

**Regional Water Quality Control Board  
North Coast Region  
Executive Officer's Summary Report  
April 6, 2023**

**ITEM:** 4

**SUBJECT:** Public Hearing to consider adoption of Order No. R1-2023-0005 Short-Term Renewal of Order No. R1-2018-0018 *Scott River TMDL Conditional Waiver of Waste Discharge Requirements* and Order No. R1-2018-0019 *Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Elias Scott)*

**BOARD ACTION:** Consider adoption of proposed Order No. R1-2023-0005

**BACKGROUND:** The Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads (Scott River Action Plan) was adopted by the Regional Water Board on December 7, 2005 and amended into the Water Quality Control Plan for the North Coast Region (Basin Plan) on September 8, 2006. The Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads (Shasta River Action Plan) was adopted by the Regional Water Board on June 29, 2006 and amended into the Basin Plan on January 26, 2007. The Action Plans for the Scott River TMDL and the Shasta River TMDL include their respective total maximum daily loads (TMDLs) and a description of the actions necessary to achieve the TMDLs and attain water quality standards in these watersheds.

Since 2006, the Regional Water Board adopted and has implemented Orders conditionally waiving the requirement to file a Report of Waste Discharge (ROWD) and obtain Waste Discharge Requirements (WDR), pursuant to Water Code section 13269. These Orders were revised in 2012 and 2018 as the implementation program has warranted.

On April 23, 2018, the Regional Water Board adopted Order No. R1-2018-0018 and Order No. R1-2018-0019 (2018 Orders) as the Scott River Waiver and Shasta River Waiver, respectively. These 2018 Orders substantively revised and updated what had previously been management measure guidance to become required conditions of compliance. Based on the best professional judgement of Regional Water Board staff through implementation of the Scott River Order and Shasta River Order, these management measures had shown good progress towards ameliorating water quality impacts and increasing waste assimilative capacity when applied on agricultural operations. Other substantive revisions included clarified monitoring and reporting requirements, as well as a finding (Finding 18 in both of the 2018 Orders) that outlines the intent of the Regional Water Board to address water quality concerns associated with agriculture in the Scott and Shasta watersheds through a future permitting program more consistent with approaches implemented in other parts of the state. Finding 18 states that this could include a tiered permitting structure based on past compliance and current threat to water quality.

To be eligible for coverage under the 2018 Shasta River Order, 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 2018 Scott River Order, 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.

On November 23, 2022, a public notice announcing the release of the draft Order No. R1-2023-0005 Short-Term Renewal of Order No. R1-2018-0018 *Scott River TMDL Conditional Waiver of Waste Discharge Requirements* and Order No. R1-2018-0019 *Shasta River TMDL Conditional Waiver of Waste Discharge Requirements* 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. A public workshop detailing the factors necessitating a short-term renewal was held in Santa Rosa on December 8, 2022. These factors include the need to review the effectiveness of the current program of implementation, address the intent of Finding 18, and assess additional data collected since the adoption of the 2018 Orders, especially around the impacts of the established minimum instream flow requirements in response to the drought emergency in the Klamath Basin. Regional Water Board's Scott and Shasta Steward has been assisting the State Water Resources Control Board's Division of Water Rights (Division of Water Rights) in the implementation of these flow requirements since 2020 as a substantial proportion of his formal duties. As such, he has been diverted from the focused work required to update the 2018 Orders. The intent of this short-term renewal is to provide the time necessary to complete these tasks. The written comment period for the draft Short-Term Renewal Order was originally open through January 3, 2023, then extended until January 9, 2023 to allow commenters more time to prepare comments following the winter holidays.

**DISCUSSION:** Twelve 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 responses. For complete responses to all comments, please see the Staff Response to Comments document.

*Comments focused specifically on the short-term renewal*

- **Topic:** Short-term Renewal Length. Multiple commenters described preferences relating to the length of the short-term renewal. Three commenters requested the length be no more than 1 year, two commenters requested the length be no more than 2 years, and two commenters requested the Orders be adopted as-is for another 5 years.

**Response:** The draft short-term renewal was for "up to" 5 years. As noted in the Staff Report and at the public workshop held on December 8, 2023, significant assessment is needed to consider the effectiveness of implementation to date and the role of the Orders in the larger TMDL Action Plan. Significant amounts of water quality data have been collected, restoration projects have been completed, changes in riparian vegetation have been catalogued, and partner agencies have implemented

regulatory and non-regulatory actions that have resulted in changes in the watershed. Staff need time to develop a comprehensive proposal for the public and Regional Water Board's consideration that represents a responsive next step in non-point source regulation of agricultural operations in the Scott and Shasta watersheds that is adapted to current conditions based on the best available science. In consideration of General Comment 1 and the work that will be required to conduct analyses and develop a comprehensive proposal, staff propose a 2.5-year renewal of the Orders.

- **Topic:** Multiple commenters asserted that the short-term renewal violates the spirit and the letter of the State Board's Racial Equity Resolution as it allows continued impacts to species important to Klamath Basin tribes.

**Response:** Staff acknowledges the multigenerational trauma of the colonization, displacement, and systematic genocide of Native American people in California, as well as the ongoing disruption of traditional Native American practices by activities taking place within the Klamath Basin and across the North Coast, including discharges to surface water that imperil the survival of culturally important species like Chinook and Coho Salmon. Staff has focused on building partnerships with tribal technical staff, and commits to working closely with Klamath Basin tribes in the development of the subsequent orders to ensure the Tribes have a meaningful opportunity to participate and that the resulting orders support all beneficial uses, including the Native American Cultural (CUL), Subsistence Fishing (FISH), and Tribal Subsistence Fishing (T-Sub) beneficial uses.

- **Topic:** Multiple commenters asserted that staff offers no evidence that the Orders need modifications, and that they should be renewed for another 5-year period.

**Response:** Per Water Code section 13269, which describes Waivers of Waste Discharge Requirements and their elements, subdivision (f) describes the process for renewing any existing waiver. This section indicates that prior to renewing any waiver for a specific type of discharge, a public hearing shall take place where the State or Regional Water Board shall determine whether the discharge for which the waiver was established instead should be subject to general or individual waste discharge requirements. In addition, pursuant to Water Code section 13269 subdivision (a), the Regional Water Board must determine that the waiver is consistent with the applicable Basin Plan and is in the public interest. The short-term renewal is intended to provide staff the time to gather and analyze existing data and information in each watershed to determine if the protection of water quality would be better served by general Waste Discharge Requirements, the existing Conditional Waivers of Waste Discharge Requirements, or modified Conditional Waivers of Waste Discharge Requirements. The result of these analyses will be the subject of a future public process, in which the public provides comment on staff proposals and the Regional Water Board provides direction and considers adoption.

*Comments focused on the content and effectiveness of the Orders, and on water quality conditions in the watersheds*

- Multiple commenters provided feedback on what provisions they would like to see in the next order iteration or provided feedback on why commenters believe certain areas of the existing orders do not comply with various state policies (Non-Point Source Policy, Water Code Section 13269, etc.).
- Multiple commenters suggested that the Regional Water Board should require mandatory enrollment in the existing Orders before adoption of the new Orders.
- Several commenters asserted that no improvement in water quality has occurred as a result of the existing Orders, citing either a lack of data or studies conducted by other entities.
- Multiple commenters asserted that the Regional Water Board is attempting to assert authority over streamflow levels via temperature and sediment TMDLs in the Scott and that streamflow is regulated by the Division of Water Rights.
- Several commenters suggest there is no evidence to show that the Scott River watershed has severe water quality problems that impact fish.

Responses to these comments regarding the content and effectiveness of the Orders, and on water quality conditions in the watersheds, are included in the Staff Response to Comments document.

The proposed Order has been updated to reflect a proposed 2.5-year renewal period and to note the extended public comment period. During this renewal period, as indicated in the Response to Comments document, staff will take the submitted comments into consideration when drafting the subsequent orders. We expect interested parties to testify at the Board Hearing.

**RECOMMENDATIONS:** Adopt Order No. R1-2023-0005 as proposed.

**SUPPORTING DOCUMENTS:**

1. Proposed Order No. R1-2023-0005
2. Order No. R1-2018-0018 *Scott River TMDL Conditional Waiver of Waste Discharge Requirements*
3. Order No. R1-2018-0019 *Shasta River TMDL Conditional Waiver of Waste Discharge Requirements*
4. Staff Response to Comments
5. Notice of Public Comment Period, Workshop, and Hearing