

**California Regional Water Quality Control Board  
North Coast Region**

**Order No. R1-2012-0084**

**Scott River TMDL Conditional Waiver**

**Of**

**Waste Discharge Requirements**

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

1. The *Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads*, hereinafter known as the Scott River TMDL Action Plan, includes sediment and temperature total maximum daily loads (TMDLs) and describes the implementation actions necessary to achieve the TMDLs and attain water quality standards in the Scott River watershed. The Action Plan describes specific actions for the Regional Water Board and other responsible parties in Table 4-10 of the Water Quality Control Plan for the North Coast Region (Basin Plan). The implementation actions were designed to encourage and build upon on-going, proactive restoration and enhancement efforts in the watershed. For discharges not already authorized, the Regional Water Board waived 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 the on-going collaborative programs and implement recommended measures as applicable (R1-2006-0081). To be covered under the Waiver, landowners are required to employ land stewardship practices and activities that minimize, control, and preferably prevent discharges of sediment and elevated solar radiation loads from affecting waters of the Scott River and tributaries.
2. On August 9, 2006 the Regional Water Board adopted Order No. R1-2006-0081, the Conditional Waiver for Discharges Related to Specific Land Management Activities in the Scott River Watershed North Coast Region (Scott River TMDL Waiver). On June 22, 2011, the Regional Water Board adopted Order No. R1-2011-0063 temporarily extending the Scott River TMDL Waiver until March 31, 2012 to allow time to assess the effectiveness of the program as currently implemented. On March 15, 2012, the Regional Water Board adopted Resolution R1-2012-0030, further extending the waiver until October 31, 2012.
3. Regional Water Board staff hosted a public workshop in Fort Jones on April 21, 2011 to provide the community covered by the Scott River TMDL Waiver an opportunity to report on activities reflecting progress made in implementing measures described in Table 4-10 of the Scott River TMDL Action Plan. Regional Water Board staff received significant information during and subsequent to this workshop regarding such activities. It is clear from the available information that:
  - a. Many landowners are making good faith efforts to address sediment and temperature concerns on their properties; some landowners are not taking action to implement the Scott River TMDL Action Plan; and it is not apparent under which of the two categories described above most landowners fall.

- b. Many landowners expressed concerns about the regulatory burden of implementing a large program when it may not be necessary in all instances.
  - c. The Action Plan and existing Waiver are unclear about what specific management measures could be implemented to comply with the TMDL.
4. Order R1-2006-0081 waives the requirement to file ROWDs and obtain WDRs for dischargers who participate in the on-going collaborative programs including the implementation, as applicable, of the recommended measures described in Table 4-10 of the Scott River TMDL Action Plan. The Scott River TMDL Action Plan identifies specific actions for implementation by parties responsible for roads and sediment waste discharge sites, parties responsible for vegetation that shades water bodies, and parties conducting grazing activities (Responsible Parties).
5. The Scott River TMDL Action Plan and existing Scott River TMDL Waiver did not include any enrollment requirements or annual reporting. In order to effectively determine who was participating, a paper-intensive exercise would be required where Regional Water Board staff would send letters to all landowners asking for the submittal of a Notice of Intent (NOI). Conducting such an exercise would expend significant staff resources and would impose the same regulatory burden on all landowners regardless of the level of risk to water quality impacts associated with their land management.
6. The Scott River TMDL Action Plan and existing Scott River TMDL Waiver include provisions for the requirement of Grazing and Riparian Management Plans as well as Erosion Control Plans on an as-needed, site-specific basis.<sup>1</sup> The Scott River TMDL Action Plan and existing Waiver also provide that monitoring shall be conducted upon the request of the Regional Water Board's Executive Officer.<sup>2</sup> Rather than spend limited

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<sup>1</sup> The Scott River Action Plan and existing Scott River TMDL Waiver provides that the Regional Water Board's Executive Officer shall require parties responsible for grazing activities on private lands in the Scott River watershed to develop, submit, and implement a Grazing and Riparian Management Plan and a Monitoring Plan on an as-needed, site-specific basis. A Grazing and Riparian Management Plan shall describe, in detail, (1) sediment waste discharges and sources of elevated water temperatures caused by livestock grazing, (2) how and when such sources are to be controlled and monitored, and (3) management practices that will prevent and reduce future sources. The Scott River Action Plan and existing Scott River TMDL Waiver also provides that the Regional Water Board's Executive Officer shall require parties responsible for roads, on an as-needed, site-specific basis, to develop and submit an Erosion Control Plan and a Monitoring Plan. An Erosion Control Plan shall describe, in detail, sediment waste discharge sites and how and when those sites are to be controlled. An Erosion Control Plan shall describe, in detail, sediment waste discharge sites, and how and when those sites are to be controlled. (*Water Quality Control Plan for the North Coast Region*, 2011, pg 4-67.00; see also *Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads*, table 4-10: [http://www.waterboards.ca.gov/northcoast/water\\_issues/programs/tmdls/scott\\_river/060307/bpl/Basin\\_Plan\\_Language.pdf](http://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/scott_river/060307/bpl/Basin_Plan_Language.pdf)).

<sup>2</sup> Monitoring shall involve one or more of the following: implementation monitoring, upslope effectiveness monitoring, instream effectiveness monitoring, and compliance and trend monitoring. (*Water Quality Control Plan for the North Coast Region*, 2011, pg 4-64.00; see also *Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads*, Table 4-10:

resources having every discharger submit a NOI, it would be appropriate for staff to focus on working with a subset of landowners and activities based on higher risk to water quality for efficient implementation of the Waiver.

7. Factors that increase risk to water quality include type and intensity of land use, proximity to streams, and the length of stream adjacent to such activities; these factors should be considered in determining when Plans and other documentation shall be required. Accordingly, this Waiver directs staff to focus on working with Responsible Parties whose operations present higher risks to water quality. For timberlands managed for timber production, staff should focus on working with the largest landowners responsible for upland road management and sediment control. Responsible Parties who do not receive a letter requesting Plans and/or other documentation or otherwise contacted by Regional Water Board staff need not file anything with the Regional Water Board as long as they meet conditions of this Waiver. Regardless, all Responsible Parties are still expected to comply with the provisions in the Action Plan Table 4-10.
8. Plans required by the Regional Water Board's Executive Officer can range from a simple submittal describing practices implemented to prevent discharges of sediment and/or elevated solar radiation loads from affecting waters of the Scott River and tributaries, to a Plan that comprehensively describes existing sources of sediment discharge and elevated water temperatures, management practices employed to control the sources, and a monitoring and reporting program to document actions taken to control the sources and the effectiveness of such actions. The level of detail required in a Plan will be dependent on the site-specific characteristics of an activity/operation, and will be specified in writing by the Regional Water Board's Executive Officer.
9. Landowners may have the opportunity to receive assistance with monitoring requirements through the Klamath Tracking and Accounting Program. The program is currently under development, and will be in place during the term of this Waiver.
10. In Response to Finding 3(c), above, this Waiver provides specificity on the types of management measures that minimize, control, or prevent the discharge of sediment and elevated solar radiation loads from affecting waters of the Scott River watershed. These are provided as guidance only. Appropriate management measures should be developed for a specific site and activity..
11. 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 as part of the Scott River TMDL development and adoption process in accordance with title 14, California Code of Regulations, section 15251(g). This conditional waiver does not result in any physical changes in the environment different from the Scott River TMDL Action Plan. The Waiver renewal 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. Two categorical exemptions are also applicable under title 14, California Code of Regulations sections 15307 and 15308, for 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 Waiver.

12. State Water Board Resolution No. 68-16 Statement of Policy with Respect to Maintaining High Quality of Waters in California (Resolution No. 68-16) requires Regional Water Boards, in regulating the discharge of waste, to maintain high quality waters of the State, and to ensure that discharges will not unreasonably affect beneficial uses, and will not result in water quality less than that described in Regional Water Board's policies. This Order is consistent with Resolution 68-16 because it requires management practices and measures to be implemented to achieve water quality standards and to prevent nuisance. The Scott River TMDL Action Plan establishes an iterative process that includes evaluation and then implementation of management practices in a timely manner to reduce discharges of waste. These conditions are enforceable through this conditional Waiver. Changes in water quality that may occur as a result will be to improve, over time, the quality of the waters, not to cause degradation. Thus, any change in water quality will be consistent with maximum benefit to the people of the State and will not unreasonably affect beneficial uses.
13. The Regional Water Board determines that the adoption of this Waiver will be consistent with the Basin Plan, will be in the public interest, and will not have a significant impact on the environment.

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code sections 13263, subdivision (a), 13267, and 13269, the Regional Water Board waives the requirement to submit a Report of Waste Discharge and the requirement to establish Waste Discharge Requirements for dischargers that participate in the on-going collaborative programs and implement recommended measures as applicable, as described in the North Coast Region water Quality Control Plan Table 4-10. The following conditions shall apply:

1. If requested in writing by the Regional Water Board Executive Officer, Responsible Parties shall provide Plans and/or documentation as requested. If a Plan is requested and subsequently approved by the Executive Officer, the Responsible Party shall implement the Plan. The Regional Water Board's Executive Officer may direct the Responsible Party to develop a site specific monitoring and reporting plan, including a description of specific monitoring requirements.
2. The following list includes explicit guidance on the types of management measures that minimize, control, or prevent the discharge of sediment and elevated solar radiation loads from affecting waters of the Scott River watershed:
  - Riparian areas are managed in a manner that allows the natural establishment and persistence of native vegetation;

- Riparian areas are managed in a manner that allows sufficient vegetation to prevent increased surface erosion;
  - Riparian areas are managed in a manner that maintains their essential functions supporting beneficial uses (e.g. sediment filtering, woody debris recruitment, streambank stabilization, nutrient cycling, pollutant filtering);
  - Grazed lands are not managed in a manner that results in pollutant discharges;
  - Grazing in riparian areas occurs in the late winter/early spring period, when impacts to woody species are minimized;
  - Grazing within riparian corridors occurs for short durations, and only when forage consisting of non-woody vegetation is available;
  - Livestock are removed from riparian areas when stubble height reaches 4 inches, or livestock shift preference to browsing of woody species, whichever occurs first;
  - Livestock are prevented from disturbing sediment discharge sites and other unstable features adjacent to watercourses;
  - Manure, soil, plant waste, and other debris are not stockpiled in areas where they could be washed or eroded into streams;
  - Management practices are in place to prevent excess irrigation water from reaching surface waters;
  - Tillage practices do not prevent the natural establishment and persistence of riparian vegetation;
  - Management practices, such as buffer strips and cover crops, are in place to prevent the erosion of sediments that could reach waterbodies;
  - Roads and related infrastructure are constructed and maintained in a manner that minimizes the discharge of sediment.
3. Monitoring of sediment waste discharges and sources of elevated water temperatures may include, but is not limited to, the following:
- Photo documentation related to implementation of management measures;
  - Evaluation and documentation of instream and near-stream management measures (e.g., riparian buffer establishment affecting sediment and temperature discharges).
4. It is the Regional Water Board's intent that this Waiver remain in effect for up to five years. As activities currently addressed in this Waiver are incorporated into new permitting programs, these activities will no longer be eligible for coverage under the Scott River TMDL Waiver. Waste discharges associated with agricultural sources in the Scott River watershed will be incorporated in the region-wide agricultural discharge control program currently under development.
5. This Waiver shall not apply to any discharges for which a WDR or waiver of WDR is issued under a separate action of the state or Regional Water Board.
6. Responsible Parties shall allow Regional Water Board staff entry onto the affected property, with reasonable notice, for the purposes of observing, inspecting, and/or

collecting samples or other monitoring information to document compliance or non-compliance with this Waiver.

7. The Regional Water Board may take enforcement actions for violations of this Waiver, as appropriate. Nothing in this Waiver precludes actions to enforce any directly applicable prohibition or provisions found in the Basin Plan, or to require clean up and abatement of existing sources of pollution, where appropriate.
8. This Waiver shall not create a vested right, and discharges of waste shall be considered a privilege, as provided for in Water Code section 13263.
9. This Waiver does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). Dischargers are responsible for meeting all other applicable requirements of local, state, and federal regulations and/or required permits.
10. Discharges shall not cause pollution, contamination, or nuisance as defined by Water Code section 13050.
11. This Waiver expires upon Regional Water Board adoption of a superseding regulatory action or after five years, whichever occurs first. This Waiver is conditional and may be terminated at any time by the State Water Resources Control Board or Regional Water Board.

#### Certification

I, Matthias St. John, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on October 4, 2012.

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Matthias St. John  
Executive Officer