

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2023-0012**

TO ADOPT AMENDMENTS TO THE WATER QUALITY CONTROL POLICY FOR
SITING, DESIGN, OPERATION, AND MAINTENANCE OF ONSITE WASTEWATER
TREATMENT SYSTEMS AND CONDITIONAL WAIVER RENEWAL

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy) on June 19, 2012 under [Resolution No. 2012-0032](#). The OWTS Policy was approved by the Office of Administrative Law on November 13, 2012, and became effective six months later on May 13, 2013, consistent with OWTS Policy section 13.0.
2. The State Water Board adopted the Conditional Waiver Renewal and Amendment to Identified Impaired Water Bodies Listing for the OWTS Policy on April 17, 2018 under [Resolution No. 2018-0019](#), before its expiration on May 13, 2018. The amendments were approved by the Office of Administrative Law on June 11, 2018.
3. On February 16, 2016, the State Water Board adopted [Resolution No. 2016-0010](#) identifying the human right to water as a top priority and core value of the Water Boards. Renewing the OWTS Policy supports the resolution objectives by providing consistent statewide water quality standards for onsite wastewater treatment systems (OWTS), mitigates the pollution of community surface and groundwater resources, and requires additional protections for water bodies likely to be impaired by pathogens and nitrogen from contributing OWTS.
4. On November 16, 2021, the State Water Board adopted [Resolution No. 2021-0050](#) condemning racism, xenophobia, bigotry, and racial injustice and strengthening its commitment to racial equity, diversity, inclusion, access, and anti-racism as a top priority and core value of the Water Boards; including reaffirming the Water Boards' commitment to providing for the protection of public health in communities disproportionately burdened by environmental contamination. Renewing the OWTS Policy supports the objectives of this resolution and subsequent Racial Equity Action Plan objectives by continuing to reduce permitting costs for OWTS owners through the statewide conditional waiver of waste discharge requirements while providing statewide standards that provide a framework for safe access to sanitation for Californians, including disadvantaged communities.

5. [Assembly Bill 2108](#) went into effect January 1, 2023 and requires the Water Boards to (1) conduct equitable, culturally relevant outreach when considering proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged communities or tribal communities; and (2) for certain actions, adopt findings related to water quality impacts in disadvantaged or tribal communities and/or environmental justice concerns. The public comment period for renewal of the OWTS Policy closed on November 1, 2022 prior to Assembly Bill 2108 going into effect. However, the renewal of the OWTS Policy public process described further in this resolution included a public notice provided in both English and Spanish, a public staff workshop held virtually during the evening to reduce travel costs and accommodate attendee work schedules, and staff conducted comprehensive tribal outreach. Representatives of disadvantaged communities submitted written comments and have received notice of public participation opportunities including workshops and State Water Board meetings. Pursuant to Water Code section 13149.2, the State Water Board reviewed readily available information concerning anticipated water quality impacts in disadvantaged communities or tribal communities resulting from renewal of the OWTS Policy. The State Water Board also considered environmental justice concerns within the State Water Board's authority with regard to those impacts. The State Water Board anticipates that the renewal of the OWTS Policy will not result in disproportionate water quality impacts in disadvantaged communities or tribal communities and/or environmental justice concerns within the scope of the State Water Board's authority. Staff anticipate providing OWTS Policy implementation support, including expanded outreach to disadvantaged communities on the OWTS Policy requirements, guidance on locating available public and private federal, state, and local wastewater funding programs, and collaboration on applicable findings from the statewide wastewater needs assessment, authorized by the State Water Board through [Resolution No. 2022-0019](#).

6. The OWTS Policy authorizes subsurface disposal of domestic strength wastewater, and in limited instances high strength wastewater, and establishes minimum requirements for the permitting, monitoring, and operation of OWTS to protect beneficial uses of waters of the state and to prevent or correct conditions of pollution or nuisance. The OWTS Policy also conditionally waives the requirement for OWTS owners to submit a report of waste discharge, obtain waste discharge requirements, and pay fees in order to operate and discharge from systems meeting the OWTS Policy conditions. The OWTS Policy applies to OWTS on federal, state, and tribal lands to the extent authorized by law or agreement.

7. Renewal of the OWTS Policy includes the following proposed amendments:
- a. Non-substantive revisions to improve readability and formatting to meet the Water Boards' website accessibility requirements so people with disabilities can perceive, understand, navigate, and interact with the website in compliance with Government Code sections 7405 and 11135.
 - b. Clarifications to authorities already afforded to local agencies concerning Local Agency Management Programs; including the requirement to comply with local ordinances, define the geographical reach of certain requirements contained within Local Agency Management Programs or Advanced Protection Management Programs, and consideration of any necessary additional requirements more protective of water quality in areas under local agency jurisdiction, including areas vulnerable to groundwater pollution from OWTS.
 - c. Clarifications to the submission timing for Local Agency Management Program five-year assessment reports by removing legacy language applicable to the initial phase-in period of the OWTS Policy which has now passed.
 - d. Updates to the definition of domestic wastewater by including wastewater normally discharged from systems serving multiple dwelling units, including accessory dwelling units that are a high priority in California for affordable housing.
 - e. Updates to OWTS Policy Tables 5 and 6 in Attachment 2 (Attachment 2). Attachment 2 identifies those impaired water bodies where: (1) it is likely that operating OWTS will subsequently be determined to be a contributing source of pathogens or nitrogen and therefore, at the time of OWTS Policy preparation, it was anticipated that OWTS would receive a loading reduction, and (2) it is likely that new OWTS installations discharging within 600 feet of the water body would contribute to the impairment. OWTS Policy section 5.6 requires that the State Water Board update Attachment 2 as new information becomes available. Since the OWTS Policy was adopted in June 2012 and renewed in 2018, new information was collected requiring Attachment 2 changes to reflect current water body listings where the pathogens or nitrogen impairment is likely caused or contributed to by OWTS sources. Attachment 2 includes the proposed amendments to the impaired water bodies list and provides schedules for the Regional Water Boards to adopt Total Maximum Daily Loads (TMDLs) for these water bodies in accordance with the requirements for applicability of OWTS Policy section 10 that

governs Advanced Protection Management Programs for impaired areas. The justifications for the proposed amendments to Attachment 2 are provided in the staff report where water body listings were added, TMDL completion dates were revised, or water body listings were removed.

8. By law, conditional waivers of waste discharge requirements expire five years after adoption; the conditional waiver in the OWTS Policy will expire on Monday April 17, 2023. Water Code section 13269 (f) requires that prior to renewing any conditional waiver for a specific type of discharge, the State Water Board shall review the terms of the waiver at a public hearing where the State Water Board shall further determine whether the discharge for which the conditional waiver was established should be subject to general or individual waste discharge requirements.
9. As described in the updated staff report and proposed OWTS Policy provided on the [public State Water Board OWTS Policy webpage](#), the State Water Board has considered the conditions set forth in the OWTS Policy, which include: requirements that OWTS shall: (1) function as designed, with no surfacing effluent, (2) not utilize a dispersal system that is in soil saturated with groundwater, (3) not be operated while inundated by a storm or flood event, (4) not cause or contribute to a condition of pollution or nuisance, (5) comply with all local agency codes, ordinances and requirements; (6) comply with and meet any applicable TMDL requirements, special provisions for impaired water bodies, or supplemental treatment requirements, and (7) comply with any corrective action requirements.
10. The State Water Board proposes to renew the OWTS Policy conditional waiver of waste discharge requirements set forth in OWTS Policy section 12.0. The State Water Board adopted a conditional waiver of waste discharge requirements as part of the OWTS Policy in accordance with Water Code section 13269, to implement the framework of state and local agency coordination in regulating OWTS. The conditional waiver, set forth in OWTS Policy section 12.0, waives requirements to submit a report of waste discharge, obtain waste discharge requirements, and pay fees for discharges from OWTS in compliance with all applicable OWTS Policy conditions.
11. The State Water Board finds that the conditions contained within the OWTS Policy are adequately protective of water quality and human health. The State Water Board further finds that renewal of the conditional waiver is in the public interest. Because the conditions contained in the waiver are appropriate, requiring all OWTS to be subject to general or individual waste discharge requirements is not necessary.

12. The State Water Board prepared a Substitute Environmental Document in 2012 for adoption of the OWTS Policy, in compliance with the California Environmental Quality Act (CEQA). The 2012 Substitute Environmental Document analyzed not only the proposed OWTS Policy and the proposed conditional waiver, as part of the OWTS Policy, but also subsequent actions of the State Water Board, Regional Water Boards, and local agencies to implement the OWTS Policy.

13. The State Water Board proposed OWTS Policy clarifying revisions, Attachment 2 amendments to identified impaired water bodies listings, and consideration of the conditional waiver renewal does not require further analysis of environmental impacts within the meaning of CEQA because the whole of the action considered does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (See, Cal. Code Regs., tit. 14, §15060, subd. (c)(2); Cal. Code Regs., tit. 14, § 15378, subd. (a). See also, Cal. Code Regs., tit. 14, § 15061, subd. (b)(2).). However, the State Water Board included an informational CEQA update as an addendum in the staff report that was circulated for public comment and included information pertaining to the proposed OWTS Policy clarifications, justifications for the Attachment 2 updates, and a “Tribal Cultural Resources” section 3.1.2 to supplement the existing information in the 2012 OWTS Policy CEQA Substitute Environmental Document.

14. On August 17, 2022, the State Water Board provided legal public notice for the Staff Workshop, Opportunity for Comments and Notice of Public Hearing, and Consideration of Adoption for the OWTS Policy Amendment and Conditional Waiver Renewal by electronically providing the public notice on the State Water Board public and program webpages, and Onsite Wastewater Policy Implementation and Onsite Wastewater Treatment email lists. The public notice was also published in 21 newspapers with the largest estimated circulation in geographic areas within each Regional Water Board.

15. The State Water Board complied with the tribal consultation requirements established by Governor’s Executive Order No. B-10-11 (Sept. 19, 2011) and Assembly Bill 52 (Gatto) (Stats. 2014, ch. 532) which ensure tribal governments have the opportunity to provide meaningful input in the development of regulations, rules, policies, or projects that may affect tribes. Specifically, staff issued consultation letters to Assembly Bill 52 and non-Assembly Bill 52 tribes listed with the Native American Heritage Commission during August 2022. Specific information from the Yuhaaviatam of San Manuel Nation received on August 9, 2022, was included in the staff report CEQA addendum to supplement the 2012 OWTS Policy Substitute Environmental Document discussion on Tribal Cultural Resource

requirements. Staff held a consultation with the San Pasqual Band of Mission Indians on November 8, 2022, and closed consultation on January 12, 2023.

16. The documents for public comment were posted on the [public State Water Board OWTS Policy webpage](#), including the public notice, proposed OWTS Policy amendment, and staff report that includes the CEQA addendum. A public comment period was held from September 16 to November 1, 2022, and the State Water Board received eight public comment letters.
17. On October 4, 2022, staff held the publicly noticed virtual staff workshop via zoom and posted the recording with captions on the [public State Water Board OWTS Policy webpage](#).
18. On October 18, 2022, the State Water Board held the noticed Public Hearing required per Water Code section 13147 during the public comment period to receive oral comments on the OWTS Policy.
19. On April 4, 2023, the State Water Board publicly posted the responses to the public comments received. A number of the comments raised issues regarding OWTS Policy implementation rather than the proposed OWTS Policy amendment and conditional waiver renewal.
20. The State Water Board conducted a public meeting on April 18, 2023, in Sacramento to consider adoption of a resolution and the associated OWTS Policy amendment, conditional waiver renewal, and the CEQA addendum.
21. The documents and other materials that constitute the record of proceedings on which the State Water Board findings are based are located electronically and at the State Water Resources Control Board, Division of Water Quality, 1001 I Street, 15th floor, Sacramento, California, 95814. The custodian for these documents is the Division of Water Quality.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Amends the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy).

2. Adopts the CEQA addendum.

3. Renews the conditional waiver set forth in the OWTS Policy for the maximum duration allowed by law.

4. Authorizes the Executive Director or designee to submit the amended OWTS Policy to the Office of Administrative Law for review and approval.

5. Authorizes the Executive Director or designee to make minor, non-substantive modifications to the language of the OWTS Policy and the supporting documentation if State Water Board staff or OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board and the public of any such changes.

6. Directs staff to engage stakeholder groups who commented during the comment period and any other interested persons regarding issues and questions regarding ongoing project implementation and for future renewals.

CERTIFICATION

The undersigned Clerk to the Board hereby does certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 18, 2023.

AYE: Chair E. Joaquin Esquivel
 Vice Chair Dorene D'Adamo
 Board Member Sean Maguire
 Board Member Nichole Morgan

 NAY: None

 ABSENT: Board Member Laurel Firestone

 ABSTAIN: None



 Courtney Tyler
 Acting Clerk to the Board