STAFF RESPONSE TO PUBLIC COMMENTS

DRAFT STATEWIDE WATER QUALITY CONTROL POLICY FOR SITING, DESIGN, OPERATION, AND MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS AND CONDITIONAL WAIVER RENEWAL

APRIL 04, 2023

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2023 OWTS POLICY RENEWAL STAFF RESPONSE TO PUBLIC COMMENTS

INTRODUCTION

On September 16, 2022, State Water Resources Control Board (State Water Board) staff released a proposed amendment of the statewide Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy), Conditional Waiver Renewal, and Staff Report including the California Environmental Quality Act (CEQA) addendum for a 45-day public comment period.

The State Water Board received 8 public comment letters from interested parties, addressing the categories listed in the table below. State Water Board staff reviewed and considered all comments in preparation of proposed OWTS Policy revisions. This Response to Comment document provides a summary of similar comments under nine comment categories and a State Water Board staff response. The individual comment summaries organized by comment number and commenter are included in Appendix A.

Category Number	Comment Category
1	Attachment 2, Total Maximum Daily Loads
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Abbreviations and Acronyms	Terms
303(d) Listing Policy	State Water Board Water Quality Control Policy for Developing California's Clean Water Act section 303(d) List (2015). State Water Board Integrated Report program webpage
ADU	Accessory Dwelling Unit
ANSI	American National Standards Institute
APMP	Advanced Protection Management Program
Attachment 2	OWTS Policy Attachment 2, Tables 5 and 6
CEQA	California Environmental Quality Act
CTD	Combined Treatment and Dispersal Systems
IAPMO	International Association of Plumbing & Mechanical Officials
LAMP	Local Agency Management Program
NSF	National Sanitation Foundation
OWTS	Onsite Wastewater Treatment Systems
OWTS Policy	Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems State Water Board OWTS Policy program webpage
Regional Water Board(s)	Regional Water Quality Control Board(s)
SED	Substitute Environmental Document
SNMP	Salt and Nutrient Management Plan
State Water Board	State Water Resources Control Board
TMDL	Total Maximum Daily Load
USEPA	U.S. Environmental Protection Agency
Water Boards	Collectively, the State Water Board and Regional Water Boards

COMMENTERS AND ASSOCIATED COMMENT LETTERS

Public comment letters submitted by the following commenters are available at the following web portal:

File Transfer Portal Link: https://ftp.waterboards.ca.gov/?u=PCL-FTP&p=8ZHs8m
Username: N A
Password: NA

Comment Letter	Number of Comments	Comment Numbers	Commenters	Representative(s)
1	13	1.01 – 1.13	California Coastkeeper Alliance	Cody Philips
2	5	2.01 – 2.05	Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability	Jennifer Clary, Kyle Jones, Michael Claiborne
3	5	3.01 – 3.05	County of San Diego, Department of Environmental Health and Quality	Linda Turkatte
4	1	4.01	Eljen Corporation	Jim King
5	3	5.01 – 5.03	Heal The Ocean	Hillary Hauser
6	13	6.01 – 6.13	Infiltrator Water Technologies	David Lentz
7	15	7.01 – 7.15	Robert Crandall	Robert Crandall (consultant to Infiltrator Water Technologies)
8	25	8.01 – 8.25	Timothy R. O'Brien	Timothy R. O'Brien
	Total Comments: 80			

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Response to Comments

Comment No.	Comment Category 1: Attachment 2, Total Maximum Daily Loads
1.1 1.2 1.3 1.5 1.10 1.11 1.12	**Commenter(s):** California Coastkeeper Alliance **Comment Summary:** The commenter states: a. The Regional Water Quality Control Boards (Regional Water Boards) are not prioritizing the creation of total maximum daily loads (TMDLs) by the set deadlines due to inadequate resources or lack of staffing. The commenters recommend that the State Water Board does not extend water body TMDL completion deadlines unless the relevant Regional Water Board is awaiting State Water Board, Office of Administrative Law, or US EPA approval of an otherwise complete TMDL. Additionally, only remove impaired water bodies if there is new information that fully supports delisting a water body from the Clean Water Act 303(d) list, sufficient data to demonstrate that Onsite Wastewater Treatment Systems (OWTS) are not causing or contributing to a water body's impairment, or if there is a non-TMDL action that appropriately manages OWTS discharges. b. Extending the TMDL completion deadlines in OWTS Policy Attachment 2, Table 5 and 6 (Attachment 2) violates Water Code section 13269(e). c. The State Water Board removal of water bodies from Attachment 2 violates the Clean Water Act section 303(d) or the State Water Board Water Quality Control Policy for Developing California's Clean Water Act section 303(d) List (2015) (Section 303(d) Listing Policy) delisting requirements. **Response:** The proposed OWTS Policy or Staff Report has not been revised in response to comment. Refer to the justifications in section 3.4.3 of the Staff Report for Attachment 2 water body revisions. a. State Water Board staff worked with the Regional Water Boards on the proposed Attachment 2 revisions including the TMDL date extensions included in the OWTS Policy. The State Water Board and the Regional Water Boards (Water Boards) are responsible for identifying impaired water bodies, including those likely to be impaired by pathogens and nitrogen from OWTS. These impairments may be addressed through the development of TMDLs, which include timelines for

Comment No.	Comment Category 1: Attachment 2, Total Maximum Daily Loads
	implementation. The Regional Water Boards are primarily responsible for drafting TMDLs, implementation timelines, basin plan amendments, and evaluating the associated scientific and policy information. The Regional Water Boards must prioritize competing projects for staff resources, including decisions to prioritize TMDL development across many impaired watersheds and water bodies. Extending the TMDL completion dates does not negate a TMDL being adopted to address the applicable impairments. Extending the TMDL completion dates does defer the expiration of the waiver for OWTS within the area of an Advanced Protection Management Program and the need for the Regional Water Board to issue waste discharge requirements, general waste discharge requirements, waivers of waste discharge requirements, or require corrective action for such OWTS. By extending the TMDL completion dates, the local agency can continue to manage OWTS, including those within the area of an Advanced Protection Management Program. b. Extending the TMDL completion deadlines does not violate Water Code section 13269(e). Waiver conditions are specified in Section 12 of the Policy. The relevant condition is 12.6, which provides "the OWTS shall comply with and meet *any applicable* TMDL implementation requirements, special provisions for impaired water bodies, or supplemental treatment requirements imposed by Tier 3 (emphasis added)." If the State Water Board exercises its policy making discretion to extend a deadline for TMDL completion, then there will not be any applicable TMDL implementation requirements until the TMDL is completed. c. The water bodies in Attachment 2 were originally added because Water Board staff had reason to believe that OWTS *may* have contributed to the source of pathogens or nitrogen. If a water body is proposed to be removed from Attachment 2, it is primarily due to the Water Boards' current understanding that OWTS are not likely to be the source of the impairment and the actions being taken outside of the OWTS Policy address what is believed to be causing the impairment. A water body does not need to be delisted from the 303(d) impaired waters list to be removed from Attachment 2. Attachment 2 is intended to identify water bodies where, based on information available, it is likely that operating OWTS will be a contributing source of pathogens or nitrogen and therefore it is anticipated that OWTS would receive a loading reduction, and it is likely that new OWTS would contribute to the impairment. Attachment 2 does not duplicate the 303(d) impaired waters list or follow the same adoption or delisting process. Attachment 2 of the OWTS Policy is subject to updating over time based on additional information (2012 Final OWTS Policy Substitute

Comment No.	Comment Category 1: Attachment 2, Total Maximum Daily Loads
	Environmental Document (SED) page 29). Existing OWTS would continue to be subject to local standards and applicable codes for siting, design, operation, and maintenance and applicable water quality standards, including those in Regional Water Board basin plans. The proposed OWTS Policy retains the requirement that new and replacement OWTS that discharge within 600 feet of a water body listed in Attachment 2 are required to install supplemental treatment. Tier 3 requires new and replacement OWTS within 600 feet of impaired water bodies listed on Attachment 2 provide nitrogen or pathogen treatment and disinfection if there is no approved TMDL or Local Agency Management Program (LAMP) special provisions for that water body.
1.4 1.6 1.7 1.8 1.9 1.10	**Commenter(s):** California Coastkeeper Alliance **Comment Summary:** The Commenter states that the removal of the waterbodies listed below from Attachment 2 does not provide adequate justification that OWTS are not causing or contributing impairments, and request that the OWTS Policy be amended to ensure that these waterbodies are not removed from Attachment 2: a. Walker Creek, b. Serrano Creek, c. East Garden Grove Wintersburg Channel, d. San Jose Creek Reaches 1 and 2, e. Rincon beach **Response:** The Water Boards are responsible for identifying water bodies likely to be impaired by pathogens and nitrogen from OWTS and evaluating the associated scientific and policy information associated with proposed related actions. The Regional Water Boards are primarily responsible for drafting TMDLs, implementation timelines, Regional Water Board basin plan amendments, and evaluating the associated scientific and policy information associated with proposed related actions. Existing OWTS would continue to be subject to local standards and applicable codes for siting, design, operation, and maintenance and applicable water quality standards, including those in the Regional Water

Comment No.	Comment Category 1: Attachment 2, Total Maximum Daily Loads
	Board basin plans. The proposed Staff Report has been revised in response to the comments; however, the proposed OWTS Policy has not been revised in response to comments. a. The San Francisco Regional Water Board staff conducted a study that concluded that Walker Creek Watershed has nitrogen concentrations that indicate the watershed is not impaired by nutrients. b. Through a survey conducted in 2003, Regional Water Board staff found only two septic tanks potentially located within the Serrano Creek watershed. It is unlikely that new OWTS will be installed in this area because of its rapid development and the current availability of sewer lines. c. All impaired surface water bodies, including East Garden Grove Wintersburg Channel require a TMDL with restrictions on the sources of pollution to correct the impairment. The water bodies that are specifically listed in Attachment 2 of the proposed OWTS Policy are those water bodies for which Regional Water Board staff believe, based on reviews of available information, that (1) existing OWTS are sources of pathogens or nitrogen compounds and therefore will receive loading reductions in the TMDL, and (2) it is likely that new OWTS discharging within 600 feet of the water bodies would contribute to the impairment. Attachment 2 of the OWTS Policy is also subject to updating over time based on additional information (SED page 29). The proposed Staff Report has been revised in response to the comments; however, the proposed OWTS Policy has not been revised in response to comments. d. Since San Jose Creek Reaches 1 and 2 water body pathogen impairments are being addressed by the Amendment to the Water Quality Control Plan – Los Angeles Region to incorporate the TMDL for Indicator Bacteria in the San Gabriel River, Estuary and Tributaries (June 10, 2015) that went into effect June 14, 2016. This TMDL includes Load Allocations for OWTS, which apply to San Gabriel River and its tributaries, including San Jose Creek Reaches 1 and 2. Nonpoint source Load Allocations equal to zero days of allowable exceedances for the single sample and geometric mean targets are assigned to onsite wastewater treatment systems, golf courses, horse and livestock facilities, and irrigated agricultural lands within the watershed. e. State Water Board staff confirmed with the Los Angeles Regional Water Board that all impacted homes have been consolidated for wastewater and OWTS are no longer present to impact Rincon Beach, therefore OWTS is no longer the impairment source. The Carpinteria Sanitary District confirmed that all Rincon Beach homeowners have subscribed to their services (personnel

Comment No.	Comment Category 1: Attachment 2, Total Maximum Daily Loads
	communication, Craig Murray, General Manager Carpinteria Sanitary District to LB Nye, June 2022).
1.13	**Commenter(s):** California Coastkeeper Alliance **Comment Summary:** The commenter states that the following three watersheds listed in Attachment 2, noted below, have had their TMDL deadline extended without any accompanying justification within the Staff Report and requests the State Water Board to provide reasoning for these decisions. • Canada Larga (Ventura River Watershed): Extended from 2024 to 2028. • San Antonia Creek (Tributary to Ventura River Reach 4): Extended from 2017 to 2024. • Ventura River Reach 3 (Weldon Canyon to Confl w/ Coyote Creek): Extended from 2017 to 2024. **Response:** The proposed OWTS Policy has been revised in response to comment to remove the 2028 TMDL completion date extension for Canada Larga (Ventura River Watershed); refer to the revised Attachment 2. The three reaches are all associated with the Ventura River Watershed, therefore, the TMDL completion dates for Canada Larga (Ventura River Watershed), San Antonia Creek (Tributary to Ventura River Reach 4), and Ventura River Reach 3 (Weldon Canyon to Confl. w/ Coyote Creek) will be kept as 2024, which was the anticipated date from the OWTS Policy renewed in 2018.

Comment No.	Comment Category 1: Attachment 2, Total Maximum Daily Loads
5.1	**Commenter(s):** Heal the Ocean **Comment Summary:** The commenter suggests that a mechanism other than the TMDL and Attachment 2 process is needed and the current process is long, arduous, and skips over obvious polluting situations like “daylighting” of septic systems and/or leach fields in areas of high groundwater, where septic waste makes its way into both groundwater and surface water, and eventually the ocean. **Response:** The proposed OWTS Policy and Staff Report has not been revised in response to comment. Comment is out of scope for the proposed OWTS Policy. Tier 4 of the OWTS Policy includes provisions for OWTS requiring corrective actions. Further, OWTS owners are required to comply with applicable local standards and codes for siting, design, operation, and maintenance and applicable water quality standards, including those in the Regional Water Board basin plans. The findings of the statewide wastewater needs assessment approved by the State Water Board through Resolution 2022-0019 will be reviewed to assess any applicable and feasible revision recommendations for the State Water Board to consider during future renewals of the OWTS Policy.

Comment No.	Comment Category 2: Tier Requirement Changes
3.3 3.4 3.5 5.2 8.9	**Commenter(s):** County of San Diego, Department of Environmental Health and Quality Heal the Ocean Timothy R. O’Brien **Comment Summary:** a. The commenter states that the proposed OWTS Policy language for section 9.1 significantly

Comment No.	Comment Category 2: Tier Requirement Changes
	changes the meaning beyond that originally intended in the OWTS Policy initially adopted in 2012 related to a Tier 2 program and should not be adopted. The commenter further states that the proposed OWTS Policy language for section 9.2.2 specifically "and subject to Tier 3 of this Policy" is redundant and confusing and suggests that other language can be used to clarify the intent of the added language. b. Additionally, the commenter states that the added condition of "Groundwater is vulnerable to pollution from OWTS" to be considered when developing a LAMP in section 9.1.8 is not needed, as Tier 1 or Tier 2 standards are based on providing a sufficient and acceptable level of protection to groundwater, and must be clarified within the context of the findings in the SED and State Water Board Resolution No. 2012-0032, and states that the degree of vulnerability to be considered for this condition must be removed or clarified and should be in accordance with the level of protection afforded by the Tier 1 minimum standards. c. Lastly, commenters suggest adding the term "surface water" to Staff Report section 3.4 to ensure clarity and reiterate the importance of taking steps that are more protective of water quality by the Regional Water Boards and local agencies. **Response:** a. The proposed OWTS Policy section 9.1 has been revised to partially address comment. The changes are proposed by staff to further clarify the authorities that local agencies and Regional Water Boards currently have in determining system design, siting, and other requirements for systems covered under LAMPs. OWTS Policy section 9.1.1 is followed by section 9.1.2-9.1.12 (e.g., dispersal system is located in an area with fractured bedrock) which contain other specific conditions to make the provision's intent clear, even though they generally can be categorized under hydrogeological conditions. The proposed OWTS Policy section 9.2.2 has also been revised to partially address comment to remove the redundant mention of "and subject to Tier 3 of this Policy" within the context of process to address systems requiring Tier 3 standards under a LAMP through special provisions. Existing, new, and replacement OWTS that are near impaired water bodies may be addressed by a TMDL and its implementation program, or special provisions contained in an approved LAMP. If there is no TMDL or special provisions, new or replacement OWTS within 600 feet of impaired water bodies listed in Attachment 2 must meet the applicable specific requirements of Tier 3. Under

Comment No.	Comment Category 2: Tier Requirement Changes
	OWTS Policy section 9.1, the local agency and Regional Water Board can also coordinate on considerations for different and/or additional LAMP requirements for areas of concern to prevent or reduce further or future impairment or water quality impacts from OWTS. Where there are discrepancies or additional impaired areas, the local agencies may coordinate or petition their Regional Water Boards to have areas of concern covered. If appropriate, there may be special provisions added for areas of concern for OWTS that a local agency (or regional water board) identifies, such as areas with high density OWTS, challenging site conditions, shallow groundwater, etc. Those areas may not have caused an impairment to a waterbody to be listed on the 303(d) list but we also want to proactively prevent further impairments by appropriate management of OWTS. There may be cases where "special provisions" are appropriate for OWTS that are not necessarily near an impaired waterbody and Tier 3 enables the local agency to develop such special provisions to address those areas. San Mateo County has done it in their approved LAMP. b. The proposed OWTS Policy or the Staff Report have not been revised in response to comment. The proposed OWTS Policy circulated for public comment September 16, 2022 included a proposed section 9.1.8 to clarify where groundwater vulnerability is considered by local agencies in developing a LAMP. This language does not change existing OWTS Policy conditions, it only further clarifies the intent of the provisions. c. The Staff Report section 3.4.2 has been revised in response to comment, however the proposed OWTS Policy has not been revised in response to comment. The State Water Board staff did not propose changes to the OWTS Policy surface water considerations. However, the term "surface water" was added to the Staff Report to provide clarity and to emphasize the importance of water quality protections for both groundwater and surface water.
8.7 8.8	**Commenter(s):** Timothy R. O'Brien **Comment Summary:** The commenter recommends the following changes to the proposed OWTS Policy to address Accessory Dwelling Unit (ADU) requirements: a. Revise the proposed OWTS Policy to clarify that wastewater discharges from ADU OWTS are

Comment No.	Comment Category 2: Tier Requirement Changes
	subject to all the requirements in the OWTS Policy. b. Clarify what happens when an ADU OWTS is permitted at a previously ranked Tier 0 OWTS. Are both OWTS transferred to the new tier? Is the existing OWTS allowed to remain as a Tier 0 OWTS? Because it is included in the California Code of Regulations, the proposed OWTS Policy should be revised to make clear that the Plumbing Code applies to all OWTS in the state and that it is the minimum acceptable standard. c. Add a new OWTS Policy section 9.1.14 that reads, "Geographic areas where more than ten percent of properties have permitted an ADU." d. Add a new OWTS Policy section 9.1.15 that reads, "Geographic areas with groundwater quality degraded by pathogens, nitrate, or salinity, as determined by a regional water board pursuant to the Water Quality Control Policy for Recycled Water (2018) section 6.1.3.7 e. Clarify proposed OWTS Policy section 9.2.8 to make clear that Regional Salt and Nutrient Management Plans (SNMPs) may not authorize wastewater discharges that do not comply with the basin plan. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. "ADU OWTS" are not distinguished from other types of OWTS regulated by the OWTS Policy. b. An existing Tier 0 OWTS remains within Tier 0 so long as it complies with requirements in OWTS Policy section 6, regardless of the type of any additional construction on the property. If an OWTS currently in Tier 0 expands its treatment capacity, thus constituting a replacement system, it must comply with requirements in the applicable tier. A new system installed to serve new construction or additions on a property with an existing system must comply with all requirements applicable to a new system. c. The requested language for geographic areas where more than ten percent (10%) of properties have permitted ADUs and the implication that it causes significant changes or impacts is overly broad, since not all ADUs receiving permits will be discharging to unconsolidated systems and not all permits result in new ADU construction or discharges. d. New or replacement OWTS must meet applicable Tier 1, 2, or 3 requirements to qualify for the conditional waiver in the OWTS Policy.

Comment No.	Comment Category 2: Tier Requirement Changes
	e. The requested language regarding SNMPs is out of scope for the proposed OWTS Policy. The Regional Water Boards have broad Water Code authority to implement programs, policies, and other regulatory mechanisms designed to protect the beneficial uses for waters of the state in their basin plans. Per the Water Quality Control Policy for Recycled Water (2018), SNMPs were designed as a tool for addressing groundwater basins in the state that contain salts and nutrients exceeding or threatening to exceed water quality objectives established in the applicable Regional Water Board basin plans. Not all basin plans currently include adequate implementation procedures for achieving or ensuring compliance with water quality objectives for salts and nutrients. Salts and nutrients from all sources must be managed on a basin-wide or watershed-wide basis in a manner that ensures attainment of water quality objectives and protection of beneficial uses. The most effective way to address salt and nutrient loading is typically through the development of regional or subregional SNMPs rather than imposing requirements solely on individual recycled water projects or other individual sources of salts and nutrients. The OWTS Policy requires compliance with any applicable basin plan prohibitions of discharges from OWTS as one of its foundational conditions (OWTS Policy sections 2.1, 3.1, 4.2, and 9.2.5). State Water Board staff recommend this be re-emphasized though implementation. Section 9.2 and subsection 9.2.8 of the Policy state that during the detailed development of the scope of coverage for a LAMP, additional consideration should be given to SNMP development and implementation, which could impact the scope of coverage for a LAMP, including details of authorized projected flows and types of OWTS (considering, e.g., site evaluation, siting, design and construction) to be authorized or covered under the LAMP. State Water Board OWTS staff will continue coordination efforts with recycled water and SNMP staff during implementation. However, the requested changes (e.g., SNMP prohibitions) are out of scope and are more appropriate to consider in any proposed revisions to the Water Quality Control Policy for Recycled Water (2018), amendments to a basin plan, or any revised provisions of a particular SNMP.
8.14	**Commenter(s):** Timothy R. O'Brien **Comment Summary:** Commenter suggests a revision to OWTS Policy Attachment 1 (schedule), Regional Water Board basin

Comment No.	Comment Category 2: Tier Requirement Changes
	plan alignment (2024), and the local agency annual reports and water quality assessment report due dates. **Response:** The proposed OWTS Policy has been revised in response to comment. See associated Attachment 1 revisions. Further, the purpose of Attachment 1 is to set the general implementation timeline for OWTS Policy adoption. Any guidance to implement the OWTS Policy requirements will be provided during implementation and made available publicly (e.g., on the program webpage).

Comment No.	Comment Category 3: Reporting/Scheduling
2.4 8.11	**Commenter(s):** Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability Timothy R. O'Brien **Comment Summary:** a. Commenters states that the State Water Board provide counties, on at least an annual basis, with new water quality information that is relevant to the program. b. One commenter does not recommend the proposed OWTS Policy section 9.3.4 changes stating that it will result in all water quality assessments being delivered to the Regional Water Boards at one time. The commenter recommends the proposed change be deleted and revised to establish a schedule that will result in water quality assessments being submitted on a date that will allow timely analysis when considering future renewals of the OWTS Policy. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is related to ongoing OWTS Policy implementation. As feasible with existing resources, State Water Board staff intend to update its publicly available databases and program web pages with relevant information as reports become available during ongoing OWTS Policy implementation. b. The proposed OWTS Policy section 9.3.4. has been revised in response to comment. The current revolving water quality assessment report deadlines create regulatory uncertainty for

Comment No.	Comment Category 3: Reporting/Scheduling
	the local agencies and limit the ability to share information and compliance strategies. The proposed OWTS Policy changes do not include new or additional reporting. Where a local agency's first water quality assessment report due date falls on a partial year, this is an implementation and compliance consideration for the Regional Water Boards.

Comment No.	Comment Category 4: Local Agency Responsibilities, Local Agency Management Programs
3.1 3.2 5.3	**Commenter(s):** County of San Diego, Department of Environmental Health and Quality Heal The Ocean **Comment Summary:** The Commenters suggest the following revision in the proposed OWTS Policy: a. Extending the definition of Advanced Protection Management Program to APMP in the same manner as that provided with the definition of TMDL with additional language to provide clarity as to the description of an Advanced Protection Management Program. b. Update any references to the California Department of Public Health in the OWTS Policy to the State Water Board to reflect that it is the agency responsible for implementing the Safe Drinking Water Act pursuant to Health and Safety Code section 116271. Commenter strongly supports the amendment of the OWTS Policy to include section 9.1.8 that allows local agencies to establish additional requirements to be more protective of water quality, including where groundwater or surface water is vulnerable to pollution from OWTS. **Response:** a. The proposed OWTS Policy section 1.0 has been revised in response to comment where the acronym definitions have been clarified. b. The proposed OWTS Policy sections 1.0, 3.5, 4.3.2, and 7.6.1 have been revised in response to comment where the references to the California Department of Public Health have been updated to reflect that the State Water Board is the successor agency responsible for implementing the Safe Drinking Water Act pursuant to Health and Safety Code section 116271.

Comment No.	Comment Category 4: Local Agency Responsibilities, Local Agency Management Programs
8.22	**Commenter(s):** Timothy R. O'Brien **Comment Summary:** The commenter states if a discharge does not meet the conditions of the waiver, that it would be ineligible for permitting by a local agency and referred to the applicable Regional Water Board. Additionally, the commenter states that the Staff Report should not be casting doubt on the responsibility of a discharger to comply with the Water Code. **Response:** The proposed OWTS Policy and Staff Report have not been revised in response to comment. Any increased domestic wastewater discharges from OWTS into existing, new, or replacement systems over the associated volume limitations set forth in OWTS Policy section 8.1.3, 9.4.2, and 10.6.2 are subject to review and permitting by the Regional Water Boards, as applicable.

Comment No.	Comment Category 5: Accessory Dwelling Units served by Onsite Wastewater Treatment Systems
8.3 8.5 8.6 8.17 8.18 8.23 8.24 8.25	**Commenter(s):** Timothy R. O'Brien **Comment Summary:** Commenter states: a. The proposed OWTS Policy treatment of ADU OWTS is inadequate to protect water quality and public health. b. Authorizing the use of ADU OWTS is a significant change that requires much more than simply adding a definition to the OWTS Policy. c. The proposed OWTS Policy approach to ADU OWTS violates the requirements of the Antidegradation Policy. d. ADUs will significantly increase the wastewater discharge rate at a property. The OWTS Policy should establish clear guidelines and limits for local agencies that choose to revise their LAMPs to allow ADU OWTS. Additionally, the increase in housing space and occupancy will have a

Comment No.	Comment Category 5: Accessory Dwelling Units served by Onsite Wastewater Treatment Systems
	corresponding increase in wastewater discharge rates. e. The combined wastewater flow from ADUs can be conservatively estimated to be 2.5 times the original single family household flow rate. However, it could be much higher. f. The increase in ADU OWTS will certainly be a significant water quality factor. g. ADU housing arrangements may start off as temporary housing for family members, but turn into fully occupied as rental properties, exceeding the original design capacity. h. The State Water Board is failing to comply with the requirements of the California Environmental Quality Act by not amending the Substitute Environmental Document (SED) to address the proposed OWTS Policy changes. A California Environmental Quality Act (CEQA) addendum is only appropriate when minor technical project changes with no significant impacts are anticipated. Additionally, the State Water Board is not requiring mitigation measures for pathogens, nitrate pollution, and cumulative public health and water quality impacts which violates the OWTS Policy conditional waiver, basin plans, Water Code section 13269(a)(1), and the Antidegradation Policy. The Commenter recommends the State Water Board to revisit the nitrogen mitigation measure determination when considering ADU OWTS; and comply with Senate Bill X21 (SBX21) which directs the State Water Board to identify sources of nitrate groundwater contamination and evaluate the current authority to reduce current nitrate levels and to prevent continuing nitrate contamination. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. The permitting and building of multi-unit dwellings, including ADUs with or without OWTS, is not new or promulgated by the OWTS Policy and OWTS density considerations were conducted in the OWTS Policy adopted by the State Water Board in 2012. OWTS Policy section 2.0 regards all covered OWTS in the Tiers and uses the term domestic wastewater; the definition of domestic wastewater has been aligned with the language in the Staff Report. Further, the OWTS Policy does not differentiate discharges according to the configuration of the dwelling unit(s) discharging into the system or the size of the structure. Note that the OWTS Policy “domestic wastewater” definition includes “wastewater with a measured strength less than high-strength wastewater and is the type of wastewater normally discharged from, or similar to, that discharged from plumbing fixtures, appliances, and other household devices including, but not limited to toilets, bathtubs, showers, laundry facilities, dishwashing facilities, and garbage disposals….may include wastewater from

Comment No.	Comment Category 5: Accessory Dwelling Units served by Onsite Wastewater Treatment Systems
	commercial buildings such as office buildings, retail stores, and some restaurants, or from industrial facilities where the domestic wastewater is segregated from the industrial wastewater." (OWTS Policy Definitions, pg. 10.) Additions to the definition of "Domestic Wastewater" serve to make clear the previous intent that domestic wastewater discharges under the OWTS Policy that are not high-strength wastewater must comply with all applicable requirements but do not otherwise differ based on the configuration of the dwelling unit(s), whether multi-unit or single-family (except in the case of high-strength waste, which carries specific separate requirements). Potential increases in wastewater volume resulting from expansion of a dwelling or from construction of an ADU are already addressed by OWTS Policy provisions where the OWTS will otherwise continue to comply with requirements for existing systems. Requirements applicable to any system into which a newly constructed ADU would discharge are set forth according to the appropriate OWTS Policy Tiers 0-4 including the applicable system flow limits (gallons per day) in section 8.1.3, 9.4.2, and 10.6.2. Any new system built to serve an ADU or other expansion of dwelling units on a parcel must comply with OWTS Policy provisions applicable to new systems within the appropriate Tier. Because the OWTS Policy defines a replacement OWTS to include "any system that has its treatment capacity expanded," any system that is expanded to accommodate discharges from an ADU must comply with all applicable requirements for a replacement system. b. The California Department of Housing and Community Development has promoted ADUs as an affordable housing option. ADUs served by an OWTS (e.g., septic system) must have approval from the local health officer per Government Code 65852.2(a)(1)(D)(ix). Local health officers must implement applicable requirements of the OWTS Policy when considering approval of an ADU (which concerns authority for local agencies to adopt ordinances that will allow for ADUs in areas zoned to allow single-family or multifamily residential dwelling use). The OWTS Policy concerns siting, design, operation, and maintenance of OWTS, but does not otherwise regulate the types of land uses that result in discharges to OWTS and to waters of the state. Other considerations may include: not all ADUs use OWTS; some are connected to a sanitary sewer system where discharges flow to a publicly owned treatment works; and, not all ADUs result in a new or separate OWTS. The OWTS Policy conditions cover many scenarios where an OWTS replacement would occur, and do not prohibit, new or replacement OWTS construction where an increase in flow may occur that still meets the applicable OWTS Policy requirements, including the limitations on volume already contained within OWTS Policy sections 8.1.3, 9.4.2, and 10.6.2. c. The proposed OWTS Policy and Staff Report have not been revised in response to comment. The

Comment No.	Comment Category 5: Accessory Dwelling Units served by Onsite Wastewater Treatment Systems
	proposed OWTS Policy changes are for the purposes of clarifying already-existing aspects of the OWTS Policy that may have caused confusion, inconsistencies, and are currently primarily handled through implementation. The revisions are associated with the conditions assessed when the OWTS Policy was adopted by the State Water Board in 2012, which included a wide range of factors affecting water quality and the availability of treatment measures to protect beneficial uses and public health, consistent with the goals and requirements in State Water Board Resolution No. 68-16, the Statement of Policy with Respect to Maintaining High Quality of Waters in California (Antidegradation Policy). The proposed OWTS Policy changes are consistent with the Antidegradation Policy. The OWTS Policy requires dischargers to use best practicable treatment or control of the discharge necessary to avoid a condition of pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the state. d. The prevalence of ADUs served by OWTS varies by local agency jurisdiction based on local ordinances, approved LAMPs and the associated conditions, land use laws, compliance with state law such as applicable Government Code Title 7, Public Health and Safety Code, Code of Regulations Title 24, Williamson Act, CEQA provisions, and applicable federal law such as the Federal Housing Authority. Any increase in wastewater discharge rates related to an ADU will be subject to the existing flow limits in the OWTS Policy. e. A 2.5 factor is brought up by the commenter in the following two different general contexts: An increase in flows by 2.5 and an increase in system density by a 2.5 factor. The commenter references Hantzsche and Finnemore as well as Siegrist papers where neither appear to include a 2.5 factor. The OWTS Policy initially adopted in 2012 by the State Water Board included a general factor of 1.5 for flows. Further, under existing OWTS Policy implementation, if the local agency is implementing a LAMP (which may include the implementation of an Advanced Protection Management Program or TMDL), this program required Regional Water Board approval and LAMPs can, and do, contain more stringent standards than the OWTS Policy conditions. Specifically, local agencies have the authority to develop more conservative flow rates for siting and system requirements, etc. in the LAMP. Many LAMPs do this while addressing ADU coverage or prohibitions under the LAMP. One example is Butte County LAMP (On-Site Wastewater Manual, Part 3, System Requirements, Chapter 3, Design Flow, part A), which assesses peak flows with a factor of 2.0 and adds 60 gallons per day (gpd) for additional bedrooms which include ADUs for this LAMP. f. The proposed OWTS Policy and Staff Report has been revised to partially address this comment in

Comment No.	Comment Category 5: Accessory Dwelling Units served by Onsite Wastewater Treatment Systems
	regard to local agency authorities. Local agencies implementing a Tier 2 permitting program may permit ADUs consistent with the applicable OWTS Policy requirements, LAMP, local ordinances, and within their statutory and other planning authorities. If the LAMP has/or is planned to be updated to cover ADUs, this will also require Regional Water Board approval where the Tier 1 densities are considered along with other local factors to be consistent with the OWTS Policy requirements, including Tier 2 conditions under the LAMP. If the approved LAMP prohibits ADUs, or if the ADUs are otherwise not allowed within the terms of the LAMP, then the local agency should refer ADU proposals to the Regional Water Board for evaluation and permitting, as appropriate. g. The proposed OWTS Policy and Staff Report have not been revised in response to comment. State Water Board staff cannot assume, recommend, or propose OWTS Policy modifications based on possible business decisions made by one developer or another or use of properties such as housing by the owner(s) or tenants. h. The proposed OWTS Policy and the Staff Report have not been revised in response to comment. The proposed OWTS Policy revisions to the definition of domestic wastewater do not alter how the OWTS Policy treats domestic wastewater discharges to existing OWTS or the approval of new or replacement systems covered by the OWTS Policy. Therefore, no new analysis or mitigation measures are required in order comply with the conditional waiver, basin plans, or the Water Code associated with implementation of the OWTS Policy. Thus, the proposed OWTS Policy revisions are not anticipated to change the potential impacts resulting from implementation of the OWTS Policy Tiers and do not constitute a substantial change in the project mitigations or findings as described when the State Water Board adopted the OWTS Policy initially in 2012. The commenter's CEQA arguments are addressed below. Further, it is not necessary to define the various types of OWTS, since the type of dwelling unit in and of itself does not determine how the OWTS Policy applies to a domestic wastewater discharge in cases where the type of discharge and characteristics remains unchanged.
8.19	**Commenter(s):** Timothy R. O'Brien **Comment Summary:** Commenter states that allowing future residential, commercial, industrial, and agricultural land developments that have ADU OWTS discharges will increase the cumulative water quality and public

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	health impacts and will contaminate groundwater, and thus drinking water wells with nitrogen and pathogens. **Response:** The proposed OWTS Policy and Staff Report have not been revised in response to comment. When initially adopting the OWTS Policy in 2012, the State Water Board found that the OWTS Policy sets standards that could allow potentially significant direct water quality impacts from pathogen or nitrogen contamination, as well as cumulative water quality and public health impacts. The State Water Board also found that assessed alternatives and/or available mitigation measures would not meet the goals of the OWTS Policy or the promulgating Assembly Bill 885 requirements, and that specific overriding economic, legal, social, technological, or other benefits outweigh any adverse environmental impacts resulting from new or continuing discharges in compliance with the OWTS Policy. The State Water Board rejected mitigation measures for LAMPs that would include too many limitations on local agency management of OWTS, result in too many sites being deemed unsuitable for new and replacement OWTS, and/or impose significant costs on the OWTS owner without a corresponding environmental benefit. The State Water Board concluded that effective implementation of protections to allow continued use of OWTS for domestic wastewater disposal in areas not suitable for centralized treatment systems is an important public benefit to ensure access to sanitation, and the protections afforded by the OWTS Policy provide the best practicable treatment or control to ensure the highest water quality consistent with the maximum benefit to the people of the state. The State Water Board concluded that the OWTS Policy establishes a statewide, risk-based, tiered approach for the regulation and management of OWTS installations and replacements and sets the level of performance and protection expected from OWTS. None of the proposed changes in the OWTS Policy override these findings set forth for the initial OWTS Policy adopted by the State Water Board in 2012.

Comment No.	Comment Category 6: Cost/Funding
2.2 8.13	**Commenter(s):** Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability Timothy R. O'Brien **Comment Summary:** a. Commenters suggest providing principal forgiveness loans for septic maintenance, repair, and

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	replacement for low-income households through the Clean Water State Revolving Fund and provide information on the program to counties. b. Commenters suggest that schedule changes will create an unfunded mandate for local agencies, and that some local agencies will be required to prepare a water quality assessment with little data available and significant costs and provide little benefit for understanding water quality conditions. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is related to ongoing OWTS Policy implementation and State Water Board funding priorities. Section 14 of the OWTS Policy provides an outline of some potentially related funding programs for OWTS owners. However, other federal, state, and local funding may be available depending on the specific issue and location. State Board OWTS staff recommend the commenter provide this comment in future updates to the Division of Financial Assistance, Intended Use Plan and other available opportunities for comment related to the particular wastewater funding source of interest. b. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is primarily related to OWTS Policy implementation. The OWTS Policy is structured to build upon existing local agency programs in an effort to minimize the costs associated with implementing the OWTS Policy. The State Water Board recognized costs associated with monitoring groundwater and conducting water quality assessments when the OWTS Policy was initially adopted in 2012. The revolving water quality assessment report deadlines create regulatory uncertainty for the local agencies and limit the ability to share information and compliance strategies. Where a local agency's first water quality assessment report due date falls on a partial year, this is an implementation and compliance consideration for the Regional Water Boards. See OWTS Policy section 9.3.4.

Comment No.	Comment Category 7: Implementation
2.1 2.3	**Commenter(s):** Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability

Comment No.	Comment Category 7: Implementation
	Comment Summary: Commenters strongly urge the State Water Board to take the following actions to increase the benefit from the program: a. Update links to county LAMPs, many of which are either broken links or have not been linked at all; As well as provide links to annual reports from the County LAMPs on State Board webpage. b. Work with Division of Drinking Water, Region 5 Management Zones, and counties to encourage voluntary domestic well testing. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Ongoing implementation of the OWTS Policy includes periodic updates to State Water Board's public program web pages and information. State Water Board staff will work to evaluate any necessary web page updates to correct issues and how information should be accessed by the public during implementation. b. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is out of scope for the proposed OWTS Policy. The State Water Board continues its efforts to increase collaborative engagement with the Regional Water Boards and between State Water Board programs to discuss efforts such as voluntary domestic well testing. Further, past versions of OWTS regulations (prior to the adopted Policy in 2012) considered monitoring of domestic wells as part of the regulations. Monitoring of domestic wells was found to be infeasible due to implementation problems. Local agencies that implement an approved Tier 2 LAMP are required to have a water quality assessment program that can include review of public system sampling reports and water quality testing reports done at the time of new well development, refer to OWTS Policy section 9.3.

Comment No.	Comment Category 8: Wastewater Treatment
4.1 6.1 6.2 6.3	**Commenter(s):** Eljen Corporation Infiltrator Water Technologies

Comment No.	Comment Category 8: Wastewater Treatment
6.4 6.5 6.6 6.7 6.8 6.9 6.10 6.11 6.12 6.13 7.1 7.2 7.4 7.5 7.6 7.7 7.8 7.9 7.10 7.11 7.12 7.13 7.14 7.15	Robert Crandall (consultant to Infiltrator Water Technologies) **Comment Summary:** Commenters state their strong support for newer technologies such as combined treatment and dispersal systems (CTD), which combine the simplicity of conventional pipe and stone leach fields with treatment that meets Federal and State standards for secondary treatment. The commenters state that CTD systems passively treat and disperse without electrical, mechanical, or chemical components, and they have no components which require cleaning or replacement; and they also have the capacity to be modified to address and effectively treat wastewater in nitrogen and pathogen impaired areas. Commenters recommend that: The State Water Board consider language that incorporates CTD technology in the OWTS Policy, to allow the use of National Sanitation Foundation /American National Standards Institute (NSF/ANSI) 40-certified OWTS to passively treat septic tank effluent to USEPA secondary wastewater treatment standards and disperse the treated effluent to the native soil within the footprint of the system. The state needs to also encourage higher water quality standards, and now has the opportunity to do so without imposing undue operational and economic difficulties and hardships on OWTS industry stakeholders, including local agencies. a. Define the term “CTD” in the OWTS Policy - A definition for CTD is added in alphabetical order within section 1.0, where CTD system is specifically described. b. Expand the existing “supplemental treatment” definition – The existing definition of “supplemental treatment” to address CTD technology as meeting the supplemental treatment definition. Also define the sizing for supplemental treatment and qualifying CTD systems as incorporating a multiplier of 0.7. c. Address Tier 1, 2, and 3 use and sizing; Modify sections 8.1.11, 9.4.5, 9.4.6, and 10.6.6 to address operation, maintenance, and the sizing of CTD systems, which would allow decreased leaching area for International Association of Plumbing & Mechanical Officials (IAPMO) certified dispersal systems and CTD using a multiplier less than 0.7 and utilizing CTD supplemental treatment without requirements for periodic monitoring or inspections. d. The OWTS Policy be amended to follow future, amended terms of the 2024 Uniform Plumbing Code, which state that CTD systems must be certified to achieve NSF/ANSI 40 Class I treatment

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	standards. e. Consider case studies provided by the commenter. **Response:** Minor clarifications have been made to the proposed OWTS Policy and staff report in response to comment. A CTD system qualifies as an OWTS per Policy definition and is allowed technology under Tier 2 Policy conditions. A CTD may be considered an alternative collection and disposal system that uses subsurface disposal, if determined by a qualified professional as an appropriate alternative system to satisfy Tier 2 LAMP requirements. Tier 2 can establish different system design and siting requirements for new and replacement systems, rather than prescriptive system and siting (e.g., density) requirements under Tier 1 standards. All OWTS, including alternative collection and disposal systems that use subsurface disposal, under a LAMP, must adhere to monitoring requirements, any service provider roles outlined by an approved LAMP, and any other applicable Tier 2 requirements. OWTS covered by a LAMP utilizing supplemental treatment, may be required to meet Tier 3 conditions, which may include nitrogen and pathogen monitoring and mitigation requirements. Various new, existing, and evolving historical domestic wastewater treatment methods are available to comply with OWTS Policy requirements. As the commenter describes, it seems that CTD technology, which the commenter noted has been used in projects throughout California and many other states, may be another such treatment option that can be proposed to a Regional Water Board, or local agency and evaluated based on site-specific conditions for potential use at an individual site. a. The proposed OWTS Policy or staff report has not been revised in response to comment. CTD technology to treat septic tank effluent may be considered as an alternative collection and disposal system that uses subsurface disposal under Tier 2 of the OWTS Policy and is already in use in California so it is not necessary to incorporate specific mention of CTD technology in the OWTS Policy to allow its use. Specifically identifying CTD technology in the OWTS Policy could be inadvertently and incorrectly interpreted as a requirement or recommendation for its use. The OWTS Policy cannot specify the method of compliance for treating wastewater, as stipulated in Water Code section 13360. Local agencies have the flexibility to allow various domestic wastewater treatment methods within their jurisdictions that comply with the OWTS Policy and other local, state, and federal requirements. Some counties may already be considering the use of CTD technology through their LAMPs and it is the understanding of staff from industry representatives that one installer alone has already

Comment No.	Comment Category 8: Wastewater Treatment
	installed over 1,000 CTD systems in California, so the OWTS Policy does not appear to be preventing the use of all CTD technology. b. The proposed OWTS Policy and Staff Report have not been revised in response to comment. The SED Table 8-1: Tier 2 Treatment Systems and Dispersal include some examples of supplemental treatment and disposal categories that may describe some of the CTD elements. Tier 2 allows for LAMPs to include alternative siting and design criteria than that of Tier 1 and may also allow for the use of alternative collection and disposal system that uses subsurface disposal or alternative treatment systems (e.g., disinfection, aerobic treatment, mound systems, etc.), thereby allowing for a wide variety of OWTS under this Tier, that could include CTD technology if approved in the LAMP, consistent with the OWTS Policy conditions, local ordinances, and complaint with applicable statutory and other planning authorities for the Regional Water Boards and local agencies. c. The proposed OWTS Policy and Staff Report have not been revised in response to comment. OWTS Policy section 8.1.11 currently prohibits LAMPs from authorizing an increased allowance for IAPMO certified dispersal systems under Tier 1. If the OWTS Policy is edited as recommended by this comment, CTD system use would also be prohibited under Tier 2, which seems contrary to the intent of this comment letter, which is to add expanded CTD technology provisions to the OWTS Policy. OWTS Policy section 9.4.5 currently prohibits LAMPs from authorizing use of a smaller leaching area using a smaller multiplier (less than 0.7) to size IAPMO certified dispersal systems. Commenter provided edits to the OWTS Policy in section 9.4.5 that were not made by staff because the proposed edits would make new prohibitions on CTD systems using a smaller multiplier. Additionally, as the commenter noted, CTD systems are intended to treat septic tank effluent to USEPA secondary wastewater treatment standards. The OWTS Policy sets minimum monitoring requirements to demonstrate that an OWTS is properly operated and maintained to treat domestic wastewater. d. The proposed OWTS Policy and Staff Report have not been revised in response to comment. The State Water Board generally does not develop policies based on draft legislation, draft permit language, or other unadopted requirements because changes can and often do occur throughout the process for developing and finalizing requirements language resulting in regulatory inconsistencies.

Comment No.	Comment Category 8: Wastewater Treatment
	e. The proposed OWTS Policy and Staff Report have not been revised in response to comment. As described in these case studies, CTD technology for domestic wastewater treatment is currently already in use in California so revisions to the OWTS Policy are not necessary to continue the use of CTD technology.
7.3	**Commenter(s):** Robert Crandall (consultant to Infiltrator Water Technologies) **Comment Summary:** Commenter states that scientific and technical requirements were largely based on the knowledge and requirements for conventional systems which discharge untreated, raw sewerage minus the solids onto the existing, native soils. We know that the discharge of untreated water will eventually clog the native soils and, sooner or later, fail or contaminate groundwater. **Response:** The proposed OWTS Policy and Staff Report have not been revised in response to comment. The OWTS Policy does not permit the discharge of untreated, raw sewage. As provided in the OWTS Policy, "properly sited, designed, operated, and maintained OWTS treat domestic wastewater to reduce its polluting impact on the environment and most importantly protect public health" (OWTS Policy, pg. 3, Preamble, paragraph 1). The OWTS Policy "establishes minimum requirements for the permitting, monitoring, and operation of OWTS for protecting beneficial uses of waters of the state and preventing or correcting conditions of pollution or nuisance" (OWTS Policy, pg. 3, Purpose and Scope of the OWTS Policy, paragraph 2).

Comment No.	Comment Category 9: Legal Requirements
2.5	**Commenter(s):**
8.1	California Coastkeeper Alliance
8.2	Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability
8.4	Timothy R. O’Brien

Comment No.	Comment Category 9: Legal Requirements
8.12 8.15 8.16 8.20 8.21	a. **Comment Summary:** Commenters do not recommend a 5-year renewal and suggest that the OWTS Policy undergo review immediately after that report's adoption. b. The proposed OWTS Policy and Staff Report are incomplete and inconsistent with each other. The proposed OWTS Policy holds many errors and omissions preventing meaningful review by the public, responsible agencies, trustee agencies, and others. Not providing a true and correct copy of the documents violates public notice requirements in Water Code section 13269(a)(1), and Government Code section 11125. The State Water Board is not complying with Water Code section 13144, which requires consultation with concerned federal, state, and local agencies; Water Code section 13145 which requires consideration of the effect of actions pursuant to the California Water Plan; and Water Code section 13291 which requires consultation with state and local agencies in developing the OWTS Policy. c. Despite the OWTS Policy monitoring and reporting requirements, no analysis is presented. Additionally, there is a lack of data analysis, or a technical evaluation of the determination of compliance for the conditional waiver. d. The State Water Board lack of evaluation of monitoring reports violates Water Code sections 13166 and 13167. An analysis should include a list of local agencies, LAMP or Advanced Protection Management Program approval dates, data tabulation tables, statistical evaluation of the data, the regional water board basin evaluation results, and staff's determination of compliance with the waiver conditions. e. The State Water Board lack of additional analysis required by CEQA will create additional work for agencies in the future. Additionally, the Staff Report ignores the requirements to perform a supplemental SED to address the changed baseline conditions, substantially more severe pathogen and nitrate groundwater pollution, and the feasibility of mitigation measures. Alternative mitigation measures such as a maximum OWTS density standard were available to the State Water Board but were not evaluated. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is out of scope for the proposed OWTS Policy. Without a 5-year conditional waiver renewal, dischargers will be required to be permitted under new general or individual waste

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	discharge requirements causing a significant and undue burden on the Regional Water Boards, local agencies, and compliance uncertainty for OWTS owners. The findings of the statewide wastewater needs assessment approved by the State Water Board via Resolution 2022-0019 will be reviewed to assess any applicable and feasible recommendations for the conditions in the OWTS Policy for the State Water Board to consider during future renewals. b. The proposed OWTS Policy and Staff Report have not been revised in response to comment. The State Water Board has complied with the public notice requirements in Water Code section 13269(a)(1), and Government Code section 11125 by providing a general description of the proposed OWTS Policy amendments and waiver. Water Code section 13291 was relevant to the consultations for adoption of the initial 2012 OWTS Policy. On August 17, 2022 this proposed OWTS Policy and Conditional Waiver renewal was publicly noticed electronically, in newspapers representative of each Regional Water Board, and emailed to interested parties. All of the documents associated with the proposed OWTS Policy, and Conditional Waiver renewal were provided on the State Water Board's public program webpage (draft Policy, Staff Report which includes the California Environmental Quality Act SED addendum). Regional Water Board and agency input was considered in revisions to the proposed OWTS Policy and in this response to comment. c. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is associated with implementation of the OWTS Policy. The proposed OWTS Policy changes do not include new or additional reporting. The OWTS Policy implementation is ongoing where annual reports, water quality assessment reports, and other new relevant information related to OWTS Policy implementation can be evaluated to determine if updates are necessary to the current monitoring and reporting requirements to determine OWTS Policy compliance. However, the State Water Board may consider revised reporting requirements during future renewals of the OWTS Policy since all the required reports have not been submitted from the existing OWTS Policy such as the water quality assessment reports being primarily submitted for the first time in May 2024. d. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is associated with implementation of the OWTS Policy and potential State Water Board considerations for future renewals where potentially more significant revisions may be proposed and to continue implementation of Water Code section 13166 and 13167, where applicable. Based on

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	an assessment of the existing OWTS Policy, State Water Board staff recommended the renewal of the OWTS Policy to include primarily the conditional waiver and proposed clarifications as included in the OWTS Policy documents provided publicly on September 16, 2022 (per the public notice circulated August 17, 2022). The State Water Board may consider additional revisions to the OWTS Policy during future renewals, where analysis of any new information or data applicable to the OWTS Policy may take place and inform potential revisions to the SED as applicable or when determined as necessary. e. The proposed OWTS Policy and Staff Report have not been revised in response to comment. None of the proposed OWTS Policy changes would result in modifications to the identified impacts in the SED (required per Cal. Code Regs., tit. 23, § 3777) that were found to be significant and unavoidable, even after mitigation. The scope of the SED provides information regarding the potentially significant environmental effects of implementing the OWTS Policy to the extent that those effects are reasonably foreseeable (SED section 2.1) and includes considerations and states conditions where the impacts would be significant and unavoidable, even after mitigation (SED sections 6.2.4, 6.2.5, and 6.2.8). California Code of Regulations (CCR), Title 14, section 15164 provides for use of an addendum to a previously certified Environmental Impact Report (in this project, this is the SED) when "some changes or additions are necessary but none of the conditions described in 14 CCR section 15162 calling for preparation of a subsequent EIR [Environmental Impact Report] have occurred." None of the conditions described in section 15162 have occurred that would require the preparation of a subsequent EIR/SED. There have been no substantial changes to the project or new information that would require major revisions of the previous SED due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The commenter argues that discharges from ADUs will lead to new impacts or substantially more severe impacts than were analyzed in the SED but there is no substantial evidence in the record to support this. From 2018 to 2020, approximately 22,700 ADUs were added to the state's housing supply. ADU production is generally occurring in transit-accessible neighborhoods, such as the San Francisco Bay Area. The majority of California's new ADUs (79%) contain just one bedroom or a studio. Only 8% of new ADUs in California are short-term rentals, with a large portion of units being available to those making less than 80% of the area median income (www.aducalifornia.org). In a state with 14.5 million housing units, the approximately 22,700 ADUs constructed from 2018-2020 represents just 0.15% of the state's housing units. This minimal increase to the housing supply cannot be reasonably considered to be

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	causing a substantial increase in the severity of significant environmental effects identified in the SED - particularly where the majority of ADUs are constructed in transit-accessible neighborhoods that are typically on centralized sanitary sewer systems. The SED concluded there would be significant and unavoidable effects related to pathogens, nutrients, and cumulative impacts. Incremental increases in flow rates to OWTS from these very small housing units will not likely lead to substantially more severe or new impacts than those already analyzed in the SED. The existence of legislation facilitating the development of ADUs does not change this because even if this is considered new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time of the original SED, the project will still not have any new significant effects that were not discussed in the SED or any substantially more severe effects than were previously analyzed. Therefore, no major revisions to the SED are necessary in the form of a subsequent or supplemental EIR-type analysis. There is no substantial evidence in the record that new mitigation measures or alternatives that were previously found to be infeasible would now be feasible. The proposed changes or additions are to clarify the OWTS Policy implementation and do not call for a subsequent Environmental Impact Report or revised SED. Staff Report section 3.1 includes the justification for the CEQA addendum to the SED.
8.10	**Commenter(s):** Timothy R. O'Brien **Comment Summary:** a. Proposed OWTS Policy section 9.2.3 requires clarification; what does "substantial conformance, to the greatest extent practicable," mean? b. The Staff Report analysis of the conditional waiver renewal is incomplete and does not comply with Water Code section 13269(a)(2)... The Staff Report analysis of the waiver conditions is a cursory review and inadequate to determine if the conditions of the waiver are met... Despite the OWTS Policy monitoring and reporting requirements, which are discussed below, no analysis is presented. Water Code section 13269 states, "...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. Monitoring results

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	shall be made available to the public."… Even though all of the waiver conditions are addressed by the record-keeping, monitoring, and reporting requirements. For example, the conditions in proposed OWTS Policy sections 12.0.1 (surfacing effluent), 12.0.2 (dispersal in saturated soil), 12.0.4 (nuisance or pollution), 12.0.5 (local agency codes), 12.0.6 (TMDL/special provisions, supplemental treatment), 12.0.7 (corrective action requirements) are all addressed by the annual reporting requirements and five-year water quality assessments, but the data are not provided, referenced, or evaluated. It begs the question, what did the State Water Board staff rely upon in determining to renew the conditional waiver? But the "determination of compliance" is not presented in the Staff Report or anywhere else. Lacking the data, data analysis, or a technical evaluation of the determination of compliance, a reviewer can only conclude that the work simply was not performed. The public is left to wonder if the conditional waiver should be extended... Water Quality Control Policy for Recycled Water (2018) section 6.1.3 required the Regional Water Boards to complete basin evaluations to determine salinity and nutrient (nitrogen) conditions in each hydrologic basin or subbasin in its region before April 8, 2021 and identify basins where salinity and/or nutrients are a threat to water quality. The water quality evaluations will provide essential information on groundwater quality and are central to the issues under consideration for the conditional waiver renewal. **Response:** a. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is out of scope for the proposed OWTS. OWTS Policy section 9.2.3 addresses local agency management program variances. The referenced statement allows for variances in areas to have a less than significant impact as followed by OWTS Policy section 11. OWTS Policy sections 9.2.3 and 11.5 define the amount of variance (new or replacement OWTS, installations and repairs) under the applicable Tiers. Many of these considerations occur during the initial LAMP adoption since it is acknowledged that regulatory requirements for installation of OWTS are relatively complex and detailed and may require additional discussion with local agency and Regional Water Boards to implement the OWTS Policy requirements.

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	b. The proposed OWTS Policy and Staff Report have not been revised in response to comment. Comment is associated with implementation of the OWTS Policy. The proposed OWTS Policy changes do not include new or additional reporting. The OWTS Policy implementation is ongoing where annual reports, water quality assessment reports, and other new relevant information related to OWTS Policy implementation can be evaluated to determine if updates are necessary to the current monitoring and reporting requirements to determine compliance with the OWTS Policy. However, this is a potential consideration for the State Water Board during future renewals of the OWTS Policy.

APPENDIX A: INDIVIDUAL COMMENTERS COMMENTS

Comment ID	Comment Category	Commenter: California Coastkeeper Alliance Comment Summary Excerpts by Staff
1.1	Attachment 2, TMDL	However, the Policy does not specify what "new information" is sufficient to remove waterbodies from Attachment 2. As the purpose of tier three protections are to safeguard impaired waterways from OWTS discharges, waterbodies should not be removed from Attachment 2 unless new information fully supports delisting a waterbody from the 303(d) list or indicates that OWTS are not causing or contributing to impairment. *(Refer to comment letter #1, continuation of comment 1.1 for recommended changes)*
1.2	Attachment 2, TMDL	As such, the State Water Board must enforce the TMDL completion deadlines in Attachment 2 and cannot extend those deadlines with each new OWTS Policy update, as these periodic extensions essentially side-step the State Water Board's duty to require compliance with that condition of this waiver. Accordingly, a waterbody's TMDL completion deadline should not be extended unless the relevant Regional Water Board is awaiting State Water Board, Office of Administrative Law, or USEPA approval of an otherwise complete TMDL.
1.3	Attachment 2, TMDL	Although Attachment 2 is meant to protect impaired waterbodies and the Listing Policy provides clear requirements for determining whether a waterbody remains impaired, the State Water Board is suggesting removing waterbodies from Attachment 2 without regard to the Listing Policy delisting requirements.
1.4	Attachment 2, TMDL	Because Walker Creek is still impaired under California law and existing data is insufficient under the Listing Policy to find that it is attaining its beneficial uses, Walker Creek should not be removed from Attachment 2.
1.5	Attachment 2, TMDL	Accordingly, should data demonstrate that OWTS are not causing or contributing to a water body's impairment or a non-TMDL action appropriately manages OWTS discharges, the protections afforded by Attachment 2 are no longer needed. Contrarily, a Regional Board action which does not address OWTS discharges and has no impact on pollution caused by OWTS cannot justify the removal of an impaired waterbody from Attachment 2. In other words, only actions which address OWTS pollution can justify removing an impaired waterbody from Attachment 2.

Comment ID	Comment Category	Commenter: California Coastkeeper Alliance Comment Summary Excerpts by Staff
1.6	Attachment 2, TMDL	San Jose Creek Reaches 1 and 2 were removed from Attachment 2 because nutrients "are being addressed through an action other than a TMDL (National Pollutant Discharge Elimination System Permit Number CA-0053911- nitrification/denitrification)." However, that NPDES Permit only regulates the Joint Outfall System for the San Jose Creek Water Reclamation Plant, it does not regulate any OWTS. While that permit will help control pollution in these waterbodies, it has no bearing on whether discharges from OWTS will continue to cause or contribute to impairment. Because the NPDES permit does not protect San Jose Creek Reaches 1 and 2 from OWTS discharges, these waterbodies still require the protections afforded by Attachment 2 of the OWTS Policy and should not be removed.
1. 7	Attachment 2, TMDL	Rincon beach was removed from Attachment 2 because nutrients "are being addressed through a single regulatory action."11 The staff report does not clarify what that action is, and if it does not directly address discharges from OWTS, it cannot justify the removal of Rincon beach from Attachment 2.
1. 8	Attachment 2, TMDL	Serrano Creek was removed because "no new OWTS are likely to be installed in this area." While no new OWTS will be installed, that has no impact on whether the existing OWTS still cause or contribute to Serrano Creek's impaired status. Although "Regional Water Board staff is currently verifying whether any septic tanks still exist in the Serrano Creek watershed," historical data indicates there are two existing septic tanks in the region, and it does not take many OWTS to cause impairment...Until Regional Board staff update septic tank data for the region, or it is shown that the existing septic tanks do not cause or contribute to Serrano Creek's impairment, Serrano Creek should not be removed from Attachment 2.
1. 9	Attachment 2, TMDL	East Garden Grove Wintersburg Channel was removed from Attachment 2 because a "dry weather diversion is now in place and is expected to address pollutants from runoff during dry weather."15 However, it is unclear whether this new diversion prevents OWTS from causing or contributing to the channel's impairment. If not, then the dry weather diversion has not satisfied the fundamental purpose of the OWTS Policy and cannot justify removing the East Garden Grove Wintersburg Channel from Attachment 2.

Comment ID	Comment Category	Commenter: California Coastkeeper Alliance Comment Summary Excerpts by Staff
1.10	Attachment 2, TMDL	Therefore, we request that the OWTS Policy be amended to ensure that waterbodies are not removed from Attachment 2 based on non-TMDL actions unless those actions address whether OWTS continue to cause or contribute to waterbody impairment. *(See related comment 1.5)*
1.11	Attachment 2, TMDL	In addition, for many of these waterbodies, the TMDLs were not completed because the Regional Board failed to prioritize the creation of that TMDL or lacked staffing or resources needed to complete the TMDL by the set deadline. While we sympathize that Regional Boards often have inadequate resources to tackle all their clean water obligations, this chronic issue cannot excuse a failure to comply with a necessary condition of a conditional waiver. *(Refer to comment letter #1, continuation of comment 1.11 for recommended changes)*.
1.12	Legal Requirements	Moreover, periodically extending these completion deadlines violates Water Code section 13269(e), which mandates that the State Water Board require compliance with the conditions of a conditional waiver.
1.13	Attachment 2, TMDL	Three watersheds listed in Attachment 2, noted below, have had their TMDL deadline extended without any accompanying justification within the Staff Report or during the staff workshop. Without proper justification, the State Water Board may not extend the completion deadlines for these watersheds. We respectfully request the Water Boards reasoning for these decisions. • Canada Larga (Ventura River Watershed): Extended from 2024 to 2028. • San Antonia Creek (Tributary to Ventura River Reach 4): Extended from 2017 to 2024. • Ventura River Reach 3 (Weldon Canyon to Confl w/ Coyote Creek): Extended from 2017 to 2024.

Comment ID	Comment Category	Commenter: Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability Comment Summary Excerpts By Staff
2.1	Implementation	Unfortunately, the shortcomings of the OWTS Policy are exacerbated by the fragmented state of implementation, particularly reporting. We strongly urge the Board to take the

Comment ID	Comment Category	Commenter: Clean Water Action, Community Water Center, Leadership Counsel for Justice and Accountability Comment Summary Excerpts By Staff
		following actions to ensure at least some benefit from the program: • Update links to county LAMPs, many of which are either broken links or have not been linked at all; • Provide links to annual reports from the County LAMPS on State Board webpage.
2.2	Cost/Funding	Fund principal forgiveness loans for septic maintenance, repair, and replacement for low-income households through the Clean Water State Revolving Fund and provide information on the program to counties.
2.3	Implementation	Work with Division of Drinking Water, Region 5 Management Zones, and counties to encourage voluntary domestic well testing.
2.4	Reporting/Scheduling	Provide counties, on at least an annual basis, with new water quality information that is relevant to the program.
2.5	Legal Requirements	Given how little has been accomplished in the first ten years of this waiver, we do not recommend a 5-year renewal. We're hopeful that the Board's Wastewater Needs Assessment, which should begin to provide information by 2024, can provide some of the data which continues to be missing from this program. Our suggestion is that the OWTS Policy undergo review immediately after that report's adoption.

Comment ID	Comment Category	Commenter: County of San Diego, Department of Environmental Health and Quality Comment Summary Excerpts By Staff
3.1	Local agency responsibilities, LAMPs	The definition of Advanced Protection Management Program to(APMP) should be expanded on in the same manner as that provided with the definition of TMDL with additional language to provide clarity as to the description of an Advanced Protection Management Program. OWTS Policy, page 9, section 1.0: Definitions, Suggested text: "An Advanced Protection Management Program is the minimum required management program for all OWTS located near a water body that has been listed as impaired due to nitrogen or pathogen indicators pursuant to Section 303(d) of the Clean Water Act. The requirements of an APMP shall be in accordance with a TMDL implementation plan, if one has been adopted to address the impairment. In the absence of an adopted TMDL, the requirements of an APMP shall be in accordance with special provisions for the water body, if any such provisions have been proposed by the local agency and approved as part of the LAMP, or in the absence of an adopted TMDL or special provisions included in an approved LAMP, the requirements of the APMP for new and replacement OWTS near a water body listed in Attachment 2 shall be in accordance with section 10.8 of this Policy. OWTS near impaired water bodies that are not listed in Attachment 2, and do not have a TMDL, and are not covered by a LAMP with special provisions, are not subject to an APMP."

Comment ID	Comment Category	Commenter: County of San Diego, Department of Environmental Health and Quality Comment Summary Excerpts By Staff
3.2	Local agency responsibilities, LAMPs	There are references to the California Department of Public Health in the Policy that can be updated to reflect that the State Water Board is the successor agency responsible for implementing the Safe Drinking Water Act pursuant to Health and Safety Code section 116271. OWTS Policy, page 12, section 1.0: Definitions, item #1 Suggested text: for “Public Water System”: Replace "Department of Public Health " with "State Water Resources Control Board" OWTS Policy, page 17, section 3.5: Responsibilities and Duties, item #2 Suggested text: Replace "Department of Public Health " with "State Water Resources Control Board" OWTS Policy, page 19, section 4.3.2: Responsibilities and Duties, item #3 Suggested text: Replace "Department of Public Health " with "State Water Resources Control Board" OWTS Policy, page 25, section 7.6.1: Tier 1- Low Risk OWTS, item #4 Suggested text: Replace "Department of Public Health " with "State Water Resources Control Board"
3.3	Tier requirement changes	The language proposed for section 9.1 significantly changes the meaning beyond that originally provided or intended in the Policy related to a Tier 2 program and should not be adopted. The original language in section 9.1 is directly relates to and expands on the intent and purpose of the LAMP as provided in section 9.0. Section 9.0 provides the LAMP is to address local conditions, with a management program where local agencies can establish minimum standards that are differing requirements from those specified in Tier 1 (section 7.0 and section 8.0) and still achieve the OWTS Policy purpose, which is to protect water quality and public health. The protection afforded by Tier 1 is the degree of protection the LAMP alternative standards must consider, not a greater level of protection than Tier 1. OWTS Policy, Page 32, section 9.1: Tier 2-Local Agency Management Program, item #1 Suggested changes: "Where different and/or additional requirements are needed to protect water quality, the local agency shall consider the following, as well as any other conditions deemed

Comment ID	Comment Category	Commenter: County of San Diego, Department of Environmental Health and Quality Comment Summary Excerpts By Staff
		appropriate, when developing Local Agency Management Program requirements" (*refer to comment letter #3, comment 3.3 to see rest of the comment*).
3.4	Tier requirement changes	The added condition of “Groundwater is vulnerable to pollution from OWTS” to be considered when developing a LAMP is not needed, as Tier 1 or Tier 2 standards are based on providing a sufficient and acceptable level of protection to groundwater, and must be clarified within the context of the findings in the 2012 SED and State Water Board Resolution No. 2012-0032, as discussed above in Comment #3. As the State Water Board has already identified potentially significant direct water quality impacts occurring as a result of reasonably foreseeable methods of compliance with the Policy, the degree of vulnerability to be considered for this condition must be clarified and should be in accordance with the level of protection afforded by the Tier 1 minimum standards. Requirements for OWTS owners for additional protections needed to protect groundwater above that afforded by the Tier 1 minimum standards should be those that are adopted into Basin Plans to address specific areas...provide clarification to consider the degree of vulnerability up to that afforded by the Tier 1 minimum standards. OWTS Policy, Page 33, section 9.1.8: Tier 2-Local Agency Management Program, item #1 Suggested changes: "Degree of vulnerability of groundwater to pollution from OWTS in relation to that afforded by the Tier 1 minimum standards." Or Remove section 9.1.8 from section 9.1

Comment ID	Comment Category	Commenter: County of San Diego, Department of Environmental Health and Quality Comment Summary Excerpts By Staff
3.5	Tier requirement changes	Section 9.2.2 introduces the concept of special provisions for OWTS near impaired water bodies in the LAMP. The added language “and subject to Tier 3 of this Policy” is redundant and confusing. This sentence already includes the language “applicable to OWTS within specified geographic areas near specific impaired water bodies listed for pathogens or nitrogen” which is referencing OWTS subject to Tier 3. It is unclear what the intent of adding “and subject to Tier 3 of this Policy” is beyond that implied by the language already in place in this sentence. Section 10.1 clarifies that not all OWTS near impaired water bodies are covered by Tier 3. This section specifies that OWTS near water bodies that are not listed on Attachment 2, and do not have a TMDL and are not covered by a LAMP with special provisions, are not addressed by Tier 3. Section 10.2 clarifies that if a water body has an adopted TMDL, then the implementation plan supersedes all other Tier 3 requirements. Therefore, special provisions do not apply to any OWTS subject to Tier 3 and covered under a TMDL. Section 10.8 requirements for OWTS near a water body listed in Attachment 2 are covered by Tier 3 but are only applicable when there is no TMDL and no special provisions. If this language was added to clarify that special provisions are intended for those impaired water bodies with TMDLs under development and listed in Attachment 2, as alternative requirements to those provided in section 10.8, then other language can be used to make this intent clear. If this language is intended to address those impaired water bodies that do not have a TMDL and are not listed in Attachment 2, then this intent may be inappropriate as it shifts responsibility for impaired water bodies to local agencies. Local agencies do not establish water quality control policy but implement programs consistent with state policy. It is unclear why a water body would be listed as impaired and not have an adopted TMDL or a TMDL under development. For those impaired water bodies where a Regional Water Board is proposing an alternative restoration plan using their existing permitting tools to address the impairment, special provisions in a LAMP are not the appropriate mechanism for this purpose. Special provisions are part of a local program and should reflect and be consistent with state policy requirements, not set those policy requirements. Local programs are also limited to the extent of local authority and within a LAMPs stated scope

Comment ID	Comment Category	Commenter: County of San Diego, Department of Environmental Health and Quality Comment Summary Excerpts By Staff
		of coverage: not all OWTS are addressed by a local program. The regulatory tools available to Regional Water Boards, as noted OWTS Policy sections 4.2, 4.8, and 10.4.1, are the appropriate mechanisms to implement water quality control policies where a TMDL has not been adopted. Additionally, and consistent with sections 10.2 and 10.3, special provisions should not be used as the mechanism to address impaired water bodies that have an adopted TMDL that has not assigned a load allocation to OWTS or that does not provide actions for OWTS sufficient to address contributing OWTS discharges. The regulatory tools already noted and the processes established for evaluating and updating a TMDL should be used for this purpose. OWTS Policy, Page 33-34, section 9.2.2: Tier 2-Local Agency Management Program, item #1 Suggested changes: "Any special provisions, if included by the local agency, to address requirements established in a Basin Plan or state policy applicable to OWTS within specified geographic areas near specific impaired water bodies listed for pathogens or nitrogen, where OWTS has been identified as contributing to the impairment and where a TMDL has not been adopted. The special provisions shall identify the specific impaired water body, delineate the geographic scope of coverage, may be substantive and/or procedural, and may include, as examples: consultation with the Regional Water Board prior to issuing permits, supplemental treatment, development of a management district or zone, special siting requirements, additional inspection and monitoring requirements."

Comment ID	Comment Category	Commenter: Eljen Corporation Comment Summary Excerpts By Staff
4.1	Wastewater Treatment	Over the last few years, our industry continues to recognize and codify combined treatment and dispersal systems. Most recently, the Uniform Plumbing Code took up this exact issue, with the 2024 preprint including combined treatment and dispersal. This is after many states and regions have already codified or approved and implemented combined treatment and dispersal systems in their own jurisdictions. My company has been on the forefront of this technology since 1982. It is frustrating to see that yet again; the Water Boards have not incorporated this technology in the OWTS when it is used by local agencies in California. This proven technology is widely available from a variety of manufacturers. I encourage the board to consider language that would include these technologies in the renewal.

Comment ID	Comment Category	Commenter: Heal the Ocean Comment Summary Excerpts By Staff
5.1	Attachment 2, TMDL	What is needed is a mechanism other than the TMDL and Attachment 2 process – a long, arduous process that skips over obvious polluting situations like “daylighting” of septic systems and/or leach fields in areas of high groundwater, where septic waste makes its way into both groundwater and surface water, and eventually the ocean.
5.2	Tier requirement changes	Section 3.4 of your staff report (Page 18) re-emphasizes the intended authority afforded to Regional Boards and local agencies to take steps that are more protective of water quality. To ensure clarity and reiterate the importance of these actions to protect water quality, we would ask that the staff report be modified also to add “surface water” to this section. *Staff report, Page 18, section 3.4.2: "Revisions to clarify authority already afforded to local agencies", item #1* *Suggested changes:* *“Noting that LAMPSs should consider whether any additional requirements may be needed to be more protective of water quality, including groundwater and surface water degradation, in specific areas within a local agency’s jurisdiction, including areas vulnerable to groundwater and surface water pollution from OWTS.”*

Comment ID	Comment Category	Commenter: Heal the Ocean Comment Summary Excerpts By Staff
5.3	Local agency responsibilities, LAMPs	We wish to state our strong support for the amendment of the OWTS Policy to include Section 9.1.8 stating that local agencies can establish additional requirements to be more protective of water quality, including where groundwater or surface water is vulnerable to pollution from OWTS.

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
6.1	Wastewater Treatment	Infiltrator [Infiltrator Water Technologies] respectfully proposes the OWTS Policy and regulation incorporate combined treatment and dispersal (CTD) technology, allowing the use of NSF/ANSI 40-certified OWTS to passively treat septic tank effluent to USEPA secondary wastewater treatment standards, and disperse the treated effluent to the native soil within the footprint of the system. The proposed inclusion of CTD technology aligns the State Water Board's proposed OWTS regulatory framework with advanced design and construction practices in use in California and nationally today.... Adding CTD technology to the OWTS Policy provides the following benefits: 1) promotes wastewater reclamation; 2) provides an option for zero-energy secondary wastewater treatment; 3) eliminates costly operation and maintenance beyond that required for a traditional gravel and pipe leachfield; 4) provides continuous system operation during power outages and public safety power shutoffs; 5) expands the choices available for designing OWTS; 6) provides a needed framework for local agencies to regulate the technology; and 7) aligns with Appendix H of the 2024 Uniform Plumbing Code preprint.

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
6.2	Wastewater Treatment	The use of CTD in the OWTS industry goes back more than 40 years. Proprietary CTD systems were developed in the 1980s in the Northeastern United States. Since the advent of the technology, the number of state and provincial governments that have approved CTD technology for OWTS has grown steadily. At present, Infiltrator is aware of 40 states and 9 provinces where the regulatory framework allows CTD technology. Many of the jurisdictions allowing CTD technology are doing so through provisions in the OWTS Policy, while others have codified the technology, as discussed further below. For the products manufactured by Infiltrator, there are over 600,000 CTD system installations in North America. This number does not account for other CTD product manufacturers' system installations.
6.3	Wastewater Treatment	CTD System Design and Function CTD technology is a reliable, sustainable, non-electric, low-impact means of treating domestic wastewater to United States Environmental Protection Agency (USEPA) secondary wastewater treatment standards and dispersing the treated effluent to the native soil within the CTD system footprint. Secondary wastewater treatment standards include three parameters: 5-day carbonaceous biochemical oxygen demand (cBOD5) of less than 25 milligrams per liter (mg/l); total suspended solids of less than 30 mg/l; and a pH ranging between 6 and 9 (40 CFR 133). CTD technology uses naturally occurring microflora and chemical processes to degrade wastewater organic matter, achieving NSF/ANSI 40 Class 1 standards. NSF/ANSI 40 is the American national standard used to ascertain the ability of an OWTS to achieve USEPA secondary wastewater treatment standards.... These products typically incorporate a manufactured device surrounded by a coarse- grained sand, or "system sand" .... Upon entering the manufactured CTD device, effluent is typically distributed and filtered, with additional treatment in the surrounding system sand, resulting in secondary treated effluent.... The manufactured device in a typical CTD system may include combinations of pipe, cuspated plastic, synthetic aggregate, or filter fabric and other geosynthetics. Core components may be surrounded with filamentous plastics, synthetic aggregate, and layered geosynthetics, each of which provides surfaces capable of supporting fixed-film aerobic bacterial growth. It is the growth and proliferation of aerobic bacteria within both the manufactured product and surrounding and underlying system sand that allows for the

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
		biological consumption and breakdown of organic compounds in septic tank effluent.... By treating the influent organic load, an increased hydraulic loading rate can be used on the native soil, thereby reducing the required drain field area requirements (Tyler, 2001, Siegrist, 2007). (*see also Appendix A in comment letter*).
6.4	Wastewater Treatment	1. Define "CTD" - A definition for CTD is added in alphabetical order within section 1.0, where CTD system is specifically described. 1.0 Definitions <u>"Combined treatment and dispersal system" (CTD) means an OWTS that provides supplemental treatment and dispersal of effluent within a single footprint. CTD systems are comprised of proprietary media and sand in a trench or bed configuration and are used to enhance soil treatment, dispersal, and absorption of effluent discharged from a septic tank. CTD systems shall be certified by an American National Standard Institute-accredited organization to comply with NSF/ANSI 40 Class 1 effluent treatment standards. CTD systems have a subsurface discharge.</u> (*see also Appendix B in comment letter*).
6.5	Wastewater Treatment	2. Expand the existing "supplemental treatment" definition – The existing definition of "supplemental treatment" is expanded to address CTD technology as meeting the supplemental treatment definition. Also define the sizing for supplemental treatment and qualifying CTD systems as incorporating a multiplier of 0.70. 1.0 Definitions "Supplemental treatment" means any OWTS or component of an OWTS, except a septic tank or dosing tank, that performs additional wastewater treatment so that the effluent meets a predetermined performance requirement prior to discharge of effluent into the dispersal field<u>, or from the dispersal field for CTD systems. Dispersal systems serving supplemental treatment systems that are certified by an American National Standard Institute-accredited organization to comply with NSF/ANSI 40 Class 1 effluent treatment standards shall be sized using a multiplier of 0.70.</u>
6.6	Wastewater Treatment	3. Address Tier 1 use - Section 8.1.11 is modified to prohibit CTD systems for Tier 1 systems, similar to the prohibition of IAPMO-certified dispersal systems. 8.1.11 Increased allowance for IAPMO certified dispersal systems <u>and combined treatment and dispersal systems</u> that is not allowed under Tier 1.

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
6.7	Wastewater Treatment	4. Address Tier 2 use and sizing - Section 9.4.5 is amended to address the sizing of CTD systems, which would utilize a multiplier of no less than 0.70, similar to IAPMO-certified dispersal systems. Also, where the NSF/ANSI Class I CTD system certification was conducted on a system configured in a bed, then upsizing of the minimum required drain field would not be applicable because the system was demonstrated to function without the bed being upsized. 9.4.5 Decreased leaching area for IAPMO certified dispersal systems and combined treatment and dispersal systems using a multiplier less than 0.70. Combined treatment and dispersal systems tested and certified to NSF/ANSI 40 Class 1 effluent treatment standards in a bed configuration are exempt from bed upsizing requirements.
6.8	Wastewater Treatment	5. Address Tier 2 use and O&M - In section 9.4.6, the minimum operation and maintenance for CTD systems without electromechanical componentry is established as aligning with those of Tier 1 systems, which consist of leach fields. When CTD systems have no moving parts and require no external power, there is nothing to repair or replace. 9.4.6 OWTS utilizing supplemental treatment without requirements for periodic monitoring or inspections. Combined treatment and dispersal systems constructed without electromechanical components are exempt from periodic monitoring or inspections beyond requirements for a leach field.
6.9	Wastewater Treatment	6[a]. Address Tier 3 use - The proposed additions to section 10 mirror those describe above under item Nos. 4 and 5 for Tier 2 systems, with similarly structured sections and proposed, added text. 10.6.5 Decreased leaching area for IAPMO certified dispersal systems and combined treatment and dispersal systems using a multiplier less than 0.70. Combined treatment and dispersal systems tested and certified to NSF/ANSI 40 Class 1 effluent treatment standards in a bed configuration are exempt from bed upsizing requirements.

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
6.10	Wastewater Treatment	6[b]. Address Tier 3 use - The proposed additions to section 10 mirror those describe above under item Nos. 4 and 5 for Tier 2 systems, with similarly structured sections and proposed, added text. 10.6.6 OWTS utilizing supplemental treatment without requirements for periodic monitoring or inspections. Combined treatment and dispersal systems constructed without electromechanical components are exempt from periodic monitoring or inspections beyond requirements for a leach field.
6.11	Wastewater Treatment	North American CTD Regulatory Framework As the usage and prevalence of CTD technology has expanded over time, and its use has become mainstream, states and provinces have codified specifications in their regulations or publishes policy documents describing the application. States having done so previously are listed below, along with a summary of how the technology is regulated.... • Alabama – In 2017, the Alabama Department of Public Health promulgated rules incorporating “sand lined systems” (SLS). SLS is defined as a treatment system comprised of proprietary distribution media and system sand that is capable of producing effluent that meets secondary effluent criteria; in other words CTD. Under Alabama rules, SLS must be certified by an organization accredited in the United States, Canada, or Europe to meet secondary wastewater treatment standards (e.g., NSF/ANSI 40), mirroring the proposed OWTS Policy amendments described above. • Connecticut – The Connecticut Public Health Code regulates proprietary OWTS based on the amount and type of sand-filled leaching system interface that produces a biologically active layer when subjected to the flow of septic tank effluent. Under this framework, increasing the quantity of biologically active interface surface area translates to a commensurate increase in biological activity as septic tank effluent enters the sand placed around the proprietary system, thereby reducing the required effluent dispersal area. Crediting the biological impact on septic tank effluent has been part of the state’s public health code for over 20 years. • Florida – In 2018, the State of Florida promulgated rules that include a passive nitrogen treatment technology termed an “in situ nitrogen reducing biofilter” or INRB. An INRB accepts septic tank effluent and reduces the total nitrogen concentration to a level that would meet NSF/ANSI 245 standards. For reference, the minimum total nitrogen reduction

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
		benchmark that must be met for NSF/ANSI 245 certification is 50% of the influent concentration. The construction of an INRB is analogous to the CTD technology proposed in California, with a combination of distribution media and sand layers comprising the system to achieve target wastewater treatment standards. Florida's INRB regulations are provided as an example because the proposed OWTS Policy addition and Florida's nitrogen-reducing system share similar construction and operational attributes. • Maine – Over ten years ago, Maine included two categories of passive technologies that treat septic tank effluent to secondary treatment levels. Categories include gravelless fabric wrapped disposal tubing and geotextile sand filters. Like the CTD technology discussed above, the technology classes allowed in Maine include a proprietary product enveloped in sand, where the integrated product-sand combination produces treated effluent. • New York – For over 20 years, the New York State Department of Health rules have included gravelless geotextile sand filters (GSF) that allow the use of proprietary devices installed within a 4-foot-wide sand trench. GSF systems in New York are sized for secondary treatment of effluent. These systems require 33% less dispersal system trench basal area than conventional gravel and pipe leachfields, as described in regulation. In New York, GSF systems are regarded as CTD systems. • North Carolina – In the late 1980s, North Carolina adopted regulations allowing prefabricated permeable block panel systems (PPBPS), consisting of a proprietary product encased in and underlain by coarse sand. PPBPS are sized at a 50% reduction in trench length compared to a conventional gravel and pipe drainfield in North Carolina, with only one foot separating the bottom of trench from the groundwater table. • Province of Ontario, Canada – The Ontario Ministry of Municipal Affairs and Housing, which oversees wastewater regulation for Canada's most populous province, has issued proposed modifications to the Ontario Building Code that include the addition of CTD technology. The proposed CTD provisions are part of an active Ontario Building Code consultation and are receiving public comment at present. Ministry building code changes are vetted extensively by the Ontario provincial government prior to public release and as a result, typically gain enactment as proposed. • Washington – The Department of Health's Recommended Standards and Guidance document describes sand-lined system technology for use in OWTS designs.

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
		(*see also Appendix C and Appendix D in comment letter*).
6.12	Wastewater Treatment	2024 Uniform Plumbing Code Inclusion ....Today's 2021 UPC describes five technologies for dispersing septic tank effluent, including: filter media (i.e., gravel) and pipe, seepage pits, cesspools, leaching chambers, and bundled expanded polystyrene synthetic aggregate units[1]. The UPC Technical Committee's amendments include CTD technology in the 2024 UPC as a sixth wastewater dispersal technology, expanding the design and installation alternatives available to designers, installers, regulators, and manufacturers. Under the future, amended terms of the 2024 UPC, CTD systems must be certified to achieve NSF/ANSI 40 Class I treatment standards. The dispersal system planimetric area is determined using an efficiency factor of 0.70 relative to the required area for a traditional gravel and pipe leach field, providing for a more effective use of building lot space. If the CTD NSF/ANSI 40 testing included dispersal media arranged in a bed, where individual trenches are consolidated into a single, continuous effluent dispersal area, then the UPC's 50% area increase for bed configurations is exempted, conserving building lot space. The separation distance from the bottom of the CTD system to the groundwater table must be no less than 2 feet. CTD system operation and maintenance requirements adhere to manufacturer's instructions. Footnote 1: The OWTS Policy references IAPMO-certified dispersal systems, specifically leaching chambers, and bundled expanded polystyrene synthetic aggregate units. (*see also Appendix B and Appendix E in comment letter*).
6.13	Wastewater Treatment	Case Studies As a technology, CTD offers versatility for meeting different OWTS design needs. Common applications include: • Single family home - Achieve secondary wastewater treatment standards with dispersal in the system footprint; • Large flow such as multiple home, casino, or business application - Achieve secondary wastewater treatment standards with dispersal in the system footprint; • Small or large flow as part of a unit process in a larger system – Achieve secondary wastewater treatment standards and nitrify effluent where it can then be recirculated to the

Comment ID	Comment Category	Commenter: Infiltrator Water Technologies Comment Summary Excerpts By Staff
		septic tank for denitrification; or • Small or large flow as part of a unit process in a larger system – Achieve secondary wastewater treatment standards with collection and reuse such as non-food irrigation. Extending beyond the simple, routine single-family home application the case studies that follow, and are presented in Appendix F, showcase some of the capabilities of CTD that make it a valuable tool in the toolbox for industry stakeholders. The case studies are as follows: • Case Study 1 – 100,000 gpd FEMA Work Camp in Paradise, California This system served a temporary 1,500-person FEMA work camp that housed the work force cleaning up after the Camp Fire in Paradise, CA. • Case Study 2 – 1,620 gpd California Department of Forestry and Fire Protection Station 58 - Skylonda Fire Station Passive treatment was achieved at this remote location using CTD technology, returning treated effluent to the native soil without the need for electricity. • Case Study 3 – 2,900 gpd Grand Canyon North Rim Employee Housing Domestic wastewater produced from employee housing at the Grand Canyon National Park was treated and dispersed using CTD technology. • Case Study 4 – 9,420 gpd 30-Home Subdivision An average-sized subdivision was served using CTD technology, eliminating the need for a central sewer hookup. • Case Study 5 – 2,000 gpd Devil's Tower National Park Campgrounds Intermittent seasonal use needs were addressed at campgrounds located at Devil's Tower National Park using CTD technology. • Case Study 6 – 50,000 gpd Municipal Wastewater Treatment System Passive CTD technology was used to nitrify the effluent discharged from a municipality, with nitrified effluent collected in a liner and returned to the septic tank, where denitrification could occur. Nitrogen reduction efficacy for the system is excellent using CTD as a unit process within a larger, integrated system. (*see also Appendix F in comment letter*).

Comment ID	Comment Category	Commenter: Robert Crandall Comment Summary Excerpts By Staff
7.1	Wastewater Treatment	I am writing to support the revisions and amendments that have been recommended by David Lentz, P.E. of Infiltrator Water Technologies (IWT) in a separate comment submission. I have attached a copy of the proposal by Mr. Lentz at the end of my comments.
7.2	Wastewater Treatment	At the time of the development and adoption of the OWTS Policy, we were unaware and not familiar with the innovative technology known as passive Combined Treatment and Dispersal (CTD) systems. CTD systems combine the simplicity of conventional pipe and stone leach fields with treatment that meets federal and state standards for secondary treatment. These systems passively treat and disperse without electrical, mechanical, or chemical components, and they have no components which require cleaning or replacement. Although CTD systems are generally designed to provide secondary treatment, they also have the capacity to be modified to address and effectively treat wastewater in nitrogen and pathogenic impaired areas. ...CTD systems also allow for a smaller footprint. Equally important, they are affordable, being not substantially more in cost than conventional systems.
7.3	Wastewater Treatment	Worse, like most or all of the rest of the country, scientific and technical requirements were largely based on the knowledge and requirements for conventional systems which discharge untreated, raw sewerage minus the solids onto the existing, native soils. We know that the discharge of untreated water will eventually clog the native soils and, sooner or later, fail or contaminate groundwater.
7.4	Wastewater Treatment	In a relatively short time, an extensive number of residential and larger CTD systems have been installed and are in operation through the state, including a 100,000 GPD system installed near Paradise for use by a base camp of approximately 1,500 FEMA workers conducting clean-up at Paradise following the wildfire. The CTD systems have performed excellently and are approved in approximately 25 California counties. Many owners, public health officials, and engineers/designers have been favorable to the technology.
7.5	Wastewater Treatment	One of the proposed revisions, an important one, also applies to all treatment systems, not just CTD systems. The proposed revisions include acknowledgement of the CTD technology and its unique characteristics such as being capable of being installed in bed configurations.

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7.6	Wastewater Treatment	The proposed revisions also include the acknowledgement that passive CTD systems do not require the same level of operation and maintenance (O & M) as mechanical systems.
7.7	Wastewater Treatment	A very important proposed revision by Mr. Lentz is the explicit allowance of a decrease in dispersal area using a 0.70 multiplier for all treatment systems, both CTD and mechanical systems. This reduction factor is important because it allows a smaller footprint on the building lot, helps in meeting setback requirements, and reduces installation costs. Dispersal area requirements were originally based on the concerns related to conventional systems with discharges of untreated water. Since native soils are relied upon to do biological treatment in conventional systems (which leads to soil clogging and failures), a larger leachfield area is necessary to spread out the wastewater discharge. Treated water is substantially more able to be absorbed and more readily percolates through the soils to prevent clogging, and thereby require lesser dispersal area in order to protect groundwater and public health. A number of the counties allow this reduction, but a number of them do not. An explicit allowance of this reduction factor in the OWTS Policy will serve to encourage all counties to accept CTD systems with a reduction in dispersal area.
7.8	Wastewater Treatment	In summary, the existing OWTS Policy is outdated in some respects as no new technology has been added in its ten years of existence. As a result, the OWTS Policy does not effectively address the water quality improvements offered by innovative CTD systems and treatment systems in general. In effect, the current OWTS Policy and requirements provide a subsidy for conventional systems with little or no incentive for users to choose treatment, improve water quality, and promote water reclamation. The proposed revisions will help to level the playing field and encourage greater protection of water quality, public health, and the environment. A number of requirements in many of the counties are also outdated and based upon scientific and technical rationales originally developed for conventional dispersal systems. The state needs to encourage higher water quality standards, and now has the opportunity to do so without imposing undue operational and economic difficulties and hardships on OWTS industry stakeholders, including local agencies.

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7.9	Wastewater Treatment	Section 1 - Definitions: “Combined treatment and dispersal system” (CTD) means an OWTS that provides both supplemental treatment and dispersal of effluent within a single footprint. CTD systems are comprised of proprietary media and sand in a trench or bed configuration and are used to enhance soil treatment, dispersal, and absorption of effluent discharged from a septic tank. CTD systems shall be certified by an American National Standard Institute-accredited organization to comply with NSF/ANSI 40 Class 1 effluent treatment standards. CTD systems have a subsurface discharge.
7.10	Wastewater Treatment	“Supplemental treatment” means any OWTS or component of an OWTS, except a septic tank or dosing tank, that performs additional wastewater treatment so that the effluent meets a predetermined performance requirement prior to discharge of effluent into the dispersal field or from the dispersal field for CTD systems. Dispersal systems serving a supplemental treatment that is certified by an American National Standard Institute-accredited organization to comply with NSF/ANSI 40 Class 1 effluent treatment standards shall be sized using a multiplier of 0.70.
7.11	Wastewater Treatment	Section 8 8.1.11 Increased allowance for IAPMO certified dispersal systems and combined treatment and dispersal systems that is not allowed under Tier 1.
7.12	Wastewater Treatment	Section 9 9.4.5 Decreased leaching area for IAPMO certified dispersal systems and combined treatment and dispersal systems using a multiplier less than 0.70. Combined treatment and dispersal systems tested and certified to NSF/ANSI 40 Class 1 effluent treatment standards in a bed configuration are exempt from bed upsizing requirements.
7.13	Wastewater Treatment	Section 9 9.4.6 OWTS utilizing supplemental treatment without requirements for periodic monitoring or inspections. Monitoring and inspection of combined treatment and dispersal systems constructed without electromechanical components shall be in accordance with applicable Tier 1 dispersal system monitoring and inspection requirements.

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7.14	Wastewater Treatment	Section 10 10.6.5 Decreased leaching area for IAPMO certified dispersal systems and combined treatment and dispersal systems using a multiplier less than 0.70. Combined treatment and dispersal systems tested and certified to NSF/ANSI 40 Class 1 effluent treatment standards in a bed configuration are exempt from bed upsizing requirements.
7.15	Wastewater Treatment	Section 10 10.6.6 OWTS utilizing supplemental treatment without requirements for periodic monitoring or inspections. Monitoring and inspection of combined treatment and dispersal systems constructed without electromechanical components shall be in accordance with applicable Tier 1 dispersal system monitoring and inspection requirements.

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8.1	Legal Requirements	The revision procedure appears to be designed to minimize public input.2 Distribution of an obviously incomplete draft document and limiting written comments amounts to a bait and switch tactic that effectively prevents meaningful review by the public, responsible agencies, trustee agencies, and others.3
8.2	Legal Requirements	1. The proposed OWTS Policy and staff report are incomplete and inconsistent with each other preventing meaningful public comment.... The only reference to ADUs in the proposed OWTS Policy is in the definitions, but the staff report claims numerous revisions to the proposed OWTS Policy have been made; in fact, they do not exist in the proposed OWTS Policy.... Local agencies have authority to approve and permit accessory dwelling units if they are consistent with Local Agency Management Programs."4 The purported changes in the proposed OWTS Policy do not exist. b. Staff report section 3.1(3) states, "Other revisions make explicit the authority already afforded to local agencies to propose Local Agency Management Program requirements that are protective and address specific types of OWTS-related issues: defining domestic wastewater to include wastewater normally discharged from residential dwelling units,

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		including accessory dwelling units that are the subject of recent legislation…" The purported changes in the proposed OWTS Policy do not exist.... The referenced claims simply do not exist in the proposed OWTS Policy, nor does a discussion exist in the staff report other than to make the unsupported declaratory statement that local agencies have authority to permit ADUs. (The staff report should be revised to clarify the local agency authority being referenced only addresses the OWTS associated with ADUs (ADU OTWS)). (*see staff report section 3, and 3.1(3), 3.4.2*) 4. The proposed OWTS Policy contains numerous errors and omissions indicating significant revisions will be necessary.... This is apparent even though to date; the State Water Board has not been forthcoming about the planned changes to the OWTS Policy *(comment referring/related to comment 8.18)....* iii. The public is limited to written comments on incomplete documents months in advance of the 's adoption meeting. The public is then limited to commenting verbally on what will certainly be a significantly changed document delivered to the public with the minimum ten-day notice. Hardly a model of transparency in state government.
8.3	ADU	It appears that staff intends to formalize the use of ADUs in the OWTS Policy.
8.4	Legal Requirements	Failing to provide a true and correct copy of the documents that will be considered by the State Water Board is inconsistent with public notice requirements in Water Code section 13269(a)(1), and Government Code section 11125. (*see comment 8.2 for reference on discrepancies*).

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8.5	ADU	2. The proposed OWTS Policy treatment of ADU OWTS is inadequate to protect water quality and public health. Authorizing the use of ADU OWTS is a significant change that requires much more than simply adding a definition to the OWTS Policy. ADUs will significantly increase the wastewater discharge rate at a property. The OWTS Policy should establish clear guidelines and limits for local agencies that choose to revise their local agency management program (LAMP) to allow ADU OWTS. … Obviously, the increase in housing space and occupancy will have a corresponding increase in wastewater discharge rates. The combined wastewater flow from ADUs can be conservatively estimated to be 2.5 times the original single family household flow rate. However, it could be much higher.... d. The increase in ADU OWTS will certainly be a significant water quality factor.
8.6	ADU	Such housing arrangements may start off as housing for an in-law, domestic assistant, or temporary housing for family members, but they quickly become fully occupied as rental properties, oftentimes exceeding the original design capacity.... Developers seek maximum return on their investment and therefore propose the smallest parcel size that the regional water board will accept. Allowing ADU OWTS on those minimized parcels has the effect of increasing the density by a factor of 2.5 in areas with very little, if any remaining attenuative capacity.

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8.7	Tier requirement changes	3. Recommended changes to the proposed OWTS Policy to address ADU OWTS.... a. Revise the proposed OWTS Policy to make clear that wastewater discharges from ADU OWTS are subject to all the requirements in the OWTS Policy. b. Clarify what happens when an ADU OWTS is permitted at a previously ranked Tier 0 OWTS. Are both OWTS transferred to the new tier? Is the existing OWTS allowed to remain as a Tier 0 OWTS?.... Because it is included in the California Code of Regulations, the proposed OWTS Policy should be revised to make clear that the Plumbing Code applies to all OWTS in the state and that it is the minimum acceptable standard.... i. Add a new OWTS Policy section 9.1.14 that reads, "Geographic areas where more than ten-percent of properties have permitted an ADU." ii. Add a new OWTS Policy section 9.1.15 that reads, "Geographic areas with groundwater quality degraded by pathogens, nitrate, or salinity, as determined by a regional water board pursuant to the Water Quality Control Policy for Recycled Water (2018) section 6.1.3.7. e. Clarify the proposed OWTS Policy section 9.2.8 to make clear that Regional Salt and Nutrient Management Plans (SNMPs) may not authorize wastewater discharges that do not comply with the basin plan.... Discharges that do not comply with the regional water board's basin plan are not eligible for permitting by local agencies because they do not comply with OWTS Policy Conditional Waiver. 12.0.4 (condition of pollution or nuisance), nor do they comply with the criteria for Title 27 exemption (section 20090(b)(ii) (discharge complies with the applicable basin plan).

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8.8	Tier requirement changes	At a minimum, ADU OWTS should be prohibited for: i. Any local agency permitting OWTS Tier 1 systems.... Local agencies that only permit Tier 1 facilities have not evaluated the impact to groundwater quality that OWTS create. Therefore, Tier 1 permitting agencies should be prohibited from authorizing ADU OWTS. All ADU OWTS applications in Tier 1 jurisdictions should be referred to the regional water board for permitting consideration. ii. Any ADU OWTS located in a Tier 3 geographic area where: 1. The TMDL is not complete.... 2. Where OWTS discharges are identified as a contributing water quality impairment factor in an approved LAMP special provision area, Advanced Protection Management Program. 3. An adopted TMDL includes load allocations and an implementation plan for OWTS, unless the total discharge from all OWTS and ADU OWTS at the property comply with the implementation plan requirements. iii. Any property that requires a requirement variance or fails to perform the following: 1. Comply with any requirement for Tier 1 OWTS.... 2. A property that requires a variance from an approved LAMP (described in OWTS Policy section 9.2.3). A history of OWTS failures at the property (surfacing effluent, leach field repairs, etc.) should also make a property ineligible for an ADU OWTS. 3. Any existing OWTS that does not comply with the requirements for supplemental treatment or the associated monitoring described in OWTS Policy sections 10.9 through 10.15. 4. Any property that requires a variance for corrective action (described in OWTS Policy section 11.5).
8.9	Tier requirement changes	The following specific revisions to the proposed OWTS Policy are recommended: Change all references of "California Department of Public Health" in the proposed OWTS Policy to "State Water Board, Division of Drinking Water.".... Revise the section to include a reporting due date of February 1 to be consistent with reporting requirements in OWTS section 9.3.3. c. There appears to be no significant difference between proposed OWTS Policy section 9.1.1 and proposed section 9.1.8. Recommend deleting proposed section 9.1.8.

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8.10	Legal Requirements	d. Proposed OWTS Policy section 9.2.3 requires clarification; what does "substantial conformance, to the greatest extent practicable," mean?
8.11	Reporting/Scheduling	e. The proposed change in proposed OWTS Policy section 9.3.4 will result in all water quality assessments being delivered to the Regional Water Boards at one time. The change is not recommended.... The proposed change in proposed OWTS Policy section 9.3.4 is confusing because it states, "Every fifth year after May 13, 2018…" a local agency must submit a water quality assessment. But the report due date is February 1. The confusion will be, is an assessment due on February 1, 2023 (which is less than five years), or not until February 1, 2024? Going forward, are the reports due in the years 2028 or 2029? The reporting schedule should be unambiguous.... The proposed schedule in proposed OWTS Policy section 9.3.4 will result in the water quality assessments being submitted either just before (e.g., February 2028) or one year after (e.g., February 2029) the OWTS Policy will be renewed at a State Water Board meeting, which will render the water quality assessment data too late to be evaluated, or nearly five-years too early.11.... For example , the Santa Cruz County LAMP was approved in October 2021; other LAMPs may also have been approved late. The staff report does not present any analysis of how the proposed change would impact local agency workloads, analysis of water quality conditions, or even a listing of the dates LAMPs were approved.... I recommend the proposed change be deleted, or if retained, revised to establish a schedule that will result in water quality assessments being submitted on a date that will allow timely analysis when considering future conditional waiver renewals.
8.12	Legal Requirements	Water Code section 13144 requires the state water board to consult with, and carefully evaluate recommendations of concerned federal, state, and local agencies. The staff report does not mention consultations. Have the Regional Water Boards; county health departments; and United States Environmental Protection Agency, Underground Injection Control program managers been consulted? Water Code section 13145 requires consideration of the effect of its actions pursuant to the California Water Plan; the staff report does not present a description of such an analysis. Water Code section 13291

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		requires consultation with state and local agencies in developing the OWTS Policy, it is reasonable to assume the legislature would expect consultation on a significant revision of the OWTS Policy.
8.13	Cost/Funding	The change creates another unfunded mandate for local agencies to absorb. Some local agencies will be required to prepare a water quality assessment with little data available. Those reports incur significant costs and provide little benefit for understanding water quality conditions.... For example, the Santa Cruz County LAMP was approved in October 2021; other LAMPs may also have been approved late. The staff report does not present any analysis of how the proposed change would impact local agency workloads, analysis of water quality conditions, or even a listing of the dates LAMPs were approved.
8.14	Tier requirement changes	f. Proposed OWTS Policy Attachment 1 (schedule) needs to be revised and corrected. Add the following: i. Regional water board basin plan alignment (2024). The Regional Water Boards will have to revise their basin plan to reflect the changed OWTS Policy. ii. If proposed OWTS Policy section 9.3.4 is revised, the water quality assessment report due dates should be shown. iii. All of the information on local agency annual reports is incorrect or outdated and should be revised.

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8.15	Legal Requirements	5. The staff report analysis of the conditional waiver renewal is incomplete and does not comply with Water Code section 13269(a)(2).... The staff report analysis of the waiver conditions is a cursory review and inadequate to determine if the conditions of the waiver are met.... Despite the OWTS Policy monitoring and reporting requirements, which are discussed below, no analysis is presented. Water Code section 13269 states, "...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. Monitoring results shall be made available to the public.". Even though all of the waiver conditions are addressed by the record-keeping, monitoring, and reporting requirements. For example, the conditions in proposed OWTS Policy sections 12.0.1 (surfacing effluent), 12.0.2 (dispersal in saturated soil), 12.0.4 (nuisance or pollution), 12.0.5 (local agency codes), 12.0.6 (TMDL/special provisions, supplemental treatment), 12.0.7 (corrective action requirements) are all addressed by the annual reporting requirements and five-year water quality assessments, but the data are not provided, referenced, or evaluated. It begs the question, what did the State Water Board staff rely upon in determining to renew the conditional waiver?. But the "determination of compliance" is not presented in the staff report or anywhere else. Lacking the data, data analysis, or a technical evaluation of the determination of compliance, a reviewer can only conclude that the work simply was not performed. The public is left to wonder if the conditional waiver should be extended.... e. Water Quality Control Policy for Recycled Water (2018) section 6.1.3 required the Regional Water Boards to complete basin evaluations to determine salinity and nutrient (nitrogen) conditions in each hydrologic basin or subbasin in its region before April 8, 2021 and identify basins where salinity and/or nutrients are a threat to water quality. The water quality evaluations will provide essential information on groundwater quality and are central to the issues under consideration for the conditional waiver renewal.

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8.16	Legal Requirements	The public should rightly wonder, when will the monitoring reports be evaluated? At a minimum the analysis should include a list of local agencies, LAMP Advanced Protection Management Program approval dates, data tabulation tables, statistical evaluation of the data, the regional water board basin evaluation results, and staff's determination of compliance with the waiver conditions. The failure to present the data for public review violates Water Code sections 13166 and 13167, which states, "The state board, in consultation with the Regional Water Boards, shall ensure that the information is available in single locations, rather than separately by region, and the information is presented in a manner easily understandable by the general public.". g. The staff report fails to present an analysis supervised by a licensed professional, of the impact of ADU OWTS on water quality.... Such an evaluation of the impact of a discharge on water quality falls within the professional licensing requirements of the Business and Professions Code.18
8.17	ADU	6. The proposed OWTS Policy approach to ADU OWTS violates the requirements of the Antidegradation Policy.... The failure of the proposed OWTS Policy to impose mitigation measures for the foreseeable water quality pollution that will result, violates the requirements of the Antidegradation Policy. Mitigation measures are the BPTC measures required by the Antidegradation Policy. (*references comment 8.6*).

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8.18	ADU	See comment letter for full comments. 7. The State Water Board has failed to comply with the requirements of the California Environmental Quality Act.12 The staff report states an intention to amend the Substitute Environmental Document (SED)13 to address the proposed changes in the proposed OWTS Policy. That approach is inconsistent with state law. Amendments are only appropriate when minor technical project changes with no significant impacts are anticipated. As described below, based on the proposed changes in the proposed OWTS Policy, and the changes described in the staff report but not reflected in the draft Policy, a supplemental environmental document is required.… ((related additional comments below cited from previous page in letter, p 9) Alternative mitigation measures are available to the State Water Board, but they are not evaluated. For example, a maximum density standard was not considered, requiring groundwater monitoring to determine the need for supplemental treatment was not considered, requiring supplemental treatment under specific conditions. Additive treatment measures are commonly implemented at a fraction of the cost of replacing an existing OWTS and therefore are "practicable."). (comments below continued from initial comment in letter) Without further description of how the various types of ADU OWTS are permitted and what will be permissible, the impact to water quality and public health cannot be evaluated. b. Failing to require mitigation measures for pathogens, nitrate pollution, and cumulative public health and water quality impacts violates the OWTS Policy conditional waiver, basin plans, Water Code section 13269(a)(1), and the Antidegradation Policy.... Without mitigating the waste constituents and pathogenic characteristics of the discharges, groundwater pollution will be exacerbated. Consistent with state CEQA Guidelines14 section 15162 this information is of substantial importance because significant effects are described in the SED.... The State Water Board must revisit the pathogen mitigation measure determination when considering allowing ADU OWTS. Allowing ADU OWTS discharges in any tier will increase the wastewater application rate, the exact condition the SED identified as a primary issue of concern, and change baseline conditions. There are ample mitigation measures available to reduce the "significant and unavoidable" impact to less than significant. To allow discharges to create or exacerbate a significant impact is contrary to the OWTS Policy conditional

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		waiver section 12.0.4 (not create a condition of nuisance or pollution), Water Code section 13269(a)(1) (waivers must be consistent with the regional water board basin plan), the Title 27 exemption, and the State Water Board's Antidegradation Policy.... Allowing the higher density of OWTS that will result from ADU OWTS permitting will make the nitrate pollution of groundwater described in SED section 6.2.5, substantially more severe than described in the SED. The use of the word "pollution" is significant. The term is defined in Water Code section 13050(l)(1): ""Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses. (B) Facilities which serve these beneficial uses." The SED forecasts groundwater pollution will occur (without the additional waste discharged from ADU OWTS) as a result of discharges occurring under Tiers 1, 2, 3, and 4. Allowing ADU OWTS will increase the contaminant mass flux to groundwater by a factor of 2.5 (possibly higher). The increased discharge of waste to groundwater will increase the severity of a significant impact identified in the SED. The proposed OWTS Policy is not clear on permitting status changes initiated by an ADU OWTS; however, the previously stated baseline conditions (Tier 0 OWTS) will experience a significant change. The change will undoubtedly alter baseline conditions and increase groundwater pollution with nitrate. This will be a new significant impact to the previously defined SED baseline conditions.... The State Water Board must revisit the nitrogen mitigation measure determination when considering ADU OWTS. Allowing ADU OWTS discharges in any tier will increase the wastewater application rate, waste discharged to groundwater, and change baseline conditions. There are ample mitigation measures available to reduce the "significant and unavoidable" impact to less than significant. To allow discharges to create or exacerbate a significant impact is contrary to the OWTS Policy conditional waiver section 12.0.4 (not create a condition of nuisance or pollution), Water Code section 13269(a)(1) (waivers must be consistent with the regional water board basin plan), the Title 27 exemption, and the State Water Board's Antidegradation Policy.... Clearly, baseline conditions will be significantly altered and the environment degraded by the allowance of unmitigated discharges from ADU OWTS.

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8.19	ADU	iii. Cumulative Water Quality and Public Health Impacts.... Domestic wells are often sited between 100 and 200 feet from an OWTS. The same areas of the state that have relatively high densities of OWTS also have relatively high densities of private drinking water wells, and thus have the potential for nitrate and pathogens from OWTS discharges to contaminate drinking water supplies.... With regard to cumulative public health impacts and future land development, the SED states, "OWTS discharges and other human activities that result in the release of nitrogen and pathogens into groundwater will increase over time as future related projects are implemented, especially more residential, commercial, industrial, and agricultural development. The types of cumulative public health impacts described above have the potential to be significant in the situations described above, and these will become more significant over time… Therefore, the proposed OWTS Policy contributions to these potentially significant public health impacts are considerable because the proposed Policy could allow discharges from new OWTS installations, resulting in additional risk of contamination of drinking water wells.".... Allowing ADU OWTS discharges in any tier will increase the cumulative water quality and public health impacts and change baseline conditions.
8.20	Legal Requirements	State CEQA Guidelines section 15162 states a subsequent EIR is required under certain conditions. In fact, several of the conditions are met indicating the need for further analysis. Each of the conditions is discussed in Table 1. (*see Table 1 and comment letter for full comment*). d. State Water Board's failure to perform additional analysis required by CEQA will create additional work for "downstream agencies" with discretionary approval responsibility. If a lead agency does not prepare a supplemental SED to address the increase in severity of a significant impact and the readily available means to mitigate that impact, agencies with subsequent discretionary approval (local agencies and/or Regional Water Boards) are required to perform those analyses (State CEQA Guidelines 15162(c) and 15052).... The staff report describes the SED analysis performed in 2012 and ignores the new information of substantial importance that will result in substantially more severe significant effects (pathogen and nitrate pollution and public health impacts) than described in the SED. In addition, mitigation measures previously determined to be infeasible (supplemental

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		treatment of wastewater to reduce nitrate concentrations), are feasible and will substantially reduce the severity of the significant effect. Staff report section 3.1 discusses the requirements for a supplemental SED and merely states, "The conditions listed above have not been met." A ridiculous assertion designed to avoid meaningful analysis of the severely increased effects and an analysis of the cost of protecting water quality and public health. PRC 15164(e) requires an explanation of the decision not to prepare a subsequent SED and the lead agency's findings on the project. The explanation must be supported by substantial evidence. State Water Board's determination to not prepare a subsequent SED is not supported by any evidence; the discussion of changes are editorial in nature and ignore the technical issues associated with the proposed change.... The staff report recognizes the increased severity of a significant impact, yet staff ignore the requirements to perform a supplemental SED to address the changed baseline conditions, substantially more severe pathogen and nitrate groundwater pollution, and the feasibility of mitigation measures.... ii. The failure to provide a draft supplemental SED as required by law prevents the public, trustee agencies, and responsible agencies, from the opportunity to provide comments.
8.21	Legal Requirements	e. The SED mitigation measures evaluation was incomplete and improperly eliminated viable mitigation measures solely on a cost basis. Even though mitigation measures previously were determined not to be feasible, the incomplete nature of the analysis prevented evaluation of other mitigation measures that should have been examined. For example, alternative mitigation measures were available to the State Water Board, but they were not evaluated. For example, the following obvious mitigation measures were not mentioned in the SED: a maximum OWTS density standard, requiring groundwater monitoring to determine the need for supplemental treatment, requiring supplemental treatment under specific conditions... requiring "additive treatment measures" to existing OWTS (e.g., recirculating media filters)). Additive treatment measures can be implemented at a fraction of the cost of replacing an existing OWTS. All of the mentioned mitigation measures can mitigate the significant impacts, at much lower costs than simply replacing an OWTS with one that provides supplemental treatment. The options are feasible, commonly implemented, and would substantially reduce a significant effect of the project, but State Water Board staff declined to address the increase in severity of a significant impact and

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		available mitigation measures (PRC 15162(a)(3)(c) in either the SED or the proposed OWTS Policy staff report.
8.22	Local agency responsibilities, LAMPs	....additional or increased discharges into existing systems may not meet conditions of the waiver and may require individual permitting with local and state regulatory agencies [emphasis added]." What local agencies is the staff report referring to? The authority to permit wastewater discharges is assigned by law to the Regional Water Boards. The purpose of the OWTS Policy is to clearly provide authority to local agencies to assume responsibility for the Regional Water Boards for certain discharges under the conditions described in the OWTS Policy. If a discharge does not meet the conditions of the waiver, it is ineligible for permitting by a local agency and must be referred to the regional water board. The staff report should not be casting doubt on the responsibility of a discharger to comply with the Water Code. (*previous comment on p.15, related to comment 8.22)* The staff report states local agencies will have authority to permit ADU OWTS, including in areas previously classified as Tier 0.
8.23	ADU	The staff report seems to feign any knowledge that local agencies and Regional Water Boards are increasingly facing questions regarding permitting ADU OWTS. Surprising, since the State Water Board's OWTS program page currently contains a fact sheet regarding permitting ADU OWTS.17 (citation 17: 17 State Water Board OWTS program page, Accessory Dwelling Unit Permitting Guidelines, available at: https://www.waterboards.ca.gov/water_issues/programs/owts/owts_policy.html#dwelling, accessed 29 September 2022.)
8.24	Legal Requirements	a. The approach taken in the revised OWTS Policy is not consistent with the Report to the Legislature Nitrate Study, which addressed nitrate in groundwater.19 The revised OWTS Policy ignores commonly imposed mitigation measures and recommendations provided in the State Water Board's report. The University of California, Davis, Center for Watershed Sciences produced a report addressing nitrate in groundwater20 for the State Water Board's report to the California Legislature responding to Senate Bill SBX2. Key findings included:...

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		ii. Nitrate loading reductions are possible, some at modest cost. *(comment related to 8.20)*
8.25	Legal Requirements	However, rather than address nitrogen in OWTS discharges, the State Water Board shirks their responsibility to protect water quality and public health. Senate Bill SBX2 1 also directed the State Water Board to identify sources of nitrate groundwater contamination and evaluate the State Water Board's current authority to reduce current nitrate levels and to prevent continuing nitrate contamination. Considering the inadequate nitrogen control approach proposed in the draft OWTS Policy revision, it appears staff is not very serious about controlling on-going pollution of groundwater.