

Mendocino Group, Redwood Chapter P.O.Box2330 Fort Bragg 95437-2330
8 April 2006

State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812-0100

Re: Comment Letter-Sediment and Temperature TMDL Scott River
Watershed

Dear Board Members:

The proposed implementation actions submitted by the Regional Water Quality Control Board for temperature impairment are either inadequate or missing, removed as a result of public pressure. This Basin Plan amendment does not meet the requirements of the law. The State board must return this amendment to the regional board to be revised to include protection of public trust instream flows.

Like most other northcoast rivers, the Scott River is impaired for temperature due to the increased diversions of surface water over the last thirty years. Summer flows have been reduced to the point of dryness. The declining summer flows in the Scott River are well documented. (See Dennis Jackson graphs attached) The median summer/fall low flow in the 50's was 68 cfs. That has progressively declined down to 14 cfs in the 2000's. In 2001 the low flow was just 3 cfs and, for *three consecutive months* ran under 5 cfs.

The subject Basin Plan amendment recognizes instream flows as the problem and its importance in the correction of temperature impairment, but fails to address it. The earlier July draft of the proposed Basin Plan Language included measures to address instream flow with the participation of SWRCB. It reads as follows:

The regional Water Board requests the State Water Board and its Division of Water Rights study the connection between ground water and surface water, the impacts of groundwater and surface water use on beneficial uses, and the impacts of groundwater levels on the health of riparian vegetation in the Scott River watershed. The Regional Water Board further requests the State Water Board and its Division of Water Rights take the findings of the above study into consideration and act accordingly to protect and restore the instream beneficial uses of the Scott River and its tributaries, with particular focus on those beneficial uses associated with the cold water fishery. A written request shall be sent to the State Water Board by [insert date that is 6 months from the date of U. S. EPS approval].

That language highlighted above was removed and replaced with a proposed study to be undertaken by the County and its stakeholders "should they be able to commit to conducting the study."

In the public comment section of the report it states "a large number" of responders questioned "the lack of specific actions" and the "effects of reduced surface water flows on water temperature." (Page G9-10) The response of staff to these questions was that there is "a process to develop the information to understand the interaction of water use and ground water inflows to the river." That is the stakeholder study, again "should they be able" to do it.

That original language of the July draft was on point for a viable action plan. The removal of SWRCB's involvement is not a mystery. I was advised by staff that the decision to remove the language addressing the flow problem was due "to a firestorm of political protest" from the local community. It is my understanding that this decision to back off from consideration of instream flows came from the regional board. An example of the "firestorm" is an attached article from the local Pioneer Press. The author finds it alarming that the "staff (NCRWQCB) analysis concludes that ground water pumping and surface diversions have increased temperatures in the river." and that their "recommendation concerns water use rights." The author was also alarmed that "the recommendation discusses authority by the State Water Board to seek modifications to the Scott River Adjudication and cites duties to consider Public Trust values..." The author and her reader's concerns were assuaged when these technical positions were deleted from the Basin Plan's Action Plan. (Page 14, 7-19-05 TAG Draft attached)

SHASTA RIVER TMDL The Shasta temperature TMDL, which will come before the board soon, is similar to the Scott TMDL. It recognizes the importance of instream flow and quantifies the improvement in temperature for a fixed increase in flow. Notwithstanding this recognition, the Shasta implementation plan does not provide any specific actions to increase the instream flow. In the required peer review, Dr. Charles Coutant's stated:

I was somewhat disappointed with the bottom line for temperature for it included mostly action to increase shade while just assuming that warm inputs can be eliminated by edict, which seem impractical. Relying on shade will be a very long-term remediation, one that the salmonoid populations may not live to see.

The Scott implementation plan relies wholly upon shade. Dr. Coutant's opinion, I am sure, would be the same as it was for the Shasta TMDL. Improvement in instream flows produces immediate temperature relief. Planting trees does nothing for five years and very little for ten.

TU/Audubon Petition The broad issue of the SWRCB to better regulate water rights and protect public trust flows is the central point of the Trout Unlimited Audubon Petition that is presently under consideration. While that outcome will not provide guidance in the immediate future, it should serve as notice of the past failure to provide instream protections with its resulting temperature impairment of our rivers and loss of our fisheries. That petition draws its legal strength from these temperature impaired rivers which have been drained of their rightful vitality. The regional staff's recognition of this relationship in the original Scott July draft implementation plan was a significant step forward that needs to be restored into the Basin Plan language. The SWRCB is the only agency that can do this. They must be a participant in the details of protecting instream flows for this or any other temperature implementation plan to be successful.

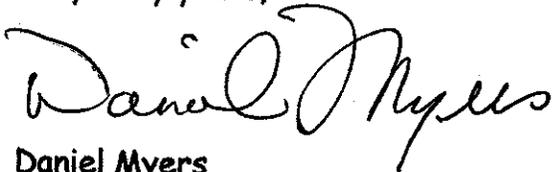
The Water Board has the authority and many options at their discretion that could result in immediate improvement in instream flow.

- Re-examine and enforce the long-standing bypass conditions on the Scott's adjudicated and other water rights.

- Reallocate water rights as necessary giving recognition of the rights of the federal Clean Water Act reestablishing the beneficial use of the fisheries.
- Perform over-flight surveys. The Russian and Navarro River watersheds have in both cases disclosed more illegal diversions than legal ones. The continued decline of summer flows since the 1980 adjudication indicates that same potential on the Scott.
- Reassign the listed implementation items WA-1 and WA-7 to the State Water Board, presently assigned to CDFG to acquire and dedicate existing water rights to instream flows.
- Restore funding for the water gauges necessary to document stream conditions.
- Review and update Fully Appropriated status of the various reaches of the watershed.

Like the Pacific Lumber decision, this is another case where the regional board is setting aside clear legal responsibilities mandated by state law and the Clean Water Act in favor of local political considerations. The State Water Resources Control Board must send this issue back to the regional board with direction to restore and protect public trust instream flows.

Very truly yours,



Daniel Myers

For the Mendocino Group of the Sierra Club

Attachments

CC: North Coast Regional Water Quality Control Board

Alan Levine

Joseph Brecher

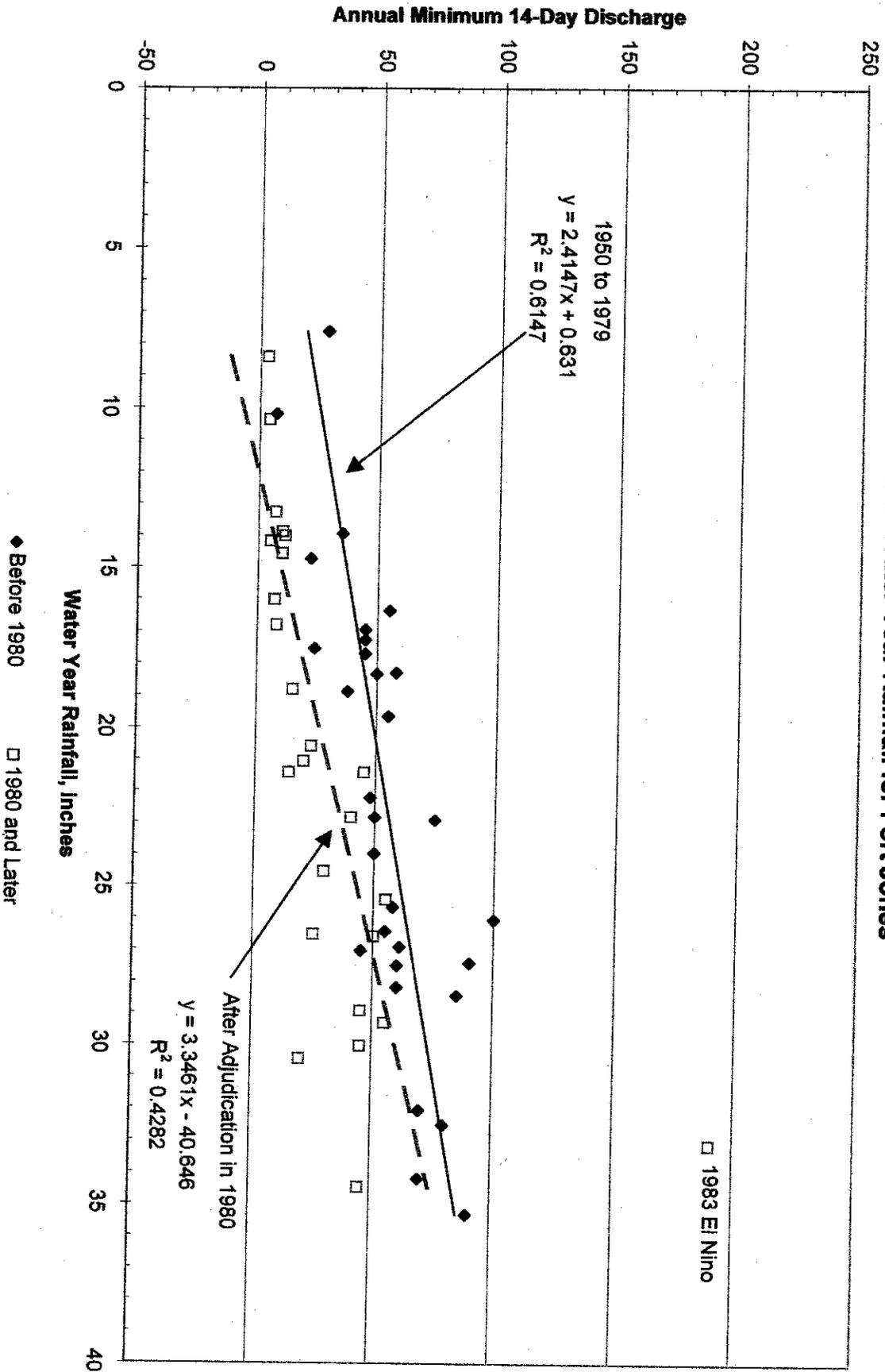
Brian Johnson

David Smith EPA

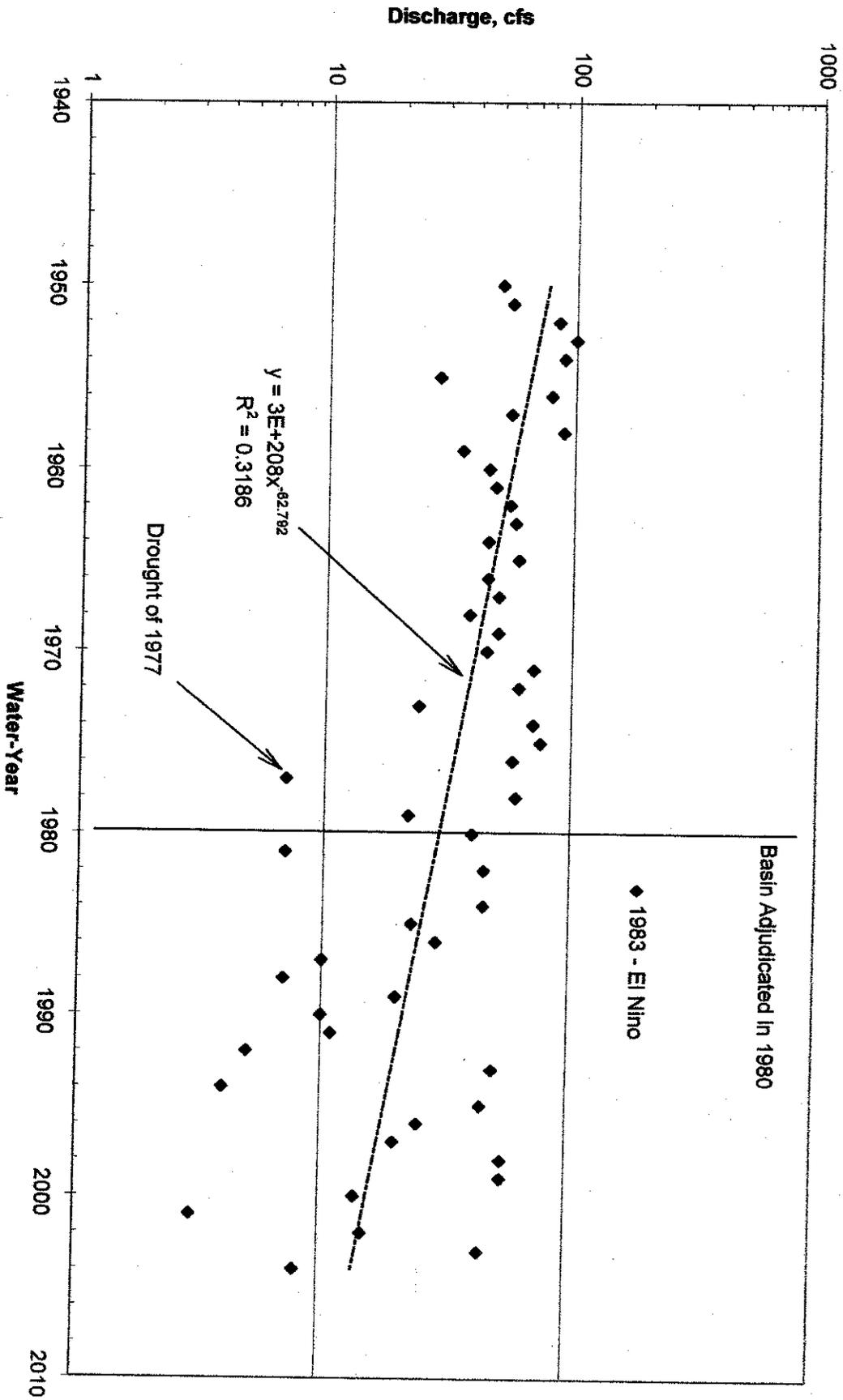
Tim McKay

Felice Pace

Scott River near Fort Jones Annual Minimum 14-Day Discharge Versus Water Year Rainfall for Fort Jones



USGS Scott River near Fort Jones, Station Number 11519500
Annual 14-Day Minimum Discharge



Scott River near Fort Jones Minimum 14-Day Discharge

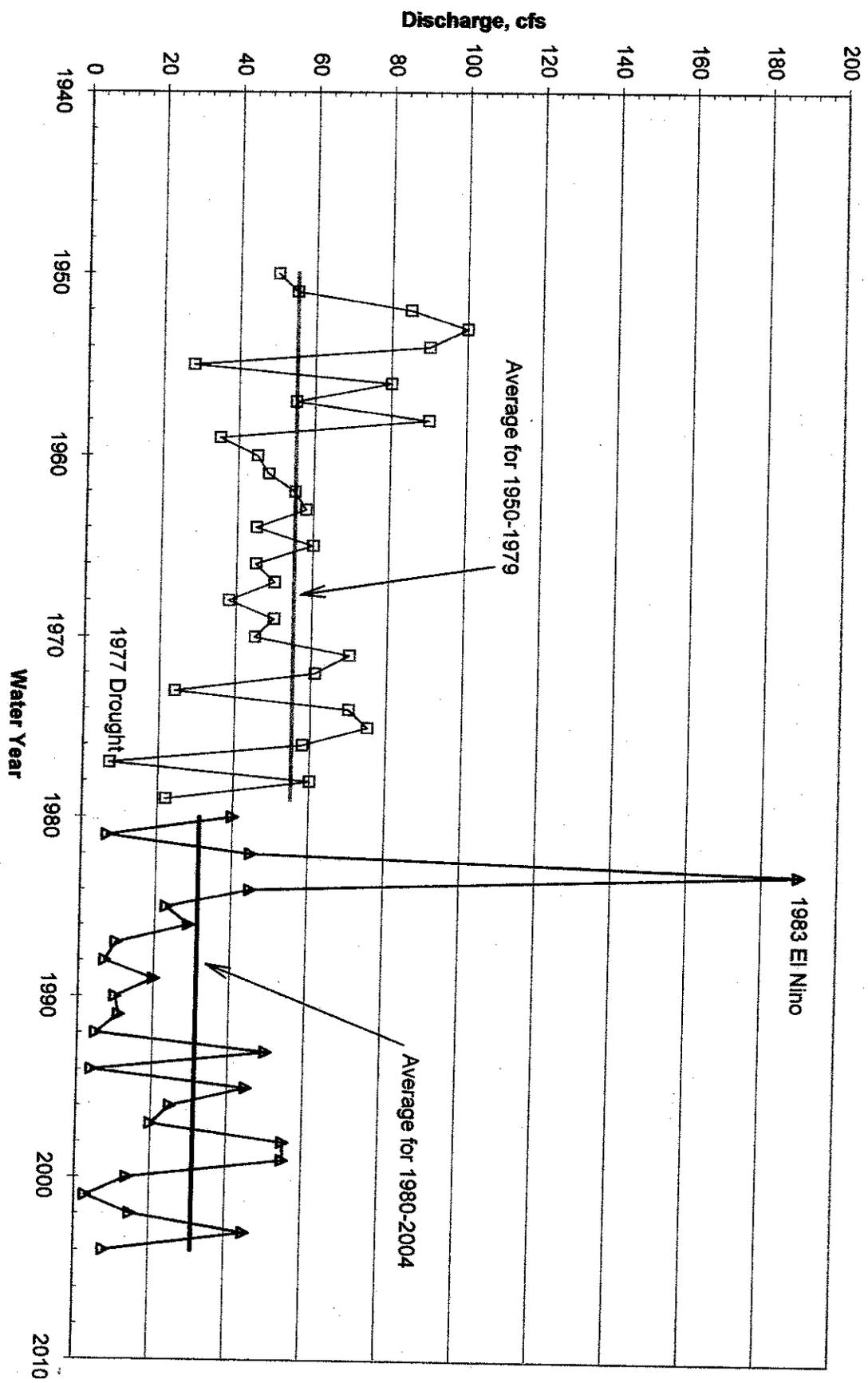


Table 4 (Cont.)		
Scott River Sediment and Temperature TMDL Implementation Actions		
Topic	Responsible Parties	Actions
Roads & Grading (cont.)	<ul style="list-style-type: none"> County of Siskiyou (County). Regional Water Board. 	<p>(Continued from previous page.)</p> <ul style="list-style-type: none"> The Regional Water Board encourages the County to develop a grading ordinance. The ordinance may be specific to the Scott River watershed or county-wide in scope. Should the County fail to commit to developing a grading ordinance by [insert date that is 1 year from the date of U.S. EPA approval], and in the absence of a grading ordinance, the Regional Water Board shall use existing authorities and regulatory tools to ensure grading activities are not discharging sediment waste on an individual, responsible party basis.
Roads	<ul style="list-style-type: none"> California Department of Transportation (Caltrans). Regional Water Board. 	<ul style="list-style-type: none"> Regional Water Board staff shall evaluate the effects of the Caltrans' state-wide NPDES permit, storm water permit, and waste discharge requirements (collectively known as the Caltrans Storm Water Program) by [insert date to be determined]. The evaluation shall determine if the Caltrans Storm Water Program is adequate and effective at preventing, reducing, and controlling discharges of sediment waste in the North Coast Region, including the Scott River watershed. If Regional Water Board staff find that the Caltrans Storm Water Program is not adequate and effective, Regional Water Board and State Water Board staff shall develop specific requirements, for State Water Board consideration, to be incorporated into the Caltrans Storm Water Program at the earliest opportunity, or the Regional Water Board shall take other appropriate permitting or enforcement actions.
Dredge Mining	<ul style="list-style-type: none"> Regional Water Board. 	<ul style="list-style-type: none"> Regional Water Board staff shall investigate the impact of suction dredge mining activities on sediment and temperature loads in the Scott River watershed by [insert date that is 3 years from the date of U.S. EPA approval]. If Regional Water Board staff find that dredge mining activities are discharging deleterious sediment waste and/or resulting in elevated water temperatures, staff shall propose, for Board consideration, the regulation of such discharges through appropriate permitting or enforcement actions.
Temperature & Vegetation	<ul style="list-style-type: none"> Parties Responsible for Vegetation that Shades Water Bodies. Regional Water Board. 	<ul style="list-style-type: none"> The Regional Water Board encourages parties responsible for vegetation that provides shade to a water body in the Scott River watershed to preserve and restore such vegetation. This may include planting riparian trees, minimizing the removal of vegetation that provides shade to a water body, and minimizing activities that might suppress the growth of new or existing vegetation (e.g., allowing cattle to eat and trample riparian vegetation). The Regional Water Board shall develop and take appropriate permitting and enforcement actions to address the removal and suppression of vegetation that provides shade to a water body in the Scott River watershed. The Regional Water Board's Executive Officer shall report to the Regional Water Board on the status of the preparation and development of appropriate permitting and enforcement actions by [insert date that is to be determined].
Water Use	<ul style="list-style-type: none"> Water Rights Holders. State Water Resources Control Board (State Water Board). Regional Water Board. 	<ul style="list-style-type: none"> The Regional Water Board encourages water users to develop and implement water conservation practices. The Regional Water Board requests the State Water Board and its Division of Water Rights study the connection between groundwater and surface water, the impacts of groundwater and surface water use on beneficial uses, and the impacts of groundwater levels on the health of riparian vegetation in the Scott River watershed. The Regional Water Board further requests the State Water Board and its Division of Water Rights take the findings of the above study into consideration and act accordingly to protect and restore the instream beneficial uses of the Scott River and its tributaries, with particular focus on those beneficial uses associated with the cold water fishery. A written request shall be sent to the State Water Board by [insert date that is 6 months from the date of U.S. EPA approval].



Ridin' Point

- a weekly column published in the
Pioneer Press

The North Coast Regional Water Quality Control Board (NCRWQCB) has released its Draft Staff Report on proposed Scott River TMDLs to the local Technical Advisory Group (TAG) for review.

http://www.waterboards.ca.gov/northcoast/programs/tmdl/scott/Draft_Staff_Report.html

A revised draft is expected to be released for review and comment to the public on September 16, with a public meeting in Siskiyou County on October 5, and in Santa Rosa on October 11. The public comment period will close on November 1, and then there will be a Regional Board Hearing in Yreka on December 7.

(A TMDL "is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources." It has also been described as a budget for pollutants. The Scott River system is listed as impaired for high temperatures and sediment, both "pollutants" to cold water fisheries such as salmon.)

I have read the draft and I am absolutely appalled with the recommendations for implementation in Chapter 5. The County is given two options for Scott Valley: (1) either pass a grading ordinance, or; (2) the NCRWQCB will implement individual Waste Discharge Requirements - WDRs, (permits) and may require Erosion Control Plans.

Staff also recommends that a three year study be conducted to ascertain any possible pollution from suction dredge mining, with potential WDRs.

The removal of riparian vegetation (including grazing and farming) is to be prohibited. (It is not clear how wide a strip of land is considered "riparian.") Ranchers will be required to fence out their livestock and may be required to have Grazing Riparian Management Plans and Ranch Water Quantity-Quality Conservation Plans. In addition, apparently, a new region-wide policy is currently being developed called the "Wetland and Riparian Protection Policy."

The most alarming recommendation concerns water use rights in the Scott River system. Staff analysis concludes that groundwater pumping and surface diversion have increased temperatures in the river. The report suggests that the NCRWQCB request that the Department of Water Resources (DWR) study the relationship between surface and groundwater, as well as their impacts on fishery resources and riparian vegetation. Staff indicates that "Research should consider groundwater that extends beyond 1000 feet of the river bank and the appropriateness of existing water rights."

The recommendation further states that DWR should "take findings of the research into consideration and act accordingly to protect and restore the instream beneficial uses of the Scott River and its tributaries, with particular focus on those beneficial uses associated with the cold water fishery. Depending on the findings of the research, it may be appropriate for the State Water Board to ensure changes be made in how water is used in the Scott River watershed." The recommendation discusses authority by the State Water Board (SWB) to seek modifications to the Scott River Adjudication and cites duties to consider Public Trust values, prohibitions in the California Constitution and Water Code against waste and unreasonable use in allowing water users to continue to hold water use rights.



feasible, funded, or not, all of the voluntary options are just that, options to be tried to perhaps avoid or minimize the eventual need for permits or orders.

General Comment 5 – Effects of Past Land Use Practices (Comment made by 29, 34, 35, 36, 42, 46)

Several comments identified the effects of past land use practices (what some call “legacy” sources) or natural processes as potentially confounding progress toward water quality compliant conditions. Specific comments addressed the presence of large areas of dredge mine tailings, the channel straightening and riparian vegetation removal activities of the Army Corps in the late 1930’s in response to floods, the difficulty of reestablishing stable riparian vegetation in the absence of a more natural, sinuous river channel, especially along the mainstem Scott River, and the potential effects of future floods and fires.

Response to General Comment 5

The TMDL and Action Plan do not specifically address the dredge mine tailings or channel conditions. Since actions in these areas are primarily initially addressed under encouragement of ongoing self-directed efforts, the local groups assuming responsibility for making and demonstrating progress on self-directed efforts are also responsible for identifying, understanding and developing solutions to these issues so as to ensure that self-directed efforts are successful initially in trending towards water quality compliance and eventually in meeting water quality standards. If any individual parties are going to be held legally responsible for abating or controlling dredge mine tailings or other so-called “legacy” sources, that would occur in the context of a permitting or enforcement process, under existing regulatory mechanisms, that allow for the responsible parties to be heard, in an administrative review process, on the question of who should be held accountable for such sources, as those issues may arise.

General Comment 6 – Water Use and Groundwater (Comment made by 1, 10, 11, 13, 14, 20, 21, 23, 25, 27, 28, 29, 31, 42, 46, 47, 48)

A large number of commenters expressed concern about the lack of specific actions in the Action Plan with respect to water quantity and its linkage to water quality. In particular, the effects of reduced surface water flow on water temperature were noted in many comment letters. Specific actions proposed included asking the State Water Resources Control Board to undertake a study of groundwater and surface water conditions, a moratorium on well drilling, and calling on the SWRCB, DFG and the California Department of Water Resources to take various actions. In addition, there was concern expressed that Siskiyou County lacks the technical resources to design or perform the study identified in the Action Plan.

Response to General Comment 6

The temperature analysis evaluates the effects of surface water and groundwater depletion. The analysis demonstrates the importance of groundwater inflows in the alluvial portions of the Scott watershed on water temperatures. However, the current information and resources were not sufficient to determine the impacts of water use on depleted groundwater inflows. The action plan identifies a process to develop the

information to understand the interaction of water use and groundwater inflows to the river. It is not the expectation or the assumption of the Regional Board that Siskiyou County would design or perform a groundwater study without assistance. The Regional Board expects that the County would engage qualified technical support that could include the Department of Water Resources or the US Geological Survey, for example.

To address concerns regarding timelines for groundwater investigations, the text of the Staff Report has been modified to identify a course of action should the primary action be unsuccessful. This action would request the involvement of the SWRCB in performing the investigations. The Regional Water Board has the pre-existing authority to make such a request of the SWRCB, and therefore there is no need to specifically provide that authority in the Action Plan.

General Comment 7 – Siskiyou County Ordinance (Comment made by 18, 27, 28, 30, 34, 46)

A number of comments were received with respect to the Action Plan element addressing the need for a County ordinance addressing roads, land disturbing activities, and grading activities outside of subdivisions. Some comments supported having this action. Other comments noted that the County has a Land Development Manual in the process of revision that addresses the underlying concerns of the Regional Water Board with respect to this issue.

Response to General Comment 7

The action item to encourage the County to address the potential for land disturbance to increase sediment delivery to watercourses has been retained, with modifications to the language to allow for an ordinance or equivalent County-enforceable mechanism, and with a change in the timeline from 1 year to 2 years for County adoption.

General Comment 8 – Data Transparency (1, 14, 28, 29, 47, 48)

Comments were received that data used as the basis for the TMDL analysis and data developed from or used in any future studies should be available to all stakeholders for review.

Response to General Comment 8

Regional Board staff have strived to make data and information used in the analysis available, both by explanations in the Staff Report and by providing information upon request from interested parties. The information and methods used in the Staff Report are public record and are available to the public. Regional Water Board staff agree that supporting data should be available, and that the decision making process should be transparent. Regional Water Board staff also recognize the responsibility that accompanies the development and dissemination of data. It can be irresponsible to release data without supporting information (metadata) that defines the appropriate use and limitations of the data. The amount of data used to develop the Scott River TMDLs is substantial, and so development of metadata is a significant task that will take a lot of time. Regional Water Board staff have offered to make specific data available, and have