

Regional Water Quality Control Board  
North Coast Region

Executive Officer's Summary Report  
9:00 a.m., April 19, 2018  
Weed, California

**ITEMS:** 5 and 6

**SUBJECT:** Public Hearing to consider adoption of Order No. R1-2018-0018, the Scott River TMDL Conditional Waiver of Waste Discharge Requirements, and Order No. R1-2018-0019, the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements, (Eli Scott)

**BOARD ACTION:** Consider adoption of proposed Orders No. R1-2018-0018 and R1-2018-0019.

**BACKGROUND:** The Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads (Scott River TMDL Action Plan) was amended into the Water Quality Control Plan for the North Coast Region (Basin Plan) on December 7, 2006. The Action Plan for the Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads (Shasta River TMDL Action Plan) was amended into the Basin Plan on January 26, 2007. The Action Plans for the Scott River TMDL and the Shasta River TMDL include, in part, their respective load allocations (LAs), and descriptions of the implementation actions necessary to achieve the LAs and attain water quality standards in the Scott River and Shasta River watersheds.

On October 4, 2012, the Regional Water Board adopted Order Numbers R1-2012-0083 and R1-2012-0084, the Conditional Waivers for Discharges Related to Specific Land Management Activities in the Shasta River and Scott River watersheds, respectively. Both Orders expired on October 4, 2017.

On June 1, 2017, a public notice announcing the release of the draft Scott River TMDL Conditional Waiver of Waste Discharge Requirements (Scott River TMDL Waiver or Waiver) and Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Shasta River TMDL Waiver or Waiver) was posted on the Regional Water Board's webpage and distributed through the Regional Water Board's Scott River TMDL and Shasta River TMDL contact lists. Public workshops detailing proposed changes in the draft Scott River and Shasta River Waivers were held in Yreka on June 14, 2017, and in Santa Rosa on June 29, 2017. The written comment period for the draft Waivers was open until July 14, 2017.

The proposed Orders were originally scheduled to be heard during the October 19, 2017, Board Meeting. On October 9, 2017, multiple wildfires broke out in Sonoma and Napa Counties, destroying property and displacing residents. The City of Santa Rosa was severely impacted, which resulted in the closure of the Regional Water Board headquarters until October 16, 2017, and the cancellation of the Regional Water Board meeting scheduled for October 19, 2017, in Weed, California. On October 17, 2017, notice was provided that the October 19, 2017, Board meeting was cancelled and on November 1, 2017, the Regional

Water Board transmitted to interested parties and posted to its website a notice of postponement of the hearing until further notice. With the exception of order numbers and dates, no changes to the proposed Orders have been made since the Orders were posted for the October 19, 2017, Board meeting.

The Waivers extend the substantive provisions from the existing Orders, and reaffirms the Regional Water Board's intent to continue to implement and build upon the on-going Scott and Shasta River TMDL waiver programs. The Waivers continue provisions of the Action Plans that require the dischargers to submit a Grazing and Riparian Management Plan and/or an Erosion Control Plan (Scott River TMDL Waiver), or a Ranch Management Plan and/or a Tailwater Management Plan (Shasta River TMDL Waiver), when required by the Regional Water Board's Executive Officer. Additionally, the Executive Officer may require a site specific monitoring and reporting plan (both Waivers).

The Waivers continue to focus on efficient implementation and direct staff to first focus on working with the dischargers whose operations present the highest risks to water quality. Factors used to determine risk to water quality include type and intensity of land use, proximity to streams, the length of stream adjacent to such activities, and locations of sensitive aquatic resources. Dischargers who do not receive a letter requesting plans and/or other documentation or are not otherwise contacted by Regional Water Board staff do not need to file anything with the Regional Water Board. However, compliance with the conditions of the Waivers is a requirement of all dischargers subject to the Waivers.

The Waivers now include standard conditions describing the types of required management measures that minimize, control, or prevent the discharge of fine sediment, nutrients (including animal waste), other oxygen consuming materials, and elevated solar radiation loads from affecting waters of the Scott and Shasta River watersheds (Condition 5). This is a substantive change over the previous version of the Waivers, which included the management measures only as guidelines for interpreting compliance. These changes to the Waivers codify these management measures in a way that enables dischargers to clearly understand and implement required management measures to protect water quality. This change also allows Regional Water Board staff clear guidelines for progressive enforcement when dischargers fail to implement the management measures recognized as protective of water quality. The Waivers are thus intended to be both clear to dischargers and an effective tool for Regional Water Board staff in implementing the Waivers and the associated TMDL Action Plans in order to attain water quality standards in these watersheds.

To be eligible for coverage under the Shasta River Waiver, dischargers are required to employ land stewardship practices and activities that minimize, control, and 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.

Similarly, to be eligible for coverage under the Scott River Waiver, dischargers are required to employ land stewardship practices and activities that minimize, control, and prevent discharges of fine sediment and elevated solar radiation loads (including loss of riparian vegetation and tailwater discharges) from affecting waters of the Scott River and tributaries.

**DISCUSSIONS:** Eight comment letters were received during the public comment period. All written comments are summarized and responded to in the Staff Response to Comments document. The following are the topics that received the most comments and a summary of staff's response. For a more complete response, please see the Staff Response to Comments document.

- **Topic:** The Waivers' alignment with the Non-Point Source Pollution policy, requirements for Waivers of Waste Discharge (CWC section 13269), and the basin plan.  
**Response:** These waivers represent an element of a larger non-point source pollution control program and require dischargers to implement best management practices that eliminate, control and prevent discharges of sediment, temperature, and oxygen consuming materials. They work in compliment with other regulatory mechanisms described in the Scott and Shasta River TMDL Action Plans including but not limited to 401 certification, timber and dairy permits, etc. The monitoring required at the discretion of the Executive Officer (EO) is designed to "support the development and implementation of the waiver program, including but not limited to, verifying the adequacy and effectiveness of the waivers conditions" as stated in Water Code Section 13269 (See Response to General Comment No. 1 for a full response to this comment).
- **Topic:** The Waivers' alignment with the State's anti-degradation policy (State Water Board Resolution No. 68-16).  
**Response:** These orders (i.e. Waivers) are the latest in a series of orders that address non-point source discharges in the Scott and Shasta River Watersheds. These orders are anticipated to minimize, control, and prevent discharges from agricultural and grazing activities in these watersheds and result in an on-going improvement over current conditions. Additional monitoring and reporting, if required by the EO, is designed to confirm degradation is not occurring, that the management measures are sufficient to prevent degradation, or, in some cases, that additional management measures are necessary to prevent degradation. Failure to comply with the waiver conditions would mean a discharger is out of compliance with the waiver and the Regional Water Board would pursue further permitting and enforcement actions. Finding 16 of both Waivers have been modified to more directly address this comment (See Response to General Comment No. 2 for a full response to this comment).
- **Topic:** The need for effective enforcement actions against high-risk dischargers.

**Response:** The waivers provide clear conditions of compliance and violations of these conditions are enforceable (see Scott Waiver condition 8, 9, 10, and 11 and Shasta Waiver conditions 8, 9, 10, 11, and 12). Note that Shasta Waiver condition 12 has been added to the Scott Waiver to ensure dischargers understand that they are required to apply for and comply with all other applicable permits for their operations. These waivers do not limit or restrict the Regional Water Board's ability to address water quality concerns. The Regional Water Board has a variety of enforcement tools including: issuance of Notices of Violation, Cleanup and Abatement Orders, Cease and Desist Orders, and Administrative Civil Liability actions to address activities that cause pollution or a condition of nuisance (See Response to General Comment No. 4 for a full response to this comment).

- **Topic:** Support for a tiered implementation approach that includes fees for dischargers.

**Response:** A potential tiered implementation approach was outlined in finding 18 as a possibility that future revisions of the Waivers may include tiers, additional enrollment, monitoring and reporting requirements, and may require the payment of fees. The State Water Board, not the Regional Water Board makes fee determinations for all State and Regional Water Board regulatory programs. The intent of Finding 18 is to indicate that fees *may be* required in the future, that such fees *may be* tiered based on risk, and to provide an incentive for possible lower fees to those Dischargers who come into compliance with the waiver (See Response to General Comment No. 5 for a full response to this comment).

- **Topic:** The Shasta River TMDL Action Plan requirement for compliance with all water quality objectives and TMDL allocations for: (a) all discharges associated with riparian land use activities; and (b) all tailwater return flows no later than January 26, 2017.

**Response:** Compliance with water quality standards has not yet been achieved consistent with the goal indicated in the Shasta River TMDL Action Plan. This waiver establishes requirements for the implementation of best management practices and monitoring consistent with the Shasta River TMDL Action Plan that will lead to compliance with the Basin Plan standards and the Shasta River TMDL Action Plan (see Condition 3 and Condition 5) (See Response to Shasta River Comment No. 2 for a full response to this comment).

In response to some of the comments, staff proposed non-substantive revisions in one or both of the Waivers, which are explained in the Response to Comments document. Staff also initiated other revisions to improve the clarity and consistency between the two Waivers. All revisions are reflected in strikethrough (deleted language) or underline (added language) in the proposed orders. The strikethrough/underline copies of these proposed orders included in the package reflect changes from the public review draft versions of the orders. The strikethrough/underline copies do not reflect the changes from the 2012 orders, as extensive structural changes were made to create consistency between the proposed Scott and Shasta orders. We expect interested parties to testify at the Board Hearing.

**RECOMMENDATIONS:** Adopt Order No. R1-2018-0018 and Order No. R1-2018-0019 as proposed.

**SUPPORTING DOCUMENTS:**

1. Proposed Shasta River TMDL Conditional Waiver, with Table 4-14 of the TMDL Action Plan – clean copy and strikethrough/underline
2. Proposed Scott River TMDL Conditional Waiver, with Table 4-10 of the TMDL Action Plan – clean copy and strikethrough/underline
3. Staff Response to Comments
4. Comment letters received
5. Notice of Public Hearing