

## **RESOLUTION NUMBER R2-2008-(PROPOSED)**

### **WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR GRAZING OPERATIONS IN THE TOMALES BAY WATERSHED (TOMALES BAY, LAGUNITAS CREEK, WALKER CREEK AND OLEMA CREEK) IN THE SAN FRANCISCO BAY REGION**

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region finds:

#### **1) Waste Discharge Requirements**

- a) California Water Code (CWC) Section 13260, subdivision (a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Water Board a report of the discharge containing such information and data as may be required by the Water Board, unless the requirement is waived pursuant to Section 13269.
- b) The Water Board prescribes waste discharge requirements (WDRs) except where the Water Board finds that a waiver of waste discharge requirements (waiver of WDRs) for a specific type of discharge is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to CWC Section 13269.
- c) CWC Section 13269 provides that any such waiver of WDRs shall be conditional, may not exceed five years but may be renewed, and may be terminated at any time by the Water Board.

#### **2) Monitoring Under Waivers of Waste Discharge Requirements**

- a) CWC Section 13269 was amended effective January 1, 2005. CWC Section 13269 now includes the following provisions:
- b) The waiver shall include the performance of individual, group or watershed-based monitoring, unless the Water Board determines that the discharges do not pose a significant threat to water quality
- c) Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.

The Waiver requires compliance with monitoring conditions consistent with the amendments to CWC Section 13269

The Water Board may include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board.

### 3) Basin Plan

The Water Board has adopted a *Water Quality Control Plan for the San Francisco Bay Region* (Basin Plan). The Basin Plan is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board, U.S. EPA, and the Office of Administrative Law where required. The latest version was effective as of December 22, 2006.

### 4) Receiving Water Beneficial Uses

Pursuant to the Basin Plan and State Board Plans and Policies, including State Water Board Resolution No. 88-63 Policy entitled *Sources of Drinking Water*, the existing and potential beneficial uses of Tomales Bay and its tributary creeks, Lagunitas, Walker, and Olema Creeks, include:

- Ocean Commercial and Sport Fishing (COMM)
- Shellfish Harvesting (SHELL)
- Marine Habitat (MAR)
- Fish Migration (MIGR)
- Preservation of Rare and Endangered Species (RARE)
- Fish Spawning (SPWN)
- Wildlife Habitat (WILD)
- Water Contact Recreation (REC-1)
- Non-contact Recreation (REC-2)
- Cold Freshwater Habitat (COLD)
- Warm Freshwater Habitat (WARM)
- Agricultural Supply (AGR)
- Municipal and Domestic Supply (MUN)

### 5) Tomales Bay Pathogen Total Maximum Daily Load and Associated Implementation Plan

- a) Tomales Bay and its tributaries have been identified as impaired for nutrients, sediment, and pathogens; additionally, it is identified as impaired for mercury in the Walker Creek watershed. The Tomales Bay watershed has been placed on the Clean Water Act 303(d) list. A Total Maximum Daily Load (TMDL) for pathogens was adopted by the Water Board on September 21, 2005, and subsequently approved by U.S. EPA on January 10, 2007. The basis for the pathogen TMDL includes exceedances of the numeric standard for shellfish harvesting and for recreational uses.
- b) The Tomales Bay pathogen TMDL establishes density-based water quality bacteria concentrations and prohibits the discharge of human waste; it also includes an associated Tomales Bay Watershed Pathogen TMDL Implementation Plan (TMDL Implementation Plan) that specifies the actions necessary to protect and restore beneficial uses.
- c) The TMDL Implementation Plan builds upon previous and ongoing successful efforts to reduce pathogen loads in Tomales Bay and its tributaries. It requires actions consistent with the CWC, the State's *Nonpoint Source Pollution Control Program Plan*, the State's

*2004 Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Enforcement Policy), and human waste discharge prohibitions (prohibitions 5 and 15, Table 4-1) of the Basin Plan.

- d) Grazing lands in the Tomales Bay Watershed are identified in the pathogen TMDL as one of the categorical pollutant sources. The TMDL Implementation Plan specifies required implementation measures for each of the source categories. The required implementation measures for grazing operations include evaluation of operating practices, development of comprehensive site-specific pathogen control measures, and an implementation schedule for such management measures, and submittal of progress reports documenting actions undertaken.
- e) To comply with the Tomales Bay pathogen TMDL Implementation Plan, grazing lands' landowners and lessees must submit to the Water Board, a Report of Waste Discharge (ROWD), or other submittal in lieu of a ROWD, providing description of the facility; identification of necessary site-specific grazing management measures to reduce animal waste runoff; and, a schedule to implement identified management measures. Grazing lands' landowners and lessees must also comply with all applicable WDRs or waiver of WDRs, and report progress on implementation of grazing management measures that reduce or eliminate animal waste runoff. These reports must be submitted individually or jointly or through a third party.
- f) In the case of dairies, the Tomales Bay pathogen TMDL requires implementation measures for the grazing lands portion of the facilities. Dairies are already regulated under existing WDRs or waiver of WDRs for confined animal facilities. Those dairy facilities already covered under existing General Waste Discharge Requirements for Confined Animal Facilities, Resolution R2-2003-0093, or under existing Waiver of Waste Discharge Requirements for Confined Animal Facilities, Resolution R2-2003-0094, will not need to submit a Notice of Intent pursuant to this waiver of WDRs. It is the intent of Water Board staff, upon reissuance of General Waste Discharge Requirements or Waiver of Waste Discharge Requirements for Confined Animal Facilities, to consider grazing activities within these dairies as part of the dairy facility operations.

#### **6) Walker Creek Mercury TMDL**

- a) Walker Creek, in the northern portion of the Tomales Bay watershed, was placed on the Clean Water Act 303(d) list for impairment by mercury. The creek flows through a former mercury mining district into Tomales Bay. Mercury-laden sediment threatens fish-eating birds and aquatic life. Although a large cleanup effort at the Gambonini Mine site (the largest source of mercury in the watershed) occurred in 1999, mercury is still present in the watershed downstream of the Gambonini Mine. A TMDL for mercury in Walker Creek was adopted by the Water Board on January 23, 2007. The mercury TMDL identified sources of mercury that still remain in creek beds, banks, and floodplains downstream of the Gambonini Mine site.
- b) Due to the way mercury behaves in the aquatic environment, certain grazing operations and management practices in the floodplain of Walker Creek may inadvertently increase the discharge of mercury-laden sediments and increase the potential for production of methylmercury. Methylmercury can be present or be transformed from mercury by a

series of biological and chemical processes in nature, and can pose a threat to aquatic organisms.

- c) To avoid the inadvertent discharge of mercury, grazing lands' landowners and lessees in the Walker Creek watershed downstream of the Gambonini Mine must incorporate management practices that minimize the discharge of mercury or the production of methylmercury.

## **7) Nonpoint Source Implementation and Enforcement Policy**

- a) The discharge of nonpoint source pollution from agricultural grazing operations within the San Francisco Bay Region is considered to be a discharge of waste that could affect the quality of waters of the State, as defined in Section 13260 of the California Water Code. Potential water quality degradation from such grazing activities has previously not had regulatory oversight, but the NPS Enforcement Policy requires that all nonpoint source pollution be regulated through WDRs, waivers to WDRs, or prohibitions.
- b) The NPS Enforcement Policy encourages the Water Boards to “be as creative and efficient as possible in devising approaches to prevent or control nonpoint source pollution.” This includes development of third-party programs, including coalitions of dischargers in cooperation with a third party representative, organization, or government agency to assist the dischargers in complying with the requirements and assure the Water Board and the public that actions have been taken to reduce nonpoint source pollution. The third party role is restricted to entities that are not actual dischargers under the State Water Resources Control Board/Regional Water Quality Control Board permitting and enforcement jurisdiction.
- c) The NPS Enforcement Policy requires that waiver enrollees prepare and execute a nonpoint source pollution control implementation program (NPS pollution control implementation program) that does the following:
  - i) States the purpose of the program such that nonpoint source pollution is addressed in a manner that ultimately achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.
  - ii) Includes a narrative of the Management Practices (MPs) and other program elements that are expected to be implemented to ensure attainment of the NPS pollution control implementation program’s stated purpose(s), the process to be used to select or develop MPs, and the process to be used to ensure and verify proper MP implementation.
  - iii) Includes a time schedule to achieve water quality objectives, and corresponding quantifiable milestones designed to measure progress toward reaching the specified objectives. The CWC 13242 (b) and 13263 (c), and the NPS Enforcement Policy recognize that there are instances where it will take time to achieve water quality objectives. The effort may involve all or some of various processes, including: identification of measurable long-term and interim water quality goals; a timeline for achieving these goals; identification and implementation of pollution control MPs; provision(s) for maintenance of the implementation actions; provision(s) for additional actions if initial actions are inadequate; and, in the case of third-party organizations, identification of a responsible third party to lead the efforts.

- d) For the purpose of compliance with this waiver of WDRs, the NPS pollution control implementation program will be referred to as the Ranch Water Quality Plan.

## **8) Maintenance of High Quality Waters in California**

State Water Board Resolution 68-16, *Statement of Policy with Respect to Maintenance of High Quality Waters in California*, finds “whenever the existing quality of the water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with the maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. Any activity which produces or may produce a waste ...and which discharges or proposes to discharge to existing high quality waters will be required to meet WDRs which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.”

This waiver of WDRs is consistent with Resolution 68-16 because it requires implementation of MPs in an iterative manner to arrive at the best practicable treatment or control of the discharge to protect beneficial uses and to attain the highest water quality possible. In allowing for existing landowner, lessees, and operators to continue in business and implement MPs in an iterative manner to achieve improvements to water quality, this waiver of WDRs is consistent with the maximum benefit to the people of the State. This waiver of WDRs sets forth conditions that require dischargers to implement additional MPs to assure protection of beneficial uses of waters of the State, and maintain the highest water quality consistent with maximum benefit to the people of the State.

## **9) California Environmental Quality Act**

The Water Board is the lead agency for this project under the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) (CEQA). The Water Board adopted a negative declaration pursuant to CEQA on July 08, 2008.

## **10) Grazing Waiver Strategy**

The San Francisco Bay Water Board is pursuing the use of a waiver of WDRs for grazing operations, as it reflects our expectation of compliance by the majority of the dischargers, it is protective of beneficial uses, and the most efficient permitting route given limited staff resources. The Water Board still retains the right to issue Individual WDRs on an as-determined basis.

## **11) Grazing Lands/Grazing Operations**

The Tomales Bay Pathogen TMDL defines ‘grazing lands’ as all lands grazed by livestock, including ranchlands, riparian areas, and pasturelands.

For the purposes of this waiver of WDRs, the term ‘grazing operation’ will refer to those facilities where animals are fed or maintained on irrigated vegetation or rangeland forage for a total of 45 days or more in any 12-month period, and vegetation forage growth is sustained

over the lot or facility during the normal growing season. The grazing operation includes auxiliary facilities such as roads, reservoirs, etc.

## **12) Dischargers**

This waiver of WDRs is applicable to landowners, lessees and operators conducting grazing operations in the Tomales Bay Watershed including the Lagunitas Creek, Walker Creek, and Olema Creek watersheds. For the purposes of this waiver of WDRs, the term landowner/operator will replace the term Discharger.

## **13) Third-Party Program**

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.

## **14) Compliance Schedule**

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, and will be reviewed upon its reissuance.

## **15) Intent to Issue Waiver**

CWC Section 13269 allows Water Boards to waive submission of ROWDs and/or issuance of WDRs if it is in the public interest. CWC 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 the 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 protection of water quality compared to other regulatory options, 3) it provides a more efficient and more timely 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 Tomales Bay. 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.

## **16) Public Meeting**

Water Board Staff conducted two public meetings in Point Reyes, California, on August 23, 2007, and on June 11, 2008. The Water Board conducted a public hearing on July 08, 2008 in Oakland, California, and considered all testimony and evidence concerning this matter.

**THEREFORE BE IT RESOLVED:** Pursuant to Water Code, section 13269 subdivision (a) Waste Discharge Requirements may be waived for grazing operations in the Tomales Bay Watershed area pursuant to the conditions listed below.

**BE IT FURTHER RESOLVED** that this waiver of WDRs is for a period of five years unless terminated sooner.

### **1) Eligibility for Coverage**

Landowner/operators of grazing lands that meet all of the following are eligible for coverage under this waiver of WDRs

- a) Are in existence as of the date of adoption of Resolution R2-2008-(Proposed), or start or resume operations within the life of this Waiver of WDRs
- b) Encompass an area of 50 acres or more.
- c) Encompass an area smaller than 50 acres, but are identified by Water Board staff, as posing a threat to water quality.
- d) To be covered under this waiver, the landowner/operator shall submit a completed Notice of Intent (NOI) (Attachment A), as well as documentation that demonstrates how the landowner/operator is satisfying, or intends to satisfy, all the conditions of this waiver. These submittals shall be sent to the Water Board no later than January 31, 2009, to the following address:

San Francisco Bay RWQCB

1515 Clay Street, Suite 1400

Oakland, CA 94612

ATTN: Grazing Operations Waiver Program

Excluded from this waiver of Waste Discharge Requirements are grazing lands that encompass an area smaller than 50 acres. These grazing operations, however, are still expected to effectively manage their facilities, and may be required to obtain Waste Discharge Requirements on a case-by-case basis, if the potential for water quality impacts are found. Also excluded from this waiver of WDRs are those dairy facilities already covered under existing General Waste Discharge Requirements or Waiver of Waste Discharge Requirements for Confined Animal Facilities, Resolutions R2-2003-0093 and R2-2003-0094, respectively.

To be in compliance with the waiver of WDRs, the landowner/operator must comply with the terms and conditions specified herein:

## CONDITIONS

### 1) Ranch Water Quality Plan

- a) The landowner/operator is required to have a completed Ranch Water Quality Plan that shall be kept on site and available for review by Water Board staff at all times. Elements of this Plan shall include a ranch facility map, or aerial photo on a 1:12,000 scale; an inventory of resources based on visual observations and/or existing reports; an assessment of the ranch facility conditions, per the checklist titled *Checklist Form For Assessing Grazing Operations in the Tomales Bay Watersheds* (Attachment B), identifying controllable discharge points for pathogens, nutrients, sediment, and mercury; identification of sediment legacy discharge points, if appropriate; and a description of the of the Ranch Water Quality Plan objectives.
- b) The Ranch Water Quality Plan shall include all management practices currently implemented at the ranch facility; a schedule for implementation of newly selected management practices at all identified points of pollutant discharge; the implementation schedule for management of grazing activities, structural improvements, livestock management, and land treatments; and the implementation schedule for road-erosion control and prevention actions, and actions to avoid management-related increases in erosion of unstable areas.
- c) The Ranch Water Quality Plan shall also include a plan for compliance monitoring and reporting that demonstrates the proposed management practices are being implemented.

### 2) Waiver Standards

Management Practices must be implemented so as to achieve the following objectives:

- a) Minimize delivery of **sediment** from ranching lands to surface waters.
- b) Minimize delivery of **pathogens, nutrients, and mercury** from ranching lands to surface waters.
- c) Establish manure management operations designed to minimize runoff from entering watercourse.
- d) Manage animal use areas to minimize sediment/pathogen/nutrient/mercury runoff to water course(s).
- e) Construct and maintain access and ranch roads to minimize erosion.
- f) Manage existing grazing operations to prevent additional erosion of legacy sediment delivery sites.
- g) Control and design animal crossings to minimize pathogen/sediment/nutrient/mercury runoff into watercourse.

### 3) Implementation of Management Practices

- a) The landowner/operator shall meet the Waiver Standards by implementing site-specific management practices that reduce nonpoint source pollution due to grazing and protect



water quality. In selecting what management practices to use at the ranch facility, the landowner/operator must take in consideration the vegetation, terrain, kind of livestock and general ranch facility operation procedures.

- b) In selecting management practices that reduce nonpoint source pollution due to grazing, landowners/operators in the Walker Creek Watershed, downstream of the Gambonini Mine, must choose practices that will minimize the discharge of mercury or the production of methylmercury. Any proposed management practice that involves work within the floodplain, or any proposal to implement a management practice that may have the potential for increasing the discharge of mercury or the production of methylmercury, must be submitted to Water Board staff prior to implementation.
- c) If Water Board staff determine that the proposed management practice/control measure does have the potential to increase the discharge of mercury or the production of methylmercury, then the management practice/ control measure will not be covered by this Waiver of WDRs, and a separate Report of Waste Discharge, pursuant to Section 13260 of the California Water Code shall be submitted by the landowner/operator.
- d) A list of potential management practices may be found in the Natural Resource Conservation Service Field Office Technical Guide or equivalent rangeland management guidance documents. The Conservation Service Field Office Technical Guide can be obtained at your local office of the USDA Natural Resources Conservation Service or the Conservation District office.

#### **4) Compliance Monitoring and Reporting**

- a) At a minimum, the landowner/operator must conduct visual inspections of the entire ranch facility to verify that chosen management practices are being implemented and that the Waiver Standards are being met.
- b) The landowner/operator shall, in addition to inspecting the entire ranch facility, visually inspect the closest receiving water, upstream and downstream of the ranch facility, to monitor any change in water quality resulting from facility operations. This inspection is needed to determine the effectiveness of the management practices implemented at the ranch facility.
- c) Inspections shall be conducted prior to anticipated storm events, during extended storm events, and after actual storm events; and on a monthly basis during dry conditions. Landowners/operators are not required to perform inspections during dangerous weather conditions, such as flooding, electrical storm, etc., or when storm events begin after scheduled facility operating hours.
- d) Pre-storm inspections of the entire ranch facility shall ensure that appropriate management practices are properly installed and maintained; mid-storm and post-storm inspections are to assure that management practices have functioned adequately and whether additional measures are needed.
- e) The landowner/operator shall maintain records of inspections, monitoring observations, and any response taken to eliminate potential sources of sediment, nutrients pathogens and mercury from the ranch facility. If a water quality problem is found during the inspection, the landowner/operator must report the nature of the problem, and the measures taken to correct it.

- f) The landowner/operator must submit an annual certification to the Water Board that its facility meets the conditions of this waiver of WDRs, documenting the implementation of management practices, effectiveness evaluation, and records of any inspections where a water quality problem was identified, as well as the measures taken to correct these problems. These certifications are due November 15, 2009 and annually thereafter.
- g) The landowner/operator shall report any noncompliance that endangers human health or water quality, within 24 hours of becoming aware of its occurrence. The incident shall be reported to the Water Board and to the California Office of Emergency Services (OES). During non-business hours, the landowner/operator shall leave a message on the Water Board's voice mail. The message shall include the time, date, and place of the discharge and shall be recorded in writing by the landowner/operator. The OES is operational 24 hours a day. A written report shall be submitted to the Water Board office within five (5) business days of the landowner/operator becoming aware of the incident. The written submission shall contain:
  - i) The approximate date, time, and location of the discharge;
  - ii) A description of the noncompliance event and its cause;
  - iii) The rate, volume, and duration of the discharge;
  - iv) The period of noncompliance, including dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - v) The steps taken to correct discharge and/or a time schedule and a plan to implement corrective actions necessary to prevent the recurrence of such discharges.

## **5) Termination Procedures**

- a) In the event of closure or change in land use of the ranch facility, the landowner/operator shall file a Notice of Termination with the Water Board.
- b) The landowner/operator shall, within 21 days of receiving notice from the Water Board that its facility no longer qualifies for coverage under this waiver of WDRS for failure to comply with its terms and conditions, file an updated ROWD. The ROWD must be submitted with the applicable filing fee in order to obtain coverage under WDRs. Discharges that could affect the quality of the waters of the State may commence only in accordance with Water Code Section 13264 (a).
- c) In the event of any change in operation control or ownership of land or waste discharge facilities, the landowner/operator shall immediately notify any succeeding landowner/operator of its responsibility to comply with this waiver. A copy of such notice shall be submitted to the Water Board in order for the original landowner/operator to be relieved of its responsibility to comply with this waiver. In order to continue the discharge pursuant to this waiver, the succeeding landowner/operator must submit a completed NOI to the Water Board within 21 days of receipt of such notice, and receive approval by the Water Board Executive Officer.

## **6) Failure to Comply with Terms and Conditions of this Waiver**

- a) Landowner/operators who fail to comply with the terms and conditions of this Waiver shall be subject to appropriate enforcement action. Discharges that could affect the quality of the waters of the State may commence only in accordance with Water Code

**This Waiver Expires on July xx, 2013**

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the waiver of WDRs adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 08, 2008.

Bruce H. Wolfe  
Executive Officer