

CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR GRAZING OPERATIONS IN THE NAPA RIVER AND SONOMA CREEK WATERSHEDS

RESPONSE TO COMMENTS

PART I - Background and summary of comments received

Board staff received both oral and written comments relating to the Conditional Waiver of Waste Discharge Requirements (waiver of WDRs) and its accompanying CEQA Initial Study/Mitigated Negative Declaration (ISMND). Comments received (shown in italics) and Board staff responses to comments are provided below.

Although CEQA does not require written response to comments received on the ISMND, it does require the lead agency to consider the comments. It is the Board's practice to provide written responses on proposed policy and regulations. To the best of our ability and where appropriate, we have provided responses to all written and oral comments received, whether specific to the waiver of WDRs or the ISMND.

Board staff has also made changes to the draft waiver of WDRs and draft ISMND that staff identified as necessary to correct errors, clarify intent, revisit impact assumptions, and/or to offer further explanation. These changes are referred to Staff Initiated Changes and are provided in Part IV. None of the changes are substantial revisions requiring recirculation in that these changes do not identify new impacts or a determination that mitigation measures are insufficient to reduce impacts to less than significant levels.

ISMND – Comment summary:

ISMND comments included concerns about the disclosure of documents to the public, the effects of greenhouse gases, the potential for overgrazing, and consistency with local regulations.

Waiver of WDRs – Comment summary:

Waiver of WDRs comments included concerns about over-regulation and costs, the number of animals on the land and impacts of over-grazing, and monitoring the effectiveness of management measures and the grazing program as a whole.

Oral – Comment summary:

We also received oral comments at two public workshops held in January and July 2011. Topics included definition of a storm event and what constitutes livestock. In addition, members of the public requested financial assistance including access to grants and/or reductions in permit fees for implementing channel restorations and other sediment reduction projects such as bank stabilization and removal or replacement of culverts

Part II - Written comment letters and responses

Comment Letter #1

Earth Defense of the Environment Now ** Living Rivers Council

Dated July 26, 2011

Comment 1-1a: Project Description:

CEQA requires full public disclosure of documents yet the waiver program excludes public review for the Ranch Water Quality Plans. Ranch Water Quality Plans must be made part of the public record.

Response 1-1a:

CEQA requires full public disclosure of environmental impacts of a proposed project. For this project (waiver of WDRs), the impacts of the project were fully disclosed to the public through the Initial Study/Mitigated Negative Declaration published on June 21, 2011.

Ranch Water Quality Plans do not currently exist. The draft waiver of WDRs requires the development of Ranch Water Quality Plans in the future. These plans will be prepared by each individual landowner/operator, will be retained at the site/facility, and shall be made available to Board staff upon site visit and inspection.

Comment 1-1b:

What (Best) Management Practices criteria will be used to judge the adequacy of the Ranch Water Quality Plans?

Response 1-1b:

Ranch Water Quality Plans will be assessed for adequacy through:

- a) Comparison of the Ranch Water Quality Plan against the Waiver Standards listed in the draft waiver of WDRs;
- b) Board staff's review of the Annual Certification Compliance Report submitted for a facility; and,
- c) Site inspections of the facility.

Verification of the adequacy of the Ranch Water Quality Plans and site-specific management practices will be determined by Board staff and will incorporate the experience gained through implementation of the Tomales Bay Grazing Waiver Program. Board staff's responsibility is to make sure best management practices are being implemented and maintained. Our experience with the Tomales Bay Grazing Program, which covers approximately 66,600 acres of the watershed, shows that there are four key elements that guide successful management practice implementation and include:

- 1) Public outreach aimed at educating ranchers about the requirements and goals of the grazing program;
- 2) Aiding the development of local partnerships that provide ranchers with compliance assistance;
- 3) Identification of funding to assist landowners with implementation and upkeep of management practices; and,

- 4) Board staff enforcement of the program through field inspections and administrative tracking of notices of intent (NOIs), and annual certification compliance reports.

We plan to will apply this same strategy in implementing the Napa River and Sonoma Creek watershed grazing regulatory program.

Comment 1-1c:

Over grazing is common in horse and cattle operations. What criteria will be used to determine over grazing to prevent and reduce sediment and pathogen pollution?

Response 1-1c: Based on comments received on the draft waiver and during the CEQA process - Condition 1 (Ranch Water Quality Plan) of the draft waiver of WDRs has been amended to add a criterion for the assessment of Residual Dry Matter (RDM) as specified in the *University of California 2002, California Guidelines for Residual Dry Matter (RDM) Management on Coastal and Foothill Annual Rangelands, Rangeland Monitoring Series Publication 8092*.

The use of RDM guidelines and measurements to manage and monitor rangelands is an integral component of Ranch Water Quality Plans. Condition 4 (Compliance Monitoring and Reporting) of the draft waiver of WDRs has been amended to require landowners/operators to measure and record measurements of RDM. These measurements must be included in the Annual Certification of Compliance documents (annual reports) submitted to the Water Board.

Comment 1-2:

IX. Hydrology and Water Quality:

Inspections of water quality should use an objective numeric basis for the success or failure of the program. The monitoring of the Napa River will not adequately pin point the individual grazing sources of pollution and should be in individual stream basins.

Pollution from cattle grazing around class II and III streams will flow into the class I streams thereby polluting spawning gravels and impacting all beneficial uses of the waters of the State. Class II and III streams must be included under this waiver. Are class II and III streams included in this waiver program? If the answer is no then please explain why they are not included.

Response 1-2:

Water quality monitoring will be conducted by Board staff, and will use an objective numeric basis for the success or failure of the program.

The waiver of WDRs requires attainment of all water quality objectives and protection of all beneficial uses, according to the Basin Plan, for all waters of the State, including Class I, II, and III streams. The stated purpose of the waiver of WDRs is to implement the Napa River and Sonoma Creek sediment and pathogen TMDLs, which were adopted to prevent and reduce pollutants and protect beneficial uses of the Napa River, Sonoma Creek, and their tributaries.

Compliance with the waiver of WDRs by landowners will be via annual reports and site inspections to identify individual pollutant sources. These inspections will be evaluated against the waiver standards stated in Condition 2 of the wavier of WDRs.

Comment 1-3:*VII. Greenhouse Gas Emissions:*

Greenhouse Gas emissions are considered in the waiver program for only heavy equipment. It should also include the impacts made by the GHG produced by the cattle themselves.

Response 1-3:

CEQA requires that the environmental document evaluate changes that would result from the Project. The waiver of WDRs regulates waste discharges and is intended to protect water quality. It sets conditions for the implementation of management practices on grazing lands for the protection of water quality. The waiver of WDRs will not result in changes in the number of grazing animals in the Napa River and Sonoma Creek watersheds and thus will not result in significant impacts to GHG produced by cattle.

Comment Letter #2**Napa Sierra Club – Napa Group****Dated July 26, 2011****Comment 2-1: Typos**

Please correct these typos:

Page 5, paragraph 6, line 5: "rate" should be "rare"

Page 17, paragraph 3, line 3: delete first "during"

Page 18, d), paragraph 1, line 3: "zoning should be "zoned"

Response 2-1:

Thank you for bringing these errors to our attention. The final document will be reviewed and corrected. Specifically, the text on page 5, paragraph 6, line 5, has been edited to delete the word "rate" and replace it with the word "rare."

The text on page 17, paragraph 3, line 3 has been edited to delete the first occurrence of "during."

The text on page 18, d), paragraph 1, line 3 has been edited to delete the word "zoning" and replace it with the word "zoned."

Comment 2-2: Soil Erosion

Regarding the text on page 28, b) Result in substantial soil erosion or loss of topsoil:

Negative effects from overgrazing have been well documented (White et al. 1983, EBMUD 2001, USEPA. 2002, Friends of Sycamore Valley 2003, Horman & McCutcheon 2005, Cary & Silburn 2006). Overgrazing is a potentially large threat to increase erosion because this ill-advised practice may continue for years, yet the potential for overgrazing is not addressed in the MND. When overgrazing occurs in some locally managed east bay watersheds, practices are changed, land is rested (EBMUD 2001), or the break from correct management is noted for later action (Friends of Sycamore Valley 2003). Raindrops striking bare ground (such as results from overgrazing) is a large contributing cause of soil erosion and sedimentation (Ellison 1945); overgrazing may bring about small areas, pastures, or acres of bare ground. If, as stated on page 39 "The purpose of the waiver of WDRs is to reduce sedimentation in streams" then overgrazing must be included in the

discussion of ranch activities. The level of CEQA would not change from restrictions on overgrazing, and the impact on geology and biological resources would be reduced.

The ranch plan must recognize the potential effects of overgrazing and include Management Practices (MP) that work to prevent it and the subsequent erosion that occurs. Target amounts of residual dry matter (RDM) or inches of cover that will prevent fall erosion before grass re-grows should be included in all ranch plans. These targets, if met, will not only prevent erosion, but will increase filtration of runoff from non-point sources (i.e., cattle dung and wildlife or feral animal feces), reduce sedimentation (EPA 2002) and sustain the ranch as a viable business.

Response 2-2:

As indicated on page 28 of the ISMND (IV, item B), the waiver of WDRs would not affect the number of cattle grazing per acre. In addition, to insure that over grazing does not occur, we have amended the waiver of WDRs to add a criterion for Residual Dry Matter as a tool to prevent sediment, nutrients and pathogens from entering waterways (Refer to response to Comment # 1-1c, above).

Comment 2-3: Typos

Please address these typos: Background Page 33, paragraph 1, line 1: delete one of the two "current/currently"

Response 2-3:

The text on page 33, paragraph 1, line 1 has been edited to delete the first use of the term "current" to read as follows:

"Grazing operations in Napa and Sonoma counties currently have some fencing along property borders, fencing to separate livestock paddocks, water troughs, etc., as well as other agricultural management practices implemented on-site."

Comment #2-4: Table 2 should be in the active voice

Table 2 (page 43), Table 2: the lettered items should be in the active voice.

Regarding Table 2, the fact that policies "may" be done is established in the opening paragraph (Policy CON-47). Items a, b, d, e, f, g, h, & i should begin "Monitor," "Address," "Support," "Ensure," "Ensure," "Address," "Amend," and "Develop," respectively. Note: There is no "c" as the table is mis-lettered.

*Page 43, Table 2, g) "Addressed effects related to past and current mining, grazing (**including overgrazing and livestock distribution problems leading to bare ground**), and other activities to the extent feasible." **Progress will be photo-documented.** (Bolded italicized wording should be added as regular text).*

Response 2-4:

The ISMND has been amended to include Policy CON-47 (c) regarding reducing sediment on county-owned roads.

The purpose of Table 2 is to summarize relevant policies of Napa and Sonoma counties. The text in Table 2 on page 43 is copied directly from the Napa and Sonoma County General Plans, to reflect the adopted policies of each jurisdiction. The language was determined by each county and is

consistent with the nature of General Plan documents, which layout general goals and objectives for the future.

Table 2 is copied directly from the Napa County general plan and cannot be amended for purposes of this CEQA document.

Comment 2-5: Cost Estimates (Page 63)

To reduce overgrazing in affected areas will temporarily reduce herd size and grazing pressure, and allow less Animal Unit Months (AUMs) per pasture. This cost difference will be offset by improved overall long-term pasture health and the quality of feed as invasive weeds (opportunistic plants which colonize bare ground) are out-competed by better forage. Cattle distribution management problems may also be addressed through herd rotation and other Holistic Resource Management strategies. Such strategies may require increased costs for additional herd management or include costs for items such as molasses barrels for drawing cattle into less used areas.

Response 2-5:

Livestock management strategies to comply with the draft waiver of WDRs may well include herd distribution and /or reduction, though waiver conditions may be achieved in other ways. It is speculative to conclude that the waiver would result in increased costs due to the herd management practices discussed in the comment.

Part III - Public Meeting Comments and Responses

Comment 1:

Is the focus of the waiver only for cattle? What about goats and sheep?

Response 1:

The proposed waiver of WDRs applies to all livestock, including but not limited to cattle, goats, sheep, horses, etc., that meet the eligibility criteria of the draft waiver of WDRs.

Comment 2:

*Fencing that allows migration of wildlife will allow goats and sheep to pass.
Is barbed wire fencing excluded for wildlife migration?*

Response 2:

The standards contained in the draft waiver of WDRs require the implementation of management practices to minimize sediment, pathogens, and nutrients from running off the land and entering waterways. The management practices that will be identified for a particular ranch to meet these standards are not prescribed and are the responsibility of the ranch owner/operator. Should fencing be needed, landowners/operators will be responsible for choosing the most appropriate type of fence to meet their ranch-specific conditions and operations.

Comment 3:

The CEQA document did not include economics.

Response 3:

Economic considerations were addressed in the respective TMDLs and a summary was included at the end of the ISMND on pages 62-65.

Comment 4:

Waiver conditions do not directly address number of animals or impacts of overgrazing.

Response 4:

Condition 1 (Ranch Water Quality Plan) of the draft waiver of WDRs has been amended to add a criterion for the assessment of Residual Dry Matter (RDM) as specified in the *University of California 2002, California Guidelines for Residual Dry Matter Management on Coastal and Foothill Annual Rangelands, Rangeland Monitoring Series Publication 8092*. In addition, Condition 4 (Compliance Monitoring and Reporting) of the draft waiver of WDRs has also been amended to require landowners/operators to measure and record measurements of RDM. These measurements must be included in the Annual Certification of Compliance documents submitted to the Board.

Comment 5:

Who does Ranch Plan – Owner or Lessee?

Response 5:

One party or the other is responsible for completing the Ranch Water Quality Plan. The Owner is ultimately responsible but the Owner and Lessee can agree on who prepares the Ranch Water Quality Plan.

Comment 6:

Can we use resource management plans and monitoring results prepared for other agencies to submit for this waiver? We do not want to reinvent the wheel.

Response 6:

We support the incorporation of plans and results prepared for other agencies into the Ranch Water Quality Plan and Annual Certification of Compliance documents as long as they meet the requirements of the Conditional Grazing Waiver and related Reporting documents.

Comment 7:

Are there funding sources available to implement the conditions of the waiver?

Response 7:

Currently there are a few available funding sources available to help ranchers with the implementation of management practices and include 319(h) federal grants and the Environmental Quality Incentives Program (EQIP) program funds managed through the Natural Resource Conservation Service. We strongly suggest that landowner/operators work with their respective resource conservation districts, Natural Resources Conservation Service offices or other agricultural representatives to explore available funding mechanisms for implementation of management practices.

Our grant management experience has shown that grant applicants should work with the Board and their partners to develop well-written grant proposals that address the priorities of the different grant programs. Board staff is available to help with these efforts.

Comment 8:

- 1) *Consideration of sediment and pathogen retention in holding ponds and onsite reservoirs as a best management practice;*
- 2) *discussion of the consequences of overflow of these ponds and reservoirs during winter rain storms, i.e. is dilution part of the solution by taking the sediments and pathogens through the downstream system during high flows*
- 3) *Possible environment impacts of sediment and pathogen retention,*
 - a. *Construction of sediment ponds and reservoirs (if not already in existence)*
 - b. *Maintenance cleaning of smaller sediment ponds and distribution of removed sediment so as to minimize:*
 - i. *return of the sediment to the watercourse*
 - ii. *Neutralizing of pathogens by exposure to sun and air*

Response 8:

On page 9 of the draft waiver of WDRs, waiver standards are specified. Each property owner will develop a Ranch Water Quality Plan that includes a suite of management measures to achieve those waiver standards. Management measures may include the construction of detention basins, holding ponds, or other means of reducing pathogens. Board staff will review and evaluate these practices on an individual basis to ensure compliance with the waiver standards.

Comment 9:

Why do I have to do this? Why do you call it a waiver? It is still a permit.

How do you know I am a source? I am considered guilty before proving my innocence.

Response 9:

The Water Board has developed and adopted separate sediment and pathogen TMDLs for the Napa River and Sonoma Creek watersheds. Grazing lands are identified as one of the sediment and pathogen sources of pollution in these watersheds.

The draft waiver of WDRs specifies actions that are needed to resolve the water quality impairment for pathogens and sediment and to restore water quality. It is important to note that the Water Board and State Water Board are working on all identified, controllable sources of sediment and pathogens, not just grazing lands. For example, the State Water Board recently updated its General Construction Stormwater Permit to include more stringent requirements for sediment control and stormwater runoff. There is also the statewide municipal stormwater permit that regulates urban runoff from cities in these watersheds. The Water Board is also developing a conditional waiver program to control sediment delivery from vineyard facilities in the Napa River and Sonoma Creek watersheds.

It is called a waiver because it waives WDRs. Under the California Water Code, Section 13269 the Water Boards may waive submission of a Report Of Waste Discharge (ROWD) and/or issuance of WDRs if it is in the public interest. Section 13269 authorizes the Water Board to waive WDRs for a specific discharge or specific types of discharges if the following conditions are met:

- 1) the waiver is in the public interest,
- 2) the waiver is conditional,
- 3) waiver conditions include performance of individual, group, or watershed-based monitoring,
- 4) compliance with waiver conditions is required, and
- 5) a public hearing has been held. The term of the waiver cannot exceed five years, but the Water Board can renew a waiver after holding a public hearing. The Water Board may terminate a waiver at any time.

Relevant factors in determining whether a waiver is in the public interest include the following: whether the discharger is implementing reasonable practices to minimize the deleterious effects of the discharge; whether a feasible treatment method or set of management practices exist to control the pollutants in the discharge; and whether waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Water Board to focus its limited resources to conduct field oversight, public outreach and, where necessary, enforcement.

The adoption of this waiver of WDRs is in the public interest because:

- 1) it includes conditions that are intended to reduce and prevent pollution and nuisance and protect beneficial uses of the waters of the State,
- 2) it contains more specific conditions for the protection of water quality compared to other regulatory options,
- 3) it provides a more efficient and timelier mechanism of complying with water quality objectives than other regulatory options,
- 4) it provides for an efficient and effective use of limited Water Board resources,
- 5) it provides flexibility for landowner/operators by providing an option of complying through a third-party entity,
- 6) it enhances beneficial uses of water and enhances sustainability of ranching operations, and
- 7) the Water Board does not currently regulate discharges of waste from grazing operations in the Sonoma Creek and Napa River watersheds.

This waiver of WDRs will result in regulation of nonpoint source discharges from these operations. The Water Board has notified the landowners/operators and all known interested agencies and persons of its intent to issue a waiver of WDRs.

No one is considered “guilty” before proving innocence. The development of the draft waiver of WDRs for grazing utilized a cooperative approach towards ranch land regulation. Waiver conditions incorporate common and industry-accepted standard practices for ranch land management. It should be noted however, that Section VIII of the Notice of Intent (Attachment A of the draft waiver of WDRs) requires the landowner/operator to submit accurate and true data to the Water Board. Falsification of data and information may be subject to penalties.

Comment 11:

Consider providing a definition of “storm event” for purposes of monitoring.

Response 11:

The intent of the “storm event” compliance and reporting requirement is to insure that management practices are in place prior to and throughout the entire rainy season to prevent the discharge of pollutants. It should be noted that conduction of monthly inspections during the rainy season will satisfy the monitoring and reporting requirements of the waiver of WDRs.

Comment 12:

*Look at ways to eliminate the burden of permitting restoration work.
Can permit fees for management plans (401 certifications) be waived?*

Response 12:

Currently, 401 certification fees are established by the State Water Board. The fee schedule is reviewed and amended annually by the State Water Board at a public meeting.

Certain projects may be eligible for reduced fees if they meet the criteria under the State Water Board’s “General 401 Water Quality Certification Order for Small Habitat Restoration Projects.” The General Order and forms may be found at:
http://www.swrcb.ca.gov/water_issues/programs/cwa401/generalorders.shtml

Comment 13:

General comments related to the regulatory and financial burden on the ranching community.

Response 13:

The intent of waiver of WDRs is to improve water quality in the Napa River and Sonoma Creek watersheds for the benefit of those who live and work there, visitors, and wildlife. Board staff sought to strike a balance between the endpoint of improving water quality and interim measures designed and deployed to control sediment and pathogen loading that are reasonable, feasible, and cost-effective. Financial costs should be offset by our shared goal of sustainable grazing and the human and societal benefits inherent in clean water and a sustainable environment. This is not to say that financial costs to ranchers have been, or will be negligible. Future costs of compliance will depend on current management practices and investments to date in water quality protection improvements; there is no reason to expect that ranching in the area will not remain viable.

The waiver of WDRs does not require “extra” measures beyond those already required for compliance with existing waste management and water quality laws and regulations. Conditions specified in the waiver of WDRs are flexible with regard to allowing identified management measures to be implemented on a schedule that considers resource constraints.

To be in compliance with the waiver of WDRs, ranchers must identify and implement management measures necessary to reduce the discharge of pathogens, sediment and nutrients to the Napa River and Sonoma Creek. Each landowner/operator is responsible for assessing his/her own property and identifying appropriate site-specific management measures to reduce pollution. The timeline for implementation of management measures is flexible, as it is the landowner who will propose a feasible schedule for implementation of his/her identified pollution reduction efforts. This flexibility allows the landowner/operator to build in financial resource issues it takes to get the work done. The timelines proposed, however, must be reasonable and protective of water quality.

For over a decade, using Clean Water Act Section 319 (h) funds, the State and Regional Water Boards have reached out to the regulated community with technical and educational information and financial support to assist with management practice implementation. Other organizations including State and federal agencies such as County Resource Conservation Districts, National Resource Conservation Service, UC Cooperative Extension, and cattle and agricultural industry groups can provide technical expertise and/or financial assistance to comply with the waiver of WDRs.

Part IV – Staff-Initiated Changes

Note that text insertions are denoted by underline and deletions by strikethrough.

PART A - Changes to the June 20, 2011, Draft Conditional Waiver of WDRs for Grazing Operations

Change 1: Finding 7, California Environmental Quality Act

Finding 7 was revised to more fully set forth how the Board complied with CEQA as follows:

The Water Board is the lead agency for this waiver of WDRs ~~project (Project)~~ under the California Environmental Quality Act (Public Resources Code ~~Section 2100~~section 21000 et seq.) (CEQA). The Water Board ~~prepared, circulated and adopted a mitigated negative declaration pursuant to CEQA~~Mitigated Negative Declaration for the Project on ~~September 14, 2011.~~ The Water Board has considered the Mitigated Negative Declaration, as well as all comments, and finds that this waiver of WDRs will not have a significant effect on the environment. The Water Board further finds that the mitigation measures identified in the Mitigated Negative Declaration to keep impacts to less-than-significant levels, as well as a program for monitoring and reporting on such mitigation measures, have been required as conditions of this waiver of WDRs. The Water Board's decision is based on the record as whole for the Project, which is available at the Water Board's offices.

Change 2: Finding 10, Dischargers

Finding 10 was revised to provide consistency in word use and to clarify the relationship between Landowners/Operators, Grazing Operations, Grazing Lands, and Dischargers as follows:

~~This waiver of WDRs is applicable to landowners, lessees and operators conducting grazing operations in the Napa River and Sonoma Creek watersheds. For the purposes of this waiver of WDRs, the term landowner/operator will replace the term Discharger.~~

Discharges, including stormwater runoff, from Grazing Operations on Grazing Lands can affect water quality by transporting pollutants including sediment, pathogens, and nutrients into surface waters. Grazing Lands are identified in their respective sediment and pathogen TMDLs as sediment and pathogen pollutant sources to the Napa River and Sonoma Creek watersheds. Landowners and operators conducting Grazing Operations on Grazing Lands are dischargers as they discharge or propose to discharge waste that could affect the quality of waters of the State.

This waiver of WDRs is applicable to landowners and operators conducting Grazing Operations on Grazing Lands in the Napa River and Sonoma Creek watersheds.

Change 3: Finding 11, Third-Party Program

Finding 11, Third-Party Program was deleted from the Findings section of the waiver of WDRs and inserted as Condition 6 in the waiver of WDRs. This action was taken to make the approval of the third party role an enforceable condition of the waiver of WDRs.

~~If a Third Party Program, as described in Finding 6 (b) above, is developed, the entity providing the third party role shall be approved by the Executive Officer.~~

Condition 6 of the draft waiver of WDRs now reads as follows:

If a Third Party Program, as described in Finding 5 (b) above, is developed, the entity providing the third party role shall be approved by the Executive Officer.

Change 4: Finding 12, Compliance Schedule

Finding 12, Compliance Schedule was deleted from the Findings section of the waiver of WDRs and inserted as Condition 2 in the waiver of WDRs. This action was taken to make the Compliance Schedule an enforceable condition of the waiver of WDRs given that it is an outgrowth of Condition 1, preparation of the Ranch Water Quality Plan.

~~Each landowner/operator must comply with the implementation timelines proposed in the Ranch Water Quality Plan, a plan whose elements are described on Condition 1 of this waiver of WDRs. Initial implementation of the Ranch Water Quality Plan shall occur during the timeframe of this waiver of WDRs. The overall implementation of the Ranch Water Quality Plan may extend beyond the life of this waiver of WDRs, and will be reviewed upon its reissuance.~~

Condition 2 of the draft waiver of WDRs now reads as follows:

Each Landowner/Operator shall comply with the implementation timelines proposed in the Ranch Water Quality Plan, a plan whose elements are described on Condition 1 of this waiver of WDRs. Initial implementation of the Ranch Water Quality Plan shall occur during the timeframe of this waiver of WDRs. The overall implementation of the Ranch Water Quality Plan may extend beyond the life of this waiver of WDRs and will be reviewed upon renewal of this waiver.

Change 5: Condition 5, Implementation of Mitigation Measures

Condition 5, Implementation of Mitigation Measures was added to the draft waiver of WDRs to comply with CEQA Guidelines section 15074(c) which requires that when adopting a mitigated negative declaration, the lead agency (Water Board in this instance) adopt a program for reporting on or monitoring the changes which it has required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

Condition 5 now reads as follows:

Mitigation measures identified in the Mitigated Negative Declaration for this waiver of WDRs shall be implemented as follows:

a) Air Quality and Greenhouse Gas Emissions

For projects that pose the potential to exceed applicable air quality standards, the Landowner/Operator shall implement dust abatement and greenhouse gas measures as required by the Bay Area Air Quality Management District.

b) Geology and Soils

For proposed projects involving large-scale grading and construction that disturb one acre or more, the Landowner/Operator shall obtain coverage under State Water Board Order No. 2009-0009-DWQ (Construction General Permit) and shall implement erosion control practices as required by the Construction General Permit.

Routine property maintenance of original line and grade, hydraulic capacity, or disturbances on land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation, are not construction activities covered by the Construction General Permit.

c) Biological Resources/Hydrology/Water Quality

For proposed projects that involve construction activities in or adjacent to waters of the state, or projects that substantially impact a sensitive species, or other sensitive natural communities (identified in local or regional plans or by wildlife agencies), the Landowner/Operator who proposes the project shall obtain all applicable and necessary permits from the Water Board, the U.S. Army Corps of Engineers, and/or the California Department of Fish and Game. Landowners/Operators shall comply with the specified conditions and mitigation requirements set forth in the respective permits to mitigate for any identified significant environmental impacts to biology, hydrology, and water quality.

Change 6: Condition 6, Compliance Monitoring and Reporting

Condition 6(g) of the draft waiver of WDRs was revised to comply with CEQA Guidelines section 15074(c) as described in Change 5, above, to require the reporting of any required mitigation measures resulting from the implementation of management practices.

Condition 6(g) now reads as follows:

g. The Landowner/Operator shall submit an annual certification to the Water Board that its facility meets the conditions of this waiver of WDRs, documenting the implementation of any required mitigation measures, management practices, implemented, an evaluation of the effectiveness evaluation of management practices, and records of any inspections where a water quality problem was identified, as well as the management practices taken to correct these problems. These certifications are due November 15, ~~20XX~~2012, and annually thereafter.

PART B - Changes to the June 20, 2011, Initial Study Mitigated Negative Declaration (ISMND)

Note that text insertions are denoted by underline and deletions by strikethrough.

Change 1: GENERAL ISMND EDITS

The ISMND was reviewed and edited to correct typographical errors.

Change 2: III. AIR QUALITY

Mitigation measure III-1 was refined from an overly conservative interpretation to be less prescriptive. It now reflects our expectation that the majority of implementation projects (e.g., fence delivery/installation, off-stream water trough installation, etc.) that could affect air quality will be limited in size, of short duration (i.e., no permanent engines or emissions sources), and in keeping with background vehicle and equipment emissions rates. We expect that a large scale activity (i.e., significant earth moving and grading), that could adversely affect air quality, would be more an exception, than a program norm.

The text has been edited as follows:

Less than significant impact with mitigation. Implementation of grazing management actions as required to comply with the waiver of WDRs ~~which that involving large scale grading and construction projects that disturb one acre or more, or involve a large number of construction vehicles and equipment (e.g., construction or rehabilitation of a ranch road network), could generate result in grading and earthmoving and could be generated. In addition, some increased short-term, localized dust and/or vehicle emissions that violate air quality standards. Such projects would be subject to regulation by the BAAQMD. from construction worker vehicles trips and construction equipment engine emissions could occur resulting in short-term, local, potentially significant impacts.~~ which that involving large scale grading and construction projects that disturb one acre or more, or involve a large number of construction vehicles and equipment (e.g., construction or rehabilitation of a ranch road network), could generate result in grading and earthmoving and could be generated. In addition, some increased short-term, localized dust and/or vehicle emissions that violate air quality standards. Such projects would be subject to regulation by the BAAQMD.

Mitigation Measure III-1:

For During grading and construction projects that may violate air quality standards, landowners must implement dust-abatement measures as required recommended by BAAQMD. as feasible dust control procedures, during all construction activities, including the following:

- a. ~~Water all active construction areas at least twice daily;~~
- b. ~~Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.); and,~~
- e. ~~Replant vegetation in disturbed areas as quickly as possible.~~

Change 3: IV. BIOLOGICAL RESOURCES

The checkbox for Biological Resource (d) was moved from “less than significant with mitigation” to “less than significant” because of the limited temporal aspect of the potential impact.

The text has been edited as follows to coincide with the checkbox:

Less than significant impact with mitigation. Grazing management actions proposed to comply with the waiver of WDRs would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. It is possible, however, that projects could be proposed to comply with the waiver of WDRs that involve construction or earthmoving activities that could temporarily interfere with wildlife movement, migratory corridors, or nurseries (e.g., fencing, road improvements, etc.). Equipment that would cause such surface disturbance would be limited to what would be needed to develop or improve dirt ranch roads, install or repair fences, provide off-stream water, etc. and not result in a sustained project-site presence by workers, vibration, noise, and/or dust nor would such projects substantially interfere with migratory or native wildlife movement. Any additional boundary, exclosure or enclosure fencing that might be installed to comply with the waiver of WDRs will be in keeping with commonly used fencing designs in the watershed and deemed appropriate for the kind and class of livestock being grazed/managed.

Mitigation Measure IV-4:

~~Measures to minimize impacts on movement of resident or migratory fish or wildlife species including the following:~~

- ~~a. Projects shall be designed to avoid construction in known wildlife corridors or during the breeding season, avoid sensitive habitat areas and minimize disturbances; and,~~
- ~~b. Fences that may be constructed to restrict cattle shall be designed to prevent impeding wildlife movement by requiring wildlife to be able to pass either over or under (upper and lower fence heights), or through (fence materials) the constructed fence.~~

Change 4: VI. GEOLOGY AND SOILS

The mitigation measures for the Geology and Soils category (b) was refined similarly to Change 2 above, to more accurately reflect the limited circumstances, that are project scale-dependent (i.e., earth moving and grading in excess of 1 acre in size), under which potentially significant impacts to geology and soils might arise through implementation of grazing management practices. The text was also edited to provide a current reference to State Water Board Order No. 2009-0009-DWQ (Construction General Permit) and to not prescribe mitigation measures that could potentially conflict with those required under Order No. 2009-0009-DWQ.

The text has been edited as follows:

Less than significant with mitigation. Specific projects involving earthmoving or construction activities to comply with requirements of the waiver of WDRs are reasonably foreseeable. Such activities (e.g., fence installation, localized benching of a slope to allow placement of an off-stream water trough, etc.) would not result in substantial soil erosion or the loss of topsoil because they would be limited in size and scope. The purpose of the waiver of WDRs is to reduce erosion, not increase it. To meet the proposed waiver of WDRs conditions, construction would be designed to reduce overall soil erosion. However, large-scale temporary earthmoving

operations (e.g., ranch road installation and rehabilitation) -could result in short-term, limited erosion. ~~Large-scale c-Compliance projects that disturb affecting an area of one acre or more would be subject to the review and/or approval of the Water Board, which would require implementation of routine and standard erosion control best management practices and proper construction site management. These projects would required to obtain coverage under the a general construction National Pollutant Discharge Elimination System permit~~Construction General Permit Order No. 2009-0009-DWQ and implementation of a storm water pollution prevention plan to control pollutant runoff such as sediment. Other smaller grading projects would be subject to non-discretionary requirements of the Napa or Sonoma County grading ordinance, which would reduce potential impacts from grading.

Routine property maintenance of original line and grade, hydraulic capacity, or disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation, are not construction activities covered by Construction General Permit Order No. 2009-0009-DWQ.

Mitigation Measure VI-1:

During large scale earthmoving and construction, landowners must implement best management practices~~implement erosion control practices per the State Water Board Water Resource Control Board Order No. 2009-0009-DWQ (Construction General Permit)~~as feasible during all construction activities, including the following:

- a. ~~Use proper slope grading, temporary/permanent seeding or mulching, erosion control blankets, fiber rolls, etc. and other methods to prevent the movement of soils;~~
- b. ~~Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.); and,~~
- e. ~~Replant vegetation in disturbed areas as quickly as possible.~~

Change 5: IX. HYDROLOGY AND WATER QUALITY

Mitigation Measure 1X-1 for the Hydrology and Water Quality category (c) was refined to be less prescriptive and avoid potential conflict, with the project-specific mitigation requirements that would be required in future permits issued by the Water Board, the U.S. Army Corps of Engineers, and/or the California Department of Fish and Game.

The text has been edited as follows:

Less than significant impact with mitigation: Specific projects involving earthmoving or construction activities to comply with waiver of WDRs requirements could affect existing drainages patterns and are reasonably foreseeable. ~~Although~~ ~~However,~~ they would be designed to reduce overall soil erosion, not increase it, ~~there remains the chance based on the size and location of the project that~~. ~~Nevertheless,~~ temporary earthmoving operations could result in short-term, limited erosion. Large-scale projects (e.g., road rehabilitation or construction, etc.) that disturb one acre or more of land~~These specific compliance projects would be subject to the review and/or approval of the Water Board, which would be required to obtain coverage under Construction General Permit Order No. 2009-0009-DWQ, and be required to implementation of routine and standard erosion control best management practices and proper construction site management. Construction projects over one acre in size would require a general construction~~

~~National Pollutant Discharge Elimination System permit and implementation of a storm water pollution prevention plan. Routine property maintenance of original line and grade, hydraulic capacity, or disturbances to land surfaces solely related to agricultural operations such as disking, harrowing, terracing and leveling, and soil preparation, are not construction activities covered by Construction General Permit Order No. 2009-0009-DWQ.~~

Furthermore, specific projects to comply with the waiver of WDRs requirements that involve construction in or adjacent to waters of the State shall be required to ~~must~~ comply with standard permit conditions in the U.S. Army Corps of Engineers' Nationwide Permit nos. 13 (Bank Stabilization) and 27 (Stream and Wetland Restoration Activities). U.S. Army Corps of Engineers' final approval and issuance of a permit is only valid with Clean Water Act 401 certification of the proposed activity, which is made by the Water Board. Section 401 requires the Water Board to certify that such projects comply with water quality standards, and as such, Section 401 certifications often include conditions that are more stringent than the federal requirements.

Mitigation Measure IX-1:

The landowner shall obtain all applicable and necessary permits from the Water Board, the U.S. Army Corps of Engineers, and/or the California Department of Fish and Game. Landowners/Operators shall comply with the specified conditions and mitigation requirements set forth in the respective permits to mitigate for any identified significant environmental impacts to biology, hydrology, and water quality.

~~During earthmoving and construction, landowners must implement best management practices as feasible during all construction activities, including the following:~~

- ~~a. Use proper slope grading, temporary/permanent seeding or mulching, erosion control blankets, fiber rolls, etc. and other methods to prevent the movement of soils;~~
- ~~b. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.); and,~~
- ~~c. Replant vegetation in disturbed areas as quickly as possible.~~