

North Coast Regional Water Quality Control Board

Order No. R1-2023-0005

**Short-Term Renewal of Order Nos. R1-2018-0018
and R1-2018-0019**

Scott River and Shasta River TMDL Conditional Waivers

of

Waste Discharge Requirements

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

1. The Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads, hereinafter the Scott River TMDL Action Plan or Action Plan, was adopted by the California North Coast Regional Water Quality Control Board (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 following approval by the United States Environmental Protection Agency. The Scott TMDL Action Plan describes the implementation actions necessary to achieve the Sediment and Temperature TMDLs and attain water quality standards in the Scott River watershed. The Action Plan assigns specific actions for the Regional Water Board and Dischargers in Table 4-10 of the Basin Plan. The implementation actions are designed to encourage and build upon on-going, proactive restoration and enhancement efforts in the watershed. Pursuant to Water Code section 13269, and consistent with [Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program](#) (May 20, 2004) the Regional Water Board adopted Order No. R1-2006-0081, Conditional Waiver for Discharges Related to Specific Land Management Activities in the Scott River Watershed North Coast Region on August 9, 2006 (2006 Scott Order). In the 2006 Scott Order the Regional Water Board conditionally waived the requirement for Dischargers to file a Report of Waste Discharge (ROWD) and obtain Waste Discharge Requirements (WDR) pursuant to Water Code section 13269 for Discharges not already authorized under an existing permit or order. The 2006 Scott Order applied to Dischargers that participate in specified on-going collaborative programs and implement the measures outlined in the 2006 Scott Order. To be covered under the 2006 Scott Order Dischargers were required to employ land stewardship practices and activities that minimize, control, and prevent discharges of sediment and elevated solar radiation loads to the Scott River and tributaries. On October 4, 2012 the Regional Water Board adopted Order No. R1-2012-0084 (2012 Scott Order), updating the 2006 Scott Order and extending its coverage until October 4, 2017. Consideration of a revised Scott Order was postponed temporarily due to disruption caused by the Nuns and Tubbs fire in

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Sonoma County in October of 2017, and on April 19, 2018, the Regional Water Board adopted Order No. R1-2018-0018, (2018 Scott Order), which substantially revised the 2012 Order to include updated planning, monitoring, and reporting requirements, as well as updating what had been management measure guidance in the 2012 Scott Order to become required conditions of compliance in the 2018 Scott Order.

2. The Action Plan for the Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads, hereinafter the Shasta River TMDL Action Plan, was adopted by the Regional Water Board on June 28, 2006, and amended into the Basin Plan on January 26, 2007, following approval by the United States Environmental Protection Agency. The Shasta TMDL Action Plan describes the implementation actions necessary to achieve the Temperature and Dissolved Oxygen 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 Dischargers¹ to achieve these standards. 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 Dischargers that choose to participate in on-going collaborative programs and implement applicable management measures outlined in Table 4-14 of the Action Plan. Pursuant to Water Code section 13269, and consistent with California's [Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program](#), the Regional Water Board adopted the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Order No. R1-2012-0083 or 2012 Shasta Order) on October 4, 2012. To be eligible for coverage under the 2012 Shasta Order, the Dischargers were 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) to the Shasta River and tributaries. Consideration of a revised Shasta Order was postponed temporarily due to disruption caused by the Nuns and Tubbs fire in Sonoma County in October of 2017, and on April 23, 2018 the Regional Water Board adopted Order No. R1-2018-0019 (2018 Shasta Order). As with the 2018 Scott Order, the 2018 Shasta Order was substantially revised to include updated planning, monitoring, and reporting requirements as well as updating what had been management measure guidance in the 2012 Shasta Order to become required conditions of compliance in the 2018 Shasta Order.

¹ The term "Dischargers" as used in this Order includes individuals or entities that are responsible for discharges of waste into the Scott and Shasta River watersheds.

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3. The 2018 Scott Order covers discharges associated with activities not explicitly covered by other Regional Water Board permits, including ranching operations adjacent to waterways and rural roads not associated with active timber harvest plans. These discharges include increased solar radiation in stream reaches where current effective shade is less than the adjusted potential effective shade as indicated in the Scott River TMDL, as well as sediment discharges indicated in the Scott River TMDL associated with anthropogenic landslides, large and small discrete streamside features, and road related sources. In addition to these discharge categories identified in the Scott River TMDL, conditions in the 2018 Order included minimizing, controlling, and preventing discharges of irrigation tailwater and discharges of animal waste from agricultural operations to surface waters. These discharges were included in order to support addressing the impairment of a segment of the Scott from Young's Dam to the Boulder Creek Confluence for biostimulatory conditions, dissolved oxygen, and pH. These impairments resulted in this segment of the Scott River being listed on the Clean Water Act section 303(d) list of impaired waterbodies in the 2012 Integrated Report².
4. The 2018 Shasta Waiver covers discharges associated with activities not explicitly covered by other Regional Water Board permits, including ranching operations adjacent to waterways and rural roads not associated with active timber harvest plans. These discharges include increased temperature in stream reaches where current effective shade is less than the adjusted potential effective shade indicated in the Shasta River TMDL, increase of temperature due to impoundment of surface waters, discharges of fine sediments and other oxygen consuming materials, including animal waste and discharges of warm and nutrient-rich irrigation tailwater.
5. Since their original adoption in 2006 important progress has been made to implement the Scott and Shasta River TMDL Action Plans. Actions taken to comply with requirements of the Scott and Shasta TMDL Conditional Waivers of Waste Discharge Requirements (Waivers or Orders) have resulted in the following key accomplishments listed in findings 6-9.
6. In the Scott, 20 Ranches have been assessed for compliance with Waiver conditions, representing approximately 31% of the stream frontage in the watershed adjacent to agricultural activities. Of these 20 ranches, 8 Grazing and Riparian

² More information on the integrated report process can be found at https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/303d/index.html

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Management Plans have been required and are now being implemented to address documented water quality concerns.

7. In the Shasta, 13 Ranches have been assessed for compliance, including approximately 19 miles of the Shasta River mainstem frontage, the entire Parks Creek and Big Springs Creek frontage, and approximately 1.3 miles of the Little Shasta River. All 13 ranches now operate under Ranch Management and Monitoring Plans due to documented water quality concerns, or equivalent plan determined by Regional Water Board staff to be in compliance with Waiver requirements (for example, Safe Harbor Agreement Site Plans that staff have deemed sufficient to address documented water quality concerns).
8. In addition to the regulatory work conducted under the Waivers, the Regional Water Board has allocated a total of 3.48 million dollars since the adoption of the Scott River TMDLs for sediment and temperature to support TMDL related work in the watershed. This funding has resulted in approximately 25 acres of riparian plantings, 17.8 miles of riparian fencing, 2,200 feet of bioengineered bank restoration, various geomorphic assessments, hydrologic disconnection of 53 rural road treatment sites, reach-scale restoration planning, and the development to the Scott Valley Integrated Hydrologic Model, which is used by the Siskiyou County Groundwater Sustainability Agency to develop and implement their Groundwater Sustainability Plan and is under active development guided by the State Water Resources Control Board to understand groundwater and surface water dynamics under drought conditions. Additionally, over the last three years the Regional Water Board has been conducting ambient monitoring of surface water for temperature, dissolved oxygen, and nutrient concentrations at 8 sites across the watershed to confirm the 2012 biostimulatory conditions listing. The results of this monitoring effort will continue to inform implementation of the Scott River Order and overall implementation of other water quality related work.
9. In the Shasta, the Regional Water Board has allocated approximately 5.06 million dollars since the adoption of the Shasta River TMDLs for dissolved oxygen and temperature to support TMDL related work in the watershed. This funding has resulted in the removal of 1 channel-spanning dam on the mainstem Shasta, installation of 12.3 miles of riparian fencing, 21 off-channel stockwater systems, 1.4 miles of riparian plantings, 2 projects improving irrigation diversions on cold-water springs that resulted in an increase of spring water left instream, and permanently stopped 10 cfs of tailwater from entering the Shasta River by funding the implementation of various best management practices on private land. Continuous water quality monitoring continues in the Shasta River, with 12 dissolved

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oxygen stations, 32 temperature stations, and 4 meteorological stations measuring atmospheric conditions within the riparian zone being active in 2022 and 2023.

10. Finding 18 in the 2018 Scott Order and the 2018 Shasta Order outlined the Regional Water Board's intentions for potential revisions to the Waivers. Finding 18 of the 2018 Scott Order reads:

Following the expiration or replacement of this 2018 Order, the Regional Water Board intends to address water quality concerns associated with agriculture in the Scott River watershed through a permitting program (i.e. order) more consistent with approaches implemented in other parts of the state. The future order is anticipated to follow the same general approach as this 2018 Order, requiring Dischargers to proactively implement land stewardship practices and activities that minimize, control, and prevent discharges of sediment and solar radiation loads to the Scott River and tributaries. The future order would continue to involve on-site water quality assessments with Regional Water Board staff. However, the future order may differ from this Order by incorporating a tiered structure, employing multiple levels of permitting rigor commensurate with the level of discharge or threat of discharge, and may require active enrollment procedures and payment of fees. It is likely that the lowest risk tier would be for those properties that have already been assessed by Regional Water Board staff and successfully implemented practices that minimize, control, and prevent discharges of sediment and solar radiation loads to the Scott River and tributaries. Higher tiers with increased monitoring and reporting requirements would likely apply to those properties that have not developed plans or taken actions to comply with the conditions of this 2018 Order. Any future order would be subject to noticing and public comment before consideration of adoption by the Regional Water Board.

- Finding 18 of the 2018 Shasta Order reads:

Following the expiration or replacement of this 2018 Order, the Regional Water Board intends to address water quality concerns associated with agriculture in the Shasta River watershed through a permitting program (i.e. order) more consistent with approaches implemented in other parts of the state. The future order is anticipated to follow the same general approach as this 2018 Order, requiring the Dischargers to proactively implement land stewardship practices and activities that minimize, control, and prevent discharges of fine sediment, nutrients, oxygen consuming materials, and elevated solar radiation loads to the Shasta River and tributaries. The future order would continue to involve on-site

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water quality assessments with Regional Water Board staff. However, the future order may differ from this Order by incorporating a tiered structure, employing multiple levels of permitting rigor commensurate with the level of discharge or threat of discharge, and may require active enrollment procedures and payment of fees. It is likely that the lowest risk tier would be for those properties that have already been assessed by Regional Water Board staff and successfully implemented practices that minimize, control, and prevent discharges of fine sediment, nutrients, oxygen consuming materials, and elevated solar radiation loads to the Shasta River and tributaries. Higher tiers with increased monitoring and reporting requirements would likely apply to those properties that have not developed plans or taken actions to comply with the conditions of this Order. Any future order would be subject to noticing and public comment before consideration of adoption by the Regional Water Board.

11. On March 12, 2020, National Oceanographic and Atmospheric Administration National Marine Fisheries Service (NOAA NMFS) staff contacted Regional Water Board staff out of concern for low flows in the Scott River based on below average winter snowpack conditions. Regional Water Board staff began coordinating with other State and Federal agencies in response to these drought concerns in both the Shasta and Scott watersheds, recognizing the impact of low flows on beneficial uses within these watersheds. This collaboration continues with bi-weekly coordination calls among a diverse set of stakeholders.
12. On April 21, 2021, Governor Newsom declared a drought state of emergency under the provisions of the California Emergency Services Act, directing state agencies to take immediate actions to ensure bolder drought resilience across the state. On May 10, 2021, Governor Newsom extended the drought proclamation to include counties within the Klamath River, Sacramento-San Joaquin Delta, and the Tulare Lake watersheds. This proclamation directed the State Water Resources Control Board (State Water Board) and California Department of Fish and Wildlife to evaluate minimum instream flows and other actions to protect salmon, steelhead, and other native fishes in critical systems in the State. To support this effort, the Regional Water Board's Scott and Shasta Watershed Steward tasked with implementing the 2018 Scott Order and the 2018 Shasta Order was diverted from a subset of their duties to dedicate 50% of their time to emergency drought response as a member of a team within the State Water Board's Division Water Rights. This staff diversion continues at 40% of their time. Due to this refocusing, ranch assessment progress was slowed beginning in July 2021 through the spring of 2022. Further, work to revise the 2018 Scott and Shasta Orders consistent with Findings 18 prior to their expiration on April 19, 2023 could not be completed.

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13. Though Regional Water Board staff have not yet been able to conduct the work necessary to revise the 2018 Scott Order and 2018 Shasta Order consistent with Finding 18, these orders have provided Staff with an effective tool for water quality protections, and the Regional Water Board finds that a short-term renewal of the 2018 Scott Order and 2018 Shasta Order will continue to provide protections to surface water while Staff continues to provide compliance assistance for these orders, to pursue enforcement actions where necessary, and to develop appropriate proposed revisions to the Orders.
14. This renewal of the 2018 Scott Order and 2018 Shasta Order retains all terms, conditions, and monitoring and reporting requirements for covered Dischargers to protect water quality. The Regional Water Board retains all its authorities under the California Water Code to address discharges of waste to waters of the state within the Scott and Shasta River Watersheds, including: taking enforcement actions for violations of the Orders, Basin Plan prohibitions, or activities that create or threaten to create a condition of nuisance or pollution in the watershed, requesting reports of waste discharge for individual sites, requiring increased monitoring and reporting of activities that may affect water quality in the watersheds, and has the authority to deny or terminate coverage under the Scott and Shasta Waivers, as appropriate. For these reasons, a short-term renewal of the Scott and Shasta Waivers is in the public interest and consistent with the Basin Plan.
15. The intent of this short-term renewal of the 2018 Scott and Shasta Orders is to allow continued use of these orders while Regional Water Board staff develop new permits for certain nonpoint source discharges in the Scott and Shasta Watersheds to implement the TMDL Action Plans. Development of these new permits will include: (1) Analysis of existing data in each watershed collected pursuant to the implementation the Scott and Shasta Orders, including on-ranch effectiveness data relating to site-specific best management practice implementation, Surface Water Ambient Monitoring Program data collected in both watersheds to characterize ambient trends in water quality data, and data collected pursuant to implementation of emergency drought regulations by the State Water Board Division of Water Rights; (2) Assessment of other regulatory programs across the State that regulate similar discharges; (3) Consideration of potential approaches described in Finding 18 of the Scott and Shasta Orders, including a tiered permitting approach based on site-specific risk to water quality and past program participation.
16. 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 for a certified state regulatory program as part of the Shasta River TMDL and Scott River TMDL development and adoption process in accordance with title 14, California Code of Regulations, section 15251(g). The implementation of this Order (the "project") will not result in any physical changes in

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the environment different from those that were analyzed in the Scott River TMDL Action Plan or the Shasta River TMDL Action Plan. This Order 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 that would require revisions to the environmental analysis due to the involvement of new significant environmental effects, or substantial increase in the severity of previously identified significant effects. The issuance of this Order is also exempt from the provisions of CEQA in accordance with the following categorical exemptions: title 14, California Code of Regulations sections 15301, (existing facilities); 15302 (replacement or reconstruction); 15303 (new construction or conversion of small structures); 15304, (minor alterations to land); 15306 (information collection); and 15307 and 15308 (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 Order.

17. The Regional Water Board has notified interested parties of its intent to issue this renewal of the 2018 Scott and Shasta Orders for up to 5 years, including direct outreach to tribal governments, environmental stakeholders, and Siskiyou County officials. Additionally, a 41-day public comment period was noticed on November 23, 2022 and ended January 3, 2023. The Regional Water Board intends to revise the Orders in the shortest time practicable. The Regional Water Board, in a public meeting on December 8, 2022, heard and considered comments pertaining to this short-term renewal.

IT IS HEREBY ORDERED, that the Scott River TMDL Conditional Waiver of Waste Discharge Requirements, Order No. R1-2018-0018 and the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements, Order No. R1-2018-0019, are renewed.

Matthias St. John
Executive Officer

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