California Regional Water Quality Control Board
North Coast Region

Order No. R1-2017-0032

Shasta 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 Shasta River Temperature and Dissolved Oxygen Total Maximum Daily Loads,* hereinafter the Shasta River TMDL Action Plan or Action Plan, was adopted by the California North Coast Regional Water Quality Control Board (Regional Water Board) on June 28, 2006 (Resolution No. R1-2006-0052) and amended into the *Water Quality Control Plan for the North Coast Region* (Basin Plan) on January 26, 2007 following approval by the United States Environmental Protection Agency.[1] The 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 (Attachment A of this Order) sets forth specific implementation actions required of the Regional Water Board and Dischargers[2] to achieve these standards.

2. 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.

3. Pursuant to Water Code section 13269, and consistent with California's Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program (May 20, 2004), the Regional Water Board adopted the Shasta River TMDL Conditional Waiver of Waste Discharge Requirements (Order No. R1-2012-0083 or 2012 Order) on October 4, 2012. To be eligible for coverage under the 2012 Order, the Dischargers are required to employ land stewardship practices and activities that minimize, control, and ~~preferably~~ prevent discharges of fine sediment, nutrients (including animal waste), other oxygen consuming materials, and elevated solar radiation loads (including loss of riparian vegetation) ~~from affecting waters of~~ to the Shasta River and tributaries. Order No. R1-2012-0083 expired on October 4, 2017.

[1] *http://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/shasta_river/060707/finalshastatmdlactionplan.pdf*

[2] The term "Dischargers" is used in this Order and includes individuals or entities that are responsible for discharges of waste into the Shasta River watershed as well as those responsible for maintaining operations that may limit or control discharges of waste.

4. On June 1, 2017 the Regional Water Board initiated a 37 day public comment period on Order No. R1-2017-0032 (2017 Order). On June 14, 2017 the Regional Water Board held a staff workshop in Yreka and on June 29, 2017 held a Board workshop in Santa Rosa to solicit public comment on the draft 2017 Order.

~~5. On June 14, 2017 the Regional Water Board held a staff workshop in Yreka and on June 29, 2017 held a Board workshop in Santa Rosa to solicit public comment on the draft 2017 Order.~~

5. ~~6.~~ The Regional Water Board ~~now~~ finds that to efficiently prioritize resources for Order implementation it is appropriate for staff to continue to focus on those activities and Dischargers that pose the highest risk to water quality. Regional Water Board staff are prioritizing staff efforts on a subset of Dischargers with operations adjacent to ~~important~~ reaches of the Shasta River and its tributaries with high habitat value for support of beneficial uses and activities with the highest risk to water quality.

6. ~~7.~~ Factors ~~that increase~~ used to determine risk to water quality include type and intensity of land use, proximity to streams, and the length of stream adjacent to such activities. Accordingly, this Order directs staff to continue its focus on working with Dischargers whose operations present higher risks to water quality. Factors that increase risk to water quality of the Shasta River watershed include, but are not limited to:

- Excessive animal grazing in riparian corridors, including grazing that occurs after forage length is less than four inches, or grazing when animals favor woody species;
- Unrestricted animal access to the Shasta River, tributary reaches, or springs and their associated wetlands in the Shasta River watershed, which can result in discharge of animal waste to surface waters;
- Feeding in close proximity to riparian corridors, which increases the introduction of animal waste into surface waters;
- Storage or stockpiling of manure, soil, plant waste and other debris in areas where they could be washed or eroded into surface waters;
- Storage of chemical fertilizers, pesticides, fuels, oils and other potentially hazardous substances or nutrient containing substances in areas where they could be readily introduced to surface waters;
- Application of nutrients, compost, soil amendments, irrigation water, or other materials above the agronomic rate, or in a manner whereby excess water or nutrients percolate beyond the root zone and into groundwater, or run off into surface waters;
- Tillage practices that inhibit the development of riparian vegetation and/or lead to excessive loading of sediment into surface waters;
- Unpermitted alterations to streambanks and streambeds;

- Creating or maintaining unpermitted impoundments of surface water that lead to elevated surface water temperatures; and
- Unmitigated tailwater return flows to main stem and tributary reaches, or into springs and their associated wetlands such that elevated surface water temperatures result.

7. ~~8.~~ This Order requires ~~the~~ Dischargers to provide Regional Water Board staff access to properties for the purposes of assessing compliance with this Order.

8. ~~9.~~ The Shasta River TMDL Action Plan and this 2017 Order~~,~~ authorize the Regional Water Board~~'s~~ Executive Officer~~,~~ on a site specific~~,~~ as-needed basis~~,~~ to require the development, submittal, and implementation of Ranch Management Plans and/or Tailwater Management Plans designed to minimize, control, and prevent ~~the~~ discharges of fine sediment, nutrients and ~~other~~ oxygen consuming material, as well as elevated solar radiation loads, from ~~impacting~~ violating water quality standards in the Shasta River watershed.

9. ~~10.~~ Ranch Management Plans and Tailwater Management Plans can range from a simple submittal describing practices implemented to prevent discharge of waste, including fine sediment, nutrients and ~~other~~ oxygen consuming material, as well as elevated solar radiation loads, from affecting waters in the Shasta River watershed, to a more comprehensive plan. More comprehensive plans could include, but are not limited to, identification and description of:

- Existing sources of waste or tailwater discharges and other nonpoint source activities;
- Management practices employed to minimize, control, and prevent discharges from those sources and activities; and
- 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.

10. ~~11.~~ The Shasta River TMDL Action Plan and this 2017 Order, provide that the Regional Water Board~~'s~~ Executive Officer may direct the Dischargers to develop a site specific monitoring and reporting plan, including a description of specific monitoring and reporting requirements. Monitoring and reporting 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 nutrient and temperature discharges); and/or
- Collection of tailwater data, including impacts from tailwater discharge (e.g. collection of water temperature, nutrients, or dissolved oxygen data in tailwater and receiving water and estimates of tailwater discharge volumes).

The level of detail required in a site specific monitoring and reporting 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.

11. ~~12.~~ The landowners who do not receive a letter requiring development and submittal of plans and/or other documentation (described in findings 9-11) need not file anything with the Regional Water Board and need not submit annual reports as previously required by the Shasta River TMDL Action Plan and the 2012 Order as long as they meet eligibility criteria and conditions of this 2017 Order. Regardless, all Dischargers are still required to comply with the provisions in Table 4-14 of the Action Plan (Attachment A of this Order). Appendices A through G of the Action Plan provide examples of applicable management measures that Dischargers should consider as part of their land stewardship activities.

12. ~~13.~~ This Order provides some examples of the types of management measures that minimize, control, ~~or~~ and prevent the discharge of sediment and elevated solar radiation loads to the Shasta River watershed, consistent with Table 4-14 of the Action Plan (Attachment A). These ~~types of~~ management measures ~~are the type that~~ will ~~control,~~ minimize, control, ~~or~~ and prevent the discharge of waste and other controllable water quality factors associated with a site. Alternative site-specific management measures that achieve the equal or better level of performance as the measures contained in this Order may be developed in consultation with Regional Water Board staff for a specific site and activity.

13. ~~14.~~ Since adoption of the 2012 order, progress toward attaining the TMDL has been made utilizing an approach focused on activities with the highest risk to water quality. This progress in the Shasta River watershed includes the installation of 24 stockwater systems, 8 irrigation efficiency projects, 6 projects that divert tailwater return flow, and 3,750 linear feet of riparian plantings. Additionally, 23 ranches have been assessed by Regional Water Board staff. Approximately 133 miles of riparian fencing have been installed since the adoption of the Action Plan, protecting 91% of the mainstem of the Shasta River, 60% of the Little Shasta River, 49% of Parks Creek, 60% of Yreka Creek, and a cumulative 61% of the entire stream reach length of the Shasta River system. Since 2006 approximately $3.3 million has been awarded in grants to complete these projects and to support ongoing stewardship efforts within the watershed to implement the Action Plan.

14. ~~15.~~ Tailwater discharges continue to be one of the most significant and controllable threats to water quality subject to Regional Water Board regulatory jurisdiction, as does the lack of riparian fencing along tributaries of the Shasta River. Flow and increasing dedicated cold water to the Shasta River watershed is ~~another~~ a high priority with efforts underway by Dischargers, The Nature Conservancy, Cal Trout, Montague Water Conservation District, Shasta Valley Resource Conservation District, and the National Marine Fisheries Service.

15. ~~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 as part of the Shasta 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 the environment different from those that were analyzed in 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. 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); 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.

16. ~~17.~~ 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 to regulate~~, in regulating~~ the discharge of waste~~,~~ to maintain high quality waters of the ~~s~~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 the latest in a series of regulatory orders that implement the Shasta River TMDL Action Plan and requires Dischargers to take actions that minimize, control, and prevent non-point source discharges in the watershed. This Order ~~R1-2017-0032~~ is consistent with Resolution No. 68-16 because it requires that Dischargers employ the best practicable treatment and control measures in order to minimize degradation, ~~management practices and measures to be implemented to~~ achieve water quality standards, and ~~to~~ prevent nuisance. The Shasta River TMDL Action Plan and management measures required by this Order establish~~es~~ an iterative process that includes evaluation and ~~then~~ implementation of management practices in a timely manner to ~~reduce~~ minimize, control, and prevent the discharge~~s~~ of waste. These management practices ~~conditions~~

are enforceable through this Order~~.~~ and the effectiveness of these measures will be verified through monitoring and reporting as required by the Executive Officer. The Regional Water Board anticipates that any ~~C~~changes in water quality that may occur as a result of Order implementation will~~,~~ ~~be to improve,~~ over time, reflect an improvement in water quality, not degradation.~~the quality of the waters, not to cause degradation.~~ Thus, any change in water quality will be consistent with the maximum benefit to the people of the ~~s~~State and will not unreasonably affect beneficial uses.

17. ~~18.~~ The Regional Water Board determines that the adoption of this Order will be consistent with the Basin Plan, all applicable statewide plans and policies, ~~will be~~ is in the public interest, and will not have a significant adverse impact on the environment.

18. ~~19.~~ Following the expiration or replacement of this 2017 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 ~~other~~ approaches implemented in other parts of the state. The future order is anticipated to follow the same general approach as this 2017 Order, requiring the Dischargers to proactively implement land stewardship practices and activities that minimize, control, and prevent discharges of fine sediment, nutrients, ~~other~~ 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, ~~other~~ 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.

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 landowners in the Shasta River watershed that comply with the following:

1. Dischargers that are implementing applicable management measures outlined in this Order will be considered eligible for coverage under this Order. Such Dischargers shall employ land stewardship practices as described below and in Attachment A of this Order.

2. If required in writing by the Regional Water Board~~'s~~ Executive Officer, Dischargers shall develop Ranch Management and/or Tailwater Management Plan(s).

3. The Regional Water Board~~'s~~ Executive Officer may ~~also~~ direct the Discharger to develop and implement a site specific monitoring and reporting plan~~. When required by the Executive Officer, Dischargers shall develop and provide a site specific monitoring and reporting plan for~~ , which, upon request, shall be submitted for the Executive Officer's review and approval. Monitoring and reporting may include, but is not limited to, the following:

   a. Photo documentation related to implementation of management measures;
   b. Evaluation and documentation of instream and near-stream management measures (e.g. riparian buffer establishment affecting nutrient and temperature discharges);
   c. Collection of tailwater data, including impacts from tailwater discharge (e.g. collection of water temperature, nutrients, or dissolved oxygen data in tailwater and receiving water and estimates of tailwater discharge volumes).
   d. Annual summary of progress towards implementing management measures in an approved Ranch Management or Tailwater Management Plan(s), or other activities designed to minimize, control, and prevent ~~or minimize~~ potential water quality impacts;
   e. Monitoring results.

4. When any plan as described above is required and subsequently approved by the Executive Officer, the Discharger shall implement the plan. Failure to submit or implement the plan as approved is a violation of this Order.

5. Dischargers shall comply with management measures that minimize, control, and prevent the discharge of ~~fine~~ sediment, nutrients (including animal waste), ~~other~~ oxygen consuming materials and elevated solar radiation loads that affect the Shasta River watershed. The following are management measures that will minimize, control, and ~~limit or~~ prevent the discharge of waste and elevated solar radiation loads to the Shasta River watershed. Dischargers shall implement management measures to comply with these standard conditions or management measures developed in consultation with Regional Water Board staff that provide equal or better protection:

   a. Riparian areas are managed in a manner that allows the natural establishment and abundance of native vegetation;
   b. Riparian areas are managed in a manner that allows sufficient vegetation to minimize, control, and prevent surface erosion;
   c. 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, shading);

d. Grazed lands are managed in a manner that minimizes, controls, and prevents pollutant discharges;
e. Periodic grazing in riparian areas is limited to the late winter/early spring period, when impacts to woody species are minimized;
f. Grazing within riparian corridors occurs for short durations, and only when forage consisting of non-woody vegetation is available;
g. Livestock are removed from riparian areas when stubble height reaches 4 inches, or livestock shift preference to browsing of woody species, whichever occurs first;
h. Livestock are prevented from disturbing sediment discharge sites and other unstable features adjacent to watercourses;
i. At no time shall grazing in riparian areas cause a discharge of waste to surface waters;
j. Manure, soil, plant waste, and other debris are stockpiled away from areas where they could be washed or eroded into ~~streams~~ surface waters;
k. Management practices are in place to minimize, control, and prevent irrigation water or tailwater from reaching surface waters;
l. Tillage practices do not prevent the natural establishment and abundance of native riparian vegetation;
m. Management practices, such as buffer strips and cover crops, are in place to minimize, control, and prevent the erosion of sediments that could reach waterbodies;
n. Nutrients from fertilizers, compost, soil amendments, or other sources are applied at agronomic rates to minimize, control, and prevent nutrient runoff into surface water or percolation into groundwater at levels that violate water quality standards;
o. Roads and related infrastructure are constructed and maintained in a manner that ~~prevents and~~ minimizes, controls, and prevents the discharge of sediment to the waterbodies;
p. Pesticides are stored, handled, used, and disposed of in manner that ~~avoids delivery~~ minimizes, controls, and prevents discharge to surface water or groundwater; and
q. Petroleum products and other liquid chemicals, such as gasoline, diesel, biodiesel, and oil shall be stored, handled, used, and disposed of in a manner that ~~avoids delivery~~ minimizes, controls, and prevents discharge to surface water and groundwater.

6. This Order shall not apply to any discharges for which an individual WDR or waiver of WDRs has been issued by the Regional Water Board. It also does not supersede or limit the requirements of any enforcement actions (e.g., cleanup and abatement orders) that are issued by the State or Regional Water Board.

7. Pursuant to Water Code section 13267, the Regional Water Board staff or its authorized representatives may investigate the property of persons subject to this Order to ascertain whether the purposes of the Porter-Cologne Act are being met and whether the landowner is complying with the conditions of this Order. This inspection shall be made with the consent of the landowner, or if consent if withheld, with a duly issued warrant pursuant to the procedure set forth in Title 13 Code of Civil Procedure Part 3 (commencing with section 1822.50). However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.

8. Nothing in this Order precludes the Regional Water Board from taking enforcement actions for violations of any discharge prohibition in the Basin Plan, California Water Code, or requiring cleanup and abatement of existing sources of pollution, where appropriate.

9. This Order shall not create a vested right, and discharges of waste shall be considered a privilege, as provided for in Water Code section 13263 subdivision (g).

10. This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is 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.

11. Discharges shall not cause conditions of pollution or nuisance as defined by Water Code section 13050.

12. This Order does not preclude the need for permits that may be required by other governmental agencies, nor does it supersede any requirements, ordinances, or regulations of any other regulatory agency, including necessary certification and permitting for the application of pesticides and herbicides and proper handling of human/domestic waste.

13. This Order expires five years following the date of adoption or when the Regional Water Board or State Water Board adopts a regulatory action that explicitly supersedes this Order, whichever occurs first. ~~This Order expires upon Regional Water Board adoption of a superseding regulatory action or after five years, whichever occurs first.~~

Certification

I, Matthias St. John, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of Order R1-2017-0032, adopted by the California Regional Water Quality Control Board, North Coast Region, on October 19, 2017.

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Matthias St. John
Executive Officer

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