

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
9:00 A.M., October 4, 2012
Yreka, California

- ITEM: 3
- SUBJECT: Public Hearing on Order No. R1-2012-0083, to consider adoption of the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Andrew Baker)
- BOARD ACTION: Consider adoption of Order R1-2012-0083, Shasta River TMDL Conditional Waiver of Waste Discharge Requirements
- BACKGROUND: The Action Plan for the Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads (Action Plan) (Order No R1-2006-0052) was amended into the Water Quality Control Plan for the North Coast Region (Basin Plan) on January 26, 2007. The Shasta River TMDL Action Plan includes, in part, temperature and dissolved oxygen total maximum daily loads (TMDLs,) a description of the implementation actions necessary to achieve the TMDLs and attain water quality standards in the Shasta River watershed, and a provision conditionally waiving the requirement to file a Report of Waste Discharge and obtain Waste Discharge Requirements for responsible parties that participate either individually or in on-going collaborative programs and implement applicable management measures.
- To be eligible for coverage under the waiver, responsible parties are required to employ land stewardship practices and activities that minimize, control, and preferably prevent discharges of fine sediment, nutrients (including animal waste), other oxygen consuming materials, and elevated solar radiation loads (including loss of riparian vegetation and tailwater discharges) from affecting waters of the Shasta River and tributaries. This waiver was set to expire in January 2012.
- On January 19, 2012, the Regional Water Board adopted the Short Term Renewal of Conditional Waiver for Discharges Related to Specific Land Management Activities in the Shasta River Watershed (Order No. R1-2012-0008). On August 23, 2012, the Regional Water Board renewed the Short Term Waiver (Order No. R1-2012-0070), allowing staff additional time to prepare a revised waiver.

On July 13, 2012 a public notice announcing the release of the revised draft waiver, Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Shasta River TMDL Waiver or Waiver), and the upcoming August 1, 2012 public workshop and October 4, 2012 public adoption hearing, was posted on the Regional Water Board's webpage, published in the local newspaper, and distributed through the Regional Water Board's interested parties contact list. The Shasta Valley Resource Conservation District also helped distribute the notice to their constituents. The written comment period for the Waiver was open until August 17, 2012.

The August 1, 2012 public workshop was held in Yreka to facilitate the attendance of affected stakeholders and other interested parties residing in and near the Shasta River watershed. The workshop was attended by members of the public, representatives of state and local government and Regional Water Board members and staff. Staff presented a brief overview of the proposed Shasta River TMDL Waiver with the majority of the workshop dedicated to the receipt of public comments on the draft waiver and broader discussions between Regional Water Board, staff, and the public. Comments received at the public workshop are summarized in the Regional Water Board Staff Response to Public Comments on the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Staff Response to Public Comments; Supporting Document 2) and included as part of this report. An electronic copy of the Staff Response to Comments is also available at the Regional Water Board website at http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/.

One comment letter was received by the Regional Water Board during the written comment period. A copy of the letter, submitted by the Siskiyou County Board of Supervisors (August 17, 2012), is included as an attachment to the Staff Response to Public Comments.

ISSUES:

The most common issues identified during the comment period are summarized below:

- The criteria by which staff will prioritize implementation efforts and evaluate risk to water quality;
- The criteria for submittal of plans;
- The application of progressive enforcement;
- Inclusion of additional Waiver conditions for allowing Regional Water Board staff access to private property; and
- Need for additional public outreach such as newsletters and press releases.

Prioritization of Landowner Engagement:

For efficient implementation, staff will first focus on working with landowners/responsible parties whose operations present the highest risks to water quality, initially within the upstream geographic area of the watershed where cold water refugia exists for coho salmon, and moving downstream over time, rather than requiring all dischargers to enroll in the Waiver at once. Potential high risks to water quality impairment recovery include: 1) the quantity, quality and temperature of tailwater return flows, 2) the type and intensity of land use activity, 3) the proximity of land uses to streams, and 4) the length of stream adjacent to land use activities. Geographic focus areas include, in priority: 1) cold water refugia in the Big Springs Complex area downstream of Dwinnell Dam, lower Parks Creek and Big Springs Creek, 2) main stem Shasta River between Big Springs Creek and Road A-12, 3) Little Shasta River and Yreka Creek, 4) main stem Shasta River between Road A-12 and Klamath River, and 5) upstream of Lake Shastina.

In this prioritized manner, Regional Water Board staff intend to engage with responsible parties to assess compliance with the TMDL. The determination of whether a ranch management and/or tailwater management plan is required will depend on the nature and severity of any discharge or threatened discharge, as well the level of effort required to control the discharge. Regional Water Board staff will focus their assessment on factors related to discharge of oxygen consuming materials and nutrients, fine sediment, and elevated solar radiation loads, including riparian conditions, livestock access to riparian areas, potential discharge of eroded sediments, and the potential for tailwater discharge. Specifically, assessments will include the following:

- Assessment of irrigation practices including, water conservation measures;
- Assessment of the current management of irrigation tailwater discharge;
- Assessment of riparian conditions;
- Assessment of livestock management practices including grazing practices, access to offsite watering locations and access of livestock to riparian areas; and
- Collection of photographic and other information on presence/absence and need for riparian fencing to protect and enhance riparian function.

Requests for ranch management and/or tailwater management plans will be based on the findings of the land use and condition

assessment. The assessment will also be used to log overall TMDL implementation progress.

Criteria for Plan Submittal:

If a situation or situations are identified that require actions to protect water quality (i.e., eliminate a discharge or threat of discharge to waters of the state), staff will discuss those issues and possible corrective actions with the responsible party. If an agreement is reached which involves a relatively simple action to address the threat, staff will follow up with a letter documenting the identified issues and outlining the agreement between responsible party and staff. If the solution is complex, the level of effort necessary to abate the threat to water quality is greater, or staff are unable to come to agreement with the responsible party at the time of inspection, the Regional Board's Executive Officer may require the submittal of a ranch management and/or tailwater management plan that describes how the threat will be abated, with an implementation monitoring component to verify progress, if appropriate. Plans can range from a simple submittal describing practices implemented to prevent discharge of waste, including fine sediment, nutrients and other oxygen consuming material, as well as elevated solar radiation loads, from affecting waters in the Shasta River watershed, to a more comprehensive plan. Responsible parties who do not receive a letter requesting Plans and/or other documentation or otherwise contacted by Regional Water Board staff will not need to file anything with the Regional Water Board as long as they meet conditions of this Waiver; however, responsible parties are still expected to comply with the provisions in the Action Plan. Staff will document progress, resolution of the issue(s), and compliance with the waiver.

Any decision by Regional Water Board staff can be elevated to their supervisor, the Executive Officer, and the Regional Water Board. Actions by the Regional Water Board can be appealed to the State Water Resources Control Board.

Progressive Enforcement

A variety of enforcement tools are available and may be appropriate if a party refuses to engage with Regional Water Board staff. Generally, staff utilizes a progressive approach to enforcement, where additional letters are sent and if ignored, could lead to a variety of enforcement mechanisms as appropriate, including but not limited to these options: a request for report of waste discharge, 13267(b) letter requesting a water quality protection plan, Cleanup and Abatement Order, or Administrative Civil Liability Complaint.

SIGNIFICANT CHANGES:

Staff recommends a new condition number 3, to support Finding number 11. This new condition makes it explicit that the Executive Officer may request responsible parties to develop site specific monitoring and reporting plans. This may have been accomplished under condition number 2 by the "...and/or other documentation as requested." provision, however, adding this condition provides clarity.

The proposed revisions are minor and considered to be clarifying language. Staff does not consider any of the proposed revisions of the public review draft Shasta River TMDL Waiver to be significant changes to the scope, framework or intent of that waiver. Rather the proposed revisions and staff's more focused Waiver implementation approach, are considered to be clarifying language to reaffirm the staff and the Regional Water's Board's intent to continue to implement and build upon the on-going Shasta River TMDL Waiver program. In addition to the focused implementation approach, staff will continue to work on ongoing action items as opportunities and resources permit.

The Action Plan adopted in 2007 needs some revisions. There are action items that are now considered low risk or lower in priority such as urban and suburban runoff. There are also action items that have been completed (i.e. USFS Nonpoint Source Waiver and Private Timber Land Waiver). These revisions will likely occur during the next Basin Plan triennial review update.

SUPPORTING DOCUMENTS:

1. Shasta River TMDL Conditional Waiver
2. Staff Response to Comments
3. Comment letter
4. Notice of Public Hearing