

STAFF REPORT
IN SUPPORT OF THE
AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE
COLORADO RIVER BASIN REGION TO REVISE THE SEPTIC TANK
PROHIBITION FOR THE
TOWN OF YUCCA VALLEY – SAN BERNARDINO COUNTY



June 2021

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1 INTRODUCTION

Staff of the California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board or Regional Water Board) developed this Staff Report to describe a proposed amendment to the Water Quality Control Plan for the Colorado River Basin Region (Basin Plan). The proposed amendment would revise the septic tank discharge prohibition in the Town of Yucca Valley for a second time (Amendment).

The Basin Plan is designed to preserve and enhance water quality in the Colorado River Basin Region and to protect all regional waters for the benefit of present and future generations, and is implemented by the Colorado River Basin Water Board. The Basin Plan contains the region's beneficial uses for groundwater and surface waters, water quality objectives to protect those beneficial uses, and implementation programs to achieve water quality objectives. The Basin Plan fulfills state and federal statutory requirements for water quality planning, thereby preserving and protecting groundwater and surface waters of the Colorado River Basin Region. (See Water Code, § 13240; 33 U.S.C. § 1313.) The most recent amendment to the Basin Plan was an administrative amendment to update bacteria water quality objectives for waters designated for Water Contact Recreation, which was approved by the State Water Resources Control Board (State Water Board) on March 16, 2021.

The Basin Plan currently includes a septic tank discharge prohibition for the Town of Yucca Valley (Prohibition) in areas that overlie the Warren Valley Groundwater Subbasin (Warren Subbasin). The Basin Plan amendment adopting the original Prohibition was approved by the Colorado River Basin Water Board on May 19, 2011 (Resolution No. R7-2011-0004) and went into effect on November 13, 2012 upon approval by the Office of Administrative Law (OAL). The amendment outlined the requirements, conditions, and deadlines of the Prohibition and required the Hi-Desert Water District (HDWD) to construct a centralized sewage collection system (collection system) and wastewater treatment and reclamation facility (WRF) in three phases.

The Prohibition that went into effect on November 13, 2012 was revised by a Basin Plan amendment that was approved by the Colorado River Basin Water Board under Resolution R7-2016-0001 on March 10, 2016 and went into effect on March 7, 2017 upon approval by the Office of Administrative Law (OAL). The Amendment revised the Prohibition in the following ways: it extended the compliance date for Phase 1 by five and a half years to December 31, 2021; it extended the compliance dates for Phases 2 and 3 by seven and a half and three and a half years, respectively, to a consolidated deadline of December 31, 2025; it revised internal phase boundaries; it added provisions to include deferred parcels where compliance deadlines would be delayed until certain connection criteria are met; and it otherwise updated prohibition language for clarity and accuracy.

Financial, legal, economic, and technical issues have caused further delays in the construction of the collection system in Phase 1, and design and construction of the collection system for Phases 2 and 3. HDWD requested that the Colorado River Basin

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Water Board revise the Prohibition to combine Phases 2 and 3 into a single Phase 2, extend the overall deadlines for the Prohibition, and identify additional deferred parcels. In addition to these requests, Colorado River Basin Water Board staff identified necessary changes to the Prohibition for consistency, clarity, and accuracy, to protect water quality, and to streamline the requirements, where possible, for HDWD and the property owners.

2 RECOMMENDED CHANGES

This Amendment proposes to revise Basin Plan Chapter 4, Section II.H.2.iii as follows:

- Combines Phases 2 and 3 into a single Phase 2;
- Extends the deadline for Phase 1 from June 30, 2021 to December 31, 2023;
- Extends the deadline for Phase 2 from December 31, 2025 to December 31, 2028 if the western Joshua tree does not get listed as threatened or endangered, or to December 31, 2031 if it does get listed;
- Adds deferred parcels with a net increase of 625 parcels;
- Provides a 180-day compliance period after the collection system becomes available when the dischargers need to connect;
- Adds compliance date extensions for parcels with recently installed Onsite Wastewater Treatment Systems (OWTS);
- Adds a connection criterion for deferred parcels that will require HDWD to construct a collection system for any deferred parcels that remain 15 years after their phase deadline;
- Requires Advanced Treatment Units (ATU) for new and replacement OWTS on exempt parcels;
- Revises reporting requirements to include additional information but less frequent reports;
- Provides an updated map to show the revised phases and deferred parcels; and
- Revises the language for clarity, accuracy, and consistency.

The specific changes proposed under the Amendment are discussed in the paragraphs below.

2.1 (a) Definitions (new)

This section contains definitions specific to the Prohibition and was added at the beginning of the Prohibition for clarity and consistency.

2.1.1 Onsite Wastewater Treatment Systems (OWTS)

Proposed text:

“Onsite Wastewater Treatment Systems (OWTS) are individual disposal systems, community collection and disposal systems, and alternative collection and disposal systems that use subsurface disposal.”

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This term replaces the term “individual disposal systems,” which was mentioned in the opening paragraph but was not defined. The new term and definition were borrowed from the *Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Policy). The OWTS Policy regulates some systems that are conditionally permitted under the Prohibition, and therefore it is important to ensure that the Prohibition is consistent with the OWTS Policy. The use of this definition also clarifies the systems to which the Prohibition applies.

2.1.2 Municipal Sewage Collection System Availability

These two definitions replace a definition that was originally included in a footnote to section “(a) Time Schedule for Implementation.”

Original text:

“A municipal sewage collection system is defined as “available” once the system is operational, and is located within 500 lineal feet of an existing or proposed new disposal system discharge.”

Proposed text:

For residential parcels a municipal sewage collection system is considered available when the public sewer or any building or exterior drainage facility connected thereto is located less than 200 feet from any existing or proposed building or exterior drainage facility on the parcel, and the parcel abuts and is served by such public sewer.

For non-residential parcels a municipal sewage collection system is considered available when the public sewer or any building or exterior drainage facility connected thereto is located less than 500 feet from any existing or proposed building or exterior drainage facility on the parcel, and the parcel abuts and is served by such public sewer.

The new definition for residential parcels was adapted from the OWTS Policy for consistency and clarity. The new definition reduces the availability distance to 200 feet because a distance of 500 feet in residential areas may define the sewer as available when in fact the available sewer is on a neighboring street. Additionally, it is not reasonable to expect a residential parcel owner to be responsible for a lateral connection of up to 500 feet. For non-residential parcels, the same language is used for clarity and consistency, but the distance remains at 500 feet because HDWD indicated that it is the appropriate distance for some commercial lots to ensure that they are required to connect to the sewer.

2.1.3 Sewer Availability Date

Proposed text:

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*“The **sewer availability date** is the first day when the municipal sewage collection system is available.”*

This new term was incorporated for clarity and consistency and is used throughout the Prohibition.

2.1.4 Individual Prohibition Deadline

Proposed text:

*“The **individual prohibition deadline** is the day when the prohibition of OWTS goes into effect for a specific parcel based on the provisions contained in the Yucca Valley OWTS Prohibition.”*

This new term was incorporated for clarity and consistency and is used throughout the prohibition.

2.1.5 Deferred Parcels

Proposed text:

*“**Deferred parcels** are parcels where the installation of a sewer is not economically or technically advisable, and is not required, until sufficient development occurs, as described in subsection (e)(2).”*

This new definition defines a term that was already used in the original text but was not clearly defined. The new definition was incorporated for clarity as to the purpose and function of deferred parcels.

2.1.6 Deferred Area

Proposed text:

*“A **deferred area** is a continuous set of deferred parcels that would be serviced by a segment of sewer line that could be readily connected to the available centralized sewer system.”*

The new definition offers clarity regarding how to apply connection criteria for deferred areas, identified in the new subsection (e)(2).

2.1.7 Discharger

Proposed text:

*“A **discharger** is any person or entity that discharges domestic wastewater from OWTS within Phases 1 and 2 defined in Appendix C of the Basin Plan.”*

This revised definition defines an existing term. This definition has been moved to the beginning of the Prohibition and redefined to clarify the applicability of the Prohibition.

2.1.8 Advanced Treatment Unit (ATU)

Proposed text:

*“An **Advanced Treatment Unit (ATU)** is an OWTS component capable of reducing specific constituents in wastewater not normally achieved by other treatment options such as septic tanks.”*

The new term is used in new provisions included in the revised Prohibition.

2.2 Deleted: Opening Paragraph

Original text:

“Pursuant to section 13280 of the Water Code, the discharge of wastewater from new or existing individual disposal systems on parcels within Phase 1, Phase 2, and Phase 3 of the Hi-Desert Water District Sewer Master Plan (Final Report, January 2009) is prohibited with certain exceptions noted below.”

This opening paragraph was deleted and the content was incorporated into the new section (b) Implementation.

2.3 (b) Implementation

Formerly “Time Schedule for Implementation,” the section title was simplified to be reflective of the revised content. Various portions of the old section were revised, removed, or incorporated into other sections. Because of the length of this section, it is presented as original and proposed text below in three parts.

The first part of the original text was revised.

Original text:

“This prohibition shall become effective for all parcels within the boundaries of the prohibition in accordance with the following time schedule:

<i>Phase</i>	<i>Deadline¹</i>
<i>Phase 1</i>	<i>June 30, 2021</i>
<i>Phase 2</i>	<i>December 31, 2025</i>

¹ Or when a municipal sewage collection system becomes available, whichever comes first. A municipal sewage collection system is defined as “available” once the system is operational, and is located within 500 lineal feet of an existing or proposed new disposal system discharge.

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<i>Phase</i>	<i>Deadline¹</i>
<i>Phase 3</i>	<i>December 31, 2025”</i>

Proposed text:

Pursuant to Water Code section 13280, the discharge of wastewater from OWTS within Phases 1 and 2 defined in Appendix C of the Basin Plan, shall be prohibited, in accordance with the following schedule:

- 1. For Phase 1: by December 31, 2023;*
- 2. For Phase 2:*
 - a. by December 31, 2028 if the western Joshua tree is not listed as threatened or endangered by the California Fish and Game Commission;*
 - b. by December 31, 2031 if the western Joshua tree is listed as threatened or endangered by the California Fish and Game Commission;*
- 3. Or when a municipal sewage collection system becomes available, whichever comes first.*

Alternative deadlines apply to some dischargers as described in section (e) of the Yucca Valley OWTS Prohibition. Hi-Desert Water District (HDWD) shall complete the construction of the municipal sewage collection system in time to make it available at all parcels within the Prohibition Phases 1 and 2 in accordance with the above schedule. Dischargers shall connect to the municipal sewage collection system and cease discharging from OWTS within 180 days of their individual prohibition deadline.

The above proposed text contains the revised section “(b) Implementation” in its entirety. In the first sentence, the original text was combined with information from the opening paragraph, is revised to clarify applicability of the Prohibition. The term “individual disposal systems” was replaced with “Onsite Wastewater Treatment Systems,” defined in the new section (a) Definitions; this sets up the Prohibition to work better with the OWTS Policy and clearly defines the types of discharges to which the Prohibition applies. The geographic applicability has also been clarified by siting the new Appendix C, which contains a map of the boundaries of the Prohibition, replacing the former figure 4-1. In the numbered paragraphs that follow, only Phases 1 and 2 are mentioned because Phases 2 and 3 have been combined into Phase 2. The deadline for Phase 1 has been extended by two and a half years. The deadline for Phase 2 (formerly Phases 2 and 3) was made conditional on the listing status of the western Joshua tree, with a three-year extension if it is not listed as threatened or endangered, and a six-year extension if it is listed as threatened or endangered. The western Joshua tree is currently listed as a candidate

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species by the California Fish and Game Commission and their listing decision should be announced by mid-2022.

The second sentence clarifies that some properties will have alternate deadlines that are explained further in the Prohibition.

The third sentence was added to clearly identify HDWD's responsibility in ensuring that dischargers can connect to the municipal sewage collection system, which was formerly not identified in the Prohibition.

The fourth sentence provides the dischargers with a 180-day compliance period in which they can connect to the municipal collection system. The original text did not identify such a compliance period, meaning that the dischargers could be considered noncompliant if they were not instantly connected once the municipal collection system became available. A compliance period will allow dischargers time to schedule a contractor to build the lateral connection to the collection system, especially considering that neighboring properties would be competing for a limited pool of contractors.

The next part was deleted without any replacement.

Original text:

Construction of the Hi-Desert Water District (HDWD) municipal sewage collection system and wastewater treatment and reclamation facility (WRF) for the Town of Yucca Valley shall proceed in accordance with the following milestones and schedule:

Package	Start Construction	Complete Construction
<i>Package A: Collection System East</i>	<i>July 31, 2016</i>	<i>February 28, 2018</i>
<i>Package B: Pumping Stations</i>	<i>September 30, 2016</i>	<i>April 30, 2018</i>
<i>Package C: Collection System Central</i>	<i>October 31, 2017</i>	<i>April 30, 2019</i>
<i>Package D: Collection System West</i>	<i>December 31, 2018</i>	<i>March 31, 2020</i>
<i>WRF</i>	<i>February 28, 2017</i>	<i>July 31, 2019</i>

This text was deleted because these deadlines have passed. There is no need to revise it to include the remaining construction packages for Phase 2. Instead, the second sentence in the new section (b) Implementation ensures that HDWD is responsible for completing construction in time to meet the general phase deadlines.

The following text was revised and incorporated into the new section (c) Sewer Availability Notifications.

Original text:

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Regarding the availability of and need to connect to the centralized sewer system, the District shall provide property owners in Phase 1 at a minimum the following two notifications:

1st Notification: *a 90-day advance notice (by mail), as to when the approximate date the sewage collection system will become “available” for them to connect; and*

2nd Notification: *another written notification, within 10 days of when the system is actually “available,” that the system is “available,” and they need to connect to it.*

The last part of the original section was revised and incorporated into the new section (f) (3) Connection Compliance Reports.

Original text:

Within one-hundred (100) days following the first round of the 2nd Notification, and every month thereafter on the 15th day of the month, HDWD shall submit to the Colorado River Basin Water Board a technical report in the form of a letter with the names and address of property owners who have not connected to the sewage collection system as required even though the system is available for them to connect. Further, a detailed progress schedule to connect property owners to the sewage collection system shall be available on the HDWD’s Project webpage (www.protectgroundwater.org) throughout the Project.”

2.4 (c) Sewer Availability Notifications

This is a new section with text that was moved and revised from the old section “(a) Time Schedule for Implementation.”

Proposed text:

Regarding the availability of and need to connect to the municipal sewage collection system, HDWD shall provide each property owner at a minimum the following two notifications:

- 1. 90 days or more before the projected sewer availability date, announcing when the municipal sewage collection system will become available and advising of the requirement to connect to it within 180 days of that date; and*
- 2. Within 14 days after the sewer availability date, confirming the municipal collection system’s availability and advising of the requirement to connect to it within 180 days of the sewer availability date.*

A schedule of the projected sewer availability dates shall be made available by HDWD through its website until all properties within Phases 1 and 2 are connected.

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The first sentence was revised to apply to all dischargers, not only to Phase 1. Both notification requirements were revised for clarity and consistency with other sections of the revised Prohibition. The second notification requirement was also revised to increase the time period within which HDWD must issue the notices from 10 days after the sewer becomes available to 14 days.

2.5 (d) Discharge from OWTS

This is a new section containing information that was formerly not specified in the Prohibition.

Proposed text:

New, replacement or existing OWTS on all parcels where the individual prohibition deadline has not passed may discharge as regulated by the local agency under the Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy), or by the Regional Water Board under a waste discharge requirements permit, and in accordance with any other applicable provisions in the Yucca Valley OWTS Prohibition.

This information was included to clearly outline the applicability of OWTS Policy. While the OWTS Policy is already applicable to all eligible OWTS that continue discharging under the Prohibition, this paragraph is important in making it clear to the public how such systems will be regulated. This information is applicable to parcels where the general phase deadlines have not passed and the collection system is not yet available, or where alternative deadlines apply.

2.6 (e) Alternative Deadlines

Section “(e) Alternative Deadlines” is a new section with two subsections incorporating both existing and new provisions.

Proposed text:

Phase deadlines shall not apply to certain dischargers and shall be replaced with alternative deadlines as described below.

This sentence introduces the provisions that follow.

2.6.1 (e)(1) Recent OWTS Installations (new)

This new subsection contains new provisions.

Proposed text:

For parcels where new or replacement basic OWTS were installed less than 36 months prior to the sewer availability date, the individual prohibition deadline shall

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be 36 months after the OWTS installation date. Owners of such OWTS shall provide proof of the installation date to the Regional Water Board

For parcels where a new or replacement OWTS consisting of an ATU designed to remove at minimum 50% nitrogen was installed less than 60 months prior to the sewer availability date, the individual prohibition deadline shall be 60 months after the OWTS installation date. Owners of such OWTS shall provide proof of the installation date and nitrogen removal rates to the Regional Water Board.

The inclusion of these new provisions is meant to partially offset the immediate financial impact to dischargers that recently installed an OWTS, such as new developments or failing OWTS. Without these extensions, new developments may either be put on hold until the collection system is available, or may suffer a severe financial hit from having to pay both for an OWTS installation and a lateral connection to the collection system within a short period of time; both such outcomes may negatively impact the local economy. The extension is longer for OWTS consisting of an ATU because the cost of such systems is greater, and their nitrogen removal capability offsets the threat to water quality from prolonged discharge.

2.6.2 (e)(2) Deferred Parcels

This subsection contains revised provisions from former section “(b) Deferred Parcels.”

Original text:

Parcels identified in Appendix A of the March 2016 Staff Report prepared in support of this amendment (hereafter “March 2016 Staff Report”) shall connect to the HDWD’s centralized sewage collection system and WRF when they meet any of the following criteria:

- 1. An area of Deferred Parcels has experienced enough development to meet a threshold of 1.7 equivalent dwelling units (EDU) per 100 feet of pipe;*
- 2. A street or area is 80 percent developed; or*
- 3. An area has experienced enough development to generate flows resulting in a minimum of 2 feet per second (fps) flushing velocity.*

Revised text:

The individual prohibition deadlines for all deferred parcels shall be the same as their sewer availability date, unless other alternative deadlines apply. HDWD shall construct the municipal sewage collection system so that the sewer availability date occurs by December 31 of the second year after one of the following criteria is met by the corresponding deferred area:

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- 1. A deferred area has experienced enough development to meet a threshold of 1.7 equivalent dwelling units (EDU) per 100 feet of pipe; or*
- 2. A deferred area is 80 percent developed; or*
- 3. A deferred area has experienced enough development to generate flows resulting in a minimum of 2 feet per second (fps) flushing velocity; or*
- 4. The phase deadline passed more than 15 years ago.*

The first two sentences place responsibility on HDWD to extend the collection system to deferred parcels and a timeline is established for doing so, followed by four connection criteria. Connection criteria 1-3 were revised for clarity. The fourth connection criterion was added to ensure that parcels cannot be deferred indefinitely and are ultimately provided with sewer service.

2.7 Deleted: Internal Phase Boundaries for Phases 1 through 3

The text in the former section “(c) Internal Phase Boundaries for Phases 1 through 3” was removed from the Prohibition without replacement.

Original text:

The internal boundaries for Phases 1 through 3 shall be realigned and defined as recommended in the March 2016 Staff Report. Parcels in Alternative Area 1, which are identified in Appendix B of the March 2016 Staff Report, shall be moved from Phase 1 into Phase 2; Parcels in Alternative Area 2, which are identified in Appendix B of the March 2016 Staff Report, shall be moved from Phase 1 into Phase 3; and Parcels in Phases 2 and 3, which are identified in Appendix C of the March 2016 Staff Report, shall be moved into Phase 1, as recommended in the March 2016 Staff Report. Thus, the internal boundaries of each Phase of the Prohibition shall be as shown in Figure 7 of the March 2016 Staff Report and are defined as follows:

- 1. The Phase 1 area shall be bounded by Barron Drive to the north, Highland Trail to the south, La Contenta Road to the east, and Camino Del Cielo Trail to the west;*
- 2. The Phase 2 area shall be bounded by Onaga Trail to the north, Golden Bee Drive to the south, La Contenta Road to the east, and Rockaway Avenue to the west; and*
- 3. The Phase 3 area shall cover the remaining residential customers on the west end of HDWD’s service area, along with some low to medium density residential customers located north of the Yucca Wash up to Cobalt Road; and some low to medium density residential customers located south of Golden Bee Drive and north of South Park Road.*

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This section was deleted as the description is outdated. There is no need to replace it with a new description of the changes to the boundaries because this information is contained in Appendix C, and the changes to the boundaries and phases are described in this Staff Report.

2.8 (f) Reporting

This section was renamed from “Monitoring and Reporting” because no water quality monitoring is required, and the content was revised.

Original text:

Pursuant to section 13225 of the Water Code, by June 2016, and every calendar quarter thereafter on the 15th, HDWD shall submit to the Regional Water Board a report regarding the construction of the centralized sewage collection system and WRF. The report shall describe overall progress to build the centralized system and WRF; number of parcels connected to the system; and overall progress to achieve compliance with the Prohibition. HDWD shall also submit bi-annual reports to the Regional Water Board by January 1st and July 1st of each year regarding the status of Deferred Parcels. Specifically, the report shall address whether any Deferred Parcel and/or areas where Deferred Parcels are located meet any of the criteria specified in paragraph (b), above.

Proposed text:

Pursuant to Water Code section 13225, HDWD shall submit the following reports to the Regional Water Board:

The information about the reports was broken out into the three sub-sections that follow, for clarity.

2.8.1 (f)(1) Construction Progress Reports

Proposed text:

On an annual basis by the 15th day of February, HDWD shall submit to the Regional Water Board reports regarding the construction of the municipal sewage collection system and the wastewater reclamation plant (WRP) during the reporting period of the preceding calendar year. Reports shall be submitted annually until all construction is complete, including the municipal sewage collection system for deferred parcels. Each report shall include the following information for the reporting period, as applicable: description of progress building the municipal sewage collection system; description of progress building the WRP; number and percentage of parcels in each phase connected to the municipal sewage collection system; and other activities to achieve compliance with the Yucca Valley OWTS Prohibition.

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The report frequency was reduced from quarterly to annual because annual reports are deemed sufficient by Colorado River Basin Water Board staff. The name of the wastewater facility was updated to be consistent with its waste discharge requirements permit. Conditions under which the reports no longer need be submitted were added for clarity. The required contents of the reports were kept the same but were rewritten for clarity.

2.8.2 (f)(2) Deferred Parcels Status Reports

Proposed text:

On an annual basis by the 15th day of February, HDWD shall submit to the Regional Water Board reports regarding the status of deferred parcels. Each report shall be organized in editable spreadsheet format and shall list all deferred parcels that have met any of the criteria specified in section (e)(2), above prior to December 31 of the previous calendar year. The reports shall contain the following information for each parcel, as applicable: Assessor's Parcel Number (APN), address, which connection criterion was met, calendar year when the connection criterion was met, connection status, expected connection date, and actual connection date.

The report frequency was reduced from biannual to annual because annual reports are deemed sufficient by Colorado River Basin Water Board staff. The required contents of these reports were extended and clarified to ensure that all necessary information is included for the Colorado River Basin Water Board staff to verify compliance with the applicable provisions of the Prohibition.

2.8.3 (f)(3) Connection Compliance Reports

This sub-section contains information that was revised and moved from former section (b) Implementation for clarity.

Proposed text:

On a biannual basis by the 15th day of January and July, HDWD shall submit to the Regional Water Board reports documenting all properties to date that did not connect to the municipal sewage collection system within 180 days of their individual prohibition deadline. The reports may be submitted on a more frequent basis as requested by the Regional Water Board staff or per HDWD's discretion. The reports shall be organized in editable spreadsheet format and contain the following information, as applicable: APN, property owner name, property owner mailing address, date of the individual prohibition deadline, type of alternative deadline, date of the first report where the noncompliance was listed, current connection status, and the date when the property was connected.

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The report frequency was changed from once after the collection system becomes available, to biannual. The 180-day compliance period first defined in “(b) Implementation” is referenced for consistency. The option for more frequent reports is included and may be helpful in enabling the Colorado River Basin Water Board to take enforcement actions in a more expedient manner. The format of the reports was specified to ensure that the information is provided to Colorado River Basin Water Board staff in a readily accessible manner. The required contents of these reports were extended and clarified to ensure that all necessary information is included for the Colorado River Basin Water Board staff to verify compliance with the applicable provisions of the Prohibition.

2.9 (g) Prohibition Exemptions

This section has been revised to specify the criteria to be considered for exemptions and to elaborate on the meaning and limitations of being granted an exemption. Because of the length of this section, it is presented as original and proposed text below in three parts.

The first part defines the applicability of the exemptions and what information must be provided.

Original text:

Exemptions to the Yucca Valley OWTS Prohibition shall be considered and may be granted by the Regional Water Board on a case-by-case basis pursuant to an application submitted to the Executive Officer by any person or entity that is subject to the Prohibition (Discharger). Such exemptions shall be based upon the weight of the evidence demonstrating the existence of unique conditions applicable to the Discharger, its discharge, and its property in question. These conditions include, but are not limited to, technical, environmental, or economic conditions that would make connection to the collection system or installation of an on-site advanced treatment and disposal system technically impracticable or economically excessively burdensome. To be considered for an exemption, the Discharger shall apply to the Executive Officer for relief in writing and document the conditions that would make connection to the collection system or installation of an advanced on-site treatment and disposal system technically impracticable or economically excessively burdensome. The application shall also include:

- a) Written quotes from three state-licensed commercial contractors regarding the estimated cost to install, operate, and maintain the advanced on-site treatment and disposal system; and*
- b) A financial statement regarding the applicant’s average income for the last five years, and the applicant’s most recent property value assessment.*

Proposed Text:

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Exemptions to this Prohibition shall be considered and may be granted by the Regional Water Board on a case-by-case basis pursuant to an application submitted to the Regional Water Board's Executive Officer by a discharger. Such exemptions shall be based upon the weight of the evidence demonstrating the existence of unique technical or environmental conditions applicable to the property in question that would make connection to the municipal sewage collection system technically impracticable or economically excessively burdensome. If such circumstances exist, the discharger must also demonstrate that the continued discharge would not pose a significant threat to water quality. To be considered for an exemption, the discharger shall apply to the Regional Water Board's Executive Officer for relief in writing and provide the following information, as applicable:

- 1. Property address, APN, land use type, and size in acres; and*
- 2. OWTS description: system capacity in gallons per day (gpd), average or anticipated flow in gpd, treatment unit type (such as septic tank, ATU, or other), disposal system type (such as leach field, seepage pit, or other), and disposal system parameters (length, depth); and*
- 3. Evidence that the connection to the municipal sewage collection system public sewer would be technically impracticable or economically excessively burdensome, such as:*
 - a. A map of the planned municipal sewage collection system layout demonstrating that the system will not be made available to the parcel, as defined in subsections (a)(2) and (a)(3); or*
 - b. A certification from HDWD that it will not make the municipal sewage collection system available to the parcel, as defined in subsections (a)(2) and (a)(3); or*
 - c. Written quotes from three state-licensed commercial contractors regarding the estimated cost to build a lateral connection to the municipal sewage collection system.*
- 4. Any other relevant evidence as requested by Regional Water Board staff.*

In the first paragraph, various changes were made for clarity and to provide a more precise definition of the scope and applicability of the exemptions. In the first sentence, the definition of "discharger" was moved to section (a) Definitions. The explanation of which conditions would be considered when granting exemptions was revised. Specifically, the conditions were limited to only technical or environmental conditions, instead of "not limited to, technical, environmental, or economic conditions." Economic and other unspecified conditions were excluded because clear evaluation criteria for economic and unspecified conditions has not been established and Colorado River Basin

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Water Board staff does not foresee a way to do so in a fair and consistent manner while being protective of water quality. Dischargers experiencing financial hardship should seek financial assistance. Because of the exclusion of economic and unspecified conditions, the entity to which the remaining conditions apply was specified to be the property in question, rather than “the discharger, its discharge, and its property in question.” The activities to which the conditions of being “technically impracticable or economically excessively burdensome” apply have been limited to the connection to the collection system, excluding “installation of an onsite advanced treatment and disposal system,” because such systems may be necessary to protect water quality, especially in the presence of limiting technical or environmental conditions. A sentence was added specifying that the discharger applying for an exemption must also demonstrate that the continued discharge from OWTS would not pose a significant threat to water quality, because allowing discharges that may degrade water quality would conflict with the purpose of the Prohibition. The sentences leading up to the list of information to be provided were revised for clarity.

The list of evidence and information to be provided as part of an exemption application was revised to be consistent with the changes to the applicable conditions.

The next part is a paragraph describing the responsibilities of the Executive Officer upon receipt of an exemption application.

Original text:

The Executive Officer shall have thirty (30) days from receipt of the application to notify the Discharger in writing whether the application is complete. Following receipt of a complete application, the Executive Officer shall make a preliminary determination of whether the Discharger qualifies for an exemption and shall make a recommendation to the Regional Water Board based on that determination whether the exemption should be granted or denied. The Executive Officer shall then notify the Discharger in writing regarding that recommendation and when the matter will be scheduled for the Regional Water Board’s consideration at a public hearing.

Proposed Text:

The Regional Water Board’s Executive Officer shall:

- 1. Within thirty (30) days from receipt of the application notify the discharger in writing whether the application is complete or request additional information as necessary; and*
- 2. Verify the information and decide to approve or deny the exemption based on the provided evidence; and*

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- 3. Within (60) days of certifying that the application is complete, notify the discharger, HDWD, and the local agency implementing the OWTS Policy of the decision regarding the exemption status of the property in question.*

This text was revised and provided in a list format. Most importantly, the final decision of whether to approve the application was granted to the Executive Officer in order to simplify and standardize the approval process. Additionally, the time to notify the discharger of the decision was extended from 30 days to 60 days, and HDWD and the local agency implementing the OWTS Policy must also be notified. The local agency was not specified in case it changes in the future, but currently it is the Town of Yucca Valley.

The final part in the proposed section contains all new text describing the limitations of the prohibition exemptions.

Proposed Text:

In the absence of a response from the Regional Water Board's Executive Officer, the exemption shall be considered denied. An exemption would waive the requirement to meet the deadlines that are listed in the Yucca Valley OWTS Prohibition; it would not exempt the applicant from applicable OWTS Policy provisions, the requirement to submit a ROWD, other existing requirements pertaining to the discharge of wastewater, or any additional requirements imposed to protect water quality. The exemption will be revoked if conditions that the exemption was based on change or become no longer applicable. New and replacement OWTS on exempted parcels must consist of an ATU with a nitrogen removal rate of 50% or higher; the new or replacement OWTS shall utilize a leach field or equivalent horizontal dispersal system, if there is sufficient area on the property to provide for a 100 percent replacement area that is equivalent and separate, and available for future use.

The first sentence ensures that the exemption is not assumed to be granted in the absence of a response from the Colorado River Basin Water Board. The second sentence defines the limited applicability of the exemption. The third sentence defines circumstances when the exemption may be revoked. The fourth sentence identifies OWTS system requirements for new or replacement systems on exempted properties in order to protect water quality.

2.10(h) Enforcement

This section was renamed from "Compliance Assurance and Enforcement" for accuracy and brevity. The content has been partially revised to exclude outdated information. Because of the length of this section, it is presented as original and proposed text below in two parts.

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The first paragraph discusses the general intent of the Colorado River Basin Water Board to assist the dischargers achieve compliance, followed by the Colorado River Basin Water Board's enforcement actions.

Original text:

It is the Regional Water Board's objective to work cooperatively with the Dischargers who are subject to this Prohibition to help them achieve compliance with the terms of the Prohibition. Consistent with this objective, the Executive Officer shall assist the Dischargers achieve compliance with the terms of this Basin Plan amendment. In this regard, the Executive Officer shall continue to assist the Town of Yucca Valley and HDWD obtain financial assistance and, within forty-five (45) days following approval of the amendment by the California Office of Administrative Law (OAL), shall notify in writing all Dischargers regarding:

- a) the key deadlines of this Prohibition,*
- b) options available to comply with the amendment, and*
- c) sources of potential financial and technical assistance.*

The Regional Water Board recognizes that there may be circumstances where a Discharger is not responsive to staff compliance efforts. In these cases, the State Water Board's Water Quality Enforcement Policy provides clear guidance on the options available to the Regional Water Board to bring the Discharger into compliance. In these circumstances, the Regional Water Board enforcement staff shall implement prompt, consistent, predictable, fair, and progressive enforcement to bring the Discharger into compliance at the earliest practicable date with the terms of this Prohibition. Towards this end, the Regional Water Board staff may take any combination of the following actions, as the circumstances of the case may warrant:

- Issue Notice of Non-Compliance letters;*
- Issue an order pursuant to section 13267 of the Water Code to ensure that a Discharger submits, in a prompt and complete manner, a technical report to bring its discharge into compliance with this Prohibition;*
- Issue a Cleanup and Abatement order pursuant to section 13304 of the Water Code against any Discharger who violates the Prohibition and/or threatens a condition of nuisance or pollution;*
- Prepare for consideration of adoption by the Regional Water Board, a Cease and Desist order pursuant to section 13301 of the Water Code against any Discharger who violates the Prohibition;*

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- *Issue Administrative Civil Liability Complaints, as provided for by the Water Code, against any responsible party who fails to comply with Regional Water Board orders and/or the Prohibition.*

Proposed Text:

It is the Regional Water Board's objective to work cooperatively with the dischargers who are subject to the Yucca Valley OWTS Prohibition. There may be circumstances where a discharger is not responsive to staff compliance efforts. In these cases, the Regional Water Board enforcement staff will implement progressive enforcement consistent with the State Water Board's Water Quality Enforcement Policy to bring the discharger into compliance at the earliest practicable date with the terms of the Yucca Valley OWTS Prohibition. Towards this end, the Regional Water Board staff may take a combination of several actions, as the circumstances of the case may warrant, including but not limited to the following:

- *Issue Notice of Violation letters;*
- *Issue an order pursuant to Water Code section 13267 to ensure that a discharger submits, in a prompt and complete manner, a technical report to bring its discharge into compliance with the Yucca Valley OWTS Prohibition;*
- *Issue a Cleanup and Abatement order pursuant to Water Code section 13304 against any discharger who violates the Yucca Valley OWTS Prohibition and/or threatens a condition of nuisance or pollution;*
- *Prepare for consideration of adoption by the Regional Water Board, a Cease and Desist order pursuant to Water Code section 13301 against any discharger who violates the Yucca Valley OWTS Prohibition;*
- *Issue Administrative Civil Liability Complaints, as provided for by the Water Code, against any responsible party who fails to comply with Regional Water Board orders and/or the Yucca Valley OWTS Prohibition*

Outdated text regarding a notification from the Executive Officer was removed because it is no longer applicable. The remaining sentence from the first paragraph was combined with the paragraph regarding enforcement, the content of which remains the same, with only minor changes for consistency.

The part in the original text consists of two paragraphs, which were removed entirely from this section.

Original text:

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The Executive Officer is hereby directed to provide the Regional Water Board an annual written report regarding overall progress to achieve compliance with the terms of this prohibition. The first annual report shall be due on May 23, 2012.

The Executive Officer is hereby further directed to work with the Town and HDWD to revise the existing Memorandum of Agreement between the Town, HDWD, and Regional Water Board as soon as practicable but by no later than June 30, 2016, so that it includes specific outreach and education activities targeting discharges from septic systems within the Prohibition boundaries so that they are operated and maintained properly while the centralized municipal sewage collection system and WRF are being constructed.

The information from the first paragraph concerning construction progress reports was moved to new subsection “(f)(1) Reporting” in order to provide all reporting requirements in one section. The last paragraph concerning the revised Memorandum of Agreement was removed because it is outdated and the deadlines have passed. Although the memorandum has not been renewed at this time, one can still be developed if it is determined to be necessary without including it as a requirement in the Basin Plan.

2.11 Appendix C

Figure 4-1 in the old Prohibition has been removed and replaced with a larger map to be included in Appendix C of the Basin Plan. Although Figure 4-1 was updated by the amendment revising the Prohibition, adopted under Resolution R7-2016-0001, the new figure was erroneous because it still reflected the original boundaries of the Prohibition, not the revised phase boundaries and the added deferred parcels. The map in Appendix C, shown in Attachment 1 of this Staff Report, reflects the up-to-date Prohibition boundaries, incorporating changes made by the 2017 amendment and by the proposed Amendment.

Under this Amendment, the phase boundaries for former Phases 2 and 3 have been merged into Phase 2. This change is per request by HDWD to simplify the assessment process. Because the two phases already had the same deadline, this change has no regulatory impact for the purposes of the Prohibition, nor does it impact water quality.

Additionally, deferred parcels were revised, adding a total of 656 deferred parcels and changing 31 previously deferred parcels to non-deferred status. The overall differences between the existing deferred parcels as currently approved (2017 Approved Deferred Parcels), and deferred parcels as requested by HDWD and reflected in this proposed Amendment (2021 Proposed Deferred Parcels) are summarized in the deferred parcel numbers and areas detailed in Table 1 below. 2021 Proposed Deferred Parcels include both parcels that were deferred in 2017 and parcels that are newly requested for deferral, encompassing all parcels that would be deferred if this Amendment is adopted as proposed.

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Table 1 - Changes to Deferred Parcels

	2017 Approved Deferred Parcels			2021 Proposed Deferred Parcels			2017 to 2021 Changes				
	Total	Average Size (acres)	% Vacant ²	Total	Average Size (acres)	% Vacant	Parcels Removed	Parcels Added	Net Parcels Change	% Net Area Change	% Net Parcels Change
Phase 1	300	2.43	74.3%	280	2.58	77.1%	30	10	-20	-1%	-7%
Phase 2 ³	329	7.31	81.7%	974	4.52	68.0%	1	646	+645	+83%	+196%
Total	629 ⁴	4.98	42.6%	1254	4.08	70.0%	31	656	+625	+63%	+99%

These changes will increase the total number of deferred parcels by 99% in number and by 63% in area. Most of the new parcels were added in Phase 2 (formerly Phases 2 and 3), and this change was anticipated during the previous revision of the Prohibition. Deferred parcels are parcels where the installation of a municipal sewage collection system is not economically or technically advisable until specific connection criteria are satisfied, and they are identified during the design of the collection system. When the 2017 amendment was being developed, only the Phase 1 collection system had been designed. Some deferred parcels in Phase 2 were identified at that time; however, these were primarily large vacant parcels. The deferred parcels now added are primarily in Phase 2 and consist of single-family residential buildings.

In addition to the map, the lists of parcels with changed deferment status can be found in attachments to this Staff Report. The list of parcels that are proposed to change status from non-deferred to deferred parcels is provided in Attachment 2. The list of parcels that are proposed to change status from deferred parcels to non-deferred is provided in Attachment 3.

3 CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Colorado River Basin Water Board’s discretionary decisions are typically subject to the requirements of the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. The Natural Resources Agency has certified the basin planning process of the State and Regional Water Boards as a “certified regulatory program” that is exempt from CEQA, as long as the procedures identified in the program

² Vacancy status is based on the December 2020 county parcel data

³ Phase 2 refers to the combined 2017 Phases 2 and 3, which are proposed to be combined into Phase 2 under this amendment.

⁴ Actual total approved under the 2017 amendment was 631, however parcel maps have changed and some parcels have merged or could not be matched to a current parcel.

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are followed. (Pub. Res. Code § 21080.5; Cal. Code Regs., tit. 14, § 15251(g); Cal. Code Regs., tit. 23, §§ 3720-3781.)

The Colorado River Basin Water Board adopted the Substitute Environmental Documentation (SED) for the original Prohibition Resolution R7-2011-0004 and for the revised Prohibition under resolution R7-2016-0001. None of the revisions to the Prohibition from the Amendment will result in any new significant environmental effects or in a substantial increase in the severity of the prior impacts disclosed in the prior SEDs. Further, there are no changes in circumstances or new information that would otherwise warrant any subsequent or supplemental environmental review under Public Resources Code section 21166 or CEQA Guidelines sections 15162 or 15163. The Colorado River Basin Water Board has therefore determined that the prior SEDs adequately address the potential environmental impacts of the Prohibition, as revised, and no further environmental review is necessary. These findings are documented in the Addendum that is Attachment 4 of this Staff Report.

4 OTHER CONSIDERATIONS

4.1 Necessity

OAL is responsible for reviewing regulations proposed by state agencies to ensure that they are clear, necessary, legally valid, and available to the public. (Gov. Code, § 11340 et seq.) OAL is also responsible for transmitting these regulations to the Secretary of State and for publishing regulations in the California Code of Regulations. Following State Water Board approval of this Basin Plan Amendment, any regulatory portions of the amendment must be approved by OAL. (Gov. Code, § 11353.) The State Water Board must include in its submittal to OAL a summary of the necessity for the regulatory provision. (Gov. Code, § 11353(b).) The Amendment is necessary to amend the deadlines so that compliance with the Prohibition is achieved and the project is constructed at the earliest practicable time without causing property owners subject to the Prohibition potentially in non-compliance. The Amendment is also necessary to ensure that the Basin Plan has the most up-to-date information available to maintain clarity among users.

4.2 Scientific Peer Review

The scientific basis of any Basin Plan amendment must undergo external scientific peer review before adoption by the State or Regional Water Boards. The scientific basis is the foundation of a rule that it is premised upon, or derived upon, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the protection of public health or the environment. (Health & Safety Code, § 57004.) The original Prohibition adopted under Resolution R7-2011-0004 underwent scientific peer review, and the peer review panel concluded the Prohibition was needed and scientifically warranted. The revisions to the Prohibition from this

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Amendment do not change the scientific basis for the Prohibition. Therefore, the Amendment does not include new scientific elements requiring additional peer review. .

4.3 Public Participation

Colorado River Basin Water Board staff held a public workshop remotely on April 13, 2021. A notice of a public hearing to consider adoption of the proposed Amendment by the Colorado River Basin Water Board was circulated to interested parties for a 45-day comment period between March 23, 2021 and May 7, 2021. During the comment period, three comment letters were submitted. The Colorado River Basin Water Board held a public hearing on June 15, 2020 to consider adoption of the Amendment. The Colorado River Basin Water Board considered all evidence provided by staff and the public at the hearing, including the comments received during the comment period and the staff's responses to those comments.