



COUNTY OF SISKIYOU

Board of Supervisors

1312 Fairlane Rd, Suite 1
Yreka, California 96097
www.co.siskiyou.ca.us

(530) 842-8005
FAX (530) 842-8013
Toll Free: 1-888-854-2000, ext. 8005

November 16, 2023

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
SENT VIA EMAIL: ScottShastaDrought@waterboards.ca.gov

Subject: Comment Letter – Preliminary Draft Emergency Regulations for Scott and Shasta Rivers

Ms. Tyler and Members of the State Water Resources Control Board:

The Siskiyou County Board of Supervisors (County) and the Siskiyou County Flood Control and Water Conservation District (District) (acting as the Groundwater Sustainability Agency for the Scott Valley and Shasta Valley Groundwater Basin) is writing to provide comments regarding the November 7, 2023, release of Preliminary Draft Emergency Regulation (Regulations) for the Scott and Shasta River Watersheds. We appreciate the opportunity to comment on this matter, which we understand is of vital importance to the State Water Resources Control Board (State Board) and stakeholders throughout the Klamath Watershed. We continue to be concerned with the implementation of the emergency regulations as a mechanism to resolve fisheries issues and continue to adamantly support collaborative efforts that achieve both a healthy fishery and thriving agriculture. Below are our specific comments on the Regulations.

Sustainable Groundwater Management Act (SGMA):

Adoption of these Regulations ignore authorities granted to the District through the SGMA. This has been a concern of the District's since the initial Regulations were adopted by the Water Board in 2021. The GSPs for the Scott and Shasta Valley Groundwater Water Basins have been approved by the Department of Water Resources, and we have been actively implementing the GSP's through a variety of projects and actions detailed in the GSPs. These projects and actions include utilization of the Integrated Hydrology Models for scenario evaluations, filling data gaps through increased data collection, and improving the watersheds water budgets by obtaining more precise in-flow tributary contributions.

The GSPs also include several sustainability goals which are only achievable through implementation of the GSPs. For example, the Scott Valley GSP has set a metric to reverse groundwater depletion through the implementation of several projects in the Valley, many of which irrigators have agreed to support and/or participate in. The GSP's sustainable management criteria for interconnected surface water reflect an unprecedented, unparalleled, and significant effort at reversing stream

depletion that was defined as being already an undesirable result in 2015. Among all of the state's GSPs, the Scott Valley GSP is the only plan that goes beyond simply maintaining conditions during the baseline period (in most GSPs a period from the 1990s to 2015), and that explicitly sets minimum thresholds that will reverse streamflow depletion that existed during the 1991-2018 baseline period and therefore will measurably improve streamflow condition. In the Shasta GSP it is acknowledged that surface water-groundwater interconnectivity is an important data gap and will be the top priority for the GSA to research and evaluate over the next few years while it develops its required five-year update by 2027.

The Regulations inclusion of groundwater priorities and management actions without the State Board consulting with the District appears to usurp the Districts authorities under SGMA. This is not consistent with the goals of SGMA, which aims to make collaboration a priority for the basins to achieve long-term groundwater sustainability. The State Board should collaborate with the District before including any groundwater management actions within the Regulations. This would allow the District to inform the State Board of the scientific research and data collection efforts within the two Basins. As such, through this letter, the District is requesting that the State Board organize coordination meetings between the District, DWR and the State Board.

Groundwater Recharge:

We will continue to emphasize the importance of groundwater recharge through flood irrigation and stockwater diversions, and we are concerned about language in the Regulations that will reduce surface water diversions during winter, spring and summer months when there is a need for such diversions. Limiting these surface water diversions also has repercussions on maintaining adequate groundwater levels for shallow residential wells. Groundwater recharge was identified as a key management action in the GSP's and is well supported to maintain groundwater levels at a sustainable level. Groundwater recharge is also important in supporting instream flows, and even more importantly, maintaining late season flows for salmon We encourage the State Board to include language in the Regulations that simplifies and streamlines opportunities for groundwater recharge, especially during average or below average water year types where recharge during winter months will benefit surface water/groundwater interconnection during late summer and early fall.

Local Cooperative Solutions:

We do not recommend the use of the *Siskiyou County: Agriculture Economic Analysis Considering Groundwater Regulation* for applied water rate baseline of LCS's. This analysis was conducted by the University of California, Merced for the purpose of the GSA's development of the respective GSP's for the Butte, Scott and Shasta Valley basins and is considered a preliminary analysis. In addition, it was utilized to assess economic impacts to the County resulting from theoretical SGMA actions and should not be used to analyze applied water rates for crops. We recommend in the report, the applied water rate numbers referenced in Tables 3 and 4 were provided by our SGMA consultants for hydrologic model development purposes. We recommend that the State Board refer to a presentation titled "Alfalfa Water Use in the Scott Valley" and included as Exhibit A of this

letter. This presentation provides the proper applied water rates for respective crop types in the Scott and Shasta Valleys.

The requirement for all LCS's to include metering is not feasible from a management or financial perspective when it is required for meters to be installed prior to the 2024 irrigation season. We would prefer that the Regulations allow for a volunteer or incentive-based approach, that considers the time and resources required to implement meters. We also request that the State Board consider any data privacy concerns that may make water users hesitant to install meters and/or seek LCS's.

Stockwater Diversion:

Language-specific to stockwater diversion has caused confusion and added complexity when determining what is allowed for such diversion. The flow requirements detailed in the Regulations appear to include no evidence that diverting for stockwater outside of the requirements will impact fisheries. We recommend a simpler and more practical approach regarding stockwater diversions that ensures that ranchers can adequately provide water for their livestock.

Public Trust and Beneficial Users:

As a general matter, water diverters in the Scott and Shasta Valley watershed are putting water to beneficial use for domestic, stock, and agricultural irrigation uses. No specific practice that could be considered to constitute waste or unreasonable use of water is at issue here. If any specific practice is identified by the Board, then it should be specifically dealt with in a limited fashion, rather than through the broad regulation. This does not justify imposing significant economic and social harm on Siskiyou County citizens. The two major population centers in Scott Valley, Etna and Fort Jones, are classified as a Disadvantaged Community (DAC), and Severely Disadvantaged Community (SDAC) based on median household income compared to the State average, while the entirety of Scott Valley is located in a census tract categorized as DAC.¹ In the Shasta Valley, population centers of Yreka, Grenada and Gazelle are classified as SDAC and Montague is considered DAC. The regions that would be impacted by this proposed rulemaking contains rich soil ideal for crops such as pasture, grain hay and alfalfa however higher valued crops such as nut trees or row crops are not suitable in these valleys because of weather, climate and soil types. All suitable crops still cannot be grown and harvested without water. When curtailment orders are issued Scott and Shasta Valley farmers suffer economic losses, impacting their livelihood and ability to provide for their families. Water uncertainty and the inability of farmers to receive water to irrigate their crops also harms the small businesses that support local farmers. Economic downturns have social impacts. It is well documented that economic hardship, including joblessness, results in the breakdown of traditional family arrangements, increases use of public assistance, and causes higher rates of crime and violence. E.g., Nichols, Mitchell, & Lindner, Consequences of Long-Term Unemployment, July 2013, The Urban Institute, at 11-12. Economic hardship can also induce behavioral changes that have important spillover effects on the community as a whole, including reducing investments in housing

¹ <https://gis.water.ca.gov/app/dacs/>

and other capital improvements. (*Id.* at 12.) The speculative environmental benefit of these regulations does not outweigh the concrete harm that will occur to other beneficial users of water in the Scott and Shasta Valley.


The Public Trust Doctrine is a mechanism by which the Board considers impacts and makes policy judgments to determine the appropriate balance between competing beneficial uses of water, it is not an inflexible mandate. *In National Audubon Society v. Superior Court (1983) 33 Cal.3d 419*, the California Supreme Court held that the state has continuing authority to regulate water resources in order to protect the public interest, but that the state is not required to protect specific trust uses in doing so; rather, the Legislature may authorize water diversions that it deems to be in the public interest even though this may “unavoidably harm” trust uses in source streams. (33 Cal.3d at 446; see also *id.* at 439 n. 1 (Legislature has right “to prefer one trust use over another”).) *In State of California v. Superior Court (2000) 78 Cal.App.4th 1019, 1031 n. 18*, the Court of Appeal stated that *National Audubon* “explained how the interests served by the public trust must be considered—although not necessarily given precedence—when water usage is considered.” *In Carstens v. California Coastal Comm’n (1986) 182 Cal.App.3d 277, 289*, the Court of Appeal—citing *National Audubon, Colberg and Boone*—explained that the public trust doctrine “does not prevent the state from preferring one trust use over another.” Here, the Board may decide not to engage in rulemaking because the production of groundwater for drinking, bathing, cooking, livestock, and for growth of crops on parcels in the Scott Valley is within the public interest.

Conclusion:

The health and viability of the Scott and Shasta River systems, and the entire Klamath Watershed, is of vital importance to Siskiyou County, as it is for all stakeholders who depend on it. We are dedicated to working with the State Board and stakeholders to continue to implement projects and actions to ensure that the Scott and Shasta River systems remain a dependable resource for all beneficial users. The County has long supported the need for collaboration amongst its stakeholders to solve the larger Klamath water conflicts.

We again appreciate the opportunity to comment on this matter. Lastly, we have truly appreciated the dedicated efforts by State Board members and staff throughout the last year to make multiple in-person visits to Siskiyou County, and to collaborate with the County, and its water users on a continued basis. We encourage such visits and collaboration into the future, and we are eager and committed to facilitating these efforts.

Sincerely,

DocuSigned by:

Ed Valenzuela

Chair, Board of Supervisors

cc: Senator Brian Dahle
Assemblymember Megan Dahle
Rural County Representative of California (RCRC)
California State Association of Counties (CSAC)
Shaw Yoder Antwih Schmelzer & Lange
Director Charlton "Chuck" Bonham, CDFW
Paul Gosselin, DWR