

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

TENTATIVE RESOLUTION NO. R2-2018-00XX

**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:

Background and Scope of Coverage

1. Improperly managed grazing by livestock can adversely affect water quality and impair beneficial uses through the erosion, transport, and discharge of sediment into surface waters and the discharge into surface water of nutrients and pathogens from animal wastes. In some areas of the watershed, grazing activities may facilitate the transfer of mercury to the water column. This Order implements the Basin Plan, specifically the Tomales Bay pathogens and mercury total maximum daily loads (TMDLs), the Walker Creek mercury TMDL, and the Lagunitas Creek sediment TMDL, which identify improperly managed grazing as contributing to the pathogen, mercury and sediment impairments.
2. This Resolution No. R2-2018-00XX (Conditional Waiver or Order) renews Resolution No. R2-2013-0039, "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", adopted on December 11, 2013 (2013 Waiver). Renewal is appropriate because the Water Board expects continued compliance by the majority of the enrollees, the Order is protective of beneficial uses, and the Order is in the public interest. The Water Board retains the right to issue individual waste discharge requirements (WDRs) on an as-determined basis to owners/operators of grazing lands should they be unable to comply with the requirements of the Order.
3. This Conditional Waiver will continue to apply to approximately 108,000 acres of rangeland within the Tomales Bay watershed. To date, 122 enrollees, representing approximately 74,600 acres, have enrolled in the 2013 Waiver. A total of 56 property owners within the watershed have submitted a Notice of Non-applicability (NNA) and 40 property owners outside the watershed have submitted an NNA.
4. This Conditional Waiver covers the discharges of sediment, nutrients, pathogens and mercury from Grazing Lands, defined below, and specifies measures to address erosion and to protect riparian areas. This Conditional Waiver does not apply to discharges of process wastewater, fertilizers, pesticides, or manure and wastewater discharges to land, including spray irrigation of liquid manure.
5. In accordance with the requirements of the 2013 Waiver, enrollees have engaged in adaptive

water protection strategies through implementation of management practices (MPs). These include, but are not limited to, rotating herds to lessen terracing and manage forage production, retaining appropriate levels of vegetation on rangeland to filter nutrients, pathogens, and sediment; and protecting riparian areas using exclusion fencing, off-stream water sources, hardened cattle-crossings, attractants, and by managing cattle access to creeks.

6. Since adoption of the TMDLs, the State Water Resources Control Board (State Water Board) has directed significant grant resources to assist in their implementation. These financial resources have been matched by contributions made by enrollees as well as local, State, and federal agencies and have resulted in the implementation of MPs to help enrollees achieve the requirements of the Order.
7. Differences between this Order and the 2013 Waiver include the addition of:
 - a) Attachment G - Notice of Termination: This form explains the process for terminating coverage under the Order, simplifying the process for both the enrollee and the Water Board.
 - b) Modifications to the Compliance and Monitoring Annual Certification Template (Attachment E) that help ensure Conditional Waiver requirements are met each year and that the Ranch Water Quality Plan (RWQP) is up-to-date.

These differences do not change the substance of the requirements of the 2013 Waiver. They provide a formal means for enrollees who no longer meet the Conditional Waiver requirements to terminate coverage and add clarifying language to the annual reporting requirements.

Eligibility

8. This Conditional Waiver applies to landowners or operators 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 either:
 - a) Encompass an area of 50 acres or more, or
 - b) Encompass an area smaller than 50 acres and are identified by Water Board staff as posing a threat to water quality.
9. Landowners who are already covered under the Conditional Waiver of Waste Discharge Requirements for Existing Dairies within the San Francisco Bay Region (Resolution No. R2-2015-0031) or under the General Waste Discharge Requirements for Confined Animal Facilities within the San Francisco Bay Region (Order No. R2-2016-0031) do not need to seek coverage under this Conditional Waiver. Those orders also require dischargers to implement MPs to minimize discharges of sediment, pathogens, and nutrients from their grazing operations, and they impose similar monitoring and reporting requirements.
10. Landowners already enrolled under the 2013 Waiver do not need to reapply for coverage under this renewed Conditional Waiver to remain in compliance.

Definition of Terms

11. For purposes of the Order:

- a) Landowners and operators conducting Grazing Operations on Grazing Lands are 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' refer to those facilities where animals are fed or maintained on rangeland, animals forage for a total of 45 days or more in any 12-month period, and vegetation forage growth is sustained over the lot or facility during the normal growing season. A Grazing Operation includes auxiliary appurtenances such as roads, reservoirs, etc.
- c) 'Grazing Lands' are lands grazed by livestock or where livestock have access, including ranchlands, riparian areas, and pasturelands.
- d) The Tomales Bay watershed is the total of all catchment areas draining to Tomales Bay and is the geographic area identified in Attachment A, which is unchanged from the 2013 Waiver.

Regulatory Framework

12. California Water Code (Water Code or 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 appropriate Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board, unless the requirement is waived pursuant to CWC section 13269.
13. The Water Board may waive WDRs when it finds, pursuant to CWC section 13269, that a waiver of submission of ROWDs and/or issuance of WDRs is in the public interest. CWC section 13269 authorizes the Water Board to waive WDRs for a specific discharge or type of discharge if the waiver is consistent with the Basin Plan and is in the public interest. Relevant factors in determining whether a waiver is in the public interest include the following: whether the discharger is implementing reasonable practices to minimize the deleterious effects of the discharge; whether a feasible treatment method or set of management practices exist to control the pollutants in the discharge; and whether waiving ROWDs and/or WDRs will adequately protect beneficial uses while allowing the Water Board to focus its limited resources to conduct field oversight, public outreach, and, where necessary, enforcement.
14. Pursuant to Water Code section 13263(i), the Water Board may prescribe general WDRs and/or waivers of WDRs for a category of discharges if the discharges are produced by the same or similar operations, involve the same or similar types of waste, require the same or similar treatment standards, and are more appropriately regulated under general WDRs or waivers than individual WDRs.
15. Water Code section 13269 provides that waivers of WDRs shall be conditional, may not exceed five years but may be renewed, and may be terminated at any time by the Water Board.
16. The Water Board may include as a condition of a waiver of WDRs the payment of an annual fee established by the State Water Board. (Wat. Code § 13269, subd. (a)(4)(A).)

17. The Water Board, in compliance with Water Code sections 13269 and 13263, has reviewed the 2013 Waiver and determined that it should be replaced by a new conditional waiver. Renewal is appropriate because the Water Board expects continued compliance by the majority of the current enrollees, and the Conditional Waiver is protective of beneficial uses, implements the Basin Plan, and serves the public interest.

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

- a) Includes conditions that are intended to reduce and prevent pollution and nuisance and protect beneficial uses of the waters of the State;
- b) Contains more specific conditions for the protection of water quality compared to 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 Dischargers by providing an option of complying through a third-party entity; and,
- f) Enhances beneficial uses of water and enhances sustainability of Grazing Operations.

18. Water Code section 13269 includes the following provisions:

- a) Waivers of WDRs 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.

The Conditional Waiver requires Discharger compliance with monitoring conditions consistent with Water Code section 13269. Dischargers will implement a Monitoring and Reporting Program (Condition 6). The Monitoring and Reporting Program is necessary to ensure compliance with the terms and conditions of the Conditional Waiver. The Goal of the Monitoring and Reporting Program is to prevent or reduce uncontrolled waste discharges and to protect water quality; it requires regular compliance monitoring inspections and identification of further MPs needed to improve water quality (Attachment E).

Water Quality Control Plan for the San Francisco Bay Basin

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

Implementation Plans for pathogens and mercury in Tomales Bay, for mercury in Walker Creek, and for sediment in Lagunitas Creek.

A. Receiving Water Beneficial Uses

20. 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 Creek, Walker Creek, and Olema Creek, 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
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.

B. Total Maximum Daily Loads and Associated Implementation Plans

21. 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 for mercury. Due to these impairments, the Tomales Bay watershed was placed on the State’s Clean Water Act 303(d) list of impaired waters.

The Water Board has adopted TMDLs for pathogens and mercury in Tomales Bay, for mercury in Walker Creek, and for sediment in Lagunitas Creek. Discharges from grazing are identified as contributing to the sediment, pathogen and mercury impairments. The TMDLs address pathogen levels exceeding numeric standards for shellfish harvesting and recreational uses and exceedances of water quality objectives for mercury resulting from historical mercury mining at the Gambonini Mine. The Water Board adopted a TMDL for sediment in Lagunitas Creek that addresses sediment impairment affecting cold freshwater habitat, preservation of rare and

endangered species, and fish spawning. Each TMDL contains an Implementation Plan that specifies the actions necessary to protect and restore beneficial uses.

22. Grazing lands in the Tomales Bay watershed are identified in their respective TMDLs as categorical pollutant sources. The TMDL Implementation Plans specify required implementation measures for each categorical pollutant source. The required implementation measures for grazing operations include evaluating operating practices; developing comprehensive site-specific pathogen and sediment control measures; developing an implementation schedule for such management measures; and submitting progress reports documenting actions undertaken.
23. This Conditional Waiver is consistent with the TMDL Implementation Plans because it requires each Discharger to (1) submit a Notice of Intent (NOI) that describes the facility, identifies site-specific grazing management measures to reduce animal waste and sediment runoff, and sets forth a schedule to implement identified management measures; and (2) report progress on implementation of grazing management measures that reduce or eliminate animal waste runoff.

Nonpoint Source Implementation and Enforcement Policy

24. This Conditional Waiver satisfies the State Water Board's 2004 Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Policy (Nonpoint Source Enforcement Policy), which requires that all nonpoint source pollution, including discharges from grazing lands, be regulated through WDRs, waivers of WDRs, or discharge prohibitions. Consistent with the Nonpoint Source Enforcement Policy, this Order requires development of, and compliance with, a nonpoint source pollution control implementation program in the form of a Ranch Water Quality Plan.
25. The Nonpoint Source Enforcement Policy encourages the Water Boards to "be as creative and efficient as possible in devising approaches to prevent or control nonpoint source pollution." This includes development of third-party programs to assist dischargers in complying with requirements of waivers of WDRs and assure the Water Board and the public that actions are being taken to reduce nonpoint source pollution. The third-party role is restricted to entities that are not actual dischargers under State Water Board/Regional Water Board permitting and enforcement jurisdiction.
26. Because this Conditional Waiver does not authorize fertilizer or wastewater application to land, the grazing operations covered by this Conditional Waiver are anticipated to pose a low threat to groundwater.

Antidegradation

27. State Water Board Resolution 68-16, Statement of Policy with Respect to Maintenance of High Quality Waters in California, finds "whenever the existing quality of the water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with the maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. Any activity which produces or may

produce a waste and which discharges or proposes to discharge to existing high quality waters will be required to meet WDRs which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.”

28. This Order is consistent with Resolution 68-16 because it does not authorize degradation of existing water quality. It requires MPs to be implemented in an iterative manner to arrive at the best practicable treatment or control (BPTC) of the discharge to protect beneficial uses, to prevent pollution or nuisance, and to address water quality impairments in Tomales Bay and its tributaries.
29. There is no specific set of technologies, practices, or treatment devices that can be said to achieve BPTC or ‘best efforts’ universally in the watershed. This Order, therefore, establishes a set of performance standards that must be achieved and an iterative planning approach that will lead to implementation of BPTC/best efforts. The iterative planning approach will be implemented as two distinct processes, 1) establishment of a baseline set of universal ranch water quality management standards combined with upfront evaluation, planning and implementation of management practices to attain those goals, and 2) additional planning and implementation measures if degradation trends threaten to impair a beneficial use (i.e., water quality objectives are not being met). Taken together, these processes are considered BPTC/best efforts. The planning and implementation processes that Dischargers must follow on their ranches should lead to on-the-ground implementation of the optimal practices and control measures to address waste discharges from Grazing Operations.

California Environmental Quality Act

30. The Water Board is the lead agency for this project under the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) (CEQA). This Conditional Waiver involves the renewal of the 2013 Waiver for existing Grazing Operations and sets forth requirements for the “operation, repair, maintenance, permitting, licensing, or minor alteration of existing facilities.” It does not authorize expansion of use beyond the scope of the 2013 Waiver. To the extent this Conditional Waiver applies to Grazing Operations and Grazing Lands covered by the 2013 Waiver, the Conditional Waiver 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.

Two other CEQA exemptions may also be applicable:

- a) CEQA Guidelines Exemption 2 for Replacement of Existing Structures (Cal. Code Regs., tit.14, § 15302) exempts “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.” Consistent with the categorical exemption for Replacement of Existing Structures, covered facilities may replace or reconstruct fencing or crossings on the facility to ensure proper function in compliance with this Conditional Waiver.
- b) CEQA Guidelines Exemption 4 for Minor Alterations (Cal. Code Regs., tit.14, § 15304)

exempts “minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes...” Consistent with the categorical exemption for Minor Alterations, covered facilities may make improvements, such as planting of vegetation or restoration of eroded areas.

The Water Board adopted a Negative Declaration (ND) on July 18, 2008, concurrent with the adoption of Resolution No. R2-2008-0054, “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”, adopted on July 8, 2008 (2008 Waiver). In 2013, the Water Board adopted an addendum to the negative declaration as part of the 2013 Waiver renewal. This renewed Conditional Waiver does not expand or restrict the scope of coverage, nor does it authorize expansion of Grazing Operations or the geographic area covered by this Order.

Concurrent with this Order, the Water Board is adopting an addendum to the 2008 ND pursuant to Title 14 of the California Code of Regulations, section 15164. The addendum, included in Attachment B, concludes that, in accordance with Cal. Code Regs., tit. 14, §§ 15162, 15164, a subsequent ND is not necessary for the Order for the following reasons:

- a) This Order renewal makes only minor technical changes and additions to the 2013 Waiver;
- b) There have been no changes in the scope or applicability of the Conditional Waiver or its requirements 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 known physical changes on Grazing Lands or at Grazing Operations that have caused significant new environmental effects or increased the severity of previously identified less-than-significant environmental effects, such as would require major revisions of the previous ND; and,
- d) No new information of substantial importance has emerged since the ND was adopted that would affect the conclusions of the ND.

For these reasons, the Water Board relies on the 2008 ND 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 Water Board, that the Order, as conditioned, may have a significant effect on the environment.

Human Right to Water

31. 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. (Wat. Code § 106.3.) This Conditional Waiver promotes that policy by requiring management practices designed to protect beneficial uses relevant to human health, including MUN and REC-1.

Endangered Species

32. This Conditional Waiver 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 Wildlife Code §§ 2050-2097) or the federal Endangered Species Act (16 U.S.Code §§ 1531-1544). Dischargers shall be responsible for meeting all requirements of the applicable endangered species act. A discharge that is deleterious to fish, plant life, mammals, or bird life, or is otherwise in violation of California Fish and Wildlife Code section 5650 is not a discharge that is authorized nor in compliance with the terms and conditions of this Conditional Waiver. The Discharger shall obtain permits as necessary and comply with permit conditions and all other applicable federal, State, county, and local laws and regulations.

Public Meeting

33. The Water Board has notified the Dischargers and all known interested agencies and persons of its intent to renew the Conditional Waiver. The Water Board circulated the Conditional Waiver for 30 days of public comment, starting on August 3, 2018. The Water Board conducted a public hearing in Oakland and considered all testimony and evidence concerning this matter.

THEREFORE BE IT RESOLVED that, pursuant to Water Code 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) 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 either:
- 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 meeting the above conditions shall submit a completed Notice of Intent (NOI, Attachment C) 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 or 2013 Waivers, 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, this requirement is deemed satisfied.

These submittals shall be sent to the Water Board no later than **March 15, 2019**, to the following address or email:

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

Email: R2GrazingWaiver@waterboards.ca.gov

Exclusions from Coverage

A Discharger conducting Grazing Operations on Grazing Lands that meet any of the following conditions may be excluded for coverage under the Conditional Waiver by completing a Notice of Non-Applicability (NNA, Attachment D):

- a) The property is not used for grazing.
- b) The Grazing Operations encompass an area smaller than 50 acres and do not pose a threat to water quality. These Grazing Operations are still expected to follow best management practices for their facilities and may be required to obtain WDRs on a case-by-case basis if the potential for water quality impacts are found.
- c) The Discharger operates a confined animal facility already covered under existing General WDRs for Confined Animal Facilities or a dairy already covered under a Conditional Waiver of WDRs for Existing Dairies, Resolution Nos. R2-2016-0031 and R2-2015-0031, respectively.

A Discharger who meets any of the conditions above and who has not previously filed an NNA shall submit such notice by March 15, 2019.

Conditions

In order to receive the benefit of the Conditional Waiver in lieu of individual regulation, an eligible Discharger shall comply with the terms and conditions specified herein:

1) Ranch Water Quality Plan (RWQP)

The Ranch Water Quality Plan (RWQP) shall be kept on site and available for review by Water Board staff at all times. Elements of the RWQP shall include:

- a) A ranch map, or aerial photo on a 1:12,000 scale, that includes the location of pastures, roads, fence lines, water sources and other MPs designed to protect water quality;
- b) Description of MP objectives, including improvements in practices to reduce fecal coliform, sediment and mercury in local surface waters to achieve the TMDL load allocations;
- c) An inventory of resources based on visual observations and/or existing reports;
- d) An assessment of the Grazing Operations, per 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;
- e) Identification of legacy sediment discharge points (e.g., gullies, landslides), if appropriate;

- f) 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* (2006) (Series Publication 8092);
- g) Description of all MPs implemented at the ranch as part of Grazing Operations;
- h) A schedule for implementation of proposed MPs to comply with the standards of this Order (Condition 4);
- i) An implementation schedule for management of grazing activities, structural improvements, livestock management, and land treatments to comply with the Conditional Waiver standards; and,
- j) An implementation schedule for road-related and grazing-related erosion control and prevention actions to avoid increases in erosion from existing, unstable areas (e.g., gullies, landslides) within the Grazing Operation.

The Attachment F checklist 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 Grazing Waiver webpage:

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/agriculture/grazing/tomalesbay_grazing.html

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 the MPs are being implemented and are achieving the waiver conditions and/or to provide feedback for use in modifying and updating the RWQP. Attachment E provides the Compliance and Monitoring Annual Certification (Annual Certification) template the Discharger may use to report compliance with the Order to the Water Board.

2) **Deadlines and Compliance Schedule**

Dischargers must meet the following deadlines and compliance schedule:

- a) RWQP shall be completed by April 15, 2019. Dischargers already enrolled in the Conditional Waiver do not need to produce a new RWQP but need to keep their existing RWQP updated to reflect current conditions.
- b) Implementation schedules shall be completed and included in the RWQP by April 15, 2019, and may be updated yearly thereafter, as needed.
- c) Each Discharger shall comply with the implementation timelines in the RWQP prepared pursuant to Condition 1. Initial 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.
- d) The Plan for Compliance Monitoring and Reporting shall be completed and included in the RWQP by April 15, 2019. The Discharger shall submit an Annual Certification to the Water Board that its Grazing Operations meet 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 to the Water Board annually by November 15. The Annual Certification reporting period is defined as being between October 1 and September 30. Failure to comply with Annual Certification submittal by the November 15 deadline may subject the Discharger to monetary enforcement of up to \$10,000 a day. (Wat. Code § 13385, subd. (c).)

3) General Conditions

- a) The Dischargers must implement measures identified in the RWQP prepared pursuant to Condition 1 and make annual adaptive management adjustments to the RWQP to reduce fecal coliform indicator bacteria concentrations and sediment loads in surface waters.

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 Water Code 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) The Dischargers' livestock management and irrigation activities shall assure protection of all actual or designated beneficial uses of groundwater.
- b) The Water Board may conduct inspections pursuant to Water Code 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 Water Code 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 a Discharger 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 Water code section 13260. Failure to file a ROWD and unauthorized discharges may result in enforcement action pursuant to Water Code sections 13261 and 13385(m) respectively.

4) **Grazing Performance Standards**

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

- a) Minimize delivery of **sediment** from Grazing Operations to surface waters;
- b) Minimize delivery of **pathogens, mercury, and nutrients** from Grazing Operations 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 watercourses;
- 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 (MPs)**

- 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 into consideration the vegetation, terrain, type of livestock, and general operation procedures. If waste discharges from a Grazing Operation continue to threaten water quality, then additional MPs shall be implemented.
- b) A list of potential management practices may be found in the Natural Resource Conservation Service Field Office Technical Guide, the California EPA grazing management guidelines guidance found at www.waterboards.ca.gov/water_issues/programs/nps/encyclopedia/1e_graz.shtml, or equivalent rangeland management guidance documents. The Field Office Technical Guide can be obtained at local offices of the USDA Natural Resources Conservation Service or the Conservation District office.

6) **Compliance Monitoring and Reporting**

- a) The Discharger shall conduct visual inspections of the Grazing Operation to verify that MPs identified in the RWQP have been implemented and that Conditional Waiver Standards are being met.

- 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 facility operations. These inspections are needed to determine the effectiveness of Grazing Operation MPs.
- 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 entire area of the Grazing Operation to verify MP implementation and readiness for the rainy season. A Discharger is not required to perform inspections during dangerous weather conditions or when a storm begins after scheduled facility operating hours.
- d) Pre-storm inspections of the entire ranch facility shall ensure that appropriate MPs are properly installed and maintained; post-storm inspections are to evaluate whether management practices have functioned adequately and whether additional measures or maintenance work is needed.
- 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, the MPs taken to correct it, and report it in the Annual Certification document, as described in Condition 6)g.
- f) The Discharger shall measure and record measurements of Residual Dry Matter (RDM) prior to fall rains as specified in the *University of California 2006, California Guidelines for Residual Dry Matter Management on Coastal and Foothill Annual Rangelands, Rangeland Monitoring Series Publication 8092*. These measurements shall be included in the Annual Certification document, as described in Condition 6)g. If minimum RDM targets are not met, the Discharger shall provide an explanation for not meeting the targets in the Annual Certification document.
- g) The Discharger shall submit an Annual Certification (Attachment E) to the Water Board that certifies its facility meets the conditions of the Conditional Waiver, documenting any required mitigation measures, 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 November 15 annually; newly enrolled Dischargers shall submit their first certification by November 15, 2019.
- h) 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 Office of Emergency Services (CalOES). The Discharger shall leave a message on the Water Board's spill hot-line 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. CalOES is operational 24 hours a day. A written report shall be submitted to the Water Board office within five 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 noncompliance event and its cause;

- iii) The rate, volume, and duration of the discharge;
- iv) The period of noncompliance, including dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,
- v) The steps taken to correct discharge and/or a time schedule and a plan to implement corrective actions necessary to prevent the recurrence of such discharges.

7) Third-Party Program

Pursuant to Water Code 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 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.

9) Termination Procedures

- a) Ranch Closure or Change in Land Use
In the event of closure or change in land use of the ranch facility, the Discharger shall file a Notice of Termination (Attachment G) 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 general WDRs, individual WDRs, an NPDES permit, or other permit.
- b) Noncompliance With the Conditional Waiver
The Discharger shall, within 21 days of receiving notice from the Water Board that its facility 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 Water Code section 13264, subdivision (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 a 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 Water Code section 13264, subdivision (a). The 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 (Wat. Code § 13263, subd. (a)).

This Conditional Waiver expires on October 11, 2023.

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 **October 10, 2018**.

Bruce H. Wolfe
Executive Officer

Attachments:

- Attachment A:** Map of the Tomales Bay Watershed
- Attachment B:** CEQA Addendum
- Attachment C:** Notice of Intent
- Attachment D:** Notice of Non-Applicability
- Attachment E:** Compliance and Monitoring Annual Certification Template
- Attachment F:** Checklist Form for Assessing Grazing Operations in the Tomales Bay Watershed
- Attachment G:** Notice of Termination