

**RESPONSE TO COMMENTS  
CONDITIONAL WAIVER RENEWAL  
AND AMENDMENT TO IDENTIFIED IMPAIRED WATER BODIES LISTING FOR THE  
WATER QUALITY CONTROL POLICY FOR SITING, DESIGN, OPERATION, AND MAINTENANCE  
OF ONSITE WASTEWATER TREATMENT SYSTEMS**

On February 2, 2018 a notice of public hearing was transmitted to all known interested parties regarding a public hearing in which the State Water Resources Control Board (State Water Board) will receive comments on the Onsite Wastewater Treatment System (OWTS) Policy conditional waiver renewal and Attachment 2 list amendment. A 60-day public comment period was provided. The comment period ended on April 6, 2018. Comment letters were received from two entities. They are:

- Heal the Ocean/Heal the Bay, RE: Conditional Waiver Renewal and TMDL List Amendment, April 5, 2018.
- Clean Water Action, Comment Letter – OWTS Conditional Waiver Renewal and TMDL List Amendment, April 6, 2018.

Responses to the comments are provided below. In addition, the Staff Report has been amended to reflect the changes and a change sheet has been prepared for State Water Board consideration at the public hearing.

**Heal the Ocean/Heal the Bay Comments**

Heal the Ocean/Heal the Bay provided a comment letter on April 5, 2018, which provided the following comments. Each of the comments and a comment response is provided below (comments were edited for length and shown in italics for clarity). The original comment letter is available at: [https://www.waterboards.ca.gov/public\\_notices/comments/owts\\_tmdl/](https://www.waterboards.ca.gov/public_notices/comments/owts_tmdl/).

***1. The Conditional Waiver Renewal and TMDL List Amendment alters the intent of AB 885 regulations.***

*AB 885 was signed into law in September 2000. The State Board was required to adopt, by January 2004, regulations or standards for the permitting or operation of the 1.2 million septic systems operating in California. The TMDL List Amendment now proposes extensions in Attachment A Tables 5 (Pathogens) and 6 (Nitrogen), which would delay the development of these standards up to an additional seven years, which extends deferment of action concerning OWTS up to a total of 24 years after AB 885 passed in 2000. This law was passed in recognition of 303(d)-listed water bodies where OWTS were degrading water quality, and any further unjustified delay poses a serious risk to public and environmental health.*

Response:

In order to address the impaired waters requirements of Water Code § 13290 et. seq., which was adopted as Assembly Bill 885, the State Water Board included Tier 3 as part of the OWTS Policy. Tier 3, Advanced Protection Management Programs for Impaired Areas, sets requirements for existing, new and replacement OWTS that are near water bodies that have been listed as impaired due to nitrogen or pathogen indicators pursuant to Section 303 (d) of the Clean Water Act. Attachment 2 was developed in order to define the scope of Tier 3 requirements, listing those specific water bodies where: “(1) it is likely that operating OWTS will subsequently be determined to be a contributing source of pathogens or nitrogen and therefore it is anticipated that OWTS would receive a loading reduction, and (2) it is likely that new OWTS installations discharging within 600 feet of the water body would contribute to the impairment.” The Policy directs the State Water Board or its Executive Director to periodically update Attachment 2 based upon information available at the time of 303(d)

listing and notes that the listing “may be further updated based on new information.” (OWTS Policy, section 5.6.) The proposed revisions represent new TMDL completion dates reflecting the criteria set forth above and based upon information that has become available in the period since OWTS Policy adoption.

Delays in developing the TMDLs are not desirable, but they are unlikely to result in additional degraded water quality or threats to public health. That is because the OWTS Policy requires all new or replacement OWTS located within 600 feet of an impaired water body listed in OWTS Policy Attachment 2 to be automatically subject to the default specific requirements of Tier 3. Tier 3 became effective immediately when the Policy became effective (OWTS Policy section 3.1). Local agencies are required to permit OWTS consistent with Tier 3 requirements. However, local agencies may elect to develop an APMP.

An APMP is a program that a local agency may include with their LAMP to manage Tier 3 OWTS. If a local agency does not submit an APMP, then they must implement the Tier 3 default requirements for systems located within the Tier 3 default geographic area. When a Regional Water Board adopts a TMDL for a water body listed on OWTS Policy Attachment 2, it may contain additional requirements, a different geographic area, or may conclude that OWTS are not a significant contributing waste load. Local agency APMPs may be more restrictive, but not less restrictive than the requirements of a TMDL implementation plan.

**2. Many water bodies that remain on the 303(d) list have passed their TMDL deadlines with no justification, no regulatory action as required by AB 885, and no amended completion date.**

*The proposed amendment lists a number of water bodies that have passed deadline for the development of a TMDL, with no justification for inaction and no amended completion date. OWTS within the vicinity of these waterbodies should be put immediately into OWTS Policy Section 10, and be required to submit an Advanced Protection Management Program (APMP) for Regional Water Board approval, or they should implement the requirements of an adopted TMDL implementation plan. The waterbodies that have passed the TMDL deadlines with no justification and with no amended completion date include:*

**Table 5 (Impaired for Pathogens)**

<b>Region</b>	<b>Waterbody Name</b>	<b>Counties</b>	<b>Completion Date</b>
3	Rincon Creek	Santa Barbara, Ventura	2015
4	Coyote Creek	Los Angeles, Orange	2015
4	Rincon Beach	Ventura	2017
4	San Jose Creek, Reach 1	Los Angeles	2015
4	San Jose Creek, Reach 2	Los Angeles	2015
4	Sawpit Creek	Los Angeles	2015
4	Walnut Creek Wash	Los Angeles	2015
7	Alamo River	Imperial	2017
7	Palo Verde Outfall Drain/ Lagoon	Imperial, Riverside	2017

**Table 6 (Impaired for Nitrogen)**

<b>Region</b>	<b>Waterbody Name</b>	<b>Counties</b>	<b>Completion Date</b>
8	Grout Creek	San Bernardino	2015
8	Rathbone Creek	San Bernardino	2015
8	Summit Creek	San Bernardino	2015

*All of the above listed waterbodies should be immediately entered into the Advanced Protection Management Program if no TMDL has been submitted.*

Central Coast Water Board Staff Response

Rincon Creek was included in Attachment 2 of the OWTS policy because the septic systems for the community of Rincon Point and Rincon Beach County Park were known to be creating water quality impairments in Rincon Creek. The majority of this area was connected to a wastewater treatment plant in approximately 2013 to address this problem.

Because the TMDL was scheduled for 2015, the conditional waiver applicability has expired for OWTS located within the geographic area of the water body and any OWTS will be subject to regulation by the Regional Water Board.

Los Angeles Regional Water Board Staff Response

The Los Angeles Regional Water Board has adopted several TMDLs, which were not presented in the Staff Report. The Los Angeles Regional Water Board adopted a TMDL for Coyote Creek, San Jose Creek Reach 1, San Jose Creek Reach 2, and Walnut Creek Wash as part of the San Gabriel River Bacteria TMDL on June 10, 2015. The TMDL became effective on June 15, 2016. The TMDL assigns load allocations to OWTS and states that the load allocations will be implemented in conformance with the OWTS Policy.

A TMDL for Sawpit Creek was adopted as part of the Los Angeles River Bacteria TMDL on July 9, 2010. The TMDL became effective on May 24, 2012. The TMDL assigns load allocations to OWTS and requires the load allocation to be implemented in conformance with the Nonpoint Source Implementation and Enforcement Policy.

The TMDLs have been incorporated into the County of Los Angeles local agency management program (LAMP), which was noticed for public comment on March 22, 2018 and is available at: [https://www.waterboards.ca.gov/losangeles/board\\_decisions/tentative\\_orders/other\\_resolutions/Los\\_Angeles\\_County/](https://www.waterboards.ca.gov/losangeles/board_decisions/tentative_orders/other_resolutions/Los_Angeles_County/).

The comment also addresses the Rincon Beach TMDL scheduled for 2017. The Los Angeles Regional Water Board has begun development of a bacteria TMDL for Rincon Beach. Los Angeles Regional Water Board staff held a public meeting to discuss the data review for the TMDL on February 2, 2018. The meeting was noticed to the public on January 23, 2018. The TMDL is anticipated to be completed by 2019. OWTS Policy Section 10.4.1 allows two years beyond the schedule provided in OWTS Policy Attachment 2 before the waiver of WDRs expires for an OWTS located within the geographic area. Therefore, no change is requested in the schedule for Rincon Beach.

The comment regarding enrolling all the listed waterbodies is the same issue identified in Comment No. 3. Please refer to that comment and response.

### Santa Ana Regional Water Board Staff Response

Grout Creek, Rathbun Creek, and Summit Creek, which drain into Big Bear Lake, do not have nitrogen water quality objectives (WQOs) in the Santa Ana Regional Water Board basin plan. Using the tributary rule during the 1994 and 1998 water quality assessments, Regional Water Board staff applied the total inorganic nitrogen WQO for Big Bear Lake (0.15 mg/L) when identifying the three streams as being impaired for nutrients. At that time, the Listing Policy did not exist; correcting the listing has not been a sufficiently high priority. Big Bear Lake, which was listed for nutrients in 1994, has an approved nutrient TMDL (Order No. R8-2006-0023) that includes actions in its implementation plan for these three sub-watersheds. Furthermore, the Santa Ana Regional Water Board adopted a subsurface disposal prohibition effective 1980, which prevented new subsurface disposal systems in Bear Valley (which includes the three streams). Region 8 is currently undertaking an evaluation of Big Bear Lake tributaries, to identify potential aquatic life stressors (including nutrients). The study includes a number of tributaries, including Grout Creek, Rathbun Creek and Summit Creek. The study is scheduled for completion in 2020. If nutrients are identified as a stressor for any of the tributary streams and potentially causing impairment, Regional Water Board staff will take appropriate actions (either TMDL or alternative actions through the USEPA 303(d) Program Vision).

### **3. Many of the justifications given for TMDL deadline extensions violate the Policy.**

*Tables 5 and 6 of Attachment A list proposed justifications for extending TMDL Completion Dates. Some of the justifications are given with detail as well as an obvious record of work done towards developing a TMDL (e.g. the work on the Russian River). However, Heal the Ocean and Heal the Bay find many other justifications to be unreasonable. For example, as many as six additional years are being proposed to extend required action in the San Francisco Bay (Region 2), and the justification is "based on current work load and priorities..." We understand that many Regional Boards have a large workload; however, AB 885 is a law, and as such, its implementation should be prioritized, not deprioritized.*

*TMDL extensions should not be given unless reasonable effort has been exercised and shown through submittal of work completed to date. Heal the Ocean and Heal the Bay ask that the State Board require detailed work reports for the following waterbodies. If these reports are not submitted in timely fashion, OWTS in these regions should immediately be entered into OWTS Policy Section 10, and require submittal of an APMP for Regional Water Board approval.*

#### Response:

The statement addressing immediate enrollment into OWTS Policy Section 10 misunderstands how the OWTS Policy is implemented. All new or replacement OWTS located within 600 feet of an impaired water body listed in OWTS Policy Attachment 2 are automatically subject to the default requirements of Tier 3 specific to that system. Tier 3 became effective immediately when the Policy became effective (OWTS Policy section 3.1).

An APMP is a program that a local agency may include with their LAMP to manage Tier 3 OWTS. If a local agency does not submit an APMP, then they must implement the Tier 3 default requirements for systems located within the default geographic area, "600 linear feet [in the horizontal (map) direction] of a water body listed in Attachment 2" (OWTS Policy Section 10.1). When a Regional Water Board adopts a TMDL for a water body listed on OWTS Policy Attachment 2, it may contain additional requirements, a different geographic area, or may conclude that OWTS are not a significant

contributing waste load. Local agency APMPs may be more restrictive, but not less restrictive than the requirements of a TMDL implementation plan.

**Table 5 (Impaired for Pathogens)**

**Justification given for San Francisco Bay (Region 2):** “Based on current work load and priorities, this work is anticipated for completion in...”

**Heal the Ocean/Heal the Bay Response:** This is not an acceptable justification. AB 885 is a law; coming into compliance with the law is not negotiable. Especially egregious is the statement that the required work is not a "priority."

<b><u>Region</u></b>	<b><u>Waterbody Name</u></b>	<b><u>Counties</u></b>	<b><u>TMDL Date (with ext.)</u></b>
San Francisco Bay	Pacific Ocean at Pillar Point Beach	San Mateo	2016-2022
San Francisco Bay	Petaluma River	Marin, Sonoma	2017-2018
San Francisco Bay	Petaluma River (tidal portion)	Marin, Sonoma	2017-2018
San Francisco Bay	San Gregorio Creek	San Mateo	2019-2022

The San Francisco Bay Regional Water Quality Control Board has completed significant work regarding the listed pathogen impaired water bodies. The evaluation of pathogens in the tidal and non-tidal portions of the Petaluma River has made significant progress; however, recent delays due to staff responding to the North Bay Fires have occurred. The work performed to evaluate San Gregorio Creek and the Pacific Ocean at Pillar Point indicates OWTS are not likely to be considered a significant source of the impairment. Each of the water bodies is further discussed below.

**Petaluma River and Petaluma River (tidal portion)**

The San Francisco Regional Water Board has made significant progress on developing a TMDL to address pathogen impairment in the Petaluma River watershed. Fecal indicator bacteria (FIB) data was collected between 2014 and 2017 to document conditions, evaluate the spatial and temporal extent of the impairment, and identify controllable sources of bacteria. The studies identified a number of sources, that include OWTS, sanitary sewer overflows, homeless encampments, confined animal facilities, grazing, and storm water. The watershed is large and contains more than 500 OWTS which have been mapped in relation to tributaries and the mainstem of the Petaluma River. Staff is continuing to work on developing a process to prioritize the actions that will be most effective in addressing the impairment. A project report will be transmitted to the public in April 2018 in conjunction with a planned CEQA scoping meeting.

**San Gregorio Creek**

The San Francisco Regional Water Board has made significant progress on evaluating pathogen impairment in the San Gregorio Creek watershed in the past two years. The listing impairment for this entire creek was based on a single sample location in an estuarine lagoon at the mouth of this creek. To better characterize water quality conditions Regional Water Board staff sampled the watershed in summer 2017 and winter 2018 to collect FIB. Staff also conducted a microbial source tracking (MST) study to identify DNA from potential sources of FIB. Results from the FIB study indicate that the creek and its tributaries generally comply with the USEPA recommended recreational criterion for E. coli of 100 MPN/ 100ml. Statistically, 11 of 14 (82%) of non-tidal sampling locations and seasons met the USEPA criterion. In addition, the summer MST data showed only two watershed locations with

detectable human bacteria. FIB data from summer and winter at the two sites consistently met the geometric mean and statistical threshold value (320 MPN/100ml) recreation standards currently under consideration at the State Water Board. Therefore, OWTS are not considered a likely cause of the few FIB exceedances observed in the watershed. A bacteria TMDL would not need to include stringent requirements to regulate OWTS. Probable sources of FIB in this watershed include livestock grazing and wildlife sources.

**Pacific Ocean at Pillar Point**

In 2014, the San Mateo Resource Conservation District released a San Francisco Regional Water Board-funded report addressing FIB sources impacting the Pillar Point Harbor area. The report determined that OWTS are not a likely source of the impairment and that human fecal waste are not a significant source of the observed water quality impairment. The report recommended implementation of best management practices including storm water measures for dog and livestock waste, as well as further study regarding biofilm and sediment sources within the storm water drain system.

**Justification given for Los Angeles (Region 4):** *“The schedule extension is needed to study the impacts of the Thomas Fire on bacteria loading in the Ventura River watershed.”*

**Heal the Ocean/Heal the Bay Response:** *The TMDL for these water bodies was to have been completed in 2017. The State Board should require a report of work done in development of TMDLs up until December 2017.*

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>TMDL Date (with ext.)</u>
Los Angeles	Canada Larga	Ventura	2017-2024
Los Angeles	San Antonio Creek	Ventura	2017-2024
Los Angeles	Ventura River, Reach 3	Ventura	2017-2024

Response: The Los Angeles Regional Water Board staff requested an extension to the deadline for the adoption of a bacteria TMDL for San Antonio Creek, Ventura River Reach 3, and Cañada Larga. Until a bacteria TMDL can be developed for the Ventura River watershed, the OWTS contributing to bacteria impairments are being addressed by the Ventura River Algae TMDL, which was adopted by the Los Angeles Regional Water Board on December 6, 2012. The Ventura River Algae TMDL defines APMP requirements and the Ventura County Environmental Health Division has included the APMP requirements in their draft LAMP/APMP.

The Ventura County LAMP/APMP states, “The geographic area for the APMP to implement the Ventura River Algae TMDL is the entire Ventura River watershed until the Division completes, and the Regional Board approves, a study to refine the APMP. Subsequent studies or reduction of the nutrient load in the watershed may also further refine the geographical boundaries of the APMP.” Ventura County will complete the study to refine the APMP in November 2018.

The more protective standard included in the APMP will provide water quality and human health protection while providing time to evaluate the standards in the TMDL process. The Ventura County LAMP/APMP was noticed for public comment on February 28, 2018 and is available at:

[https://www.waterboards.ca.gov/losangeles/board\\_decisions/tentative\\_orders/other\\_resolutions/Ventura\\_County/index.html](https://www.waterboards.ca.gov/losangeles/board_decisions/tentative_orders/other_resolutions/Ventura_County/index.html).

**Justification given for Santa Ana (Region 8):** “2016 303(d) List as approved by the Regional Board and State Board indicated a revised expected TMDL completion date.”

**Heal the Ocean/Heal the Bay Response:** “Expected” does not imply the certainty required to meet the demands of a state regulation. Unlike some explanations provided for other waterbodies, no additional details are provided to explain this extension given for TMDL completion.

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>TMDL Date (with ext.)</u>
Santa Ana	Goldenstar Creek	Riverside	2019-2021
Santa Ana	Mill Creek, Reach 1	San Bernadino	2015-2019
Santa Ana	Morning Creek Canyon	Orange	2017-2021
Santa Ana	Seal Beach	Orange	2017-2019
Santa Ana	Serrano Creek	Orange	2017-2021
Santa Ana	Huntington Harbor	Orange	2017-2019

In 2012 the Santa Ana Regional Water Board adopted Resolution 2012-0001, approved by USEPA in 2014 that amended the Basin Plan to revise water quality objectives for bacteria. The amendment also placed the Region's freshwater lakes and streams into one of four tiers (“Tier A”, “B”, “C” or “D”) based on the known or estimated actual or potential intensity of primary contact recreational use by the public, and other factors. The amendment specified implementation strategies and required storm water agencies in the region to develop a Comprehensive Region-Wide Bacteria Monitoring Plan. The monitoring plan was finalized in 2016 and used the Tiers established in the 2012 amendment along with other information to prioritize monitoring locations. The first annual report under this monitoring program was submitted in 2017.

Regional Water Board staff have used the guidance in the 2012 amendment as well as information developed by the region-wide bacteria monitoring plan to revise the TMDL adoption dates. Information on the 2012 Basin Plan Amendment and the Regional Bacteria Monitoring Program is available at: [https://www.waterboards.ca.gov/santaana/water\\_issues/programs/planning/Bacteria\\_Monitoring\\_Program.html](https://www.waterboards.ca.gov/santaana/water_issues/programs/planning/Bacteria_Monitoring_Program.html)

**Goldenstar Creek**

During the 2016 Integrated Report process for the Santa Ana Regional Water Board, the 2010 Goldenstar Creek listing data was reexamined and compared to the revised Basin Plan., particularly where there is insufficient data to calculate a suitable number of geomean values. Goldenstar Creek is a Tier D waterbody with a single sample maximum value of 410 MPN/100 mL. Of the 79 E. coli analyses reviewed during the 2016 Integrated Report for Goldenstar Creek, only 12 values exceeded 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, Regional Water Board staff chose not to delist the water body during the 2016 Integrated Report and will wait until additional sampling is performed. The additional sampling and analysis should be completed by the next Integrated Report cycle in 2022.

**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. Although the water body could have been delisted for indicator bacteria on the basis on the new water quality objectives adopted in 2012, staff determined it was prudent to leave the listing in place until further sampling is conducted.

#### Morning Creek Canyon

Morning Canyon Creek was added to the 2010 303(d) list by USEPA using data collected in 2004-2006. No new data were available to confirm this listing for the 2016 Integrated Report. Morning Creek Canyon is included in the Region's Comprehensive Bacteria Monitoring Program under Priority 3. Regional Water Board staff have collected E. coli data since 2016. The first annual monitoring report indicated that the geomean Rec-1 bacterial objective is being exceeded. Staff will assess these data and undertake further actions as necessary. The Regional Water Board adopted a Resolution in 2017 (2017-0019) adding Morning Canyon to the Basin Plan.

#### Seal Beach

The Regional Water Board did not have sufficient resources to complete the TMDL by 2017. 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 (1st 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. The Los Angeles Regional Water Board has developed a TMDL for bacteria in the San Gabriel River, Estuary, and Tributaries. The TMDL was approved by USEPA in June 2016. Santa Ana Regional Water Board staff will investigate this listing in the next fiscal year to determine if a separate 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 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 USEPA 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 Region's 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. 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. Regional Water Board staff is currently verifying whether any septic tanks still exist in the Serrano Creek watershed.



Huntington Harbour

The Regional Water Board did not have sufficient resources to complete the TMDL by 2017. 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. Regional Water Board staff will investigate this listing in the next fiscal year, assessing more recent data to determine whether a TMDL is still warranted.

**Table 6 (Impaired for Nitrogen)**

**Justification given for San Francisco Bay (Region 2):** “A nutrient study was conducted in 2016/17. Will probably delist in 2022 Integrated Report. If not, will develop TMDL.”

**Heal the Ocean/ Heal the Bay Response:** This justification is very confusing, vague and presumptuous. "Will probably delist..." is not a proper justification. It is unclear what this potential delisting is based on. Will work continue so that if it is not delisted in 2022, a TMDL can be developed immediately, or will additional time be required?

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>TMDL Date (with ext.)</u>
San Francisco Bay	Lagunitas Creek	Marin	2016-2022
San Francisco Bay	Petaluma River	Marin, Sonoma	2017-2022
San Francisco Bay	Walker Creek	Marin	2016-2022

The San Francisco Regional Water Board has completed significant work addressing the three listed nutrient impairments for Lagunitas and Walker creeks and the Petaluma River. Each of the water bodies is further discussed below.

Lagunitas Creek

In summer 2016 and 2017, San Francisco Regional Water Board staff conducted a study to evaluate the nutrient impairment in the Lagunitas Creek watershed. Samples were collected and analyzed for a suite of water chemistry analytes (e.g., ammonia, nitrate, nitrite, total nitrogen, orthophosphate, and total phosphorous) and algae biomass indicators (benthic chlorophyll-a, benthic ash-free dry mass). In-stream and riparian physical habitat and stream temperature data was also collected to evaluate the potential for eutrophic conditions. The 2016 data indicate the water body is not impaired by nutrients. Nitrogen concentrations have decreased since 2002, but high algae levels were noted in one tributary, Halleck Creek. The data collected from 2017 are not yet available for analysis; conclusions regarding the water body are pending the analysis of the 2017 data, which will be available in 2018. Based on the data the San Francisco Regional Water Board will complete an impairment assessment and either develop a TMDL for the whole watershed or the portion of the watershed that is impaired. If the analysis indicates that nutrients are not causing eutrophication, the San Francisco Regional Water Board will proceed with delisting Lagunitas Creek as part of the 2022 Integrated Report.

Walker Creek

In summer 2016 and 2017, San Francisco Regional Water Board staff conducted a study to evaluate the nutrient impairment in the Walker Creek watershed. Samples were collected and analyzed for a suite of water chemistry analytes (e.g., ammonia, nitrate, nitrite, total nitrogen, orthophosphate, and total phosphorous) and algae biomass indicators (benthic chlorophyll-a, benthic ash-free dry mass).

In-stream and riparian physical habitat and stream temperature data was also collected to evaluate the potential for eutrophic conditions. The 2016 data indicate the water body is probably not impaired by nutrients. Nitrogen concentrations have decreased since 2002, but high algae levels were noted in one tributary, Arroyo Sausal. The data collected from 2017 are not yet available for analysis; conclusions regarding the water body are pending the analysis of the 2017 data, which will be available in 2018. Based on the data the San Francisco Regional Water Board will complete an impairment assessment and either develop a TMDL for the whole watershed or that portion of the watershed that is impaired. If the analysis indicates that nutrients are not causing eutrophication, the San Francisco Regional Water Board will proceed with delisting Walker Creek as part of the 2022 Integrated Report.

**Petaluma River**

Regional Water Board staff conducted a study to evaluate nutrient impairment in Petaluma River and concluded that the river and its tributaries are unlikely to be impaired by nutrients. Between 2014 and 2017, San Francisco Regional Water Board staff collected a suite of water chemistry analytes (e.g., ammonia, nitrate, nitrite, total nitrogen, orthophosphate, and total phosphorous) and algae biomass indicators (benthic chlorophyll-a, benthic ash-free dry mass). Staff also collected secondary indicators of eutrophication such as continuous monitoring of dissolved oxygen and pH. In-stream and riparian physical habitat and stream temperature data was collected to evaluate the potential for eutrophic conditions. Staff presented an analysis of these data in a May 2017 public meeting and concluded the river was unlikely to be impaired by nutrients. In April 2018, a written nutrient impairment analysis will be released as part of the Petaluma River bacteria TMDL project report and transmitted to the public. These data will be used in the 2022 Integrated Report to support a delisting for nutrients. However, the San Francisco Regional Water Board staff efforts to identify and repair OWTS near the river and tributaries as part of the Petaluma River bacteria TMDL will result in a reduction of nutrients discharged to the water body.

***Justification given for Santa Ana (Region 8):*** “2016 303(d) List as approved by the Regional Board and State Board indicated a revised expected TMDL completion date.”

***Heal the Ocean/Heal the Bay Response:*** “Expected” does not imply the certainty required to meet the demands of a state regulation. Unlike some explanations provided for other waterbodies, no additional details are provided to explain this extension given for TMDL completion.

<u>Region</u>	<u>Waterbody Name</u>	<u>Counties</u>	<u>TMDL Date (with ext.)</u>
Santa Ana	Serrano Creek	Orange	2017-2021

**Serrano Creek**

Serrano Creek was added to the 2010 303(d) list by USEPA using data collected in 2004-2006. No new data were available to confirm this listing for the 2016 Integrated Report. 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. Regional Water Board staff is currently verifying whether any septic tanks still exist in the Serrano Creek watershed.

**4. *The initiation of a waiver renewal program poses serious risk to public and environmental health.***

*Heal the Ocean and Heal the Bay make this final, most important point: **The launching of a Waiver Program on the heels of State promulgated regulations is deeply problematic, as it creates an opportunity for entities to avoid compliance and thereby continue to pose serious risk to public and environmental health.***

The conditional waiver renewal will allow continued implementation of the OWTS Policy as it was adopted by the State Water Board. The conditional waiver is the formal process whereby the State Water Board ensures compliance with Policy provisions and specific conditions to protect water quality and public health while allowing local agencies to implement permitting programs approved in accordance with Policy requirements. Water Code section 13269 provides that the State Water Board or a regional water quality control board may waive the requirements for dischargers to submit reports of waste discharge and for issuance of waste discharge requirements, consistent with any applicable state or regional water quality control plan and where it is in the public interest to do so. The State Water Board adopted a conditional waiver of waste discharge requirements as part of the OWTS Policy, to implement the framework of state and local agency coordination in regulating OWTS. The conditional waiver is provided in OWTS Policy section 12.0, which also evaluates the conditions of eligibility.

By law, waivers expire five years after adoption; the conditional waiver in the OWTS Policy will expire on May 13, 2018. CWC section 13269, subd. (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 waiver conditions are described and evaluated in the Staff Report, which concludes that 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 in order to implement the requirements of the Policy.

**Clean Water Action Comments**

Clean Water Action provided a comment letter on April 6, 2018, which provided the following comments. Each of the comments and a comment response is provided below (comments were edited for length and shown in italics for clarity). The original comment letter is available at: [https://www.waterboards.ca.gov/public\\_notices/comments/owts\\_tmdl/](https://www.waterboards.ca.gov/public_notices/comments/owts_tmdl/).

- 1. Provide links to county LAMPs as well as annual reports (once submitted) on State Board webpage;*

Regional Water Boards are the agencies tasked with approving LAMPs. LAMPs may also be amended over time. Having the LAMPs posted in the State Water Board webpage increases the possibility that an outdated or revised LAMP will be accessed by the public. The Regional Water Boards post adopted LAMPs on their respective webpages; it is appropriate for that to continue to avoid errors. For those counties that are subject to multiple Regional Water Board jurisdictions, OWTS Policy Attachment 3 designates the responsible Regional Water Board for LAMP reviews. A link to all of the Regional Water Board webpages is available on the State Water Board webpage to assist people in

locating the appropriate Regional Water Board. In addition, many local agencies also post their draft or approved LAMPs on their agency webpage.

*2. Make technical and financial assistance for septic upgrades a priority for the Clean Water State Revolving Fund;*

Financial assistance is described in OWTS Policy Section 14. The OWTS Policy established a procedure to provide mini-loans to provide low interest loan assistance to private property owners for costs associated with complying with the Policy. The policy requires local agencies to administer the mini-loan program. Policy section 14.3 allows local agencies to submit their suggested loan eligibility criteria, recognizing the legislative intent of Water Code section 13291.5, which encourages assistance for private property owners whose cost of complying with the Policy exceeds one-half of one percent of the assessed value of the property. To date, no local agencies have applied to the state revolving fund (SRF) to administer a mini-loan program.

*3. Work with counties to encourage voluntary domestic well testing;*

Some local agencies require domestic well testing and septic tank pumping as part of a real estate transfer. The GeoTracker groundwater ambient monitoring and assessment (GAMA) groundwater information system integrates and displays water quality data from various sources on an interactive Google-based map. Analytical tools and reporting features help users assess groundwater quality and identify potential groundwater issues in California. GAMA has worked with Counties to collect groundwater quality from domestic wells for select Counties in California. These efforts have included outreach to obtain permission for sampling, sampling and laboratory analysis, and integration of the resulting water quality into the State's GAMA database. In addition, the State has contracted with the United States Geological Survey (USGS) to conduct shallow groundwater studies at targeted groundwater study areas across the State. The USGS conducts outreach and sampling of domestic wells to support these studies.

*4. Provide counties on an annual basis, with new water quality information that is relevant to the program.*

Water quality information is available to local agencies and the public through GeoTracker, which is a database and geographic information system (GIS) that provides online access to environmental data. Data originates at a number of facilities. The database also contains public drinking water well information furnished by the SWRCB's Department of Drinking Water (DDW). GeoTracker uses customized pages and data management tools based on commercially available software to provide users access to site information and data over the Internet and to view site locations on a map display. Users can specify individual analytes, geographic areas of interest, and/or calendar dates. The data can be downloaded for use in local agency or other entities' data management or GIS applications.

Local agencies are required to submit monitoring reports. Local agencies that implement only a Tier 1 program are required to submit the information in OWTS Policy section 3.3. Although this requirement does not directly address water quality, the monitoring requirements are relevant to the potential for water quality impacts. Local agencies that implement a Tier 2 program have additional water quality monitoring and reporting requirements. OWTS Policy section 9.3.2 requires a water quality assessment program that evaluates the potential impact of OWTS, especially in areas that may be more vulnerable to water quality degradation as described in section 9.1. Local agencies implementing a Tier 2 program are also required to submit annual reports and, every five years, an evaluation of the monitoring program and assessment of the potential impact to water quality.

5. *Given how little has been accomplished in the first five years of this waiver, we do not recommend a 5-year renewal. A two-year renewal would allow staff to fully review new county LAMP programs and assess at least one annual report. That would provide the Board at least some information about how and whether the program could or should be improved.*

The assertion that “little has been accomplished” is incorrect. The OWTS Policy included a schedule of implementation and much of the work has been completed. All of the Regional Water Boards have amended their basin plans to incorporate the OWTS Policy; many local agencies have developed, submitted, and obtained LAMP approvals; to date, the Regional Water Boards have adopted 10 TMDLs and delisted an additional 15 water bodies based on technical studies; and the Regional Water Boards’ working relationship with local agencies permitting OWTS is now a more formal, structured relationship.

The conditional waiver renewal will allow the progress described above to continue. The conditional waiver is the formal process whereby the State Water Board ensures compliance with Policy provisions and specific conditions to protect water quality and public health while allowing permitting of OWTS by local agencies. Water Code section 13269 provides that the State Water Board or a regional water quality control board may waive the requirements for dischargers to submit reports of waste discharge and for issuance of waste discharge requirements, consistent with any applicable state or regional water quality control plan and where it is in the public interest to do so. The State Water Board adopted a conditional waiver of waste discharge requirements as part of the OWTS Policy, to implement the framework of state and local agency coordination in regulating OWTS. The conditional waiver is provided in OWTS Policy section 12.0, which also describes the conditions of eligibility.

By law, waivers expire five years after adoption; the conditional waiver in the OWTS Policy will expire on May 13, 2018. CWC section 13269, subd. (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 waiver conditions are described and evaluated in the Staff Report, which concludes that 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 in order to implement the requirements of the Policy.