

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
9:00 a.m., October 19, 2017
Weed, California

ITEMS: 7 and 8

SUBJECT: Public Hearing to consider adoption of Order No. R1-2017-0031, the Scott River TMDL Conditional Waiver of Waste Discharge Requirements, and Order No. R1-2017-0032, the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements, (Eli Scott)

BOARD ACTION: Consider adoption of proposed Orders No. R1-2017-0031 and R1-2017-0032.

BACKGROUND: The Action Plan for the Scott River Sediment and Temperature Total Maximum Daily Loads (Scott River TMDL Action Plan) was amended into the Water Quality Control Plan for the North Coast Region (Basin Plan) on December 7, 2006. The Action Plan for the Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads (Shasta River TMDL Action Plan) was amended into the Basin Plan on January 26, 2007. The Action Plans for the Scott River TMDL and the Shasta River TMDL include loads allocations (LAs) and descriptions of the implementation actions necessary to achieve the LAs and attain water quality standards in the Scott River and Shasta River watersheds.

Most recently, on October 4, 2012, the Regional Water Board adopted Order Numbers R1-2012-0083 and R1-2012-0084, the Conditional Waivers for Discharges Related to Specific Land Management Activities in the Shasta River and Scott River watersheds, respectively. Both Orders expire on October 4, 2017.

On June 1, 2017, a public notice announcing the release of the draft Scott River TMDL Conditional Waiver of Waste Discharge Requirements (Scott River TMDL Waiver or Waiver) and Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Shasta River TMDL Waiver or Waiver) was posted on the Regional Water Board's webpage and distributed through the Regional Water Board's Scott River TMDL and Shasta River TMDL contact lists. Public workshops detailing proposed changes in the draft Scott River and Shasta River Waivers were held in Yreka on June 14, 2017, and in Santa Rosa on June 29, 2017. The written comment period for the draft Waivers was open until July 14, 2017.

The Waivers extend the substantive provisions from the existing Orders, and reaffirms the Regional Water Board's intent to continue to implement and build upon the on-going Scott and Shasta River TMDL waivers. The Waivers continue provisions of the Action Plans that require Dischargers to submit a Grazing and Riparian Management Plan and/or an Erosion Control Plan (Scott River TMDL Waiver), or a Ranch Management Plan and/or a Tailwater Management Plan (Shasta River TMDL Waiver), when required by the Regional Water Board's Executive Officer. Additionally, the Executive Officer may require a site specific monitoring and reporting plan (both Waivers).

The Waivers continue to focus on efficient implementation, and direct staff to first focus on working with the Dischargers whose operations present the highest risks to water quality, rather than requiring all dischargers to enroll in the Waiver at once. Factors used to determine risk to water quality include type and intensity of land use, proximity to streams, the length of stream adjacent to such activities, and locations of sensitive aquatic resources. Dischargers who do not receive a letter requesting Plans and/or other documentation, and are not otherwise contacted by Regional Water Board staff, do not need to file anything with the Regional Water Board as long as they meet the required conditions of these Waivers.

The Waivers now require management measures that minimize, control, or prevent the discharge of fine sediment, nutrients (including animal waste), oxygen consuming materials, and elevated solar radiation loads from affecting waters of the Scott and Shasta River watersheds (Condition 5).

To be eligible for coverage under the Shasta River Waiver, dischargers are required to implement management measures 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 implement management measures 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.

DISCUSSIONS: Eight comment letters were received by the Regional Water Board during the public comment period. All written comments are summarized and responded to in the Staff Response to Public Comments document. A number of issues were addressed by commenters; however the following are the topics that received the most comments and a summary of staff's response. For a more complete response, please see the Staff Response to Public Comments documents.

- The Waivers' alignment with the Non-Point Source Pollution policy, requirements for Waivers of Waste Discharge (CWC section 13269), and the Basin Plan.
 - Response: These Waivers represent an element of a larger non-point source pollution control program and require dischargers to implement best management practices that minimize, control, and prevent discharges of sediment, nutrients, solar radiation, and oxygen consuming materials. They compliment other regulatory mechanisms described in the Scott and Shasta River TMDL Action Plans including but not limited to 401 certification, timber and dairy waivers, etc. The monitoring required at the discretion of the Executive Officer (EO) is designed to "support the development and implementation of the waiver program, including but not limited to, verifying the

- adequacy and effectiveness of the waivers conditions” as stated in Water Code Section 13269 (See Response to General Comment No. 1 for a full response to this comment).
- The Waivers’ alignment with the State’s anti-degradation policy (State Water Board Resolution No. 68-16).
 - Response: These orders are the latest in a series of orders that address non-point source discharges in the Scott and Shasta River Watersheds. These Waivers are anticipated to minimize, control, and prevent discharges from agricultural and grazing activities in these watersheds and result in an improvement over current conditions. Additional monitoring and reporting, if required by the EO, is designed to confirm 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. Failure to comply with the Waiver’s conditions would mean a discharger is out of compliance with the Waiver and the Regional Water Board would pursue further permitting and enforcement actions. Finding 15 of the Shasta River TMDL Conditional Waiver and Finding 16 of the Scott River TMDL Conditional Waiver have been modified to more directly address this comment (See Response to General Comment No. 2 for a full response to this comment).
 - The need for effective enforcement actions against high-risk Dischargers.
 - Response: The waivers provide clear conditions and violations of these 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. These Waivers do not limit or restrict the Regional Water Board’s ability to address water quality concerns. 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 (See Response to General Comment No. 4 for a full response to this comment).
 - Support for a tiered implementation approach that includes fees for Dischargers.
 - Response: A potential tiered implementation approach was outlined in Finding 18 as a possibility that future revisions of the Waivers may include tiers, additional enrollment, monitoring and reporting requirements, and may require the payment of fees. The State Water Board, not the Regional Water Board makes fee determinations for all State and Regional Water Board regulatory programs. 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 (See Response to General Comment No. 5 for a full response to this comment).
 - The Shasta River TMDL Action Plan requirement for 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.
 - Response: Compliance with water quality standards has not yet been achieved in all locations and times in the Shasta River watershed consistent with the goal indicated

in the Shasta River TMDL Action Plan. This Waiver establishes requirements for the implementation of best management practices and monitoring consistent with the Shasta River TMDL Action Plan that will lead to compliance with Basin Plan standards and the Shasta River TMDL Action Plan (see Conditions 3 5) (See Response to Shasta River Comment No. 2 for a full response to this comment).

In response to some of the comments, staff proposed non-substantive revisions in one or both of the Waivers, which are explained in the Response to Comments document. Staff also initiated revisions to the draft Waivers to improve the clarity and consistency between the two Waivers. All revisions are reflected in strikethrough (deleted language) or underline (added language) in the proposed Waivers. We expect interested parties to testify at the Board Hearing.

RECOMMENDATIONS: Adopt Order No. R1-2017-0031 and Order No. R1-2017-0032 as proposed.

SUPPORTING DOCUMENTS:

1. Proposed Shasta River TMDL Conditional Waiver – clean copy and strikethrough/underline
2. Proposed Scott River TMDL Conditional Waiver – clean copy and strikethrough/underline
3. Staff Response to Public Comments
4. Comment letters received
5. Notice of Public Hearing