

**Regional Water Quality Control Board
North Coast Region
Executive Officer's Summary Report
December 8, 2022**

ITEM: **3**

SUBJECT: Workshop on 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 (Elias Scott)*

BOARD ACTION: This is an informational workshop. No action will be taken by the Regional Water Board.

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 following approval by the United States Environmental Protection Agency. 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, in part, their respective total maximum daily loads (TMDLs), and a description of the implementation actions necessary to achieve the TMDLs and attain water quality standards in the Scott and Shasta River watersheds.

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). The Shasta River Action Plan 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 Shasta River Action Plan. The Regional Water Board initially adopted the Scott and Shasta River Waivers in 2006, and subsequently revised them in 2012 and 2018.

On April 23, 2018, the Regional Water Board adopted Order No. R1-2018-0018 and Order No. R1-2018-0019 as the Scott River Waiver and Shasta River Waiver, respectively. These 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 Waiver and Shasta River Waiver, these management measures had shown good progress towards ameliorating water quality impacts and increasing waste assimilative capacity when applied on farming operations. Other substantive revisions included clarified monitoring and reporting requirements, as well as a finding (Finding 18 in both of the 2018 Waivers) 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 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.

WAIVER IMPLEMENTATION: Staff has been implementing the Scott River and Shasta River Waivers in their current form according to the historic prioritization approach for each watershed. In the Shasta River Watershed this includes focusing on properties with high habitat value, specifically focusing on areas that provide critical spawning and cold-water rearing habitat for Chinook and Southern Oregon Northern California Coastal Coho Salmon. In the Scott River Watershed this includes assessing the top 15 landowners in the watershed based on stream frontage within their holdings. Implementation of the Waivers includes an on-the-ground staff assessment of properties according to priority, preparation of a staff assessment report that catalogues observed water quality concerns, and, if deemed necessary, a request for a plan to address any water quality concerns that includes effectiveness monitoring (a Ranch Management and Monitoring Plan in the Shasta or a Grazing and Riparian Management and Monitoring Plan in the Scott).

To date, Staff has assessed all properties adjacent to the Shasta River mainstem between Dwinell Dam and Highway A-12, as well as all properties on Parks Creek and Big Springs Creek. This area represents critical habitat for juvenile Southern Oregon Northern California Coastal Coho Salmon and Chinook Salmon and encompasses an area covered by a recently approved Federal Safe Harbor Agreement. The Federal Safe Harbor Agreement is a voluntary agreement between landowners and the National Oceanographic and Atmospheric Administration where incidental take of listed species is allowed as long as landowners implement specific beneficial management actions that are expected to provide improved conditions for the listed species identified in the Safe Harbor Agreement Site Plan. The Regional Water Board was not party to the negotiation or finalization of these agreements. Regional Water Board staff have reviewed each Site Plan for consistency with the Shasta Waiver. Virtually all of the known cold-water spring sources of the Shasta River and its tributaries outside of the Little Shasta River lie within properties that have been assessed pursuant to the Shasta River Waiver and have active Ranch Management and Monitoring Plans in place. This includes 8 landowners within and 1 landowner outside of the Federal Safe Harbor Agreement. In most cases, landowners within the Federal Safe Harbor Agreement coverage area satisfy their Shasta River Waiver Ranch Management and Monitoring Plan requirements via their Federal Safe Harbor Agreement Site Plans. However, there are several cases where staff determined the Site Plans to be insufficient for coverage and required these landowners to conduct additional monitoring and be subject to additional provisions based on staff assessment on their properties.

In the Scott, to date, staff has assessed a total of 20 ranches, including 9 of the top 15 landowners, accounting for 31% of the stream frontage miles in the Scott River that are adjacent to agricultural activities. A total of 8 Grazing and Riparian Management Plans have been submitted and approved in the Scott with annual monitoring reports submitted as deemed necessary.

Taking the results of implementation into account as described above, the Scott River Waiver and Shasta River Waiver have proven to be an effective regulatory tool for driving key changes in both watersheds. Despite slowdowns related to the COVID-19 pandemic, where fieldwork was virtually impossible, and staff diversions to focus on emergency drought response described below, significant progress in the Scott and Shasta River Watersheds has been made through the implementation of the Waivers.

EMERGENCY DROUGHT RESPONSE: As noted in the Scott River Temperature TMDL, the Shasta River Temperature TMDL, and the Shasta River Dissolved Oxygen TMDL, adequate flow is a critical to achieving TMDL compliance and improving water quality. While the Regional Water Board has limited tools to mandate specific flow targets, the critically dry years of 2020, 2021, and 2022 resulted in the State Water Board's Division of Water Rights promulgating Emergency Regulations in both the Scott and Shasta Watersheds that included drought emergency minimum flows to avoid adverse effects on salmonids. At the request of the Division of Water Rights (Division), Regional Water Board executive management agreed to adjust the Scott and Shasta Watershed Steward work plan to dedicate 50% of their time to support the development and implementation of the Division's regulations. This provided a unique opportunity for the Regional Water Board's Staff to strengthen connections with the Division and to integrate the flow-related water quality requirements of the TMDLs into the Division's Emergency Regulations.

Following the August 30, 2021 adoption of emergency drought regulations in the Scott and Shasta Watersheds, the Division issued curtailments in both watersheds in order of priority to meet drought emergency minimum flows requested by California Department of Fish and Wildlife. This resulted in full surface and groundwater curtailments in the Scott and curtailments of surface water and appropriate groundwater in the Shasta.

Throughout 2021 and 2022, the Scott and Shasta Watershed Steward supported emergency regulation implementation by providing technical assistance, regional context, and a water-quality and TMDL-focused frame. The Scott and Shasta Watershed Steward continues to support this effort with 40% of their staff time dedicated to emergency drought regulation.

FINDING 18 OF 2018 WAIVERS: Finding 18 in the Shasta Waiver states:

“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 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.”

Similarly, Finding 18 in the Scott Waiver States:

“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.”

Staff’s involvement in emergency drought response unfortunately but necessarily diverted their full attention from conducting the full-scale data analysis and program retrospective initially envisioned to address Finding 18 of both Waivers. Staff still recommend the

approach outlined in Finding 18. However, given the diversion of staff's time to work on the emergency flow requirements, staff were unable to complete the work necessary to revise the current Waivers consistent with Finding 18 prior to the Waivers' expiration on April 19, 2023. Therefore, a short-term renewal of the Waivers is necessary. Regional Water Board staff intend to revise the Waivers in the shortest time practicable.

PUBLIC COMMENT PERIOD: On November 23, 2022 a public notice was released announcing the public review process for the Draft Order No. R1-2023-0005 Short-Term Renewal of Order No. R1-2018-20018 *Scott River TMDL Conditional Waiver of Waste Discharge Requirements* and Order No. R1-2018-0019 *Shasta River TMDL Conditional Waiver of Waste Discharge Requirements*, including a 41-day public review period, the December 8, 2022 Board workshop, and April 6, 2023 Board adoption hearing. The public notice was posted on the Regional Water Board's webpage and distributed through the Regional Water Board's interested parties contact list. The written comment period for Draft Order No. R1-2023-0005 will be open until January 3, 2023.

SUPPORTING DOCUMENTS:

1. Draft Order No. R1-2023-0005
2. Order No. R1-2018-20018 *Scott River TMDL Conditional Waiver of Waste Discharge Requirements*
https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2018/18_0018_Scott_Waiver.pdf
3. Order No. R1-2018-0019 *Shasta River TMDL Conditional Waiver of Waste Discharge Requirements*
https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2018/18_0019_Shasta_Waiver.pdf
4. Staff Report
5. Notice of Public Hearing