

**CONDITIONAL WAIVER RENEWAL,  
POLICY AMENDMENTS, AND  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT ADDENDUM**

WATER QUALITY CONTROL POLICY FOR  
SITING, DESIGN, OPERATION, AND  
MAINTENANCE OF ONSITE WASTEWATER  
TREATMENT SYSTEMS

STAFF REPORT

STATE WATER RESOURCES CONTROL BOARD

April XX, 2023

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## ACRONYMS

APMP Advanced Protection Management Program  
CEQA California Environmental Quality Act  
CWA Clean Water Act  
EIR Environmental Impact Report  
gpd Gallons Per Day  
OWTS Onsite Wastewater Treatment System  
ROWD Report of Waste Discharge  
SDWA Safe Drinking Water Act  
SED Substitute Environmental Document  
UIC Underground Injection Control  
U.S. EPA United States Environmental Protection Agency  
WDRs Waste Discharge Requirements

## 1 SUMMARY OF THE POLICY AMENDMENT

This staff report supports renewal of the conditional waiver and amendments to the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy) and includes a California Environmental Quality Act (CEQA) addendum supporting the amendment. The OWTS Policy establishes a statewide, risk-based, tiered approach for the regulation and management of existing, new, and replacement OWTS, and sets the level of performance and protection expected from OWTS. In particular, the OWTS Policy requires actions to protect water bodies identified as part of this Policy where OWTS contribute to water quality impairment that adversely affects beneficial uses. The OWTS Policy was adopted by the State Water Resources Control Board (State Water Board) on June 19, 2012; it was approved by the Office of Administrative Law on November 13, 2012; and consistent with OWTS Policy Section 13.0, became effective six months later, on May 13, 2013. The State Water Board approved amendments to the OWTS Policy on April 17, 2018, including minor updates and renewal of the conditional waiver, consistent with Water Code section 13269.

The OWTS Policy authorizes subsurface disposal of domestic strength, and in limited instances high strength, wastewater and establishes minimum requirements for the permitting, monitoring, and operation of OWTS for protecting beneficial uses of waters of the state and preventing or correcting conditions of pollution or nuisance. The Policy also conditionally waives the requirement for owners of OWTS to apply for and receive waste discharge requirements (WDRs) in order to operate their systems when they meet the conditions set forth in the Policy. The Policy applies to OWTS on federal, state, and tribal lands to the extent authorized by law or agreement.

Applicable statewide, the principal responsibility for implementation of the OWTS Policy lies with the Regional Water Quality Control Boards (Regional Water Boards). However, the OWTS Policy also assigns responsibilities to OWTS owners, local agencies that issue OWTS permits, and the State Water Board.

## 2 REGULATORY BACKGROUND

### 2.1 EXISTING REGULATORY FRAMEWORK

A wide range of overlapping laws, regulations, policies, plans, and programs that address discharges from OWTS are administered by federal, state, and local agencies.

#### 2.1.1 GENERAL FEDERAL PLANS, POLICIES, REGULATIONS, AND LAWS

The U.S. Environmental Protection Agency (U.S. EPA) is the lead federal agency responsible for managing water quality. The Federal Water Pollution Control Act of 1972 (also known as the Clean Water Act [CWA]) and its amendments, and the Safe Drinking Water Act are the primary federal laws that govern and authorize U.S. EPA's actions to control water quality. Elements of the CWA that address water quality and are relevant to the regulation of OWTS include:

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#### 2.1.1.1 Federal Clean Water Act

Water Quality Control Plans: Section 303 of the CWA requires states to adopt water quality standards for all waters of the United States. These water quality standards are contained in the water quality control plans (Basin Plans) of each of California's Regional Water Boards.

#### 2.1.1.2 Federal Clean Water Act

Antidegradation Policy: The federal policy directs states to adopt statewide policies that include the following primary provisions:

- Protect and maintain existing instream uses and water quality necessary to protect those uses.
- Protect and maintain existing water quality that is better than necessary to support fishing and swimming conditions unless minimal degradation is necessary for important local economic or social development.
- Maintain and protect high-quality waters that constitute an outstanding national resource.

#### 2.1.1.3 Federal Clean Water Act

Section 303(d) Impaired Waters List - The State Water Board established requirements for OWTS near water bodies listed as impaired pursuant to CWA Section 303(d). OWTS Policy Attachment 2, Tables 5 and 6, list the water bodies where OWTS have been identified as likely contributing to the impairment. This staff report describes recommended changes to Tables 5 and 6 based upon new information.

#### 2.1.1.4 Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) regulates contaminants of concern in the domestic water supply. U.S. EPA establishes primary and secondary maximum contaminant levels that regulate these types of contaminants. The Underground Injection Control (UIC) program was established under the provisions of the SDWA and classifies some OWTS as injection wells subject to the UIC program.

## 2.2 STATE PLANS, POLICIES, REGULATIONS, AND LAWS

### 2.2.1 CALIFORNIA WATER CODE

The California Water Code establishes the state requirement to determine what surface water or groundwater is to be publicly protected for sustainable management of groundwater resources, including long-term reliability and economic, social, and environmental benefits for current and future beneficial uses. This is best achieved locally through development and implementation of local plans and programs. The State Water Board shall also consider when revising or adopting policies, the human right to

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safe, clean, affordable, and accessible water adequate for sanitary purposes per Water Code section 106.3.

## 2.2.2 PORTER COLOGNE WATER QUALITY CONTROL ACT

California's Porter-Cologne Water Quality Control Act (Porter-Cologne Act), part of the California Water Code, is California's statutory authority for the protection of water quality. Under the Porter-Cologne Act, California must adopt water quality policies, plans, and objectives that protect the state's waters for the use and enjoyment of the people. The Act sets forth the obligations of the State Water Board and the nine Regional Water Boards pertaining to the adoption of Basin Plans and establishment of water quality objectives.

The State Water Board establishes water quality control policy for the nine Regional Water Boards. The State Water Board has primary responsibility for overseeing all the state's water quality regulations and standards, including water quality control plans and relevant water quality objectives and standards.

## 2.2.3 REGIONAL WATER QUALITY CONTROL BOARDS

Each Regional Water Board has primary responsibility for designating the beneficial uses of surface water bodies and groundwater within its region, establishing water quality objectives for protection of those uses, issuing permits, and conducting enforcement activities. Water quality objectives are established in Basin Plans. Regional Water Boards prepare and adopt total maximum daily loads (TMDLs) for water bodies listed on the CWA Section 303(d) Impaired Waters List.

## 2.2.4 CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) requires government agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a course of action on a project. CEQA applies only to discretionary government activities that are defined as "projects." A project within the meaning of CEQA is the whole of an action which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and is one of a number of actions undertaken by a government agency or involving public agency discretionary approvals.

### 2.2.4.1 OWTS POLICY SUBSTITUTE ENVIRONMENTAL DOCUMENT

Adoption of a water quality control policy is a regulatory program that has been certified by the state's Secretary for Natural Resources as exempt from the requirements of CEQA to prepare an Environmental Impact Report (EIR) or Negative Declaration. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3775.) Accordingly, the State Water Board in 2012 prepared a Substitute Environmental Document (SED) for adoption of the OWTS Policy in lieu of an EIR or Negative Declaration. The final SED includes the draft SED dated March 20, 2012, revisions to

the draft SED, and responses to comments on the draft SED and OWTS Policy. The documents together constituted the required environmental documentation under CEQA. (See Cal. Code Regs., tit. 14, §§ 15250, 15252; Cal. Code Regs., tit. 23, § 3777.) As part of its approval process, the State Water Board duly considered the final SED, which identifies significant and unavoidable impacts resulting from adoption and implementation of the OWTS Policy.

Consistent with Public Resources Code section 21081, subd. (b), specific overriding economic, legal, social, technological, or other benefits were found to potentially outweigh the unavoidable adverse environmental impacts. The State Water Board declared a statement of overriding considerations concerning the OWTS Policy's unavoidable significant impacts to explain why the benefits override and outweigh the OWTS Policy's unavoidable impacts. The identified benefits included continued availability of an affordable means of wastewater disposal for housing in areas statewide that are removed from centralized wastewater treatment systems; a statewide approach that respects the land use authorities, knowledge, and expertise of local agencies; a coordinated and consistent approach to construction of new systems, so that water quality and public health are protected, and protection of waters impaired by constituents associated with operation of OWTS where OWTS are found to be contributing to the impairment. The State Water Board thus found the significant, unavoidable environmental impacts acceptable in light of the benefits set forth above, and further found that each of the benefits constitute an overriding benefit warranting approval of the OWTS Policy, independent of the other benefits, despite each and every unavoidable impact.

### 3 RATIONALE FOR THE AMENDMENTS TO THE OWTS POLICY

Amendments to the OWTS Policy primarily consist of revisions to Tier 2 (Section 9), and Attachment 2, Tables 5 and 6. The State Water Board also proposes to renew the conditional waiver of waste discharge requirements set forth in OWTS Policy Section 12.0, which does not by itself require an OWTS Policy amendment.

Legislation has passed in the years since the OWTS Policy was adopted in 2012 that relate to the local agency approval of accessory dwelling units, in order to help address the need for housing. Local agencies have broad land use authority premised on protecting public health, safety, and welfare. Clarifications have been added in the OWTS Policy to define domestic wastewater to include wastewater normally discharged from residential dwelling units, including accessory dwelling units. Local agencies have authority to approve and permit accessory dwelling units if they are consistent with Local Agency Management Programs and with their statutory and other planning authorities.

The OWTS Policy authorizes subsurface disposal of domestic strength, and in limited instances high strength, wastewater and establishes minimum requirements for the permitting, monitoring, and operation of OWTS for protecting beneficial uses of waters



of the state and preventing or correcting conditions of pollution or nuisance. Requirements for existing systems are primarily within Tier 0 and 4. Per Water Code section 13360, the OWTS Policy does not specify the means of compliance or exclude specific technologies meeting the conditional waiver requirements of the OWTS Policy, rather the OWTS Policy sets the tiered conditions and framework for water quality and public health protections from OWTS discharges. Added clarifications to provisions that local agencies may consider including in Local Agency Management Programs, such as allowing alternative collection and disposal system that uses subsurface disposal determined to be appropriate alternative systems to satisfy Tier 2 LAMP requirements by a qualified professional, or requirements expressly addressing groundwater quality, would reduce potential uncertainty in the allowance of Local Agency Management Programs to have different or additional OWTS standards such as local site evaluation, siting, design, and construction requirements related to groundwater quality protection for new and replacement OWTS. Because Tier 2 already allows local agencies to propose minimum standards that are different from those specified in Tier 1, including differing system design requirements such as including but not limited to, alternative collection and disposal systems that use subsurface disposal, differing siting controls such as system density and setback requirements and other measures, these revisions do not expand the existing scope of local agency authority to regulate OWTS that are otherwise eligible for Tier 2 coverage.

The OWTS Policy Sections 3.2 and 9.3.4 set a five-year rolling reporting requirement for a local agency to submit an evaluation of the monitoring program and an assessment of whether water quality is being impacted by OWTS and identifying any changes to the Local Agency Management Program the local agency proposes to make to address impacts from OWTS. The nature of the rolling schedule has caused uncertainty and unclear reporting deadlines for Regional Water Boards and local agencies since 2013. Amendments were made clarifying that the reporting due date is a fixed, five-year reporting period after May 13, 2018, rather than the deadline being contingent upon the date of subsequent Local Agency Management Program amendments. These revisions will clarify and streamline implementation of the reporting requirements set forth in the Policy.

OWTS Policy Tier 3 requirements for Advanced Protection Management Programs vary depending on whether or not a TMDL has been approved, a local agency has adopted special provisions in a Local Agency Management Program, or the water body is impaired and listed in Attachment 2 under specified terms set forth. Attachment 2 listings are intended to be periodically updated as TMDLs are completed, or as new information becomes available. Revisions to Attachment 2 are included in this Policy amendment, as are revisions that make clear a local agency's authority to require special provisions in a Local Agency Management Program before a TMDL is adopted.

In addition to revisions intended to improve Policy implementation and illustrate the ways that local agencies can propose protective requirements for OWTS they regulate,

other revisions are included to update language to acknowledge that the five-year phase-in has concluded, or non-substantive changes to improve document accessibility in tables.

### 3.1 ADDENDUM TO THE 2012 FINAL SUBSTITUTE ENVIRONMENTAL DOCUMENT

CEQA applies to a governmental action that could cause a significant effect on the environment, defined as “a substantial adverse change in the physical conditions which exist in the area affected by the proposed project.” (Cal. Pub. Resources Code § 21068; Cal. Code Regs., tit. 14, § 15002, subd. (b), (g).) The State Water Board has adopted CEQA regulations at Title 23, California Code of Regulations, sections 3720-3781 to set forth rules and procedures that apply for environmental review of actions subject to the Board’s certified regulatory process. These regulations required the State Water Board to evaluate potential environmental impacts associated with adopting the OWTS Policy. In 2012, the State Water Board certified a Substitute Environmental Document in accordance with these regulations, which require a written report containing the following:

- (1) A brief description of the proposed project;
- (2) An identification of any significant or potentially significant adverse environmental impacts of the proposed project;
- (3) An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts; and
- (4) An environmental analysis of the reasonably foreseeable methods of compliance.

The environmental analysis shall include, at a minimum, all of the following:

- (A) An identification of the reasonably foreseeable methods of compliance with the project;
- (B) An analysis of any reasonably foreseeable significant adverse environmental impacts associated with those methods of compliance;
- (C) An analysis of reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts; and
- (D) An analysis of reasonably foreseeable mitigation measures that would minimize any unavoidable significant adverse environmental impacts of the reasonably foreseeable methods of compliance.

(Title 23, California Code of Regulations, § 3777, subd. (b)).

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The State Water Board regulations governing CEQA compliance do not apply when the Board determines that the activity is not subject to CEQA. Title 23, California Code of Regulations, § 3720, subd. (b).

The State Water Board conducted a programmatic analysis to assess the potential for adverse environment impacts that could be caused by adoption of the OWTS Policy or by reasonably foreseeable methods of compliance with the Policy. To assess any potential effects, the State Water Board looked to the environmental setting, the physical conditions in the vicinity of the project as they existed at the time of the assessment. These physical conditions are often referred to as the “baseline” and are used to compare the existing physical environment with conditions that may result from approving the project. Tit. 14 Cal. Code Regs., Section 15125. The CEQA baseline is interpreted to include previously existing development and activities. (*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549, 560.)

The State Water Board in 2012 identified and analyzed significant and potentially significant impacts resulting from adoption of the OWTS Policy. The State Water Board also analyzed reasonable alternatives to the project, as well as mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts. Finally, the State Water Board conducted an environmental analysis of the reasonably foreseeable methods of compliance, including reasonably foreseeable alternative methods of compliance that would have less significant adverse environmental impacts. These analyses considered all provisions set forth within the multi-tiered approach to regulation and management of OWTS installations and replacements, including adoption of the conditional waiver. The SED analyzed not only the OWTS Policy and the waiver, as part of the Policy, but also subsequent actions of the State Water Board, Regional Water Boards, and local agencies to implement the OWTS Policy. (See, State Water Resources Control Board, Onsite Wastewater Treatment System Policy Final Substitute Environmental Document, approved June 19, 2012, at p. 12, 174.)

Consideration of the 2023 OWTS Policy and conditional waiver renewal amendments by the State Water Board does not require any additional 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).) Nonetheless, in consideration of implementation information developed over the decade since the OWTS Policy was adopted, the State Water Board has prepared an addendum in order to supplement information or address new environmental categories included since the June 2012 SED.

An addendum to a previously certified Environmental Impact Report or equivalent such as a Substitute Environmental Document is appropriate if some changes or additions are necessary but none of the conditions requiring preparation of a subsequent

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environmental document have occurred. (Tit. 23, Cal Code Regs., § 15164.) The conditions requiring preparation of a subsequent environmental document are those where the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(Title 14, Cal. Code of Regs., § 15162, subd. (a).)

The conditions listed above have not been met. The revisions are minor edits to clarify the applicability and workings of the various tiers of the Policy. These include: specifying that Local Agency Management Programs must comply with local ordinances; making clear the mechanism for defining the geographical reach of certain requirements contained within Local Agency Management Programs or an Advanced Protection Management Program; additional detail on timing submission of reports; removing legacy language addressing applicability during the initial phase-in period now passed, and making non-substantive revisions for improved accessibility. Other revisions make explicit the authority already afforded to local agencies to propose Local Agency

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Management Program requirements that are protective and address specific types of OWTS-related issues: defining domestic wastewater to include wastewater normally discharged from residential dwelling units, including accessory dwelling units that are the subject of recent legislation; and noting that local agencies may consider additional requirements needed in areas where groundwater is vulnerable to pollution from OWTS. Finally, the Policy revisions include updates to a listing of surface water bodies requiring an Advanced Protection Management Program.

All of these revisions are consistent with the regulatory activities and management framework previously approved as part of the OWTS Policy and analyzed in the 2012 SED relative to existing physical environmental conditions. Local agency authority to propose protective requirements for OWTS within their jurisdiction was a key element in that framework, as was review and approval by Regional Water Boards with expertise in water quality regulation. The changes do not shift these responsibilities or otherwise change the standards for assessing whether a Local Agency Management Program is protective. Therefore, the revisions to the list of topics addressed by a Local Agency Management Program are not substantial changes that will result in any new or additional impacts from OWTS discharges, nor will they result in any impacts that are more severe than those previously analyzed.

Amending the Attachment 2 list based on technical assessment or schedule changes will not produce reasonably foreseeable additional impacts or more severe impacts to the environment. Revisions to expected TMDL adoption dates set forth in Attachment 2 will allow Regional Water Boards to consider new information on whether systems are likely contributing to impairments while working toward effective requirements for Advanced Protection Management Programs applying to systems located near impaired water bodies within the meaning of Tier 3. Renewing the conditional waiver with revisions continues the regulatory activities and management framework previously analyzed in the 2012 SED.

There are no identified substantial changes with respect to the circumstances under which the project is undertaken that would involve new significant environmental effects resulting from compliance with the OWTS Policy, nor are there significant effects of reasonably foreseeable methods of compliance with the OWTS Policy that were not discussed previously or are shown to be substantially more severe than previously demonstrated. Finally, no new information has been identified that was not known at the time the Final 2012 SED was certified and that would involve new significant effects or substantially more severe significant effects resulting from OWTS Policy compliance or involve mitigation measures or alternatives previously found not feasible or different from those analyzed.

While the OWTS Policy framework requires a water quality assessment program to develop information and reporting on water quality impacts resulting from OWTS discharges or from compliance with the OWTS Policy, the phase-in for reporting and assessing this new information does not take effect or begin until 2023. Future iterations

of the conditional waiver renewal and potential Policy revisions undertaken will be better situated to assess new information that may require changes in Policy implementation and require additional environmental analysis. Because the specified conditions have not been met, the preparation of a subsequent SED is not necessary. Therefore, an addendum is appropriate to reflect the changes or additions described below. These include addressing any areas where new information may be available, and addressing new environmental categories added since the June 2012 adoption of the OWTS Policy and SED, as set forth below.

### 3.1.1 POPULATION AND HOUSING

The 2012 SED concluded that the potential for indirect impacts from population growth in areas suited to OWTS installation that could result from housing development restrictions in other areas would be less than significant (SED, 6.6.2) due to project-specific CEQA requirements to analyze environmental impacts for any land development. As part of decision-making for new developments, local governing bodies would analyze factors such as local economic trends, land uses and market demand, cost and availability, transportation, etc. rather than site suitability alone. The 2012 SED concluded that direct and indirect cumulative impacts from increased development leading to an increase in OWTS discharges were expected to be significant and unavoidable. Alternative treatment options proposed to potentially replace existing OWTS systems were found to be too costly and infeasible to implement statewide, while removing local agency flexibility.

No significant data are available statewide to update the significance of these impacts. However, California housing and associated wastewater discharges continue to be subject to a complex regulatory framework requiring coverage under the OWTS Policy or other permitting mechanism. California legislation such as Senate Bill 9, The California Home Act (Cal. Gov. Code §§ 66452.6, 65852.21, and 66411.7) passed in 2021, seeks to increase development efficacy amongst landowners, local agencies, and state governing authorities, including new home or accessory dwelling developments to address the increasing California population and associated housing needs. Although Senate Bill 9 does not directly impact the OWTS Policy, an increase in accessory dwelling unit developments can increase discharges to existing OWTS and in some cases may potentially result in increased density of OWTS. Some of these developments may qualify for coverage under the OWTS Policy if they are shown to be protective of water quality and consistent with the requirements of the Policy and approved Local Agency Management Programs.

The OWTS Policy conditionally waives waste discharge requirements, reports of waste discharge, and associated fees for OWTS by meeting minimum standards for siting, construction, operation, and maintenance of OWTS in California. This includes wastewater discharge flow limits of 10,000 gallons per day and limitations on discharges up to 3,500 gallons per day for Tier 1 of the OWTS Policy. The Policy does not limit population or housing additions for OWTS systems but instead provides a framework for

protecting water quality from adverse effects of discharges from a large category of OWTS within the state and provides for protection of surface waters and groundwater. However, additional or increased discharges into existing systems may not meet conditions of the waiver and may require individual permitting with local and state regulatory agencies.

### 3.1.2 TRIBAL CULTURAL RESOURCES

Tribal Cultural Resources is a new category under CEQA. However, the 2012 SED (Section 6.6) concluded that indirect impacts to cultural resources, including tribal cultural resources, are less than significant with mitigation. Mitigating such indirect impacts would include compliance with state laws addressing tribal cultural resources as set forth in Public Resources Code §§ 21074, 5097.98, 5020.1(k), and 5024.1. The SED did not exclude the possibility of historic or cultural resources being encountered during construction of an OWTS, even if the area was previously disturbed or an initial cultural resources evaluation was conducted. Any OWTS construction is subject to local code and ordinance and must undergo a project-specific CEQA analysis when otherwise required.

The OWTS Policy outlines siting, construction, operation, and maintenance of existing, new, or replacement OWTS, including OWTS needing repairs (OWTS Policy, Section 11), which may be subject to project-specific CEQA analysis to address potential adverse impacts to specific tribal cultural resources. General mitigation may include, but is not limited to, a Native American archeological resources records search at the appropriate regional information center of the California Historical Resources Information System (CHRIS), Sacred Lands Inventory, and other cultural resource surveys. Mitigation measures for treatment of human remains may include, but are not limited to, compliance with Health and Safety Code section 7050.5 and, if applicable, Public Resources Code section 5097.98 upon discovery of any human remains. Upon the discovery of human remains, immediately cease all ground-disturbing activities in the vicinity of the discovery, immediately notify the county coroner, and ensure that the human remains are treated with appropriate dignity. Consultation may also develop as appropriate mitigation with any affected California Native American tribe. Treatment of human remains shall immediately comply with Health and Safety Code section 7050.5 and, if applicable, Public Resource Code section 5097.98, which addresses notification of the Native American Heritage Commission, as appropriate.

### 3.2 CONDITIONAL WAIVER RENEWAL

Water Code section 13260 requires that persons discharging waste or proposing to discharge waste that could affect the quality of the waters of the state must file a report of waste discharge. Water Code section 13263 provides that a Regional Water Board shall prescribe discharge requirements in order to implement any relevant water quality control plans, and with specific considerations including beneficial uses to be protected and water quality objectives necessary to protect those uses.

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Water Code section 13269 provides that the State Water Board or a Regional Water Board may waive the requirements for dischargers to submit reports of waste discharge and for issuance of waste discharge requirements. The State Water Board adopted a conditional waiver of waste discharge requirements as part of the OWTS Policy, in order to implement the framework of state and local agency coordination in regulating OWTS. The conditional waiver, set forth in OWTS Policy Section 12, waives requirements to submit a report of waste discharge, obtain waste discharge requirements, and pay fees for discharges from OWTS covered by the Policy where those discharges are in compliance with specified conditions.

By law, waivers expire five years after adoption; the conditional waiver in the OWTS Policy will expire on April 17, 2023. The waiver conditions are evaluated below.

### 3.3 REVIEW OF WAIVER CONDITIONS

Water Code section 13269 (f) requires that prior to renewing any waiver for a specific type of discharge, the State Water Board shall review the terms of the waiver at a public hearing. The State Water Board shall further determine whether the discharge for which the waiver was established should be subject to general or individual WDRs.

The conditional waiver in OWTS Policy Section 12 waives the requirements for OWTS owners to submit a report of waste discharge, obtain waste discharge requirements, and pay fees for discharges from OWTS covered by the OWTS Policy. The waiver conditions include the following:

#### 3.3.1 The OWTS shall function as designed with no surfacing effluent.

Systems that are failing, as outlined in Section 11, are immediately classified as Tier 4 OWTS and the failure may be classified as major or minor. Any OWTS, including Tier 1 OWTS, that experience a major failure may not be reclassified as a Tier 0 system. In addition, OWTS included in Tier 4 must continue to meet applicable requirements of Tier 0, 1, 2, or 3 after completion of corrective action. This condition of the waiver is protective of water quality and human health; no change is needed.

#### 3.3.2 The OWTS shall not utilize a dispersal system that is in soil saturated with groundwater.

This condition is protective of water quality because unsaturated conditions improve wastewater treatment and limit migration of pathogens. This condition is protective of water quality and human health; no change is needed.

#### 3.3.3 The OWTS shall not be operated while inundated by a storm or flood event.

This condition protects water quality and human health. Inundated OWTS do not adequately protect water quality and human health. This condition is protective of water quality and human health; no change is needed.

#### 3.3.4 The OWTS shall not cause or contribute to a condition of pollution or nuisance.



This condition is consistent with Regional Water Board Basin Plans. Determination of compliance will be through monitoring requirements contained in OWTS Policy Section 3.3 (for local agencies that do not submit a Local Agency Management Program (LAMP)), and Sections 9.1, 9.2, and 9.3 (for local agencies that do submit a LAMP), Sections 10.13, 10.14, and 10.15 (for local agencies that implement Tier 3 permitting pursuant to supplemental treatment requirements set forth in Tier 3, and Section 10.16 (for local agencies administering an Advanced Protection Management Program). This condition is protective of water quality and human health. In addition, revisions to the OWTS Policy include amendments to provide implementation clarifications on reporting deadlines; no change is needed.

3.3.5 The OWTS shall comply with all applicable local agency codes, ordinances, and requirements.

Many local agencies that permit OWTS have submitted a LAMP for Regional Water Board approval, that describes how their local program will be implemented to protect water quality. After May 13, 2018, local agencies that do not submit a LAMP will be limited to permitting new or replacement OWTS consistent with Tier 1 requirements, which are considered to be conservative and protective throughout the state. In addition, the OWTS Policy contains significant limits on what local agencies may permit. Only domestic wastewater, and in limited cases, Policy-defined high strength wastewater with additional treatment requirements, is allowed. Wastewater flow limits are imposed for each tier; Tier 1 systems may only discharge up to 3,500 gallons per day (gpd), and the highest allowable flow rate is 10,000 gpd (Tiers 2 and 3). Discharge of wastewater at lower flow rates inherently has less potential to significantly degrade water quality. Tier 1 density limits similarly are protective, applying to property subdivisions made pursuant to the Subdivision Map Act. This condition is protective of water quality and human health; no change is needed.

3.3.6 The OWTS shall comply with and meet any applicable TMDL implementation requirements, special provisions for impaired water bodies, or supplemental treatment requirements imposed by Tier 3.

For those OWTS located within the geographic area of a Tier 3 listed waterbody, requirements are defined within an adopted TMDL implementation plan. In the absence of an adopted TMDL implementation plan, local agencies may submit an Advanced Protection Management Program for Regional Water Board approval or implement the default requirements contained in OWTS Policy Section 10, as applicable. This condition is protective of water quality and human health; no change is needed.

3.3.7 The OWTS shall comply with any corrective action requirements of Tier 4.

As noted above, systems that are failing are immediately classified as Tier 4 OWTS. The failures are further classified as major or minor; OWTS that experience a major failure may not be reclassified as a Tier 0 system. In addition, OWTS included in Tier 4 must continue to meet applicable requirements of Tier 0, 1, 2, or 3 pending completion

of corrective action. This condition is protective of water quality and human health; no change is needed.

3.3.8 The waiver may be revoked by the State Water Board or the applicable Regional Water Board for any discharge from an OWTS, or from a category of OWTS.

This condition allows the Regional Water Board or State Water Board authority to revoke the waiver for an OWTS. If the waiver is revoked, the OWTS operator must file a report of waste discharge and obtain waste discharge requirements or an enforcement order to allow continued operation of the OWTS. This condition is protective of water quality and human health; no change is needed.

3.3.9 OWTS Policy schedule of implementation

The OWTS Policy contains a conditional waiver along with a schedule of implementation, according to which OWTS owners, local agencies, Regional Water Boards, and the State Water Board have been implementing the requirements of the OWTS Policy. Renewal of the conditional waiver will allow continued OWTS regulation by local agencies, not subject OWTS owners to excessive or duplicative fees, and prevent duplicative permitting requirements. The conditions contained within the OWTS Policy waiver are adequately protective of water quality and human health. Because the conditions contained in the waiver are appropriate, requiring all OWTS to be subject to general or individual WDRs is not necessary.

### 3.4 POLICY REVISIONS AND AMENDMENTS

The Policy revisions are summarized as follows:

3.4.1 Minor clarifications to the applicability of Policy tiers, including:

- Specifying that Local Agency Management Programs must comply with local ordinances.
- Clarifying the mechanism for defining the geographical reach of certain requirements contained within Local Agency Management Programs or Advanced Protection Management Programs.
- Clarifying the timing for the submission of reports.
- Removing legacy language addressing applicability during the initial phase-in period of the Policy which has now passed.
- Including non-substantive revisions for improved website accessibility and readability.

3.4.2 Revisions to clarify authority already afforded to local agencies, concerning Local Agency Management Programs, including:

- Defining domestic wastewater to include wastewater normally discharged from systems serving multiple dwelling units, including accessory dwelling units that are the subject of recent legislation.
- Clarifying that the OWTS Policy Tier 2 LAMPs can include alternative collection and disposal system that uses subsurface disposal that are determined to be appropriate alternative systems by a qualified professional to satisfy Tier 2 LAMP requirements. All OWTS, including alternative collection and disposal systems that use subsurface disposal under a LAMP, must adhere to monitoring requirements, any service provider roles outlined by an approved LAMP, and any other applicable Tier 2 requirements. OWTS covered by a LAMP utilizing supplemental treatment, may be required to meet Tier 3 conditions, which may include nitrogen and pathogen monitoring and mitigation requirements.
- In addition to the existing surface water considerations in the OWTS Policy, noting that LAMPs should consider whether any additional requirements may be needed to be more protective of water quality, including groundwater degradation, in specific areas within a local agency's jurisdiction, including areas vulnerable to groundwater pollution from OWTS.

3.4.3 Revisions include updates to Attachment 2 impaired water bodies. The revisions to Attachment 2, Table 5 and 6 impaired water bodies that require an Advanced Protection Management Program include:

- Removing water bodies from the tables based upon completed TMDLs that did not include an OWTS load allocation, delisting of water bodies from the CWA 303(d) list, and/or technical studies and reports that indicate OWTS are not contributing sources, or revising the schedule for TMDL adoption.
- Revising the TMDL completion schedule based upon delays in obtaining data used for the analysis, revisions to the TMDL project scope, available staff to perform the work, new information regarding contaminant sources, and office closures due to natural disasters such as wildfires and the Covid-19 pandemic.
- Regional Water Board justifications for revisions to Attachment 2, Tables 5 and 6:

**Region 1 (North Coast Regional Water Board):**

**Clam Beach**

**Luffenholtz Beach**

**Moonstone County Park**

North Coast Regional Water Board TMDL staff initiated four studies to gather data and ultimately assess concentrations of E. coli, enterococci, and Bacteroides concentrations at ocean beaches and coastal streams listed as

impaired on the 303(d) list plus data from minimally impacted reference streams to help interpret the narrative natural background objective for bacteria. The initial four studies included: 1) natural background for coastal freshwater streams, 2) 303(d) listed coastal streams, 3) 303(d) listed ocean beaches, and 4) source areas. Data collection occurred from 2016 through 2018. The schedule for this project was delayed due to unit vacancies and temporary diversion of staff resources to other high priority TMDL projects. Now underway, individual reports for the original four studies are scheduled to be completed about once every three months. A final Synthesis Report including recommendations related to the need for development of a TMDL, is anticipated in early to mid-fiscal year (FY) 23-24.

**Russian River HU, Lower Russian River HA, Guerneville HSA, mainstem Russian River from Fife Creek to Dutch Bill Creek**

**Russian River HU, Lower Russian River HA, Guerneville HSA, Green Valley Creek watershed**

**Russian River HU, Middle Russian River HA, Geyserville HSA, mainstem Russian River at Healdsburg Memorial Beach and unnamed tributary at Fitch Mountain**

**Russian River HU, Middle Russian River HA, mainstem Laguna de Santa Rosa**

**Russian River HU, Middle Russian River HA, mainstem Santa Rosa Creek**

All Russian River segments are covered under the watershed-wide Pathogen TMDL, which was adopted by the North Coast Regional Water Board in December 2021, but still pending State Water Board, Office of Administrative Law, and U.S. EPA approval.

**Trinidad State Beach**

Humboldt County Environmental Health Department provided information that indicates Trinidad State Beach should be removed from Attachment 2 because pathogen data indicate that sources are not related to human waste. The North Coast Regional Water Board staff concur with the county recommendation.

**Region 2 (San Francisco Bay Regional Water Board):**

**Pacific Ocean at Pillar Point Beach**

In February 2021 the San Francisco Bay Regional Water Board adopted the bacteria TMDL for the beaches in Pillar Point Harbor and Venice Beach, followed by the State Water Board approval in July 2021, and the U.S. EPA approval in February 2022.

OWTS in Pillar Point Harbor watershed were not identified as a significant threat to water quality because of the very small number of existing septic systems, mostly inactive, and their locations away from water bodies. Page 4-3 of the TMDL states "LOAD RANKING: Due to potential risks to human health from waters contaminated with human fecal material, septic systems are generally considered to be a potential significant source of bacteria, and

such septic systems are ranked among the high priority controllable sources. However, the septic systems in Pillar Point Harbor watershed are few, they are well-maintained and located away from waterbodies, so they are unlikely to pose a significant threat to water quality. Therefore, the load ranking for these systems is low.” Because of the low TMDL load ranking in a completed TMDL, Pillar Point harbor was removed from Table 5.

#### **Petaluma River**

The Petaluma River TMDL was adopted by the San Francisco Bay Regional Water Board on November 13, 2019, and subsequently approved by State Water Board, Office of Administrative Law, and the U.S. EPA. The TMDL identified the Advanced Protection Management Program for OWTS within 200 feet of the Petaluma River which includes the Petaluma River (tidal portion) segment, and major tributaries as sources of bacteria that are causing or contributing to the water body impairment. The TMDL calls for an inspection of these systems by a third-party inspector to identify if the system is failing and in need of corrective actions to come into compliance with the TMDL, OWTS Policy, and LAMP. It is estimated that approximately 200 OWTS will need to be inspected across Marin and Sonoma Counties. The Water Board will issue individual orders, pursuant to California Water Code section 13267, to homeowners with parcels identified in the Advanced Protection Management Program requiring the inspections. Water Board staff will then assess the inspection results and classify systems in need of repairs. Systems requiring immediate repairs are subject to Tier 4 of the OWTS Policy. Timelines to make repairs will be set by the local agency or Water Board but are not to exceed 10 years. The TMDL calls for site specific assessments to determine appropriate supplemental treatment for new or replacement OWTS.

#### **Petaluma River (tidal portion)**

In sum, the Petaluma River TMDL includes implementation requirements for this water body segment. Refer to the Petaluma River paragraph above.

#### **San Gregorio Creek**

The San Gregorio Watershed is impaired for bacteria, but levels are just above the impairment threshold. There were 7 of 33 exceedances of the *E. coli* 5-week geomean water quality objective (100 MPN/100ml) from 2017-2020. The average geomean was relatively low (76.7 MPN/100ml) across all sites, and exceedances were largely driven by a few high single sample values during the dry-summer season and two large storm events in 2019.

Although there are approximately 179 OWTS within 200 feet of the stream, they are likely not a substantial source of pathogens. Sites were separated into high and low-OWTS categories based on the number of OWTS within 200 feet of the stream bank and 1km upstream. There were no significant differences in single sample and geomean *E. coli* levels between high and low-OWTS sites. Based on microbial source tracking (MST), the human

marker was uncommon and only detected in 7 of 35 samples. Of these seven samples, only one coincided with elevated *E. coli* levels. Bovine and equine markers were detected the most frequently and are likely the primary source of pathogens in the creek.

Individual OWTS within the San Gregorio Creek watershed are regulated by the San Mateo County Environmental Health Services (EHS) Division following the requirements set in the county Local Agency Management Program. The San Francisco Bay Regional Water Board approved this Local Agency Management Program in March 2022. The Local Agency Management Program requires a basic inspection of all OWTS in the county when the systems are pumped. Thus, this basic inspection process by pumpers will identify failing OWTS in need of repairs. All inspections are required to be reported directly to San Mateo County EHS within 30 days. Upon being notified of a failure condition or other uncorrected deficiency in an OWTS, EHS will notify the owner in writing of the needed corrections required to comply with the Local Agency Management Program. The homeowner is then required to take all corrective actions necessary to comply within 60 days of such written notification, unless otherwise approved by EHS. Under this oversight program, OWTS are unlikely to be or become significant contributors of pathogens in the creek. Therefore, San Gregorio Creek was removed from Table 5.

#### **Lagunitas Creek**

Water quality data demonstrate that nitrogen and phosphorus are not elevated in Lagunitas Creek, and biological communities are healthy according to stream biological condition data used to calculate California Stream Condition Index (CSCI) scores. Therefore, the water body is not impaired for nutrients. Lagunitas Creek cannot be formally de-listed for nutrients from the 303(d) list during the 2024 listing cycle because the data solicitation period ended on October 16, 2020, well before this monitoring study was completed in spring 2022. When the remaining study data are submitted to the Integrated Report during the next solicitation period, there will be sufficient information to demonstrate Lagunitas Creek is fully supporting beneficial uses according to the listing policy and delist for nutrients. Therefore, Lagunitas Creek was removed from Table 6.

#### **Walker Creek**

Walker Creek was placed on the OWTS Policy's Attachment 2 Table 6 in 2012. New information collected by the San Francisco Bay Regional Water Quality Control Board and provided by the Marin County proposed LAMP demonstrate there is not a nitrogen water quality problem in Walker Creek. Therefore, this water body is not a priority for TMDL development nor a priority for intensive OWTS management per Attachment 2.

Walker Creek was placed on the 303(d) List in 1996, but the data used for that listing is no longer available to evaluate the impairment. The the San Francisco Bay Regional Water Board collected nutrient data in 2016 and 2017 to determine if the water body was impaired. Results from this study

showed that nitrogen levels are not elevated compared to reference (non-impacted) streams, and the water body would not be listed based on the currently available nutrient data (e.g., total nitrogen, nitrate, and ammonia data). The San Francisco Bay Regional Water Board plans to collect additional nutrient data in 2023 and 2024 to formally delist Walker Creek in a future integrated report cycle. Therefore, the San Francisco Bay Regional Water Board concluded this listing was a low priority for TMDL development.

In addition, the Walker Creek nutrient impairment did not rank as a priority project during the San Francisco Bay Regional Water Board's 2022-2023 TMDL prioritization process. That process considered all impaired waters in the region based on criteria such as the magnitude of the problem and ability of San Francisco Bay Regional Water Board action to resolve the problem. An existing nonpoint source program is expected to control nutrients in the Walker Creek watershed. The San Francisco Regional Water Board developed a TMDL to address pathogens in the Tomales Bay watershed, including Walker Creek. As required by this TMDL, a permit was created to manage grazing and confined animal facilities in the watershed, which are the largest sources of pathogens and nutrients. Because there is an active nonpoint source program in this watershed, a TMDL for nutrients in these waters will remain a low priority for the Region relative to other water quality problems.

As part of its LAMP development, Marin County is producing a list of prioritized areas for OWTS management in their jurisdiction and this watershed was not an area of concern for regulating new or existing OWTS. The San Francisco Bay Regional Water Board agrees with Marin County that additional nutrient treatment as part of new and redeveloped OWTS are not necessary to protect beneficial uses in Walker Creek. In addition, Marin County records show no new OWTS being installed near the Creek in the last 10 years, so the inclusion of Walker Creek in Attachment 2 had no effect on OWTS management. The Marin County LAMP is not finalized. Any new data that suggests OWTS are causing or contributing to a water quality problem in Walker Creek would result in Walker Creek being included as an area of concern in the Marin County LAMP and managed accordingly under the LAMP.

### **Petaluma River**

The San Francisco Bay Regional Water Board did not develop a TMDL for nutrients in the Petaluma River in 2022. The major sources of nutrients in the watershed are the same as the sources contributing to the bacteria impairment, and it is expected that nutrient reductions to occur from the actions required in the Petaluma River bacteria TMDL. San Francisco Bay Regional Water Board staff will evaluate whether nutrient concentrations and biostimulatory effects are lower as a result of bacteria TMDL implementation actions. OWTS are being addressed through the Petaluma River bacteria TMDL which defines the Advanced Protection Management Program to 200 feet from the Petaluma River mainstem and 200 feet of major tributaries.

The Advanced Protection Management Program also allows the local agency to require supplemental treatment for new and repaired OWTS. Therefore, this water body is being removed from Table 6 in the 2023 revision.

**Petaluma River (tidal portion)**

Refer to the **(Petaluma River)** paragraph above.

**Region 3 (Central Coast Regional Water Board):**

**Rincon Creek**

*E. coli* – Rincon Creek was delisted for *E. coli* during the 2020-2022 listing cycle because the salinity of the waterbody is higher than 1 ppt 95 percent of the time or more. Therefore, according to the State Water Board Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (the ISWEBE Plan), the *E. coli* objective is not applicable for this waterbody. (*Decision number 125834.*)

Fecal coliform – Rincon Creek was delisted because the ISWEBE Plan supersedes the fecal coliform objectives in our Basin Plan. Therefore, the waterbody was removed from the List because of a change in water quality standards. (*Decision number 130226.*)

**Region 4 (Los Angeles Regional Water Board):**

**Coyote Creek**

No longer listed as impaired on the 303 (d) list.

**Rincon Beach**

State Water Board staff confirmed with the Los Angeles Regional Water Board that all impacted homes have been consolidated for wastewater and OWTS are no longer present to impact Rincon Beach, therefore OWTS is not a source of the impairment. The Carpinteria Sanitary District confirmed that all Rincon Beach homeowners have subscribed to their services (personnel communication, Craig Murray, General Manager Carpinteria Sanitary District to LB Nye, June 2022).

**San Gabriel River Reach 1 (Estuary to Firestone)**

No longer listed as impaired on the 303 (d) list.

**San Gabriel River Reach 3 (Whittier Narrows to Ramona)**

No longer listed as impaired on the 303 (d) list.

**San Jose Creek Reach 1 (SG Confluence to Temple St.)**

Pathogen impairments are being addressed by the [Amendment to the Water Quality Control Plan – Los Angeles Region to incorporate the TMDL for Indicator Bacteria in the San Gabriel River, Estuary and Tributaries \(June 10, 2015\)](#) that went into effect June 14, 2016. This TMDL includes Load Allocations for OWTS, which apply to the San Gabriel River and its tributaries, including San Jose Creek Reaches 1 and 2. Nonpoint source Load Allocations equal to zero days of allowable exceedances for the single sample and geometric mean targets are assigned to OWTS, golf courses, horse and livestock facilities, and irrigated agricultural lands within the watershed.



**San Jose Creek Reach 2 (Temple to I-10 at White Ave.)**

Pathogen impairments are being addressed by the Amendment to the Water Quality Control Plan ([Attachment A to Resolution No. R15-005](#)) – Los Angeles Region to incorporate the TMDL for Indicator Bacteria in the San Gabriel River, Estuary and Tributaries that went into effect June 14, 2016. This TMDL includes Load Allocations for OWTS, which apply to the San Gabriel River and its tributaries, including San Jose Creek Reaches 1 and 2. Nonpoint source Load Allocations equal to zero days of allowable exceedances for the single sample and geometric mean targets are assigned to OWTS, golf courses, horse and livestock facilities, and irrigated agricultural lands within the watershed.

**Sawpit Creek**

No longer listed as impaired on the 303 (d) list

**Walnut Creek Wash (Drains from Puddingstone Res)**

The U.S. EPA established a TMDL that was completed in 2015.

**Region 5 (Central valley Regional Water Board):**

**Wolf Creek (Nevada County)**

**Woods Creek (Tuolumne County)**

TMDL development for each of the impaired water bodies listed above is postponed until 2028. The development of TMDLs for Wolf Creek and Woods Creek have not been prioritized for surface water TMDLs, as the Central Valley Water Board's priority has been to establish and implement a set of Basin Plan Amendments (the Nitrate Control Program under Central Valley Regional Water Board Salinity Alternatives for Long-Term Sustainability) designed to address, among other things, nitrate contamination from failing OWTS in disadvantaged communities dependent on groundwater as their source of drinking water. Delays in developing TMDLs are not desirable, but they are unlikely to result in additional degraded water quality or threats to public health. Any new or replacement OWTS located within 600 feet of an impaired water body listed in Attachment 2 is automatically required to be regulated under Tier 3 of the OWTS Policy (Section 3.1).

**Region 7 (Colorado River Basin Regional Water Board):**

**Alamo River**

The Alamo River Chloride, Indicator Bacteria and Toxicity TMDL is currently in internal review. It is scheduled for Colorado River Regional Water Board consideration during the 2023/2024 fiscal year.

**Palo Verde Outfall Drain and Lagoon**

The TMDL for the Palo Verde Outfall Drain and Lagoon has been postponed due to staff shortage, newly hired staff will be assigned this TMDL.

**Region 8 (Santa Ana Regional Water Board):**

**East Garden Grove Wintersburg Channel**

This Channel has been removed from Attachment 2 Tables 5 and 6. The Santa Ana Regional Water Board anticipates a waste loading allocation would

not be developed for existing OWTS and the development of a TMDL solely for this channel to address the ammonia and nutrient impairments is not the appropriate regulatory approach. Further, no new OWTS are likely to be installed in this area because of its development and the current availability of sewer lines and any new OWTS would be referred to the Santa Ana Regional Water Board to obtain OWTS Policy coverage, obtain coverage under a different regulatory mechanism, or where feasible, connect to available sewer to address potential water quality impacts due to the new OWTS. The Santa Ana Regional Water Board will continue to coordinate with Orange County on investigating the sources of impairments in the Channel.

### **Goldenstar Creek**

The Santa Ana Regional Water Board reexamined the 2010 Goldenstar Creek listing data during the 2016 Integrated Report process and compared to the revised Basin Plan, particularly where there is insufficient data to calculate a suitable number of geometric mean values. Of the 79 E. coli analyses reviewed during the 2016 Integrated Report for Goldenstar Creek, only 12 values exceeded the Basin Plan objective of 410 MPN/100 ml, which is below the minimum listing ratio of 14 exceedances for 79 samples. In addition, there were 2 samples reported at 410 MPN/100 ml. Based on the available data, Santa Ana Regional Water Board staff chose not to delist the water body during the 2016 Integrated Report and will wait until additional sampling is performed. Since this time, the bacteria water quality objectives have changed due to the adoption of the Bacteria Provisions into the Inland Surface Waters Enclosed Bays and Estuaries Plan. This data and any new data collected will be reviewed as part of the 2024 Integrated Report to assess impairment of this water body.

### **Mill Creek Reach 1**

Mill Creek Reach 1 was listed as impaired for pathogens in 1998. The indicator bacteria water quality objective was revised in 2012, using only E. coli values. When the E. coli data were examined in the Region's 2016 Integrated Report, 25 samples were available with 2 exceedances of regulatory criterion. However, 25 samples are insufficient to perform an impairment analysis under the Listing Policy. Staff determined it was prudent to leave the listing in place until further sampling is conducted. Since this time, the bacteria water quality objectives have changed due to the adoption of the Bacteria Provisions into the Inland Surface Waters Enclosed Bays and Estuaries Plan. This data and any new data collected will be reviewed as part of the 2024 Integrated Report to assess impairment of this water body.

### **Morning Canyon Creek**

Santa Ana Regional Water Board staff has confirmation from City of Newport Beach staff using their Geographic Information System data that all of the development in Morning Canyon Creek use sewer laterals and no septic systems will be allowed in the Newport Coast area. Therefore, this water body should be removed from Attachment 2, Table 5.

### **Mountain Home Creek**

This water body was listed with indicator bacteria, source unknown. Data collected by Santa Ana Regional Water Board staff in 2012 (outside of the 2016 Listing Cycle data solicitation) support the delisting of Mountain Home Creek for Indicator Bacteria in the next listing cycle. This data and any new data collected will be reviewed as part of the 2024 Integrated Report to assess impairment of this water body.

### **Mountain Home Creek, East Fork**

Santa Ana Regional Water Board staffing issues, including redirection to other projects and losses due to retirements and pursuit of other opportunities, prevented work in developing a TMDL. This listing will be reevaluated if new data are available as part of the 2024 Integrated Report to assess impairment of this water body.

### **Seal Beach**

The Santa Ana Regional Water Board did not have sufficient resources to complete the TMDL by 2019. The 2016 Integrated Report evaluated delisting Seal Beach for indicator bacteria. Data evaluated were collected between 1999 and 2008. Delisting was not recommended because the Enterococcus objective exceedance frequency at one of the four stations in the surf zone off Seal Beach was greater than that allowed in the Listing Policy. The station in question (1<sup>st</sup> Street Station) is adjacent to the mouth of the San Gabriel River. The three other monitoring stations along the one-mile beach are located closer to the entrance to Anaheim Bay and comply with the Enterococcus objective. Monitoring stations located within Anaheim Bay also complied with the Enterococcus objective. These data suggest that the source of the problem may not be located in the Anaheim Bay/Seal Beach Watershed. More recent Enterococcus data from Seal Beach confirms that the water quality violations are restricted to the 1st Street Station. Santa Ana Regional Water Board staff will investigate this listing to determine if a TMDL for the watershed area located in Region 8 is warranted. In addition, a survey conducted in 2003 found no septic tanks within the City of Seal Beach. Recent data provided by the local sanitation district appears to confirm this, but Santa Ana Regional Water Board staff have not finalized their review of the data.

### **Serrano Creek**

Serrano Creek was added to the 2010 303(d) list by the U.S. EPA using data collected in 2004-2006. No new data were available to confirm this listing for the 2016 Integrated Report. Serrano Creek Canyon is included in the Santa Ana Regional Water Board Comprehensive Bacteria Monitoring Program under Priority 3. County of Orange staff has been collecting E. coli data since 2016. The first annual monitoring report indicated that the geomean REC-1 bacterial objective is being achieved. Santa Ana Regional Water Board staff will review additional monitoring data as they become available to determine if a TMDL is still warranted for this water body. In addition, a survey conducted in 2003 found only two septic tanks potentially located within the Serrano

Creek watershed. The two cities within the Serrano Creek watershed have experienced rapid urbanization in recent years and the sewer network connected to the local wastewater treatment plant has expanded concurrently. Santa Ana Regional Water Board staff is currently working with County of Orange on verifying whether any septic tanks still exist in the Serrano Creek watershed. However, no new OWTS are likely to be installed in this area because of its rapid development and the current availability of sewer lines. Depending on the results of this assessment, the septic tank owners would be required by the Santa Ana Regional Water Board to upgrade to an alternative treatment system or supplemental treatment system under OWTS Policy coverage, obtain coverage under a different regulatory mechanism, or where feasible, connect to available sewer to address potential water quality impacts due to the septic tanks. Due to a TMDL not being the appropriate regulatory approach to address the remaining septic tanks, Serrano Creek is being removed from Attachment 2 Tables 5 and 6.

#### **Huntington Harbour**

The Santa Ana Regional Water Board did not have sufficient resources to complete the TMDL by 2019. The 2016 Integrated Report evaluated delisting Huntington Harbour for indicator bacteria. Although the data show an improving trend, delisting was not recommended because the Enterococcus objective exceedance frequency at four stations was greater than that allowed by the Listing Policy. This data and any new data collected will be reviewed as part of the 2024 Integrated Report to assess impairment of this water body.

#### **Grout Creek**

#### **Rathbone (Rathbun) Creek**

#### **Summit Creek**

Santa Ana Regional Water Board staffing issues prevented work in developing TMDLs for Grout Creek, Rathbone (Rathbun) Creek, and Summit Creek. These listings will be reevaluated if new data becomes available as part of the 2024 Integrated Report to assess impairment of these water bodies.