

North Coast Regional Water Quality Control Board
Staff Response to Public Comments

on the

Scott and Shasta River
TMDL Conditional Waivers of
Waste Discharge Requirements
Orders R1-2017-0031 and R1-2017-0032

The following are summaries or quotes of, and responses to, the comments received on the Scott and Shasta River TMDL Conditional Waivers of Waste Discharge Requirements (Waivers). Due to the similarity of the Waivers, many of the comments received relate to both though several were Waiver-specific. In this document, comments related to both Waivers are presented first, followed by Waiver-specific comments. Comments of similar substance are categorically grouped and summarized into general comments, and are followed by a list of commenters that expressed issues related to the comment. These commenters are referenced in the general comments using the following numbered list.

List of Commenters

1. Environmental Protection Information Center (EPIC) and Klamath-Siskiyou Wildlands Center (KS Wild) *submitted jointly*
2. Karuk Tribe (KT)
3. Nita Still (NS)
4. North Group-Redwood Chapter-Sierra Club (NGRCSC)
5. Pacific Coast Federation of Fishermen's Associations (PCFFA), Institute for Fisheries Resources (IFR) and Save the Klamath Trinity Salmon (SKTS) *submitted jointly*
6. Quartz Valley Indian Reservation (QVIR)
7. Shasta Valley Resource Conservation District (SVRCD)
8. Siskiyou County (SC)

Comments that were not addressed by the general comments and responses are addressed individually. The individual comments and responses are grouped by commenter. Commenter sections are listed alphabetically. Comments are summarized below and the original comment letters are available on the Regional Water Board website for the Scott and Shasta TMDL Programs. Each comment is identified by a code that references the initials of the person or entity that submitted the comments. Previously addressed comments may be referenced in other responses i.e. 'see response to Comment 3'.

Comments Applicable to Both Waivers

General Comments

Note: The majority of the general comments applicable to both Waivers were submitted by the Karuk Tribe, and supported and/or reiterated by other stakeholders, as indicated in the commenter numbers noted for each comment.

General Comment 1 (commenters 1, 2, 4, 5, 6).

Multiple commenters expressed concerns that the Waivers are inconsistent with Water Code section 13369 (addressing the State of California's Nonpoint Source Pollution Control Program), Water Code section 13269 (addressing Waivers of Waste Discharge Requirements), and the Regional Water Board's Basin Plan. The Karuk Tribe, in particular, asserts that the adoption of the Waivers is "illegal" because they do not implement precedential court decisions that pertain to non-point source control programs. Commenters are concerned with how the Waivers comply with the State Water Board's Non-Point Source Control Policy and the achievement of water quality objectives (WQOs). Commenters also expressed concerns regarding timelines and milestones in the Waivers to measure progress towards achieving WQOs and Total Maximum Daily Loads (TMDLs), and the nature of discretionary monitoring required by Executive Officer (EO). Commenters assert that the Waivers do not comply with criteria in Water Code section 13269 for the issuance of Waivers of waste discharge requirements, including ensuring that the Waivers are in the public interest. The general comment also expresses concerns regarding the feedback mechanism that will be used to evaluate the Waivers' contribution to WQO or TMDL compliance.

Response to General Comment 1

The Waivers are not intended to implement all aspects of the TMDLs, only those that relate to discharges of waste and controllable water quality factors associated with the activities of the Waiver holder. Thus, these Waivers do not constitute a nonpoint source water quality program as described in the state nonpoint source policy, though they are a component of one. The case cited by the Karuk Tribe, *Monterey Coastkeeper v. California State Water Resources Control Board* (2015) No. 34-20112-8001234, addresses non-point source control programs in the context of the Central Coast Regional Water Board's irrigated agriculture order. It is important to note that the decision addressed a comprehensive irrigated lands Waiver that the Central Coast Water Board applied to the entire Central Coast region. The Court's decision did not address the circumstances here, where Waivers are one component of the non-point source control program, a program that contains multiple other elements including: watershed stewardship (including comprehensive watershed monitoring in the Shasta Watershed), coordination with the State Water Board Division of Water Rights on water diversions, implementation of additional Regional Water Board discharge programs (i.e. timber and dairy Waivers, 401 certification program), application and enforcement of existing basin plan prohibitions,

and the issuance of monitoring and reporting orders. In addition, the *Monterey Coastkeeper* decision is a non-precedential and non-binding trial court decision that is currently stayed pending an appeal filed by the State Water Board.

The Shasta and Scott River TMDL Conditional Waivers specifically and solely address discharges of waste and controllable water quality factors associated with grazing, range land activities, and roads not covered by other permitting mechanisms. The Waivers do not explicitly incorporate the respective TMDL load allocations or targets, rather they require implementation of management measures designed to prevent and eliminate discharges consistent with TMDL load allocations and targets (See Condition 5 in both Waivers). If dischargers do not implement management measures effectively, they will be out of compliance with the Waiver and subject to further reporting, monitoring, or potential enforcement actions. At the discretion of the EO, the Waivers can require development of management plans, as well as monitoring and reporting requirements based on site-specific risks to water quality. These Waiver conditions, combined with the monitoring underway in the Shasta River watershed stewardship framework, and under development in the Scott River watershed, is sufficient to provide data for evaluating the effectiveness of the management measures applied. If qualitative and quantitative monitoring results indicate that actions to address thermal, sediment, or nutrient loading are insufficient, then additional actions and measures can be identified to address those discharges and controllable water quality factors. Water Code Section 13269 states that monitoring requirements shall, “be designed to support the development and implementation of the Waiver program, including, but not limited to, verifying the adequacy and effectiveness of the Waiver’s conditions.” Monitoring requirements as laid out in the Waivers meet this criteria.

Given that the Waivers are not intended to implement all aspects of the TMDLs, only those that relate to discharges of waste and controllable water quality factors associated with grazing, range land activities, and road-related sediment management, the Waivers do not constitute a nonpoint source water quality program as described in the state nonpoint source policy, though they are an important component of one.

Water Code Section 13269 states that monitoring requirements shall, “be designed to support the development and implementation of the Waiver program, including, but not limited to, verifying the adequacy and effectiveness of the Waiver’s conditions.” The Waiver’s monitoring requirements meet this criteria.

As noted above, though not an official component of the Shasta TMDL Waiver, the Shasta watershed stewardship framework also includes a monitoring program that provides annual feedback on both temperature and dissolved oxygen at specific reaches and tributaries of the Shasta River watershed, information relevant to track TMDL implementation progress. Efforts are underway to establish a comparable watershed stewardship framework for the Scott River watershed, including the collection and collation of existing temperature data in the Scott River to assess trends and the selection of a database for data dissemination.

General Comment 2 (commenters 1, 2, 4, 5, 6).

Commenters, and specifically the Karuk Tribe, maintain that the Regional Water Board has not complied with the State Water Board antidegradation policy (State Water Board Resolution No. 68-16) or established court precedent interpreting the policy.

Response to General Comment 2

As discussed in Response to General Comment No. 1, *Monterey Coastkeeper* is not a precedential case. The other decision cited by the Karuk Tribe, *AGUA v. Central Valley Regional Board* (2012) 210 Cal.App. 4th 1255, is a precedential decision and the Regional Water Board has complied with that decision. Specifically, *AGUA* affirms that the antidegradation policy applies to the best water quality achieved since 1968, adjusted for any reductions in water quality that have been authorized since 1968. The *AGUA* decision did not set requirements specifying exactly how a Regional Water Board must monitor discharges to ensure degradation does not occur, only that a Regional Water Board must make appropriate findings to support its determination that it complies with the antidegradation policy. The Regional Water Board has made the findings in this, and the prior issued versions of the Waiver, that the Waiver does not allow discharges that will degrade high quality waters, and where degradation may occur the Executive Officer may require additional monitoring to assess impacts. Finding 16 of the Scott River TMDL Conditional Waiver and Finding 15 of the Shasta River TMDL Conditional Waiver speak to the anti-degradation analysis, and have been modified to more directly address this comment. Under *AGUA*, the baseline for determining degradation is the best water quality that has existed since 1968 minus any degradation that has been authorized by prior order or regulation. This order is the latest in a series of orders that address non-point discharges primarily from agricultural and grazing activities in the Scott and Shasta watersheds. This order is anticipated to reduce and eliminate discharges from these activities to the Scott and Shasta watersheds, and to result in an improvement over current conditions in the watersheds. Specifically in this case, if a discharger complies with the Waivers by increasing riparian shading, decreasing or eliminating tailwater flows into receiving waters, minimizing or preventing the discharge of sediment into receiving waters as required by the Waivers, quality will be improved over current practices and not be further degraded from the current conditions. The specific monitoring and reporting that may be required by the Executive Officer after ranch assessments confirm that 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. If a discharger does not comply with the conditions set forth in the Waivers, they will be out of compliance with the Waiver, and further permitting and enforcement actions would be pursued.

General Comment 3 (commenters 1, 5, 7).

Multiple commenters asserted that Waivers should contain additional requirements, and requested additional actions including basin plan amendments, action plan modifications, and so forth.

Response to General Comment 3

The Regional Water Board considers changes to the Basin Plan and TMDL action plans during the triennial review process. These comments will be shared with basin planning staff for consideration during that process and we encourage all stakeholders to be actively engaged in the associated public comment periods for the triennial review to ensure these concerns are known. It is important to note that these Waivers are regulatory mechanisms that exist within the larger water quality control programmatic framework that the Basin Plan and TMDL action plans provide.

General Comment 4 (commenters 4, 5, 6)

Multiple commenters asserted that effective enforcement was necessary, and some included specific locations as examples of areas where they felt enforcement should be used to compel Waiver compliance. Commenters assert that enforcement can work to support those dischargers who are taking initiative to protect water quality, while also moving those dischargers who have not taken action to see that there are consequences for failing to comply with the Waivers.

Response to General Comment 4

The Regional Water Board agrees that effective enforcement is a necessary tool to ensure compliance. The Waivers provide clear conditions and any violations of those conditions are enforceable. See Scott Waiver Conditions 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. The Waivers do not limit or restrict the Regional Water Board's ability to address water quality concerns. Pursuant to the State Water Board's Enforcement Policy, 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. Regional Water Board staff have taken note of those locations commenters have recommended for further inspection and will be prioritizing them for assessment of Waiver compliance.

General Comment 5 (commenters 4, 6, 7)

Multiple commenters expressed support for the approach described in Finding 18 of the draft Waivers (now Finding 17 in the Shasta TMDL Conditional Waiver). One commenter expressed a continuation of a no-fee approach.

Response to General Comment 5

The content of finding 18 relates to the possibility that future revisions of the Waivers may include tiers, additional enrollment, monitoring and reporting requirements, and may require payment of fees. These potential revisions are not being proposed now and would be subject to a separate public review and Board deliberation process. The decision to

require fees for all Regional and State Water Board regulatory programs are made by the State Water Board, not the Regional Water Board. 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.

Individual Comments

Comment 1 (NS)

Several comments submitted by Ms. Still noted the following:

- water flowing past the Klamath dams is cleaner than before the dams;
- Klamath River flows through a volcanic area, which has water quality implications;
- stakeholders who want the Klamath dams removed are wrong;
- residents voted to keep the dams by over 79%.

Response to Comment 1:

The Klamath dam removal project is beyond the scope of the Scott and Shasta TMDL Waivers. The Regional Water Board notes, however, that the geology of both watersheds were taken into account when the TMDLs were adopted. Impacts of volcanic geology to water quality were considered in the Shasta River TMDL.

Comment 2 (PCFFA/IFR/SKTS)

The commenters suggest that Dischargers that do not comply with the Waiver conditions should be required to submit applications for waste discharge requirements (WDRs) that incorporate TMDL load allocations, sediment and ranch management plans, riparian flow management plans, and water and nutrient application plans.

Response to Comment 2

If a discharger does not comply with the standard conditions of the Waivers, the Regional Water Board has the authority to compel compliance with the TMDL and water quality standards through various means including but not limited to requiring submission of a report of waste discharge (ROWD) and issuance of an individual WDR, as well as progressive enforcement actions such as Notices of Violation, Cleanup and Abatement Orders and Administrative Civil Liability Complaints. The Regional Water Board will determine appropriate actions for any non-compliant discharger based on situation specific information and circumstances.

Comment 3 (PCFFA/IFR/SKTS)

Regional Water Board should act to stop the issuance of additional groundwater wells in areas of known groundwater overdraft or where new wells are likely to impact surface water streamflows.

Response to Comment 3

The Regional Water Board has no permitting authority over the installation of groundwater wells. However, the Regional Water Board coordinates with the Division of Water Rights on water right related matters, including impacts of near-stream wells when those wells capture surface waters. Similarly, the Regional Water Board will be an active participant in the development of Groundwater Sustainability Plans developed at the local level. In all of these matters, the Regional Water Board will provide input encouraging actions consistent with the temperature TMDLs.

Comment 4 (PCFFA/IFR/SKTS)

Include riparian stream buffer zones of 100 to 200 feet from the high water mark, depending on stream class, to protect water quality and for salmon habitat. Include seasonal waterways in buffers. Roads, machinery, CAFOs, AFOs, and livestock should be excluded from buffer areas.

Response to Comment 4

Rather than set specific riparian buffer widths, the approach taken in these Waivers is to establish clear expectations of riparian functions to be attained, to assess on the ground site specific riparian conditions, to identify where changes in practices are needed, and to implement new practices where necessary to appropriately protect riparian areas. Further, these Waivers do not authorize CAFOs or AFOs.

Comment 5 (PCFFA/IFR/SKTS)

In areas where permanent and necessary roads are already in areas used by farms and ranches, a removal plan should be submitted, or BMPs that will lead to zero discharge of sediment to waterways should be implemented and required. These BMPs should be designed to hold up even in heavy storm events.

Response to Comment 5

This comment is consistent with Condition 5(o) of the Waivers, and the general approach of the Waivers, which is to develop corrective plans when appropriate. Maintenance of roads and related infrastructure may include removal, if appropriate. Otherwise, roads shall be maintained in a manner that minimizes, controls, and prevents the discharge of sediments to waterbodies, including in heavy storm events.

Comment 6 (PCFFA/IFR/SKTS)

Request the Waiver address stormwater impacts and include BMPs to address storm discharges.

Response Comment 6

The Waivers address pollutants that may be associated with stormwater discharges. See condition 5 in both Waivers.

Comment 7 (PCFFA/IFR/SKTS)

Request all implementation reviews, effectiveness reviews, stewardship reports, monitoring information, any WDRs, ranch management plans, management actions, and studies related to the Scott and Shasta TMDL be made available online or on request. Also request reviews and reports related to Waivers, including monitoring reports be made available before major public comment deadlines.

Response to Comment 7

All reports prepared or held by the Regional Water Board are public documents and available upon request. In addition, the Regional Water Board posts all adopted WDRs and Waivers of WDRs on its public website as well as Notices of Violation, and any pending enforcement actions. Regional Water Board staff regret the timing of the release of the Shasta River Watershed Stewardship Report did not coincide with the public comment deadline.

Comment 8 (PCFFA/IFR/SKTS)

Commenters request an analysis on how the implementation of the Scott and Shasta Waivers and TMDLs have impacted or are expected to impact the greater salmonid fisheries contributed to by populations reared in the Scott and Shasta rivers.

Response to Comment 8

We will take the request into consideration for future assessment of the TMDLs. Also, see response to General Comment 3.

Comment 9 (PCFFA/IFR/SKTS)

Commenters assert that reservoirs with water quality issues should be required to submit reservoir management plans. Commenters allege that Dwinnell is an agricultural diversion reservoir and should be assigned specific loads and assigned management measures to remedy these adverse impacts.

Response to Comment 9

Montague Water Conservation District (MWCD) is identified as a responsible party in the Shasta TMDL Action Plan with a responsibility to comply with water quality standards for water flowing from Dwinnell into the Shasta River. The TMDL requires MWCD to submit a plan to bring the discharge from Dwinnell Dam into compliance with water quality standards. The TMDL does not contemplate or require the Regional Water Board to regulate MWCD under the Waiver and these discharges are addressed under other regulatory mechanisms.

Comment 10 (PCFFA/IFR/SKTS)

Commenter requests analysis of the cumulative watershed impacts of all human management activities throughout the Scott and Shasta watersheds to assess how these combined actions impact the ability of the TMDLs to be met.

Response to Comment 10

We will take this request under consideration for future assessments of the TMDL. The Shasta watershed stewardship framework includes a monitoring framework, and the data collected under this framework will provide insights into water quality trends. Regional Water Board staff hopes to expand this monitoring framework as needed and to establish a similar stewardship monitoring framework in the Scott River

Comment 11 (PCFFA/IFR/SKTS)

Commenter asserts that adequate funding should be in place to help subsidize voluntary landowner mitigation measures as a financial incentive program to expedite implementations.

Response to Comment 11

Funding opportunities exist through the EPA's 319(h) grant program, as well as other state, federal, and private sources. Multiple projects are actively underway in both watersheds that are currently being funded by these opportunities, including but not limited to ranch planning, riparian restoration, irrigation efficiency through piping currently unlined ditches, and bank stabilization that utilized bioengineering.

Comment 12 (SC)

Request that the Regional Water Board continue the Waiver process as is beyond 2022.

Response to Comment 12

Under Water Code Section 13269 Waivers may only be issued for a maximum of five years, so these Waivers necessarily expire in 2022. The Regional Water Board will evaluate the effectiveness of the Waivers and consider stakeholder feedback prior to their expiration in 2022 before determining the appropriate regulatory mechanism that will replace existing permitting programs. Also, see the response to General Comment 5.

Comment 13 (SC)

Commenter requests that in the development of future programs the Regional Water Board should work closely with irrigators and landowners that would be required to comply with regulations.

Response to Comment 13

The Regional Water Board is committed to continuing to work with all stakeholders, including irrigators and other responsible parties in the Scott and Shasta River watersheds, to ensure understanding of and compliance with these water quality regulations.

Comment 14 (SC)

Siskiyou County would like to see Cannabis programs and Agricultural programs combined so that they are managed on an equal level.

Response to Comment 14

Regional Water Board staff anticipate cross-program coordination as the cannabis and agriculture regulatory programs further develop. As cannabis becomes an established agricultural commodity, the Regional Water Board expects its cultivation will include many of the same water quality impacts as compared to other irrigated agriculture activities. The Regional Water Board will aim to build in program efficiencies wherever possible to comprehensively and uniformly address the water quality impacts associated with irrigated agriculture.

Comment 15 (SC)

Reiterate comment from UCCE that total exclusion of riparian grazing is not completely beneficial to creek and river conditions. Active management and rotational grazing are proactive options, which allows for benefits like invasive weed control. Encourage Regional Water Board to work with UCCE and the County's Range Advisory Board.

Response to Comment 15

We concur with the efficacy of active riparian management, and implementation of these practices can be done consistent and in compliance with the standard conditions of the Waivers. Regional Water Board staff look forward to coordination with UCCE and the County's Range Advisory Board on the implementation of the Waivers.

Watershed Specific Comments

Scott River Watershed Comments

Scott River Comment 1 (commenters 1, 2, 4, 5, 6).

Multiple commenters noted that the Scott River Waiver does not mention the non-point source pollution policy.

Response to Scott River Comment 1

The Waiver has been updated with findings to reflect the Regional Water Board's consideration of the nonpoint source control policy in its adoption of the Waivers. Please see response to General Comment No. 1 regarding how the Waiver relates to the nonpoint source pollution control policy.

Scott River Comment 2 (EPIC/KS Wild)

Commenter asserts that most of the premiere spawning areas in the Scott River dry up and remain inaccessible during Chinook migration and is dewatered during juvenile salmonid out-migration.

Response to Scott River Comment 2

The Scott Waiver is designed to address waste discharges. While the regulation of flow is beyond the scope of this Waiver, the Regional Water Board can require Dischargers to submit monitoring and reporting information related to flows and assess the effect of their management practices on water use to coordinate Regional Water Board efforts with the State Water Board's to minimize the water quality impacts related to flow. Also, see response to Comment 3 above as well as General Comment 3.

Scott River Comment 3 (NGRCSC)

Forest Service management of headwater grazing allotments is not allowing natural shade to develop on headwater streams.

Response to Scott River Comment 3

These issues fall outside of the scope of this Waiver. However, the *Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities on National Forest System Lands in the North Coast Region*, Order R1-2015-0021, includes requirements associated with managing riparian areas and directs forest service actions in relation to the Scott River TMDL Action Plan. The Regional Water Board and USFS are in ongoing conversations relating to their implementation of best management practices on grazing allotments.

Scott River Comment 4 (NGRCSC)

Scott Valley Integrated Hydrology Model (SVIHM) is too simplistic and too untested and unverified for it to serve as management tool.

Response to Scott River Comment 4

The SVIHM is beyond the scope of the Scott Waiver. With this said, the work of Dr. Harter has been subjected to peer review, is published, has yielded excellent results in comparison to calibration and validation data. The Regional Water Board looks forward to utilizing this important tool to understand potential management scenarios that may yield increased instream flow of accreted groundwater as part of TMDL implementation actions.

Scott River Comment 5 (NGRCSC)

The commenter asserts that the Waivers proposed regulatory approach is in violation of the State Board's progressive enforcement policy.

Response to Scott River Comment 5

The Waivers are consistent with the State Water Board's Enforcement Policy; they provide a clear progressive enforcement pathway. Those who are not in compliance with the standard conditions of this Waiver will be subject to individual waste discharge requirements and potential enforcement.

Scott River Comment 6 (NGRCSC)

The Waiver should prohibit on-stream feedlots (CAFOs).

Response Scott River Comment 6

The conditions of the Waivers do not authorize on-stream feedlots. As such, on-stream feedlots (CAFOs) would be out of compliance with the Waiver and would be required to submit an individual report of waste discharge. The Regional Water Board would regulate such a facility through issuance of waste discharge requirements, and the Board's NPDES (National Pollutant Discharge Elimination System) program requirements. In absence of a permit, a CAFO would face potential enforcement action for failure to obtain a permit and for discharge violations.

Scott River Comment 7 (NGRCSC)

Quantify and demonstrate the benefits of moving irrigation wells away from the Scott River and ending groundwater extraction for irrigation on September 20th.

Response Scott River Comment 7

We will take this comment into consideration as a possible scenario during future modeling efforts.

Scott River Comment 8 (NGRCSC)

Regional Water Board should notify landowners of their obligation to protect water quality.

Response to Scott River Comment 8

Depending on available staff resources and prioritized actions to implement the Waiver, Regional Water Board staff will consider options to notify landowners of their obligations to comply with the Waiver.

Scott River Comment 9 (NGRCSC)

The stewardship approach is voluntary compliance, and may not be effective in implementing the TMDL Action Plan.

Response to Scott River Comment 9

To effectively conduct a watershed-wide restoration and resource management program, all parties need to be moving in a collaborative direction with the goal of protecting water quality for the support of beneficial uses. That is the intent of the watershed stewardship framework. While participation in the adaptive management framework set up through the stewardship process is voluntary, compliance with the Waiver and other regulatory requirements (e.g. 401 certifications, Timber WDRs) is not. The benefits of the stewardship approach include collaboratively building a communication network, identifying and implementing solutions to common water quality problems, providing resources towards jointly implemented projects, sharing resources using a coordinated strategic monitoring design, and collaboratively conducting adaptive management assessments. These elements drive and inform the comprehensive watershed-wide restoration efforts via the stewardship process.

Scott River Comment 10 (QVIR)

Actions including riparian planting and riparian management are lacking in the Scott River landscape.

Response to Scott River Comment 10

Replanting of riparian vegetation, in the absence of a discharge, is an activity more appropriately regulated by local agencies and authorities. In cases of removal of canopy shade, the Regional Water Board has the authority to require riparian planting, and the conditions of the Waiver reflect this. The management measures required in the Waiver to minimize, control, and prevent discharge of sediment and elevated solar radiation under Condition 5, include riparian management measures. These measures were recommendations in previous Waivers and are now requirements in the proposed Waiver. Failure to comply with these management measures will result in non-compliance with the Waiver and could result in enforcement. The Regional Water Board also continues to encourage, coordinate, and fund riparian plantings and management across the valley. See also response to General Comment 1.

Scott River Comment 11 (QVIR)

Finding 13 in the Waiver notes that 15 ranches have been identified as the largest dischargers, but have not been asked to complete any plans to the knowledge of QVIR.

Response Scott River Comment 11

The Regional Water Board considers all landowners or operations with risk for discharge to be Dischargers subject to the conditions of the Waivers. This does not explicitly mean that landowners or their operations are actively discharging. Many of the ranches assessed by the Regional Water Board did not have discharges that posed a risk to water quality, so plans were not required. The Regional Water Board decided to classify these 15 operations

as posing the largest risk to water quality because they have longest cumulative river frontage interfacing with their ownership or operations.

Scott River Comment 12 (QVIR)River

We support requiring plans for riparian vegetation and erosion control for at least the top 15 ranches identified as dischargers.

Response to Scott River Comment 12

Please see the response to Scott River Comment 11. The Regional Water Board has not found that the largest 15 dischargers are necessarily causing the most significant water quality impacts. The Waivers require implementation of management measures to minimize, control, and prevent discharges; requirements to develop Grazing and Riparian Management Plans, Erosion Control Plans and Monitoring and Reporting Plans are at the discretion of the Executive Officer. To date, Regional Water Board staff have not found that all of the largest 15 ranches need to develop ranch-specific plans.

Scott River Comment 13

Commenter provided aerial images showing changes in riparian conditions from 1993 to 2016. Commenter indicated that riparian conditions have shown improvement in some areas, no improvement in others, and degradation in some areas. Several specific examples were cited in this comment.

Response to Scott River Comment 13

We agree that riparian conditions over time vary, and believe this points to the need to understand site-specific variables that increase riparian growth and survival, including but not limited to soil type, groundwater elevation, floodplain connection, and target species. These variables must be understood prior to planting to ensure successful restoration attempts, and different sites will respond differently according to these variables. Also, it is important to acknowledge the effects of the 1997 flood, which had substantial impacts on riparian vegetation. A comparison of aerial images taken in 1993 with those taken in 2016 is not especially informative for assessing the efficacy of the Waivers.

Scott River Comment 14 (QVIR)

Current rate of riparian planting would require over 200 years to cover the area needed for restoration.

Response to Scott River Comment 14

The Regional Water Board continues to prioritize the restoration and proper management of riparian vegetation throughout the Scott River system. Landowners are responsible for managing riparian areas in a manner that allows the natural establishment and abundance of native vegetation. Replanting is not necessarily a requirement to accelerate restoration of riparian vegetation, but can be required when removal of riparian cover results in an increase in temperature loading to surface waters.

Shasta River Comments

Shasta River Comment 1 (commenters 1, 2, 4, 5, 6).

Multiple commenters asserted that data collected from receiving waters indicated that water quality impairment is unchanged in the Shasta River despite the implementation of the current Waiver.

Response to Shasta River Comment 1

Please see response to General Comment 1. The Waivers are part of a nonpoint source program to meet TMDL targets and water quality objectives. Further, it is important to recognize that stream temperature changes will be at a time scale commensurate with the growth of riparian vegetation. Data presented at the public workshop in Yreka and the Regional Water Board meeting in Santa Rosa prior to the close of public comment indicates that when Dischargers implement standard conditions in the Waiver at the appropriate scale, water quality conditions show compelling improvements both in temperature (for example at Big Springs Creek) and dissolved oxygen (for example at Montague-Grenada bridge) (Presentation is available for review under agenda item 4 at: http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/06_2017/index.shtml).

Shasta River Comment 2 (commenters 1, 2, 4, 5, 6).

Multiple commenters asserted that the Waiver is inconsistent with the final TMDL and water quality objective compliance deadlines in the Action Plan. Namely that the Action Plan requires 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. The commenters then assert that to be consistent with the Basin Plan, the Waiver must include limitations sufficient to ensure compliance with the requirements for riparian land use and tailwater return flows immediately and require sampling of riparian and tailwater return flows to determine compliance.

Response to Shasta River Comment 2

The Shasta River TMDL Action Plan established a goal that all identified discharges associated with riparian land use activities and discharges of tailwater return flows be in compliance with water quality standards within ten years of EPA approval of the TMDL. To date, compliance with water quality standards has not been achieved consistently in the watershed. The Waiver establishes requirements for the implementation of management measures to ensure compliance with Basin Plan standards and the TMDL Action Plan (See Condition 5). Further, Condition 3 states that the Executive Officer has the authority to require site specific monitoring and reporting, which may include evaluation of instream and near stream management measures and could include tailwater flow sampling. Condition 3.d. specifically describes sampling of tailwater discharge, if appropriate. These

requirements and conditions are consistent with the goals and requirements of the TMDL Action Plan.

Shasta River Comment 3 (PCFFA/IFR/SKTS)

The commenters suggest that the Waivers should delineate and explain what actions will be taken to achieve the Shasta River TMDL minimum flow targets. Flow management activities under these Waivers should be further outlined and delineated, including actions to enhance or conserve groundwater. Waivers should incorporate new guidelines and standards for how these flow recommendations will be achieved and what water saving actions will be brought into the Waivers.

Response to Shasta River Comment 3

Commenter is correct in the assertion that the Shasta River TMDL contains minimum flow targets and outlines management measures that may be used to achieve those targets. The Waivers incorporate the TMDL requirements by requiring management measures as outlined in Attachment A. Attachment A includes measures to address water conservation practices and for stakeholders to conduct flow studies to better understand surface and groundwater flow interactions and how groundwater use effects surface flow and the maintenance of beneficial uses.

As stated in the TMDLs, the Regional Water Board lacks the authority to directly regulate water diversions. The State Water Board is the agency with the primary jurisdiction to regulate water rights and diversions for use. However, the Regional Water Board may require site-specific monitoring and reporting information to further characterize the effect of a landowner's activities on surface flow and coordinate its efforts with the State Water Board to assist it in its obligation to consider compliance with relevant water quality control plans when it allocates water rights. Additionally, there are multiple regulatory and non-regulatory efforts under way to understand and address topics related to flow, including but not limited to the California Water Action Plan efforts in the Shasta River watershed, groundwater recharge projects in the Scott River watershed, and water trading efforts by the Nature Conservancy, Scott River Water Trust, and the local Resource Conservation Districts to increase instream flow during critical periods.

Shasta River Comment 4 (SVRCD)

Shasta Valley RCD estimates that 90% of the properties prioritized for assessment have been interested in working with the SVRCD and have completed "Water Quality Ranch Plans." However these plans were referred to as "ranch assessments" at the TMDL Waiver workshop and SVRCD believe in most cases they will meet the requirement of Ranch Management Plans and/or Tailwater Management Plans written into the Waiver and should be considered as such.

Shasta River Comment 4

The work conducted by the SVRCD is invaluable to the implementation of the Shasta River TMDL Action Plan, and the Regional Water Board appreciates the work SVRCD has conducted, especially in ranch planning, irrigation efficiency, and tailwater management. What is referred to as a "ranch assessment" are the activities conducted by Regional Water Board staff to assess compliance with the Waiver as described in Condition 7. A Water Quality Ranch Plan prepared by the SVRCD could be functionally equivalent to a Ranch Management Plan or Tailwater Management Plan as described in Condition 2 of the waiver. However, the Regional Water Board reserves the authority to require additional measures be included in Ranch Management Plans or Tailwater Management Plans if deemed necessary to adequately address the issues identified in a ranch assessment by the Water Board staff. To ensure parity between plans described in Condition 2 and water quality ranch plans as prepared by SVRCD, continued close coordination and communication will be key as the process moves forward.

Shasta River Comment 5 (SVRCD)

Commenter indicates that voluntary efforts have resulted in a high degree of cooperation between local agricultural land owners, the SVRCD, and agencies to implement land management changes. This includes over 91% of the mainstem Shasta River currently protected from unmanaged grazing, outreach, and education. The commenter indicates that even with this effort not all of the goals set out in the TMDL action plan have been reached. Commenter suggests revisiting the initial hypothesis used to set targets.

Response to Shasta River Comment 5

The Regional Water Board recognizes the great cooperative effort and the results attained through the leadership and coordination efforts of the SVRCD. As evidenced by the data collected at the Montague-Grenada Bridge, these efforts have likely resulted in water quality improvements and provide support for the initial hypothesis from which the 2007 TMDL Action Plan was developed. The Regional Water Board believes that the evidence shows the hypothesis is valid: tailwater impacts, lack of riparian shading, inefficient diversions, channel impoundments, and reduced instream cold water flow are the functional drivers of impairment in the Shasta River. We expect the returns from the work completed in the Shasta River watershed will take time to manifest in improved instream temperature and dissolved oxygen conditions. We look forward to continuing to work collaboratively and creatively with the SVRCD and other watershed partners to understand these risks as they exist today, address them effectively, and move the watershed towards TMDL compliance.

Shasta River Comment 6 (SVRCD)

The commenter requests the Regional Water Board work to ensure funding exists for continuing status and trends monitoring to inform ongoing restoration efforts.

Response to Shasta River Comment 6

The Regional Water Board agrees that status and trend monitoring is vital for the success and realization of the TMDL goals. The Regional Water Board will work to ensure the SVRCD and other partners aware of funding opportunities as they are offered and will continue to explore opportunities to loan water quality monitoring equipment to entities in the Scott and Shasta watersheds so that they can track progress towards meeting water quality standards.