

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT
STAFF: Carmen Fewless
MEETING DATE: July 8, 2008

ITEM: 4

SUBJECT: **Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Tomales Bay, Lagunitas Creek, Walker Creek, and Olema Creek) – Adoption of Conditional Waiver**

DISCUSSION: The proposed Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Waiver of WDRs) addresses the Tomales Bay Pathogen Total Maximum Daily Load (TMDL), the Walker Creek Mercury TMDL, and California's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program. It is also intended to address the anticipated requirements of future sediment and nutrients TMDLs in the Tomales Bay watershed, as it requires that landowners/operators of grazing operations in the watershed implement multi-objective management practices.

Grazing in the TMDL: Grazing operations in the Tomales Bay watershed are identified in the pathogen TMDL as one category of pollutant sources that needs further control. The pathogen TMDL's implementation plan specifies required implementation measures for each of the source categories. The required implementation measures for grazing operations include evaluation of operating practices; development of comprehensive site-specific pathogen control measures; a schedule for implementing such management measures; and submittal of compliance reports documenting actions undertaken.

Use of a waiver of WDRs: Use of a conditional waiver of WDRs, rather than general WDRs or individual WDRs, is the most efficient means of uniformly addressing grazing operations pursuant to the pathogen TMDL and the Walker Creek mercury TMDL. Its use is allowed by the Water Code under circumstances present here. However, the Board retains its right to issue general WDRs or individual WDRs as appropriate in the future. The Staff Report (Appendix D) describes the basis for the Waiver and its conditions in more detail.

Waiver requirements: To comply with the proposed Waiver of WDRs, grazing facilities' landowners/operators will need to submit to the Board a Notice of Intent (NOI) that the landowner/operator intends to comply with the requirements of the Waiver of WDRs. The NOI is due on January 31, 2009. Landowners/operators will also need to complete a Ranch Water Quality Plan by November 15, 2009, comply with all conditions of the Waiver, and report

annual progress on implementation of grazing management measures that reduce or eliminate water quality problems.

Public input: The proposed Waiver of WDRs has been a topic of discussion with the Tomales Bay community since development of the pathogen TMDL and its subsequent Board adoption in 2005. Since the early 2008, the proposed Waiver of WDRs and its attachment forms have been posted to our website and made available for public review. In addition, Board staff held a public meeting at Point Reyes Station in June to receive public comment. The main issues raised in the public comments (Appendix F) related to the need for revision and clarification of the requirements listed on the attachment forms and their proposed submittal deadlines, and to requests to extend the Ranch Water Quality Plan development deadline. Board staff has revised the language of both the Waiver of WDRs and the attachment forms in response to these comments (Appendix E). The revised tentative Waiver of WDRs and its attachment forms are in Appendices A, B, and C.

Remaining concerns: A number of stakeholders remain concerned about the deadline to develop a Ranch Water Quality Plan. The pathogen TMDL's implementation plan adopted by the Board in September 2005 required that a Ranch Water Quality Plan be developed for each grazing facility by January 2009. In response to stakeholder requests and to allow for updates and modifications to these plans, Board staff has proposed in the revised Waiver of WDRs to extend this deadline to November 15, 2009, when the first annual compliance report is due. This ten-month extension would provide landowner/operators sixteen months, a reasonable amount of time, from the time the Waiver of WDRs is adopted until the Plan is to be in place. Board staff feel strongly that further delaying the preparation of the Plans, therefore delaying implementation of management practices that address pollution problems, is unjustifiable given the fact that Tomales Bay and its tributaries are impacted and that the requirement for a Ranch Water Quality Plan was initially adopted by the Board in 2005. In addition, Ranch Water Quality Plans can continue to be updated after November 15, 2009, in response to changing conditions and lessons learned during plan implementation.

RECOMMEN-
DATION:

Adoption of Conditional Waiver of Waste Discharge Requirements

APPENDICES:

- A: Revised Tentative Conditional Waiver of WDRs
- B: Attachment A: NOI form
- C: Attachment B: Checklist Form for Assessing Grazing Operations
- D: Staff Report
- E: Response to Comments
- F: Comments Received