

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2018-0019**

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

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy, or Policy) on June 19, 2012 under [Resolution No. 2012-0032](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0032.pdf) (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2012/rs2012_0032.pdf). The OWTS Policy was approved by the Office of Administrative Law on November 13, 2012; and consistent with OWTS Policy section 13.0, became effective six months later on May 13, 2013.
2. The OWTS Policy authorizes subsurface disposal of domestic strength, and in limited instances high strength, wastewater and 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 and nuisance. The Policy also conditionally waives the requirement for owners of OWTS to apply for and obtain waste discharge requirements (WDRs) in order to operate their systems if they meet the conditions set forth in the Policy. The Policy applies to OWTS on federal, state, and tribal lands to the extent authorized by law or agreement.
3. Proposed changes to the OWTS Policy consist of amendments to Tables 5 and 6 in OWTS Policy Attachment 2. The State Water Board also proposes to renew the conditional waiver of waste discharge requirements set forth in OWTS Policy section 12.0, which does not by itself require an OWTS Policy amendment.

Conditional Waiver Renewal

4. California Water Code section 13269 provides that the State Water Board or a Regional Water Quality Control Board (Regional Water Board) may waive the requirement for dischargers to submit a report of waste discharge (RWD) and for issuance of WDRs. The State Water Board adopted a conditional waiver of WDRs as part of the OWTS Policy, in order to implement the framework of state and local agency coordination in regulating OWTS. The conditional waiver, set forth in OWTS Policy section 12.0, waives requirements to submit an RWD, obtain WDRs, and pay fees for discharges from OWTS covered by the Policy where those discharges are in compliance with specified conditions.
5. By law, waivers expire five years after adoption; the conditional waiver in the OWTS Policy will expire on May 13, 2018. Water Code section 13269 (f) requires that prior to renewing any waiver for a specific type of discharge, the State Water Board shall review the terms of the waiver at a public hearing. The

State Water Board shall further determine whether the discharge for which the waiver was established should be subject to general or individual WDRs.

6. As described more fully in the [Staff Report](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/041718_3_final_staff_rpt.pdf) (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2018/041718_3_final_staff_rpt.pdf) prepared and circulated with the proposed OWTS Policy amendment, the State Water Board has considered the conditions set forth in the Policy, which include: requirements that OWTS shall function as designed, with no surfacing effluent; shall not utilize a dispersal system that is in soil saturated with groundwater; shall not be operated while inundated by a storm or flood event; shall not cause or contribute to a condition of nuisance or pollution; shall comply with all local agency codes, ordinances and requirements; shall comply with and meet any applicable total maximum daily load (TMDL) requirements, special provisions for impaired water bodies, or supplemental treatment requirements; and comply with any corrective action requirements.
7. The State Water Board finds that the conditions contained within the OWTS Policy waiver are adequately protective of water quality and human health. The State Water Board further finds that renewal of the waiver is in the public interest. Because the conditions contained in the waiver are appropriate, requiring all OWTS to be subject to general or individual WDRs is not necessary.

Identification of Impaired Water Bodies

8. OWTS Policy Attachment 2 contains Tables 5 and 6. The tables provide a list of impaired water bodies that, at the time of OWTS Policy preparation, were determined to be a contributing source of pathogens or nitrogen such that OWTS were anticipated to receive a loading reduction pursuant to a TMDL, and where it was considered likely that new OWTS installations discharging within 600 feet of the water body would contribute to the impairment. The tables provide a schedule for the Regional Water Boards to adopt TMDLs for these water bodies, in accordance with the requirements for applicability of Policy section 10, governing Advanced Protection Management Programs for Impaired Areas. OWTS Policy section 5.6 requires that the State Water Board update Attachment 2 as new information becomes available.
9. Since the OWTS Policy was adopted in June 2012, new information has been collected and the Regional Water Boards have requested certain changes to the tables. The April 2018 Staff Report, Attachment A, provides a summary of proposed amendments to OWTS Policy Tables 5 and 6 with justification for the proposed changes. (Water bodies with no proposed amendment do not appear on the table in Staff Report Attachment A.) The amendments include removing water bodies from the tables or revising the schedule for TMDL adoption. Justifications include:
 - a. Removal of water bodies from the tables is based upon completed TMDLs that did not include an OWTS load allocation, delisting of water bodies from the Clean Water Act 303(d) list, and/or technical studies and reports that indicate OWTS are not contributing sources.

- b. Schedule changes are based upon delays in obtaining data used for the analysis, revisions to the TMDL project scope, available staff to perform the work, new information regarding contaminant sources, and changed conditions or office closures due to natural disasters (wildfires).
10. Attachment 1ⁱ, attached hereto and made part of this resolution by reference, presents an underline/strikethrough version of Tables 5 and 6 showing all the proposed changes.

California Environmental Quality Act Analysis

11. The State Water Board in 2012 prepared a Substitute Environmental Document (SED) for adoption of the OWTS Policy, in compliance with the California Environmental Quality Act (CEQA). The 2012 SED analyzed not only the proposed OWTS Policy and the proposed waiver, as part of the Policy, but also subsequent actions of the State Water Board, Regional Water Boards, and local agencies to implement the OWTS Policy.
12. The State Water Board's consideration of the conditional waiver renewal and amendment to identified impaired water bodies listing does not require further analysis of environmental impacts within the meaning of CEQA because the whole of the action considered does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (See, Cal. Code Regs., tit. 14, §15060, subd. (c)(2); Cal. Code Regs., tit. 14, § 15378, subd. (a). See also, Cal. Code Regs., tit. 14, § 15061, subd. (b)(2).)
13. The conditional waiver renewal and amendment to identified impaired water bodies listing was publicly noticed. A legal notice was published in six newspapers with the largest circulation in geographic areas across the state, automated e-mail messages containing the public notice were transmitted to Lyris lists for the Onsite Wastewater Policy Implementation and several TMDL listed water bodies, and the notice was published on the State Water Board's Internet webpage.
14. The State Water Board conducted a public hearing on April 17, 2018, in Sacramento to consider adoption of the conditional waiver renewal and amendment to identified impaired water bodies listing resolution.
15. The State Water Board has responded to comments received during the public comment period. A number of the comments raised issues regarding Policy implementation rather than the proposed waiver renewal and amendments to Attachment 2.
16. The documents and other materials that constitute the record of proceedings on which the State Water Board findings are based are located at State Water Resources Control Board, Division of Water Quality, 1001 I Street, 15th floor, Sacramento, California, 95814. The custodian for these documents is the Division of Water Quality.

17. The State Water Board will file a Notice of Exemption for this project with the Governor's Office of Planning and Research in accordance with California Code of Regulations, title 14, section 15062.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Amends the Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (Policy) Attachment 2, Tables 5 and 6 as shown in Attachment 1.
2. Renews the conditional waiver set forth in the Policy for the maximum duration allowed by law.
3. Authorizes the Executive Director or designee to submit the amended Policy to the Office of Administrative Law for review and approval.
4. Directs staff to engage stakeholder groups who commented during the comment period and any other interested persons regarding issues and questions regarding ongoing project implementation.

CERTIFICATION

The undersigned Clerk to the Board hereby does certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 17, 2018.

AYE: Chair Felicia Marcus
Vice Chair Steven Moore
Board Member Tam M. Doduc
Board Member Dorene D'Adamo
Board Member E. Joaquin Esquivel

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

ⁱAttachment 1 for this Resolution No. 2018-0019 has been made web accessible and is available as a separate document for this item on the [State Water Resources Control Board 2018 adopted resolution web page](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/res18.html) (https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/res18.html)