain some feature of their property or farming area in that location, they should not be able to discount any increased erosion caused by a neighbor when they have practices available to reduce those harms on-site.

We also ask the RWB to consider how enrollees can be incentivized to address run-on onsite via their own management practices with no discount process, especially in situations where the originating parcel cannot otherwise be required to address the discharges via another permitting or regulatory program. Affected vineyard properties taking responsibility for run-on is the best way to ensure long-term water quality improvements are made and ongoing sources of impairment are addressed. Without management for run-on situations, our waterways will continue to experience significant sediment discharges and ongoing impairment.

. Third Parties

Ensuring public access to data is important for the successful implementation and oversight of the Proposed Order. The public has the right to know what is happening in their local environment, especially when it involves potential impacts to water quality and public health. Key Element 4 mandates that a NPS control implementation plan "include sufficient feedback mechanisms" in order for the RWB, enrollees, and the public to "determine whether the program is achieving its stated purpose"[11] and that all monitoring programs should be reproducible and provide a permanent and documented record that is available to the public.

The RWB has the ability to provide transparent access to third party plans, voluntary programs, monitoring locations, collected monitoring data, exemption details, adaptive measures implemented, and other key permitting details that are necessary to demonstrate the order is effective. Ongoing public outreach and transparency is critical for permit success and providing information in a publicly accessible database is crucial to furthering that need. By limiting public access, anonymizing monitoring data, and aggregating data, the RWB is limiting the public's ability to determine permit effectiveness, while also limiting its own ability to ensure order compliance in any informed manner.

We request that the RWB include all approved documents, guidelines, contractors, and related program plans to the RWB website along with the approved programs list. This will help ensure public transparency and oversight of approved programs that are largely being trusted by the RWB to implement and enforce interim compliance under this Proposed Order. By making publicly available, there will be additional layers of accountability added to any adopted program.

We also request that the RWB reconsider the requirement that coalitions include a governance structure comprising of enrollees as this appears to create a significant conflict of interest by essentially allowing enrollees to guide the requirements they are also meant to be subjected to. There does not appear to be any controls or oversight mechanisms in place to ensure concerns arising from these conflicts of interest do not hinder and/or go against the RWB and its duties to protect water quality. The RWB cannot abdicate its enforcement and oversight authority to those it is meant to regulate. Due to this significant concern, we ask that the RWB impose additional checks on approved coalition third parties. One such recommendation is to impose not-insignificant consequences for a coalition's failure to comply with any RWB request in a timely manner and/or if a coalition attempts to prevent complete transparency with the RWB.

Then in relation to Voluntary Sediment Control Programs, we request that the RWB establish a process for calculating and subsequently sharing on its website statistics on reported management practice effectiveness. We also request that additional parameters be added for remedial actions and implementation schedule, as these are currently vague. For example, Attachment C notes that there are consequences are triggered for loss of good standing, but there

[11] *Policy for Implementation and Enforcement of the Nonpoint Sourc Pollution Control Program* , STATE W TER RESOURCES CONTROL BOARD, C LIFORNIA EPA https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_iepolicy.pdf.

is no inclination as to what those consequences are. It is also not clear how long proposed implementation schedules may be.

. roundwater and Pesticide Noticing Requirements

Non-point source pollution is regularly identified and reported as the leading cause of today's water quality issues, with harmful effects on drinking water supplies, recreation, fisheries and wildlife. With such prolific and widespread impact to the beneficial uses of our waterways and local groundwater supplies, it is important that all impacted communities are not only made aware of the potential harms, but also given a voice in the solution-building process.

In the North Coast Region there are many agricultural ventures, including vineyard properties, where workers live and get their water from the property they are working on. This can create an imbalance in power over workers that may not want to speak up for more health protections out of fear or concern for their jobs despite significant water quality concerns and infringement on the basic human right to clean water.[12] In relation to this order in particular, is the importance of ensuring that those that are reliant on groundwater wells on a vineyard property are provided access to clean and safe water. This means access to clean waters that are free from harmful pesticides and harmful nitrogen levels, but also timely and efficient notice of when those waters are deemed harmful to human health.

For noticing requirements, it is important that those put at risk are given notice within 24 hours, if not earlier, so they can decide what is best for them as users of that water. It is also important that any noticing to users of the water be done in a way that is clear and understandable, be it in the form of bi-lingual postings, orally in their native language, or some other manner. The same is true for all noticing requirements under this Proposed Order when human health may be impacted.

Further, it is also important that the discharger have clear requirements on what to do when exceedances harmful to human health are observed. As presented, especially in relation to groundwater monitoring, there does not seem to be a clear direction of course when exceedances are observed. Without clear direction under these circumstances, there is a stronger likelihood that users will either have to make do without clean and safe water access at their place of work or home, or put themselves in harm's way by using the water anyway.

These basic requirements do not appear to be part of the Proposed Order and are vital to protecting public health and also for fostering trust within the community.

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[12] Note: These are only a few examples of worker abuses, but there are undoubtedly more instances of similar behaviors within our region, especially relating to housing and drinking water. https://www.pressdemocrat.com/article/news/vino-farms-to-pay-1- -million-to-settle-lawsuit-over-worker-pay-breaks/; https://vimeo.com/817526558

Recommendation: **Agricultural Drainage Structure** Natural or manmade features that carry, collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat, or filter stormwater runoff, including detention and retention basins, overland flow paths, pipes, channels, and the inlets and outlets to these features. These can include vineyard tile drains and similar subsurface drainage structures. They do not include drainage alteration for private roads and driveways, dams, reservoirs, lakes, ponds, and structures. These features may also be classified as Class IV watercourses that do not support native aquatic species and are manmade, provide established domestic, agricultural, hydroelectric supply, or other beneficial use.

Due to the sheer scale of sheetflow that may runoff a vineyard property, it is important that such instances are captured within the Agricultural Drainage Structure definition and are not excluded from this permitting structure. Further, inclusion of sheetflow runoff will help increase the RWB's certainty that the Proposed Order will further water quality objectives and help achieve the permitting program's purpose.

Recommendation: **round Cover.** Ground cover refers to the following practices: … (7) Temporary ~~Effective~~ soil cover includes mulching, straw mulching, plant residues or other suitable materials produced off site to the land surface. Mulching is used on bare, exposed soil surfaces that are deemed to be potential critical erosion areas In most cases, mulch will consist of grain straw residue, but may include wood chips, leaves, composted yard waste, etc. (NRCS Conservation Practice Standards 201643). Ground cover can also be considered all materials in contact with the soil surface that will not float or wash away during a QSE. This mainly consists of rock fragments, portions of live vegetation including basal area and plant leaves that touch the soil, plants and plantlike organisms, such as mosses, algae, ferns, fungi, duff, plant litter, crop residue, applied materials, including ~~manure~~, mulch, and manufactured erosion control products.

. eadline Extension Requests

Any requested time extension and proposed time schedule to meet compliance must be reasonable and in good-faith with explicit limits on how many requests can be made successively before enforcement action becomes necessary. Extension requests may not be allowed as a delay tactic, especially when there are significant lead times built into the Proposed Order already.

. Prohibitions

We propose the addition of the following prohibitions:

Recommendation #1: Due to the high potential and risk of sediment discharge from areas already deemed unstable, winterization period or not, we make the following suggestion.

> "Re-planting of enrolled commercial vineyards between November 5 and April 1 of each year is prohibited. Re-planting commercial vineyards on Unstable Areas is prohibited ~~unless repaired under the direction of a Qualified Professional~~. New Agricultural Drainage

RUSSIAN RIVERKEEPER

> Structures that discharge onto unstable slopes, earthen fills, or directly to a waterbody are prohibited."[13]

Recommendation #2: Add to "Prohibitions" a limitation on all soil disturbing activities at least 5 days before a QSE is forecasted to occur. Once that QSE occurs, no soil disturbing activities can be permitted until the winterization period has completed and until soil saturation has completely dissipated following a QSE outside of the typical winterization period. Modern weather forecasting is widely regarded as reliable and provides a reasonable basis for informing on property activities related to soil disturbances. Vineyard managers already rely on these same forecasts for determining other aspects of their work, like determining necessary water allocations.

Recommendation #3: Add to "Prohibitions" a limitation of vehicle use on seasonal roads that are saturated or may otherwise be prone to rutting. Limited exceptions for things like unscheduled maintenance needs so long as reasonable precautionary measures are taken to avoid rutting would be acceptable. This protects against road damage that may be caused by vehicles and reduces the chance of increased erosion and sediment run-off.

It is important that staff recognize that while many agricultural roads may be "seasonal" by definition, they are actually used the majority of the year and due to their long-term nature are extremely compacted. As these areas have a high frequency of use, are often used for worker parking in winter (e.g., for pruning), and have not typically been treated with ground cover or vegetation, these roads act more like a water conveyor in storms and take longer to saturate.

V. ONCLUSION

We appreciate the opportunity to provide comment and welcome any questions that you may have.

Sincerely,

Jaime Neary
Staff Attorney
Russian Riverkeeper

Don McEnhill
Executive Director
Russian Riverkeeper

[13] Proposed Order at pg. 46.