



# COUNTY OF SISKIYOU

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## Board of Supervisors

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August 17, 2012

Mr. Andy Baker  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd, Suite A  
Santa Rose, CA 95403-1072

Re: Comments on Shasta River TMDL Categorical Waiver

Dear Mr. Baker:

Please accept these comments from the County of Siskiyou regarding the revision of the Categorical Waiver of Waste Discharge Requirements ("Waiver") and Shasta River TMDL.

As an overarching comment, we are pleased that three members of the Regional Board, as well as the Executive Officer and a number of other staff members, were able to attend the recent TMDL workshops conducted in Yreka and Fort Jones and hear the many concerns of our landowners and water users. As noted in many comments, it is difficult to reconcile the water quality demands being placed upon Scott Valley and Shasta Valley citizens with the plans of the Klamath Hydroelectric Settlement Agreement and the Klamath Basin Restoration Agreement.

Our citizens are being told they will have to expend time and money to comply with a new regulatory program – even if they are already managing their land in a manner that is optimal for water quality – under the larger goal of implementing the TMDL action plans to enhance conditions related to sediment, temperature, and dissolved oxygen. At the same time, the Klamath settlement agreements promise to flood the Klamath River with sediment, increase water temperatures, and deplete dissolved oxygen. The Klamath River temperature TMDL even goes so far as to adopt the current temperature regime in Upper Klamath Lake as a "natural condition," when in reality it is only a natural consequence of the Klamath Irrigation Project's infrastructure and operations. No such allowance is made for the much more natural conditions of the Scott and Shasta Rivers. After all of the work that has been done over the past two decades to protect fish and water quality in the Scott and Shasta river systems, the Klamath contradictions make it all the more difficult to accept the cost and burden of chasing incremental water quality benefits under the gun of a stepped-up regulatory program.

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Jim Cook  
District 1

Ed Valenzuela  
District 2

Michael Kobseff  
District 3

Grace Bennett  
District 4

Marcia H. Armstrong  
District 5

With respect to particular provisions in the Waiver:

**Access to Private Property.** Condition 3 in the Waiver requires property owners to allow Regional Board staff access to private property “for the purpose of observing, inspecting, and/or collecting samples or other monitoring information to document compliance or non-compliance” with the Waiver. However, we are not aware of any circumstance, up to this point, where Regional Board staff have been refused access to a property and have needed some new authority for access. Amidst the current multitude of lawsuits and other regulatory actions involving the Shasta River, even many landowners who have undertaken voluntary efforts to improve habitat and water quality are increasingly resistant to further dictates and intrusions from state and federal agencies. At the same time, landowners have continued to engage in collaborative and proactive management actions. Under these circumstances, we do not see any rationale for adding an access condition that is perceived by the public with such overwhelming negativity.

If the Board does maintain the access condition in the waiver, it should provide assurance and emphasize that any access obtained through the waiver condition is strictly limited to determining compliance or non-compliance with the Waiver. It should be made clear that Regional Board staff may not invite representatives of other agencies to accompany them onto private property. Using the “voluntary” acceptance of the waiver conditions to extract access to private property threatens to intrude on individual rights, which the Fourth Amendment of the United States Constitution protects from unreasonable and warrantless searches. Access authority under the Waiver should be clear and narrow in order to minimize the degree of that intrusion.

**“Risk” Criteria.** Findings 7 and 8 in the Waiver state that staff will focus their regulatory powers on some subset of landowners determined to present the “highest risk to water quality” based on the following factors:

1. Type and intensity of land use.
2. Proximity to streams.
3. Length of stream adjacent to such activities.

These criteria for targeting particular landowners are vague and lack any quantification. What types of land use? What decrees of intensity? How close in proximity? How long is long? Through what type of equation are all of these variables combined? As presented, these criteria provide landowners with no means of assessing where their operations fall under the Waiver. Even worse, there is no yardstick to evaluate the fairness and reasonableness with which the Waiver is being implemented and no means of holding the Regional Board staff to be accountable for actions, decisions, and prioritization.

**Mandated Plans, Monitoring, and Management Actions.** The Waiver and the Shasta River TMDL action plan grant broad authority to Regional Board staff to require

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landowners to perform a number of obligations on a "site-specific" and "as-needed" basis:

1. Create ranch management plans
2. Create tailwater management plans
3. Create monitoring and reporting plans
4. Conduct photo documentation of management measures
5. Evaluate and document instream and near-stream management measures
6. Collect tailwater data
7. Provide any plans or documentation to the Regional Board upon request
8. Implement any plan at the direction of Regional Board staff

Simply allowing Regional Board staff to impose these time-consuming and costly requirements at their unilateral discretion creates another gap in anyone's ability to evaluate objectively the equity, reasonableness, and effectiveness of the program or to ensure accountability on the part of the Regional Board staff who are directing its implementation. Beyond just providing better definition and explanation of "risk criteria" as discussed above, the Waiver should systematically connect the identification of actual risks with the triggering of commensurate planning, monitoring, and management actions.

Sincerely,



Grace Bennett  
Chair, Board of Supervisors

Cc Paul McIntosh, Executive Director, California State Association of Counties  
Greg Norton, President & CEO, Regional Council of Rural Counties  
John Laird, Secretary, California Natural Resource Agency  
Charlton H. Bonhan, Director, California Department of Fish and Game