

**California Regional Water Quality Control Board
North Coast Region**

Order No. R1-2012-0083

**Shasta River TMDL Conditional Waiver
of
Waste Discharge Requirements**

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. The *Action Plan for the Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads* (hereinafter the Shasta River TMDL Action Plan or Action Plan) was adopted by the Regional Water Board on June 28, 2006 (Order No R1-2006-0052) and amended into the *Water Quality Control Plan for the North Coast Region* (Basin Plan) on January 26, 2007 following approval by the United States Environmental Protection Agency.¹ The Action Plan includes temperature and dissolved oxygen total maximum daily loads (TMDLs) and describes the implementation actions necessary to achieve the TMDLs and attain water quality standards in the Shasta River watershed. Table 4-14 of the Action Plan sets forth specific implementation actions required of the Regional Water Board and other responsible parties to achieve these standards.
2. The Action Plan also contains a provision conditionally waiving the requirement to file a Report of Waste Discharge (ROWD) and obtain Waste Discharge Requirements (WDR), pursuant to Water Code section 13269, for responsible parties that choose to participate in the on-going collaborative programs and implement applicable management measures (Shasta River TMDL Waiver or Waiver). 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) from affecting waters of the Shasta River and tributaries.
3. The Waiver was set to expire on January 26, 2012. On January 19, 2012, the Regional Water Board adopted Order No. R1-2012-0008, *Short Term Renewal of Conditional Waiver for Discharges Related to Specific Land Management Activities in the Shasta River Watershed*. On August 23, 2012, the Regional Water Board renewed the Short Term Waiver, to allow staff additional time to prepare a revised Waiver.
4. Since adoption of the Shasta River TMDL Action Plan and Waiver in 2006, Regional Water Board staff hosted and participated in a number of stakeholder outreach efforts, ranging from one-on-one meetings to formal Regional Water Board and Shasta Valley Resource Conservation District (RCD) workshops. These outreach efforts provided responsible parties and other stakeholders an opportunity to report on activities reflecting progress made in implementing measures described in Table 4-14 of the Shasta River TMDL Action Plan and the waiver.

¹ *Water Quality Control Plan for the North Coast Region*, 2011, pg 4-78 through 80; see also *Action Plan for the Shasta River Watershed Temperature and Dissolved Oxygen Total Maximum Daily Loads*, Table 4-14:
http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/083105-bp/05_implementation_plans.pdf

5. Progress has been made during the five year period covered by the previous waiver, both in terms of knowledge gained, improved coordination between stakeholders and actual progress in improving water quality conditions particularly in the spring fed coho salmon refugia areas downstream and in the vicinity of Dwinnell Reservoir. Numerous water quality, flow, water efficiency and tailwater studies have been commissioned and conducted since Shasta River TMDL approval. Tailwater discharges are now considered to be one of the most significant and controllable threats to water quality subject to Regional Water Board regulatory jurisdiction. Flow and increasing dedicated cold water to the river has proven to be a greater challenge due to complicated water rights issues, though progress is being made thanks to efforts attributed primarily to the Nature Conservancy and the Shasta Valley RCD. Significant progress has also been made to protect and restore riparian areas.
6. The Shasta River TMDL Action Plan and Waiver requires responsible parties to submit annually a written summary of all range and riparian management actions and/or tailwater return flow management actions taken to comply with water quality standards, either individually or through groups. On August 13, 2008, Regional Water Board staff sent nearly 700 Letters of Intent and questionnaires requesting landowners to participate in the TMDL program. Many landowners subsequently enrolled in the TMDL program and some have worked to improve grazing and irrigation management practices. This blanket approach for participation did not prove to be fruitful in terms of addressing the highest threats to water quality, nor an efficient use of limited staff resources.
7. Rather than spending limited resources requiring each responsible party to submit a letter stating their intent to comply with the Shasta River TMDL Waiver, it is appropriate for Regional Water Board staff to work first with a subset of responsible parties, focusing on activities with the highest risk to water quality. This approach will allow staff to more efficiently oversee implementation of the Shasta River TMDL Waiver. In addition, the Regional Water Board will increase staff presence in the watershed to outreach to the agricultural community to ensure all landowners/responsible parties comply with the TMDL and other water quality regulations. This will require allowing Regional Water Board staff access to affected properties for the purposes of observing compliance or non-compliance with this Shasta River TMDL Waiver. Regional Water Board staff will follow established office procedures, including prior notification and permission from landowners/responsible parties, before the commencement of any onsite inspection of affected properties. Regional Water Board staff will not bring other agency representatives without prior approval from landowners/responsible parties.
8. Factors that have the potential to increase risk to water quality, including the type and intensity of land uses, quantity, quality and temperature of tailwater discharges, proximity to streams, and the length of stream adjacent to such activities, will be considered when determining whether the development and submittal of plans and/or other documentation shall be required by the Regional Water Board Executive Officer. Accordingly, this Shasta River TMDL Waiver directs staff to focus on working with responsible parties whose operations present higher risks to water quality. Based on information received from the landowner responses to the questionnaires, staff

determined that initially approximately 150 landowners/responsible parties required heightened participation under the Waiver based on operations/activities with higher risks to water quality. On August 4, 2011, staff sent these landowners a TMDL reporting form/questionnaire. To date, 43 landowners have returned the reporting form or fulfilled the reporting requirements of the Waiver. Responsible parties who do not receive a letter requesting development and submittal of plans and/or other documentation (described below in findings 9-11) need not file anything with the Regional Water Board and need not submit annual reporting as previously required by the Shasta River TMDL Action Plan and existing waiver as long as they meet eligibility criteria and Waiver conditions.² Regardless, all responsible parties are still expected to generally comply with the provisions in the Action Plan Table 4-14. Appendices A through G, cited in Table 4-14 of the Shasta River TMDL Action Plan provides examples of applicable management measures that responsible parties should consider as part of their land stewardship activities.

9. The Shasta River TMDL Action Plan, including the existing waiver contains, in part, provisions requiring the Regional Water Board's Executive Officer, on a site specific as-needed basis, to require the development, submittal, and implementation of ranch management plans and/or tailwater management plans designed to prevent the discharges of fine sediment, nutrients and other oxygen consuming material, as well as elevated solar radiation loads, from affecting waters in the Shasta River watershed.
10. Ranch management plans and tailwater management 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. More comprehensive plans could include, but are not limited to, identification and description of:
 - Existing sources of waste or tailwater discharges and other nonpoint source activities,
 - Management practices employed to control those sources and activities; and
 - A monitoring and reporting program to document implementation and effectiveness of the actions taken to control those sources and activities.

The level of detail required in a plan will be dependent on the site specific characteristics of an activity/operation, and will be specified in writing by the Regional Water Board's Executive Officer. Landowners may have the opportunity to receive assistance with the development of plans on a voluntary basis through grant funded cooperative programs such as the Tailwater Reduction Programs with the Shasta Valley RCD or the Natural Resource Conservation Service.

11. The Shasta River TMDL Action Plan, including the existing waiver provides that the Regional Water Board's Executive Officer may direct the responsible party to develop a site specific monitoring and reporting plan, including a description of specific monitoring requirements. Monitoring may include, but is not limited to, the following:
 - Photo documentation related to implementation of management measures;

² *Water Quality Control Plan for the North Coast Region*, 2011, pg 4-77.00 and 4-79.00.

- Evaluation and documentation of instream and near-stream management measures (e.g. riparian buffer establishment affecting nutrient and temperature discharges); and/or
- Collection of tailwater data, including impacts from tailwater discharge (e.g. collection of water temperature data and estimates of tailwater discharge volumes).

The level of detail required in a Plan will be dependent on the site-specific characteristics of an activity/operation, and will be specified in writing by the Regional Water Board's Executive Officer. Landowners may also have the opportunity to receive assistance with monitoring requirements on a voluntary basis through the Klamath Tracking and Accounting Program. The program is currently under development and will be in place during the term of the Shasta River TMDL Waiver.

12. The Regional Water Board, acting as the lead agency under the California Environmental Quality Act (Public Resources Code, sections 21000-21777) (CEQA), conducted an environmental analysis as part of the Shasta River TMDL development and adoption process in accordance with title 14, California Code of Regulations, section 15251(g). This conditional waiver does not result in any physical changes in the environment different from the Shasta River TMDL Action Plan. The Waiver renewal does not require preparation of a subsequent or supplemental environmental document pursuant to California Code of Regulations, title 14, sections 15162 or 15163. There is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project. Two categorical exemptions are also applicable under title 14, California Code of Regulations sections 15307 and 15308, for certain actions by regulatory agencies to maintain, restore, or enhance natural resources and to protect the environment. The Regional Water Board will file a notice of determination and exemption after adoption of this Waiver.
13. State Water Board Resolution No. 68-16 Statement of Policy with Respect to Maintaining High Quality of Waters in California (Resolution No. 68-16) requires Regional Water Boards, in regulating the discharge of waste, to maintain high quality waters of the state, and to ensure that discharges will not unreasonably affect beneficial uses, and will not result in water quality less than that described in Regional Water Board's policies. This Order is consistent with Resolution 68-16 because it requires management practices and measures to be implemented to achieve water quality standards and to prevent nuisance. The Shasta River TMDL Action Plan establishes an iterative process that includes evaluation and then implementation of management practices in a timely manner to reduce discharges of waste. These conditions are enforceable through this conditional waiver. Changes in water quality that may occur as a result will be to improve, over time, the quality of the waters, not to cause degradation. Thus, any change in water quality will be consistent with maximum benefit to the people of the state and will not unreasonably affect beneficial uses.
14. The Regional Water Board determines that the adoption of this conditional waiver of waste discharge requirements will be consistent with the Basin Plan, will be in the public interest, and will not have a significant impact on the environment.

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code sections 13263, subdivision (a), 13267, and 13269, the Regional Water Board waives the requirement to submit a report of waste discharge and the requirement to establish waste discharge requirements for dischargers (responsible parties) that implement applicable management measures, as described in Table 4-14, and Appendices A through G, of the Shasta River TMDL Action Plan. The following conditions shall apply:

1. Responsible parties that are implementing applicable management measures through on-going collaborative programs or individually will be considered eligible for coverage under the Shasta River TMDL Waiver. Such responsible parties shall 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) from affecting waters of the Shasta River and tributaries.
2. If requested in writing by the Regional Water Board's Executive Officer, responsible parties shall provide ranch management and/or tailwater management plan(s) and/or other documentation as requested. If a plan is requested and subsequently approved by the Executive Officer, the responsible party(ies) shall implement the plan.
3. If requested in writing by the Regional Water Board's Executive Officer, responsible parties shall develop and provide a site specific monitoring and/or reporting plan. The level of detail required in a plan will be dependent on the site specific characteristics of an activity/operation. If a plan is requested and subsequently approved by the Executive Officer, the responsible party(ies) shall implement the plan. Monitoring may include, but is not limited to, the following:
 - Photo documentation related to implementation of management measures;
 - Evaluation and documentation of instream and near-stream management measures (e.g. riparian buffer establishment affecting nutrient and temperature discharges);
 - Collection of tailwater data, including impacts from tailwater discharge (e.g. collection of water temperature data and estimates of tailwater discharge volumes); and/or
 - A description of specific monitoring requirements.

Reporting may include, but is not limited to, the following:

- Annual summary of progress towards implementing management measures, a ranch or tailwater plan, or other activities designed to prevent or minimize potential water quality impacts.
 - Photo documentation related to implementation of management measures; and/or
 - Results of specific monitoring requirements.
4. Responsible parties shall, with reasonable prior notice and permission, allow Regional Water Board staff entry onto the affected property for the purposes of observing, inspecting, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Shasta River TMDL Waiver.
 5. It is the Regional Water Board's intent that this Shasta River TMDL Waiver remain in effect for up to five years; however, as activities currently addressed in the Shasta River

TMDL Waiver are incorporated into new permitting programs, these activities would no longer be eligible for coverage under the Shasta River TMDL Waiver. Waste discharges associated with agricultural sources in the Shasta River watershed will likely be incorporated in the region-wide agricultural discharge control program currently under development.

6. This Shasta River TMDL Waiver shall not apply to any discharges for which a WDR or waiver of WDR is issued under a separate action of the state or Regional Water Board.
7. The Regional Water Board shall take enforcement actions for violations of this Shasta River TMDL Waiver, as appropriate. Nothing in this Shasta River TMDL Waiver precludes actions to enforce any directly applicable prohibition or provisions found in the Basin Plan, or to require clean up and abatement of existing sources of pollution, where appropriate.
8. This Shasta River TMDL Waiver shall not create a vested right, and discharges of waste shall be considered a privilege, as provided for in Water Code section 13263.
9. This Shasta River TMDL Waiver does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). Dischargers are responsible for meeting all other applicable requirements of local, state, and federal regulations and/or required permits.
10. Discharges shall not cause a pollution, contamination, or nuisance as defined by Water Code section 13050.
11. This Shasta River TMDL Waiver expires upon Regional Water Board adoption of a superseding regulatory action or after five years, whichever occurs first. This Shasta River TMDL Waiver is conditional and may be terminated at any time by the State Water Resources Control Board or Regional Water Board.

Certification

I, Matthias St. John, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of Order R1-2012-0083, adopted by the California Regional Water Quality Control Board, North Coast Region, on October 4, 2012.

Original signed by Luis Rivera for

Matthias St. John
Executive Officer