

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESOLUTION NO. R2-2013-0039

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

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) finds that:

1) Background and Grazing Waiver Strategy

Within the Tomales Bay watershed, there are approximately 380 agricultural parcels, comprising approximately 108,000 acres, owned by about 177 unique property owners who are eligible for coverage under this Conditional Waiver of Waste Discharge Requirements (the Order or the Conditional Waiver). Grazing activities conducted on these agricultural parcels can adversely impact water quality and impair beneficial uses by discharging excessive sediment, nutrients, and pathogens (cattle manure contains both nutrients and fecal coliform). In some areas of the watershed, grazing activities may facilitate the transfer of mercury to the water column.

This Order renews Resolution No. R2-2008-0054, "Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed (Tomales Bay, Lagunitas Creek, Walker Creek, and Olema Creek) in the San Francisco Bay Region" (Attachment A), adopted on July 18, 2008 (the 2008 Waiver). The Tomales Bay watershed includes all tributaries associated with the Lagunitas, Olema, and Walker creeks that drain to Tomales Bay. Renewal is appropriate because the Water Board expects continued compliance by the majority of the enrollees subject to this Order, the Order is protective of beneficial uses, and the Order is in the public interest. The Water Board still retains the right to issue individual waste discharge requirements (WDRs) to the property owners on an as-determined basis.

To date, 97 property owners (enrollees) have submitted a Notice of Intent (NOI) to comply with the 2008 Waiver. The total acreage representing the properties operating under an NOI is approximately 68,000 acres. To date, 48 property owners within the watershed have submitted a Notice of Non-applicability (NNA), whereas 38 property owners outside the watershed have submitted an NNA. In accordance with requirements of the 2008 Waiver, enrollees have been engaged in an adaptive process and have implemented grazing management practices (MPs) such as nutrient and riparian management. Since adoption of the Tomales Bay Pathogens Total Maximum Daily Load (TMDL) in 2005, the State Water Resources Control Board (State Water Board) has contributed significant resources to assist in the implementation of the Tomales Bay Pathogens TMDL. These resources have been matched by contributions made by enrollees and local, State and federal sources and have resulted in the implementation of MPs to control pathogen discharges as required by the TMDL. Enrollees evaluated the effectiveness of these MPs in controlling fecal coliform and sediment non-point source pollution from grazing

activities. This adaptive process has resulted in evaluation of a number of MPs, including exclusion fencing, vegetated buffer strips, hardened livestock crossings, off-stream water sources for cattle, the use of attractants, and rotational grazing on a site-by-site basis.

Since Water Board adoption of the 2008 Waiver, water quality data within the watershed suggests some improvement. Further improvement is expected as all eligible grazing operations obtain coverage under the Order and other dischargers in the watershed (e.g., septic systems, dairies, and equestrian facilities) complete implementation actions as identified in the Tomales Bay Pathogen TMDL.

Significant differences between the Order and the 2008 Waiver include:

- a) New requirements for assessment and annual reporting of residual dry matter (hereinafter referred to as RDM) as discussed in the University of California's *California Guidelines for Residual Dry Matter Management on Coastal and Foothill Annual Rangelands, Rangeland Monitoring* (2002) (Series Publication 8092);
- b) Inclusion of Attachment B, Notice of Non-Applicability;
- c) Inclusion of Attachment C, Compliance and Monitoring and Annual Certification Template; and
- d) Modifications to the NOI (Attachment D) to include an email address point of contact data field.

2) Eligibility

All the following conditions must be met for property owners to be eligible for coverage under this Conditional Waiver:

- a) Must be a landowner or operator conducting Grazing Operations on Grazing Lands in the Tomales Bay watershed that are in existence as of the date of adoption of this Order or start or resume operations within the life of this Order, and
- b) Encompass an area of 50 acres or more, or
- c) Encompass an area smaller than 50 acres and are identified by Water Board staff as posing a threat to water quality.

3) Definition of Terms

- a) Landowners and operators conducting Grazing Operations on Grazing Lands are dischargers (hereinafter referred to as Discharger(s)) as they discharge or propose to discharge waste that could affect the quality of waters of the State.
- b) 'Grazing Operations' are those ranches where animals are fed or maintained on irrigated vegetation or rangeland, animals forage for a total of 45 days or more in any 12-month period, and vegetation forage growth is sustained over the parcel or ranch during the normal growing season. A Grazing Operation includes auxiliary appurtenances such as roads, reservoirs, etc.
- c) 'Grazing Lands' are lands encompassing an area of 50 acres or more, where Dischargers conduct grazing, such as ranchlands, riparian areas, and pasturelands.
- d) The Tomales Bay watershed is Tomales Bay and its major tributaries that drain to the Bay

including Lagunitas, Walker, and Olema creeks and is the geographic area identified in Attachment A, which is unchanged from the 2008 Waiver.

4) Basis for Conditional Waiver Renewal

- a) California Water Code¹ (hereinafter referred to as the CWC) section 13260, subdivision (a), requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, file with the Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board. Subdivision (b) excuses the filing requirement if the Water Board waives such requirement pursuant to CWC section 13269.
- b) CWC section 13263 authorizes the Water Board to prescribe requirements as to the nature of any discharge, existing discharge, or material change to an existing discharge. The requirements must implement relevant water quality control plans and take into consideration, among other things, the beneficial uses of the water to be protected, the water quality objectives reasonably required for that purpose, and the need to prevent nuisance. Section 13263 (i) allows the Water Board to prescribe requirements as to the nature of any discharge for a category of discharges if the discharges are produced by the same or similar operation, involve the same or similar types of waste, require the same or similar treatment standards, and are more appropriately regulated under general discharge requirements.
- c) CWC section 13269 authorizes the Water Board to waive the requirement to file ROWDs and to obtain WDRs for a specific discharge or type of discharge if the Water Board determines, after a hearing, that the conditional waiver is consistent with the applicable water quality control plan and is in the public interest. A waiver is conditional and may be terminated at any time by the Water Board. The Water Board must require compliance with the conditions pursuant to which a conditional waiver is granted. The conditions must include monitoring, unless the discharge does not pose a significant water quality threat. The conditional waiver may not exceed five years but may be renewed by the Water Board.
- d) As authorized by CWC section 13269, this Order conditionally waives the requirements to file a ROWD and to obtain WDRs pursuant to CWC sections 13260 and 13262 for discharges of waste from Grazing Lands that:
 - Are in existence as of the date of adoption of the 2008 Waiver or started or resumed operations since adoption of the 2008 Waiver;
 - Encompass an area of 50 acres or more; or
 - Encompass an area smaller than 50 acres, but Water Board staff has determined that the Grazing Operation poses a threat to water quality.

The waiver of WDRs for the above Grazing Lands is conditional upon meeting the requirements of this Order.

- e) The Water Board finds that waiving ROWDs and WDRs for Grazing Lands subject to this

¹ See State Water Board website - http://www.waterboards.ca.gov/laws_regulations/docs/portercologne.pdf

Order is consistent with the San Francisco Bay Basin Water Quality Control Plan² (Basin Plan), the State’s *Nonpoint Source Pollution Control Program Plan*, the State’s 2004 *Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program*³ (hereinafter referred to as the NPS Policy), and antidegradation requirements.

- f) The Water Board determined this Order is appropriate to implement the Tomales Bay TMDLs. General WDRs are not required to meet this implementation.

5) Basin Plan

The Basin Plan is the Water Board's master water quality control planning document.⁴ It designates beneficial uses, water quality objectives, and waste discharge prohibitions that apply to waters of the State, including surface waters and groundwater within the San Francisco Bay Region. It also includes programs of implementation to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Board, the Office of Administrative Law, and the U.S. EPA, where required.

6) Receiving Water Beneficial Uses

Pursuant to the Basin Plan and State Water Board plans and policies, including State Water Board Resolution No. 88-63 entitled *Sources of Drinking Water*, the existing and potential beneficial uses of Tomales Bay and its tributary creeks, Lagunitas, Walker, and Olema creeks are found in Table 1 below:

Table 1: Receiving Water Beneficial Uses

Beneficial Use	Tomales Bay	Walker Creek	Lagunitas Creek	Olema Creek
Agricultural Supply (AGR)			X	
Municipal and Domestic Supply (MUN)			X	
Freshwater Replenishment (FRESH)			X	X
Ocean, Commercial, and Sport Fishing (COMM)	X	X		
Shellfish Harvesting (SHELL)	X			
Cold Freshwater Habitat (COLD)		X	X	X
Marine Habitat (MAR)	X			
Fish Migration (MIGR)	X	X	X	X
Preservation of Rare and Endangered Species (RARE)	X	X	X	X
Fish Spawning (SPWN)	X	X	X	X
Warm Freshwater Habitat (WARM)		X	X	X

² See Water Board and State Water Board websites - http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/BP_all_chapter_s.pdf

³ http://www.waterboards.ca.gov/water_issues/programs/nps/docs/oalfinalcopy052604.pdf

⁴ See Water Board website - http://www.waterboards.ca.gov/rwqcb2/basin_planning.shtml

Beneficial Use	Tomales Bay	Walker Creek	Lagunitas Creek	Olema Creek
Wildlife Habitat (WILD)	X	X	X	X
Water Contact Recreation (REC-1)	X	X	X	X
Non-contact Recreation (REC-2)	X	X	X	X
Navigation (NAV)	X			

Compliance with this Order will protect the beneficial uses listed above.

7) Tomales Bay Pathogens TMDL and Associated Implementation Plan

Despite some improvement, recent monitoring of Tomales Bay and its main tributaries (Lagunitas, Walker, and Olema creeks) indicate that these waters exceed bacteria water quality objectives for shellfish harvesting and recreational waters and, as such, are impaired by pathogens. Pathogen pollution adversely affects existing beneficial uses, which include shellfish harvesting (e.g., sport and commercial oyster, clam and mussel harvesting), water contact recreation (e.g., swimming, fishing), and non – contact recreation (e.g., boating and kayaking). Tomales Bay and its tributaries have been identified as impaired for nutrients, sediment, and pathogens. Additionally, both Tomales Bay and Walker Creek are also impaired by mercury. Due to these impairments, the Tomales Bay watershed was placed on the State’s federal Clean Water Act 303(d) list.

On September 21, 2005, the Water Board adopted the Tomales Bay Pathogens TMDL to address the pathogen impairment for Tomales Bay and its major tributaries (Olema, Lagunitas, and Walker creeks). The TMDL requirements have been incorporated into the Basin Plan.

The basis for the pathogens TMDL included exceedances of the numeric standards for shellfish harvesting and recreational uses. The TMDL establishes fecal coliform density-based pollutant wasteload and load allocations for discharges of pathogens in the Tomales Bay watershed. The TMDL identified onsite wastewater treatment systems, small wastewater treatment facilities, sewage holding ponds, boat discharges, grazing lands, dairies, equestrian facilities, and municipal runoff as potential sources of pathogens to surface waters when not managed properly. The TMDL further identified that, for the grazing lands source category, coliform bacteria levels and coliform loads from the Walker Creek watershed are extremely elevated during storm periods.

The pathogens TMDL includes an implementation plan that provides a framework for actions needed to achieve water quality objectives and to protect and restore beneficial uses. This Order is consistent with the implementation plan by requiring controls on the discharges of animal waste from the Grazing Lands source category.

Table 2 below presents density-based load allocations for Tomales Bay watershed pathogens source categories that implement tributary targets, and Table 3 presents allocations to major tributaries, where they discharge to Tomales Bay. Load allocations to the tributaries reflect the highest fecal coliform concentrations that can be discharged while still attaining and maintaining the Tomales Bay shellfish harvesting water quality objectives. All entities in the watershed are responsible for meeting their source category allocations (Table 2) and the applicable geographic-based allocations (Table 3).

Table 2: Density-Based Pollutant Wasteload and Load Allocations⁵ for Dischargers of Pathogens in the Tomales Bay Watershed

Categorical Pollutant Source	Wasteload and Load Allocations for Fecal Coliform (Most Probable Number or MPN/100 mL)		
	For Direct Discharges to the Bay		For Discharges to Major Tomales Bay Tributaries
	Median ^a	90 th Percentile ^b	Log Mean ^a
Onsite Sewage Disposal	0	0	0
Small Wastewater Treatment Facilities	0	0	0
Boat Discharges	0	0	N/A
Grazing Lands	<14	<43	< 200
Dairies	<14	<43	< 200
Equestrian Facilities	<14	<43	< 200
Municipal Runoff	<14	<43	< 200
Open Space Lands (terrestrial wildlife) ^c	<14	<43	< 200
In-Bay Background (marine wildlife) ^c	<14	<43	N/A

^a Based on a minimum of five consecutive samples equally spaced over a 30-day period.
^b No more than 10% of total samples during any 30-day period may exceed this number.
^c Open space lands and the Bay contain wildlife and are therefore recognized as potential source areas. These areas are not believed to be a significant source of pathogens, and their contribution is considered natural background; therefore, no management measures are required.

Table 3: Density Based Pollutant Load Allocations for Tomales Bay Tributaries

Tributary	Allocation Fecal Coliform (MPN/100 mL) Log Mean
Walker Creek at Highway 1 Bridge	95 ^a
Lagunitas Creek at Green Bridge	95 ^a

^a Based on a minimum of five consecutive samples equally spaced over a 30-day period.

⁵ These allocations are applicable year-round. Wasteload allocations apply to any sources (existing or future) subject to regulation by a NPDES permit.

8) Walker Creek and Tomales Bay Mercury TMDLs and Associated Implementation Plans

- a) Walker Creek, in the northern portion of the Tomales Bay watershed, was placed on the Clean Water Act 303(d) list for mercury impairment. The creek flows through a former mercury mining district into Tomales Bay. Mercury-laden sediment, which originated from the former mining district, threatens fish-eating birds and aquatic life downstream of the mining district. Although a large cleanup effort at the Gambonini Mine site (the largest source of mercury in the Walker Creek watershed) occurred in 1999, mercury is still present in the channel and floodplain sediment deposits downstream of the Gambonini Mine.

The Water Board adopted a TMDL for mercury in Walker Creek on January 23, 2007. The TMDL requirements have been incorporated into the Basin Plan.⁶ The TMDL for Walker Creek is 0.5 mg mercury per kg suspended sediment, and the TMDL for Soulajule Reservoir is 0.04 ng dissolved methylmercury per liter water. Concentration-based load allocations for Walker Creek and Soulajule Reservoir mercury sources are shown in Table 4 below.

Between 2000 and 2009, the average total mercury in sediment in the Walker Creek delta decreased by 43% from 1.6 to 0.9 mg/kg.

Table 4: TMDL Mercury Wasteload and Load Allocations

Source	Wasteload Allocation	Load Allocation
Gambonini Mine site NPDES Permit No. CAS000001 ^a	5 mg mercury per kg suspended sediment	N/A
Soulajule Watershed and Reservoir	N/A	0.04 ng dissolved methylmercury per liter water 0.5 mg mercury per kg suspended sediment
Downstream depositional features ^b	N/A	0.5 mg mercury per kg suspended sediment
Bay-wide	N/A	0.2 mg mercury per kg suspended sediment
Global Atmospheric Sources	N/A	0.7 kg mercury per year deposited directly on the Bay water surface
Background ^c	N/A	0.2 mg mercury per kg suspended sediment
^a See State Water Board website - http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/induspmt.pdf ^b Applies to sediment released from depositional features (creek beds, banks, and floodplains) downstream of the Gambonini Mine and Soulajule Reservoir. ^c The background allocation applies to all areas in the Walker Creek watershed outside of the influence of the Gambonini Mine site or Soulajule Reservoir.		

⁶ See San Francisco Bay Regional Water Board website – http://www.waterboards.ca.gov/rwqcb2/basin_planning.shtml

- b) Due to the way mercury behaves in the aquatic environment, certain grazing operations and MPs in the floodplain of Walker Creek may inadvertently increase the discharge of mercury-laden sediments and increase the potential for production of methylmercury. Methylmercury can be present or be produced from mercury by a series of biological and chemical processes in nature and can pose a threat to aquatic organisms.
- c) To avoid the inadvertent discharge of mercury, Dischargers in the Walker Creek watershed downstream of the Gambonini Mine must incorporate MPs to minimize the discharge of mercury or the production of methylmercury.
- d) The Water Board adopted a TMDL for mercury in Tomales Bay on July 3, 2012. The TMDL requirements have been incorporated into the Basin Plan. Implementation actions of the Tomales Bay Mercury TMDL, in part, require management of Grazing Operations within the Walker Creek watershed. To comply with the Order, MPs that minimize mercury discharges and methylmercury production are required. Evaluation of the Tomales Bay Mercury TMDL will consider, in part, the effectiveness of MPs deployed in the watershed.

9) Consistency with Nonpoint Source Implementation and Enforcement (NPS) Policy

- a) The discharge of pollutants from agricultural Grazing Lands within the San Francisco Bay Region is a nonpoint source discharge of waste that could affect the quality of waters of the State under CWC section 13260. The State's NPS Policy, requires that all nonpoint source pollution be regulated through WDRs, waivers to WDRs, or discharge prohibitions.

The NPS Policy encourages the Water Boards to "be as creative and efficient as possible in devising approaches to prevent or control nonpoint source pollution." This includes development of third-party programs to assist dischargers in complying with order requirements and assure the Water Board and the public that actions are being taken to reduce nonpoint source pollution. Though dischargers may participate in third-party programs, organizationally, the programs must be managed by someone other than a discharger.

- b) The NPS Policy requires that conditional waiver enrollees prepare and execute a nonpoint source pollution control implementation program that does the following:
 - i) States the purpose of the program such that nonpoint source pollution is addressed in a manner that ultimately achieves and maintains water quality objectives and beneficial uses, including any applicable anti-degradation requirements.
 - ii) Includes a description of MPs and other program elements that are expected to be implemented to ensure attainment of the nonpoint source pollution control implementation program's stated purpose(s), the process to be used to select or develop MPs, and the process to be used to ensure and verify proper MPs implementation.
 - iii) Includes a time schedule to achieve water quality objectives and corresponding quantifiable milestones designed to measure progress toward reaching the specified objectives. CWC sections 13242 (b) and 13263 (c) and the NPS Policy recognize that there are instances where it will take time to achieve water quality objectives. The effort may involve all or some of various processes, including: identification of measurable long-term and interim water quality goals; a timeline for achieving these goals;

identification and implementation of pollution control MPs; provision(s) for maintenance of the implementation actions; provision(s) for additional actions if initial actions are inadequate; and, in the case of third-party organizations, identification of a responsible third party to lead the efforts.

- iv) Includes a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements.
- v) Includes sufficient feedback mechanisms so that the Water Board, Dischargers, and the public may determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required.

Consistent with the NPS Policy, this Order requires development of, and compliance with, a nonpoint source pollution control implementation program (as described in Finding 9.b. above) in the form of a Ranch Water Quality Plan.

10) Maintenance of High Quality Waters in California

State Water Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*⁷, finds:

“[w]henver the existing quality of the water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. Any activity which produces or may produce a waste...and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.”

This Order is consistent with Resolution 68-16 because it requires MPs to be implemented in an iterative manner to arrive at the best practicable treatment or control of the discharge to protect beneficial uses, to prevent pollution or nuisance, and to attain the highest water quality possible, providing maximum benefit to the people of the State.

11) California Environmental Quality Act

The Water Board is the lead agency for this project under the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) (CEQA). This action involves the renewal of the 2008 Waiver for existing Grazing Operations. It does not involve expansion of use beyond the scope of the 2008 Waiver. To the extent this Order applies to ranches covered by the 2008 Waiver, the

⁷ See State Water Board website -

http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf

Order is exempt from CEQA pursuant to section 15301 of the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15301), which provides an exemption for existing facilities.

The Order is also exempt under sections 15307 and 15308 of the CEQA Guidelines for CEQA activities taken by regulatory agencies to assure maintenance, restoration, or enhancement of a natural resource or the environment.

In addition, the Water Board adopted a negative declaration on July 18, 2008, concurrent with the adoption of the 2008 Waiver (see Attachment E). Since that time, there has been no expansion of Grazing Operations or of the geographic area covered by this Order.

Concurrent with this Order, the Water Board is adopting an addendum to the 2008 negative declaration, pursuant to Title 14 of the California Code of Regulations, section 15164, to support the decision that a subsequent negative declaration is not necessary for this Order. The addendum is included in Attachment E and lists the following reasons:

- a) This Order makes only minor technical changes and additions to the 2008 Waiver.
- b) There have been no substantial changes in this Order that would result in new significant environmental effects or increases in the severity of previously identified less-than-significant effects;
- c) There have been no changes with respect to the Grazing Lands or Grazing Operations, which would require major revisions of the previous negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified less-than-significant effects; and
- d) There is no 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 negative declaration was adopted.

For these reasons, the Water Board relies on the previous negative declaration and the current addendum and finds that the conditions of this Order will avoid any significant environmental effects or mitigate the effects to a point where clearly no significant effects would occur. There is no substantial evidence, in light of the whole record before the agency, that the Order, as conditioned, may have a significant effect on the environment.

12) Monitoring Under Waivers of Waste Discharge Requirements

CWC section 13269 includes the following provisions:

- a) The conditions of the waiver shall include “the performance of individual, group or watershed-based monitoring,” unless the Water Board determines that the discharges do not pose a significant threat to water quality.
- b) “Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver’s conditions. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and

type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.”

- c) “Monitoring results shall be made available to the public.”
- d) The Water Board may include as a condition of a waiver the payment of an annual fee established by the State Water Board. At the time of this hearing, the State Water Board has not established annual fees with respect to rangeland and irrigated vegetation grazing operations.
- e) Inspections of MPs related to water quality shall be performed as required by the Ranch Water Quality Plan.⁸

The Discharger operates a ranch that discharges waste subject to this Order. The wastes contain fecal coliform bacteria and discharges cause or contribute to exceedances of the Basin Plan water quality objective for fecal coliform bacteria. Therefore, the monitoring reports required by this Order and the Ranch Water Quality Plan are necessary to assure compliance and track grazing management practice implementation type, extent, and effectiveness. This Order requires compliance with monitoring conditions consistent with CWC section 13269.

13) Intent to Renew Conditional Waiver

This Order is a five year renewal of the 2008 Waiver, with minor modifications. The term of the Order cannot exceed five years, but the Water Board may renew it after holding a public hearing. The Water Board may terminate this Order at any time.

The Water Board may renew a waiver if it finds that the waiver is consistent with any applicable state or regional water quality control plans and is in the public interest. (CWC § 13269). As described herein, this Order is consistent with applicable State policies and the Basin Plan.

Relevant factors in determining whether a waiver is in the public interest include the following:

- Whether the discharger is implementing reasonable practices to minimize the deleterious effects of the discharge;
- Whether a feasible treatment method or set of MPs exist to control the pollutants in the discharge; and
- Whether waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Water Board to focus its limited resources on conducting field oversight, public outreach, and, where necessary, enforcement.

The adoption of this Order is in the public interest because it:

- a) Includes conditions that will reduce and prevent pollution and nuisance and protect beneficial uses of the waters of the State;

⁸ San Francisco Bay Water Board Tomales Bay Pathogen TMDL Webpage - http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/tomalesbaypathogenstmdl.shtml

- b) Contains more specific conditions for the protection of water quality compared with other regulatory options;
- c) Provides a more efficient and more timely mechanism of complying with water quality objectives than other regulatory options;
- d) Provides for an efficient and effective use of limited Water Board resources;
- e) Provides flexibility for the Dischargers by providing an option of complying through a third-party entity;
- f) Enhances beneficial uses of water and sustainability of ranching operations; and
- g) Will result in continued regulation of nonpoint source discharges from these Grazing Operations.

14) Endangered Species Act

This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). Dischargers shall be responsible for meeting all requirements of the applicable act(s). A discharge that is in violation of either act is not a discharge that is authorized or in compliance with the terms and conditions of this Order. Dischargers shall obtain permits as necessary and comply with permit conditions and all other applicable federal, State, county and local laws and regulations.

15) Safe, Clean, Affordable and Accessible Drinking Water

It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring Dischargers to take actions to reduce discharges to surface waters through implementation of MPs.

16) Public Meeting

Water Board staff conducted a public workshop on the Conditional Waiver on October 3, 2013, at the Marconi Conference Center in Marshall. The Water Board conducted a public hearing on December 11, 2013, and considered all testimony and evidence concerning this matter.

THEREFORE BE IT RESOLVED that, pursuant to CWC section 13269 subdivision (a), WDRs are waived for Grazing Operations on Grazing Lands in the Tomales Bay watershed provided the conditions listed below are met.

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

Eligibility for Coverage

Grazing Operations on Grazing Lands that meet the following conditions are eligible for coverage under this Order:

- a) Are located in the Tomales Bay watershed and are in existence as of the date of adoption of this Order or start or resume operations within the life of this Order, and
- b) Encompass an area of 50 acres or more, or
- c) Encompass an area smaller than 50 acres and are identified by Water Board staff as posing a threat to water quality.

A Discharger conducting Grazing Operations on Grazing Lands that meets the above conditions shall submit a completed Notice of Intent Form (Attachment D) as well as documentation that demonstrates how the Discharger is satisfying, or intends to satisfy, all the conditions of this Order. If a Discharger submitted a completed NOI in compliance with the 2008 Waiver, and there have been no changes in the Grazing Operations, the Grazing Lands identified in the NOI, or ownership or operation of the Grazing Lands or Grazing Operations, then this requirement is deemed satisfied.

These submittals shall be sent to the Water Board no later than February 15, 2014, to the following address:

San Francisco Bay Regional Water Board
ATTN: Grazing Operations Waiver Program
1515 Clay Street, Suite 1400
Oakland, CA 94612

May Be Excluded from Coverage

A Discharger conducting Grazing Operations on Grazing Lands that meet any of the following conditions may be excluded for coverage under this Order by completing an NNA (Attachment B):

- a) The property is not used for grazing.
- b) Encompass an area smaller than 50 acres and do not pose a threat to water quality. These Grazing Operations are still expected to follow MPs.
- c) Dairy facilities already fully covered under existing general WDRs or a conditional waiver of WDRs for confined animal facilities.
- d) Point source discharges to waters of the United States, as defined by federal law, are not authorized under this Order. Point source is defined as any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. (Clean Water Act § 502 (14).).

Properties previously excluded from the 2008 Waiver were based on: locations outside of the watershed, agricultural activities incompatible with the 2008 Waiver (horse ranches, orchards, dairies),

and open space/water districts. These properties may need to enroll in the waiver or obtain WDRs in the future if conditions or operations change or the potential for water quality impacts are found. A Discharger meeting any of the above conditions who has not previously filed an NNA shall submit such notice by February 15, 2014 (Attachment B).

Conditions

In order to receive the benefit of this Order in lieu of individual WDRs, an eligible Discharger shall comply with the terms and conditions specified herein:

1) Ranch Water Quality Plan (RWQP)

- a) The RWQP shall be kept onsite and made available for review by Water Board staff at all times. Elements of the RWQP shall include:
 - i) A ranch map, or aerial photo on a 1:12,000 scale;
 - ii) Description of MP objectives, including improvements in practices to reduce fecal coliforms and mercury in local surface waters to achieve TMDL load allocations;
 - iii) An inventory of resources based on visual observations and/or existing reports;
 - iv) An assessment of ranch conditions, consistent with the checklist titled *Checklist Form For Assessing Grazing Operations in the Tomales Bay Watershed* (Attachment F), identifying controllable discharge points for pathogens, nutrients, and sediment;
 - v) Identification of sediment legacy discharge points, if appropriate;
 - vi) Assessment of residual dry matter (RDM), as specified in the University of California's, *California Guidelines for Residual Dry Matter Management on Coastal and Foothill Annual Rangelands, Rangeland Monitoring* (2002) (Series Publication 8092)⁹;
 - vii) All MPs currently implemented at the ranch;
 - viii) A schedule for implementation of newly-selected MPs to comply with the standards of this Order (Conditional Waiver Standards) (see Conditional Waiver Standards, section 4 below);
 - ix) An implementation schedule for management of grazing activities, structural improvements, livestock management, and land treatments to comply with the Conditional Waiver Standards; and
 - x) An implementation schedule for road-erosion control and prevention actions and actions to avoid increases in erosion of existing unstable areas due to grazing practices to comply with the Conditional Waiver Standards.

The checklist (Attachment F) is intended to guide the Discharger in the inventory of resources and the preparation of the RWQP. Alternative checklists may be used, provided Water Board staff approves of them in writing. An approved RWQP template can be downloaded at the Region 2 Tomales Bay TMDL pathogen webpage: http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/tomalesbaypathogenstmdl.shtml.

- b) The RWQP shall also include a Plan for Compliance Monitoring and Reporting that describes the measures, protocols, and associated frequencies that will be used to verify the degree to which MPs are being implemented and are achieving the conditions of the Conditional

⁹ See UC Davis website - <http://californiarangeland.ucdavis.edu/Publications%20pdf/8092.pdf>

Waiver and/or to provide feedback for use in modifying and updating the RWQP. Attachment C provides the Compliance and Monitoring Annual Certification template the Discharger may use to report compliance with the Order to the Water Board.

2) Deadlines and Compliance Schedule

The Dischargers must meet the following deadlines and compliance schedule:

- a) The Dischargers shall have a completed RWQP by February 15, 2014.
- b) The implementation schedule shall be completed and included in the RWQP by February 15, 2014, and may be updated yearly thereafter.
- c) The Plan for Compliance Monitoring and Reporting shall be completed and included in the RWQP by February 15, 2014. The Discharger shall submit an annual certification to the Water Board that its ranch meets the conditions of this Conditional Waiver, documenting any MPs implemented, an evaluation of the effectiveness of MPs, and records of any inspections where a water quality problem was identified, as well as the MPs taken to correct these problems. These certifications are due initially November 15, 2014, and annually thereafter. The annual certification reporting period is defined as being between October 1 and September 30. Failure to comply with the submittal of the annual certification by the November 15 deadline may subject the landowner/operator to monetary enforcement of up to \$10,000 a day.
- d) Each Discharger shall comply with the implementation timelines in the RWQP, a plan whose elements are described on Condition 1 of this Order. Implementation of the RWQP shall occur during the timeframe of this Order. The overall implementation of the RWQP may extend beyond the life of this Order and will be reviewed upon any renewal of this Order.

3) General Waiver Conditions

- a) The Dischargers must implement measures identified in the RWQP and make annual management practice adaptive management adjustments to the RWQP to reduce fecal coliform indicator bacteria concentrations in surface waters to achieve the 30-day MPN threshold outlined in Tables 2 and 3 above.

In accordance with the schedule developed in the RWQP, the following conditions apply:

- i) The Dischargers shall not cause or contribute to conditions of pollution or nuisance as defined in CWC section 13050.
- ii) The Dischargers shall comply with all water quality objectives of the Basin Plan.
- iii) The Dischargers shall not cause or contribute to exceedances of any regional, State, or federal numeric or narrative water quality standard stipulated in the Basin Plan.
- iv) This Order does not authorize the discharge of any waste not specifically regulated herein. Waste specifically regulated under this Order includes: livestock wastes and fecal coliform bacteria. Examples of wastes not specifically regulated under this Order include

hazardous materials and human or mining wastes.

- v) Groundwater influenced by irrigation activities and livestock management shall be of such quality so as to assure protection of all actual or designated beneficial uses.
- b) The Water Board may conduct inspections pursuant to CWC section 13267(c):

“In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.”

Water Board staff or its authorized representatives may investigate the property of persons subject to this Order to ascertain whether the purposes of the CWC are being met and whether the Discharger is complying with the conditions of this Order. The following conditions apply to enrollees under this Order:

- i) Except in cases of an unauthorized discharge or emergency circumstances, Water Board staff will typically contact landowners/operators a minimum of 72 hours prior to site inspection.
- ii) Enrollees under the Conditional Waiver shall allow Water Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, videotaping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order.
- iii) If entry or consent to access to property is unreasonably withheld, the Executive Officer may terminate the applicability of the Order to the Discharger withholding access and the Discharger shall submit a ROWD to the Water Board pursuant to CWC section 13260. Failure to file a ROWD and unauthorized discharges may result in enforcement action pursuant to CWC sections 13261 and 13385(m) respectively.

4) Conditional Waiver Standards

MPs identified in the RWQP shall be implemented so as to achieve the following Conditional Waiver Standards:

- a) Minimize delivery of sediment from ranching lands to surface waters;
- b) Minimize delivery of pathogens, mercury, and nutrients from ranching lands to surface waters;
- c) Establish manure management operations designed to minimize runoff from entering watercourses;
- d) Manage animal use areas to minimize sediment/pathogen/nutrient runoff to water courses;
- e) Construct and maintain access and ranch roads to minimize erosion;
- f) Manage existing Grazing Operations to prevent additional erosion of legacy sediment

- delivery sites; and
- g) Design, implement and manage animal crossings to minimize pathogen/sediment/nutrient runoff into watercourses.

5) Implementation of Management Practices

- a) The Discharger shall meet the Conditional Waiver Standards by implementing site-specific MPs that reduce water pollution due to grazing and protect water quality. In selecting what MPs to use at the Grazing Operation, the Discharger shall take in consideration the vegetation, terrain, kind of livestock, and general operation procedures.
- b) A list of potential MPs may be found in the Natural Resources Conservation Service (NRCS) Field Office Technical Guide, the California EPA grazing management guidelines guidance found at the State Water Board website: http://www.waterboards.ca.gov/water_issues/programs/nps/encyclopedia/1e_graz.shtml or equivalent rangeland management guidance documents. The NRCS Field Office Technical Guide can be obtained at local NRCS offices or the Conservation District office.¹⁰

6) Compliance Monitoring and Reporting

- a) The Discharger shall conduct visual inspections of the Grazing Operation to verify that it has implemented chosen MPs and met the Conditional Waiver Standards.
- b) The Discharger shall, in addition to inspecting the Grazing Operation, visually inspect the closest receiving water, upstream and downstream of the Grazing Operation to monitor any change in water quality resulting from ranch operations. These inspections are necessary to determine the effectiveness of the MPs implemented at the Grazing Operation.
- c) Inspections shall occur twice during the dry season and at least monthly during the rainy season, preferably before and after a forecasted storm event. One of the dry season inspections shall be conducted in the month of September, prior to the beginning of the rainy season, and shall encompass the area of the Grazing Operation to ensure the ranch readiness for the rainy season. A Discharger is not required to perform inspections during dangerous weather conditions or when a storm begins after scheduled ranch operating hours.
- d) Pre-storm inspections of the entire ranch shall ensure that appropriate MPs are properly installed and maintained; post-storm inspections are to evaluate whether MPs have functioned adequately and whether additional measures or maintenance work is necessary.
- e) The Discharger shall maintain records of inspections, monitoring observations, and any response taken to eliminate potential sources of sediment, nutrients, and pathogens from the Grazing Operation for the term of this Order (minimum of five years). If a water quality problem is found during an inspection, the Discharger shall record the nature of the problem, and the MPs taken to correct it, and report it in the Annual Certification document (see 6.f. below).

¹⁰ See USDA website - http://efotg.sc.egov.usda.gov/efotg_locator.aspx

- f) The Discharger shall measure and record measurements of RDM prior to fall rains as specified in the University of California's *California Guidelines for Residual Dry Matter Management on Coastal and Foothill Annual Rangelands, Rangeland Monitoring* (2002) (Series Publication 8092). These measurements shall be included in the Annual Certification of Compliance document. If minimum RDM levels are not met, the Discharger shall provide an explanation in the Annual Certification of Compliance document.

- g) The Discharger shall report any spills or discharges that threaten human health or water quality within 24 hours of becoming aware of its occurrence. The incident shall be reported to the Water Board and to the California Emergency Management Agency (CalEMA).¹¹ The Discharger shall leave a message on the Water Board's spill hotline at 510-622-2369. The message shall include the time, date, and place of the discharge and shall be recorded in writing by the Discharger. A written report shall be submitted to the Water Board office within five (5) business days of the Discharger becoming aware of the incident. The written submission shall contain:
 - i) The approximate date, time, and location of the discharge;
 - ii) A description of the spill or discharge (type) and its cause;
 - iii) The rate, volume, and duration of the discharge;
 - iv) The period of discharge, including dates and times, and if the discharge has not been corrected, the anticipated time it is expected to continue; and
 - v) The steps taken to correct the discharge and/or a time schedule and a plan to implement corrective actions necessary to prevent the recurrence of such discharges.

7) Third-Party Program

Pursuant to CWC sections 13267 and 13269, water quality monitoring and reporting of wastes discharged must be performed on a site-specific or watershed basis. The Discharger may do so individually or in cooperation with other similar Dischargers in the watershed. If a Third Party Program, as described in Finding 9.a. above, is developed, the entity providing the third party role shall be approved by the Executive Officer.

8) Permit Reopening, Revision, Revocation and Severability

- a) The Water Board will review this Order periodically and may revise requirements when necessary for reasons including, but not limited to, adoption of more stringent applicable water quality standards in the Basin Plan or changes in State plans, policies or regulations that would affect the requirements for the discharges.

- b) The provisions of this Order are severable and if any provision of this Order, or the application of any such provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.

¹¹ See CalEMA website - <http://www.calema.ca.gov/Pages/default.aspx>. Call: 1-800-852-7550. CalEMA is operational 24 hours/day.

9) Termination Procedures

a) Ranch Closure or Change in Land Use

In the event of closure or change in land use of the ranch, the Discharger shall file a Notice of Termination with the Water Board. The Water Board may revoke coverage under this Order at any time due to change in use and require the Discharger to submit a ROWD and obtain coverage under a general WDR, an individual WDR, an NPDES permit, or other permit.

b) Noncompliance With Waiver Conditions

The Discharger shall, within 21 days of receiving notice from the Water Board that its ranch no longer qualifies for coverage under this Order for failure to comply with its terms and conditions, file an updated ROWD. The ROWD shall be submitted with the applicable filing fee in order to obtain coverage under WDRs. Discharges that could affect the quality of the waters of the State may commence only in accordance with CWC section 13264 (a).

c) Change of Control or Ownership of Land

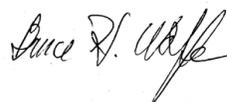
In the event of any change in control or ownership of land, the Discharger shall immediately submit a Notice of Termination to the Water Board. The notice shall include the contact information of the succeeding Discharger in order for the original Discharger to be relieved of its responsibility to comply with this Order. The Water Board will request an NOI for coverage under this Order from the succeeding Discharger and must receive a completed NOI within 45 days of receipt of such request.

10) Failure to Comply with Terms and Conditions of this Waiver

A Discharger who fails to comply with the terms and conditions of this Order is subject to an enforcement action, including but not limited to, administrative civil liabilities. Discharges that could affect the quality of the waters of the State may commence only in accordance with CWC section 13264(a). The Water Board's Executive Officer reserves the right to terminate a Discharger's coverage under this Order, and the Water Board may impose individual WDRs after proper notice and hearing (CWC § 13263).

This Conditional Waiver Expires on December 10, 2018.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of the Renewal of Conditional Waiver of Waste Discharge Requirements for Grazing Operations in the Tomales Bay Watershed adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on **December 11, 2013**.



Bruce H. Wolfe
Executive Officer

Digitally signed by Bruce H. Wolfe
DN: cn=Bruce H. Wolfe, o=SWRCB, ou=Region 2, email=bwolfe@waterboards.ca.gov, c=US
Date: 2013.12.13 15:54:17 -08'00'

Attachments:

Attachment A: Map of the Tomales Bay Watershed

Attachment B: Notice of Non-Applicability

Attachment C: Compliance and Monitoring and Annual Certification Template

Attachment D: Notice of Intent

Attachment E: CEQA Addendum

Attachment F: Checklist Form for Assessing Grazing Operations in the Tomales Bay Watershed