

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
9:00 a.m., October 4, 2012
Yreka, California

ITEM: 4

SUBJECT: Public Hearing on Order No. R1-2012-0084, to consider adoption of the Scott River TMDL Conditional Waiver of Waste Discharge Requirements (Bryan McFadin)

BOARD ACTION: Consider adoption of Order R1-2012-0084, Scott River TMDL Conditional Waiver of Waste Discharge Requirements

BACKGROUND: *The Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads (Action Plan) (Order No R1-2005-0113) was amended into the Water Quality Control Plan for the North Coast Region (Basin Plan) on September 8, 2006. The Scott River TMDL Action Plan includes, in part, sediment and temperature total maximum daily loads (TMDL) and a description of the implementation actions necessary to achieve the TMDLs and attain water quality standards in the Scott River watershed. On August 9, 2006 the Regional Water Board adopted Conditional Waiver For Discharges Related to Specific Land Management Activities in the Scott River Watershed, North Coast Region (Order No. R1-2006-0081, Scott River TMDL Waiver) conditionally waiving the requirement to file a Report of Waste Discharge and obtain Waste Discharge Requirements for responsible parties (landowners and operators) that choose to participate in the on-going collaborative programs and implement applicable management measures.*

The Scott River TMDL Waiver is set to expire on October 31, 2012. 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 staff time to assess the effectiveness of the program as currently implemented. Resolution R1-2012-0030 was adopted on March 15, 2012, further extending the waiver until October 31, 2012. The revised Waiver waives the requirements to file a Report of Waste Discharge and obtain Waste Discharge Requirements for discharges addressed in the Scott River TMDL Action Plan, for dischargers who meet the conditions of the waiver, including the submittal and implementation of Plans and/or documentation related to the control of discharges.

On July 12, 2012 a public notice announcing the release of the revised draft waiver, *Scott River TMDL Conditional Waiver of Waste Discharge Requirements* (Scott River TMDL Waiver or Waiver) and an August 2, 2012 public workshop, was posted on the Regional Water Board's webpage and distributed through the Regional Water Board's Scott River TMDL contact list. The Siskiyou Resource Conservation District also helped distribute the notice to their constituents, and a notice was published in the Siskiyou Daily News. The written comment period for the Waiver was open until August 13, 2012.

The new Waiver extends the substantive provisions of the old Waiver, and reaffirms the Regional Water Board's intent to continue to implement and build upon the on-going Scott River TMDL waiver program. The new Waiver incorporates provisions of the Action Plan that require responsible parties to submit a grazing and riparian management plan, erosion control plan, and/or a monitoring plan upon request by the Regional Water Board's Executive Officer. For efficient implementation, it directs staff to first focus on working with Responsible Parties whose operations present the highest risks to water quality, rather than requiring all dischargers to enroll in the Waiver at once. 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. For timberlands managed for timber production, the Waiver directs staff to focus on working with the largest responsible parties 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 will not need to file anything with the Regional Water Board as long as they meet conditions of this Waiver; however, Responsible Parties are still expected to comply with the applicable provisions in the North Coast Water Quality Control Plan, in section 4, Table 4-10 (available at http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan.shtml). In addition, the Waiver provides additional 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 (Condition 2, page 4).

The August 2, 2012 public workshop was held in Fort Jones to facilitate the attendance of affected stakeholders and other interested parties residing in and near the Scott River watershed. The workshop was attended by members of the public, representatives of state and local government and Regional Water Board members and staff. Staff

presented a brief overview of the proposed Scott River TMDL Waiver with the majority of the workshop dedicated to the receipt of public comments on the draft waiver and broader discussions between Regional Water Board, staff, and the public. Comments received at the public workshop are summarized in the *Regional Water Board Staff Response to Public Comments on the Scott River TMDL Conditional Waiver of Waste Discharge Requirements* (Staff Response to Comments), which is included as part of this report. An electronic copy of the Staff Response to Comments is also available at the Regional Water Board website at http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/.

Two comment letters and one email were received by the Regional Water Board during the written comment period. Copies of the letters and email are included as an attachment to the Staff Response to Comments.

ISSUES:

A number of issues were brought forward in the comments received by Regional Water Board staff; however the following topics received the most comments:

- The criteria by which staff will prioritize implementation efforts and evaluate risk to water quality;
- The criteria for submittal of plans;
- The application of progressive enforcement.

These issues are discussed below.

Prioritization of Landowner Engagement:

Staff will systematically evaluate and characterize the status of compliance beginning with responsible parties having the greatest length of stream channels adjacent to cultivation and/or grazing activities. High priority will also be given to specific acute water quality impacts or threats that come to the attention of staff through public complaints or staff observations, and areas where unique opportunities for water quality improvement exist. If determined necessary, the Executive Officer will require responsible parties to submit a grazing and riparian management plan, erosion control plan, and/or a monitoring plan. 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.

An analysis conducted by staff indicates that the 15 landowners with the greatest length of streams in close proximity to grazing and cultivation activities account for approximately 50% of the total stream length adjacent to these activities. Similarly, 96 landowners account for approximately 90% of the total stream length adjacent to these activities. Staff plan to evaluate compliance beginning with the landowners with the largest stream length adjacent to the activities listed above and work through the list in descending order. This approach will result in either verification of water quality protection or mitigation of water quality threats along the greatest length of stream in the shortest time span.

Criteria for plan submittal:

Regional Water Board staff will focus their assessment on factors related to discharge of sediment and elevated solar radiation loads, including riparian conditions, livestock access to riparian areas, potential discharge of eroded sediments, and the potential for tailwater discharge.

If a situation or situations are identified that require actions to protect water quality (i.e., eliminate a discharge or threat of discharge to waters of the state), staff will discuss those issues and possible corrective actions with the landowner. If an agreement is reached which involves a relatively simple action to address the threat, staff will follow up with a letter documenting the identified issues and outlining the agreement between landowner and staff. If the solution is complex, the level of effort necessary to abate the threat to water quality is greater, or staff are unable to come to agreement with the landowner at the time of inspection, staff will request the submittal of a water quality protection plan that describes how the threat will be abated, with an implementation monitoring component to verify progress, if appropriate. Staff will document progress, resolution of the issue(s), and compliance with the waiver.

Any decision by Regional Water Board staff can be elevated to their supervisor, the Executive Officer, and the Regional Water Board.

Actions by the Regional Water Board can be appealed to the State Water Resources Control Board.

Progressive Enforcement:

A variety of enforcement tools are available and may be appropriate if a party refuses to engage with Regional Water Board staff. Generally, staff utilizes a progressive approach to enforcement, where additional letters are sent and if ignored, could lead to a variety of enforcement mechanisms as appropriate, including but not limited to these options: a request for report of waste discharge, 13267(b) letter requesting a water quality protection plan, Cleanup and Abatement Order, or Administrative Civil Liability Complaint.

SIGNIFICANT CHANGES:

Staff does not consider any of the proposed revisions of the Scott River TMDL Waiver to be significant changes to the scope, framework or intent of the public draft waiver. The proposed revisions are considered to be clarifying language.

SUPPORTING DOCUMENTS:

1. Draft Scott River TMDL Conditional Waiver
2. Staff Response to Comments
3. Comment letters and email received
4. Notice of Public Hearing