

## CHAPTER 9. ENVIRONMENTAL ANALYSIS

### Key Points

- For the purposes of the California Environmental Quality Act (CEQA), the proposed project consists of:
  - Adoption of the Scott River TMDL Action Plan as a Basin Plan amendment.
  - Adoption of the introductory summary of TMDLs as a Basin Plan amendment.
- The project is categorically exempt from the provisions of CEQA that require an initial study, environmental impact report, and a negative declaration.
- Other relevant provisions of CEQA and State Water Board regulations require that amendments to a Basin Plan comply with the functionally equivalent process, including:
  - holding a scoping meeting,
  - preparation of a functionally equivalent substitute document,
  - preparation of alternatives to the project,
  - preparation of a CEQA Checklist,
  - preparation of an analysis of environmental impacts, and
  - preparation of mitigation measures.
- A properly noticed CEQA Scoping Meeting was held on June 28, 2005, in Yreka, CA.
- This Staff Report serves as the functionally equivalent substitute document.
- Three alternatives are considered:
  - Alternative 1: No Action.
  - Alternative 2: Scott River TMDL Action Plan as proposed.
  - Alternative 3: WDR-based Implementation Actions.
- Regional Water Board staff recommend Alternative #2.
- The CEQA Checklist is included as Appendix E.
- This chapter serves as the analysis of environmental impacts.
- The adoption of the proposed Scott River TMDL Action Plan and the proposed introductory summary of TMDLs will not have a significant impact on the environment because the term “significant impact” is defined to include only adverse impacts. The environmental changes that will result from the proposed project are beneficial, not adverse.
- A description and analysis of mitigation measures is not required because there are no significant adverse impacts to be mitigated.

For the purposes of the California Environmental Quality Act (CEQA), the project consists of:

1. Adoption of the proposed Scott River TMDL Action Plan as a Basin Plan amendment.
2. Adoption of the proposed introductory summary of TMDLs as a Basin Plan amendment.

The adoption of the proposed Scott River TMDL Action Plan and the adoption of the proposed introductory summary of TMDLs will not have a “significant impact on the environment,” because that term is defined to include only adverse impacts (14 CCR §15382). The environmental changes that will result from the proposed project are beneficial, not adverse. These statements are supported by the CEQA Checklist (Appendix E) and by the information presented in this Staff Report.

## 9.1 ENVIRONMENTAL ANALYSIS REQUIREMENTS

The adoption of the proposed Scott River TMDL Action Plan and the adoption of the proposed introductory summary of TMDLs constitute an action taken by a regulatory agency that is categorically exempt from certain provisions of CEQA, including the necessity to prepare an initial study, an environmental impact report (EIR), and a negative declaration. Two exemptions are applicable:

- Class 7 Exemption for Actions by Regulatory Agencies for Protection of Natural Resources  
“Class 7 consists of actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include but are not limited to wildlife preservation activities of the state Department of Fish and Game. Construction activities are not included in this exemption” (14 CCR §15307).
- Class 8 Exemption for Actions by Regulatory Agencies for Protection of the Environment  
“Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption” (14 CCR §15308).

The project – adoption of the proposed Scott River TMDL Action Plan and the proposed introductory summary of TMDLs – is consistent with these exemptions as the project will not have a significant adverse effect on the environment.

Other relevant portions of CEQA continue to apply, and State Water Board regulations require amendments to a Basin Plan to comply with a functional equivalent process. As part of this process, a Basin Plan amendment must include:

- Solicitation of public input, including holding a scoping meeting to assess the potential environmental scope of the CEQA analysis.
- The preparation of a functionally equivalent substitute document.

- The preparation of alternatives to the project.
- The preparation of a CEQA Checklist
- The preparation of an analysis of environmental impacts.
- The preparation of mitigation measures.

The project has met these requirements. More information on these requirements are included in the following sections.

## **9.2 SCOPING MEETING**

The CEQA Scoping Meeting was held on June 28, 2005, in Yreka, California. A public notice of the meeting was sent out on May 13, 2005. Triplicate notices were inserted in newspapers throughout the North Coast Region beginning the week of May 15, 2005. In preparation for the Scoping Meeting, a plain English summary of the proposal was made available to interested parties and was posted on the North Coast Region website.

Many of the comments received at the CEQA Scoping meeting concerned technical aspects of the initial proposal rather than the scope of the environmental review. The comments received at the CEQA Scoping Meeting that concerned the scope of the environmental review are summarized in Table 9.1 below. These comments, and others, helped to shape the scope of the environmental review and specific aspects of the resulting proposal.

## **9.3 FUNCTIONALLY EQUIVALENT SUBSTITUTE DOCUMENT**

As discussed previously in this Staff Report, the Basin Plan amendment process has been certified by the Secretary for Resources as functionally equivalent to, and therefore exempt from, the CEQA requirement for preparation of an environmental impact report (EIR) or negative declaration and initial study (14 CCR §15251(g)). A substitute document that is functionally equivalent to an EIR or negative declaration must be prepared, and must include a description of the proposed project and either a description of alternatives with mitigation measures to avoid significant adverse impacts or a statement showing that the project would have no significant adverse impacts. This entire Staff Report serves as the functionally equivalent substitute document. It contains the required elements.

## **9.4 ALTERNATIVES & STAFF RECOMMENDATION**

This section identifies and analyzes reasonable alternatives to the recommended approach that address different ways to reduce sediment waste discharges and elevated water temperatures in the Scott River watershed. An analysis of reasonable alternatives is required by CEQA. Every conceivable alternative need not be considered – only those that would meet the project objectives and are reasonable. “The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects” (14 CCR §15126.6(a)).

<b>Table 9.1 Comments &amp; Responses from the CEQA Scoping Meeting</b>		
<b>Scoping Factor</b>	<b>Comment</b>	<b>Response</b>
Aesthetics	No Comments.	N/A
Agricultural Resources	Proposed project could result in conversion of farmland, to non-agricultural uses because the requirements will be so stringent that rural landowners will have to sell land for development.	No specific information was presented to demonstrate that the proposal was overly stringent. The information presented in this Staff Report indicates that the proposed implementation actions are not overly stringent.  The proposal is authorized and required by existing state and federal laws. The Regional Water Board will work with landowners to develop inventories and help fund projects for cooperative landowners. The public will have time to come up with acceptable implementation alternatives. Landowner income and ability, as well as the source of problems will all be factored into specific time tables and practices to control sediment inputs and impacts to water temperatures. The time frame for implementing the TMDL is long. For example, 40 years would be a typical timeframe to achieve the TMDLs.
Air Quality	No Comments.	N/A
Biological Resources	No Comments.	N/A
Cultural Resources	No Comments.	N/A
Geology and Soils	No Comments.	N/A
Hazards and Hazardous Materials	No Comments.	N/A
Hydrology and Water Quality	Increasing riparian vegetation may reduce instream water flows.	While this may be true in the short term, in the long term, increasing riparian vegetation can raise the water table thus increasing groundwater inputs. Additionally, staff is discussing the restoration of vegetation to natural levels only. More study is proposed to address this issue.
Land Use and Planning	Look at the effects of duplication of programs.	Duplication of efforts and overlap of regulatory programs is addressed in this Staff Report.
Mineral Resources	No Comments.	N/A
Noise	No Comments.	N/A
Population & Housing	No Comments.	N/A
Public Services	No Comments.	N/A
Recreation	No Comments.	N/A
Transportation and Traffic	No Comments.	N/A
Utilities and Service Systems	No Comments.	N/A

Factors that can be used to determine the feasibility of alternatives include: economic, social, environmental, legal, and technical. The analysis of alternatives must “include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project” (14 CCR §15126.6(d)).

In order to meet the project objectives, the selected alternative must provide the tools necessary to effectively control sediment waste discharges and elevated water temperatures across the Scott River watershed so that the TMDLs are achieved, beneficial uses are protected, temperature and sediment-related water quality objectives are attained, and water quality is preserved, enhanced, and restored. Each alternative is analyzed to determine potential consequences and how that alternative would or would not achieve the stated goals.

The following alternatives were considered:

Alternative 1	No Action.
Alternative 2	Scott River TMDL Action Plan as proposed.
Alternative 3	WDR-based Implementation Actions.

#### **9.4.1 Alternative 1: No Action**

The no action alternative retains the existing Basin Plan language and does not result in the proposed Basin Plan amendment.

Currently, the Scott River watershed is not meeting water quality objectives as set out in the Basin Plan for the North Coast Region. Section 303(d) of the federal Clean Water Act requires that a list be developed of all impaired or threatened waters within each state. The Scott River watershed is listed as impaired on the 303(d) list, as described in Chapters 1 and 2 of this Staff Report. The watershed is not only listed as impaired on the federal 303(d) list, but the listings have been confirmed by monitoring and data evaluation. Section 303(d) also requires that each state establish a total maximum daily load (TMDL) for any water body designated as water quality limited. A TMDL is the maximum amount of a pollutant that a water body can contain and still achieve water quality standards. When TMDLs are adopted into the Basin Plan, they must contain implementation strategies that establish how water bodies will attain and maintain water quality objectives and support designated beneficial uses.

The Regional Water Board has entered into an agreement with the U.S. EPA to complete a full TMDL action plan by a court ordered consent decree due date.<sup>1</sup> As part of this agreement, the U.S. EPA provides funding to the Regional Water Board. Under the no action alternative, a full and complete TMDL action plan will not be adopted and the U.S. EPA will be forced to establish the technical TMDLs for sediment and temperature by the consent decree due date. Technical TMDLs established by the U.S. EPA lack implementation strategies, monitoring plans, reassessment strategies, antidegradation analyses, environmental analyses, and economic analyses. Without a comprehensive TMDL action plan, and an implementation strategy in

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<sup>1</sup> Pacific Coast Federation of Fishermen’s Associations, et al. v. Marcus, No. 95-4474 MHP, 11 March 1997.

particular, achievement of the TMDLs, attainment of water quality standards, and protection of the beneficial uses of the Scott River is not likely to occur.

The no action alternative is technically feasible and does not require any change to the Basin Plan. This alternative, however, has already been demonstrated to be ineffective at controlling excess sediment waste discharges and increased water temperatures in the Scott River watershed. Selecting the no action alternative would not result in any increased regulatory or economic burden to dischargers, however, the economic impacts of not addressing water quality impairments would be continued. The consequences of selecting this alternative may be the continued degradation of water quality and adverse impacts to beneficial uses with the attendant direct and indirect costs, such as the increased need for dredging, increased costs for water treatment, reduced commercial, recreational and subsistence fisheries, and increased flooding.

#### **9.4.2 Alternative 2: Scott River TMDL Action Plan**

This alternative consists of amending the Basin Plan to add the Scott River TMDL Action Plan and introduction summary of TMDLs as proposed.

The Regional Water Board identified excessive sediment and elevated water temperatures as water quality problems in the Scott River watershed, and the watershed is listed as impaired on the federal 303(d) list. The Regional Water Board is obligated to complete TMDLs in the Scott River watershed in compliance with a schedule agreed to with the U.S. EPA in order to meet the completion date under a court ordered consent decree arising from the lawsuit of Pacific Coast Federation of Fishermen's Associations v. Marcus, as described in the previous section. To meet this schedule, the Scott River TMDLs must be completed and adopted into the Basin Plan in 2006.

The goal of the proposed Basin Plan amendment is to establish the TMDL and describe the implementation actions necessary to achieve the TMDLs and attain water quality standards, including protecting the beneficial uses of water. The amendment does this by addressing the sediment and temperature impairments in the Scott River watershed specifically through implementation actions. The proposed implementation actions describe the steps that are necessary to prevent, minimize, and control sources of sediment waste discharges and elevated water temperatures for significant sources and land uses. The implementation actions are tailored for individual sources and land uses. Several of the implementation actions outline a process for coordination between stakeholders while others describe the additional study needs. Other implementation actions focuses on permitting and enforcement tools.

The Scott River TMDL Action Plan must be adopted in order to preserve, enhance, and restore the Scott River watershed, support beneficial uses, and achieve and maintain water quality objectives. The result will be a proactive strategy to address sediment discharges and excess water temperatures resulting from land use activities conducted in the watershed.

### **9.4.3 Alternative 3: WDR-Based Implementation Actions**

This alternative consists of amending the Basin Plan to add the introductory summary of TMDLs as proposed, the TMDLs as proposed (i.e., the sediment and temperature source analyses, TMDLs, load allocations, and margins of safety), and a suite of implementation actions that would vary from those currently proposed. Specifically, the implementation actions would be more regulatory in nature and rely on formal permit mechanisms to prevent, reduce, and control sediment waste discharges and elevated water temperatures in the Scott River watershed. The goals of such an alternate TMDL Action Plan would be the same: to achieve the TMDLs and attain water quality standards, including protecting the beneficial uses of water. This alternative would also meet Consent Decree deadlines.

As stated above, many of the implementation actions under this alternative would be more regulatory in nature than currently proposed in the Alternative #2. Formal permit mechanisms would be used. For example, permits in the form of waste discharge requirements (WDRs) or waivers of WDRs would be developed to address sediment waste discharges and elevated water temperatures. Road construction and maintenance activities, grading activities, activities that remove or suppress vegetation that provide shade to a water body, and grazing activities would be regulated under WDRs or waivers of WDRs.

This alternative would meet the objectives of the project by ensuring that sources of sediment waste and elevated water temperatures in the Scott River watershed are prevented, reduced, and controlled so as to meet the TMDLs and attain water quality standards. WDRs and waivers of WDRs would allow for specific requirements on an individual landowner basis or a general land use basis, and would also include specific time lines and monitoring requirements. This alternative would also likely increase the compliance cost to landowners/dischargers as WDRs require the submission of an annual fee to the State. This alternative may also result in additional adverse environmental consequences because of the delay imposed by the need to develop each WDR or waiver.

### **9.4.4 Staff Recommendation**

Regional Water Board staff recommend Alternative #2 and the adoption of the Scott River TMDL Action Plan and introductory summary of TMDLs.

## **9.5 CEQA CHECKLIST**

Following the CEQA Scoping Meeting, and the preparation of a specific proposal (the project), the CEQA Checklist was prepared. The CEQA Checklist is attached to this Staff Report as Appendix E.

## 9.6 ANALYSIS OF ENVIRONMENTAL IMPACTS

The project does not consist of any actual sediment-generating activities or activities that would adversely effect water temperature. The project establishes a Scott River TMDL Action Plan to control, limit, and reduce sediment discharges and impacts to water temperature from anthropogenic activities. The proposed requirements will be incorporated into permitting requirements and authorities, but the project does not permit such activities. The proposed project will not have a significant adverse impact to the environment. The proposed project will have a significant beneficial impact on the environment because it will reduce excess sedimentation of watercourses and reduce adverse impact of high water temperature in the Scott River Basin.

The adoption of the proposed Scott River TMDL Action Plan and the proposed introductory summary of TMDLs will not have a significant impact on the environment because the term “significant impact” is defined as an adverse impact with “... a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance” (14 CCR §15382). The environmental changes that will result from the proposed project are beneficial, not adverse.

## 9.7 MITIGATION MEASURES

As described above, adoption of the proposed Scott River TMDL Action Plan and the proposed introductory summary of TMDLs will have a beneficial impact on the environment because it will reduce excess sedimentation and lower the temperature of waters of the state in the Scott River watershed. The environmental changes that will result from the proposed project are beneficial, not adverse. A description and analysis of mitigation measures is not required because there are no significant adverse impacts to be mitigated.