

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2023-____

In the Matter of the Administrative Civil Liability Complaint
against

Stephen Griset

Water Right IDs SG005923 and SG005924

SOURCE: Groundwater

COUNTY: Siskiyou

ADMINISTRATIVE CIVIL LIABILITY ORDER

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BY THE BOARD:

1.0 INTRODUCTION

This matter came to the State Water Resources Control Board (State Water Board or Board) as a proposed order prepared by the Presiding Hearing Officer of the Board's Administrative Hearings Office (AHO), pursuant to Water Code section 1114, subdivision (c)(1). Pursuant to Water Code section 1114, subdivision (c)(2)(A), the Board adopts the AHO's proposed order in its entirety.

For the reasons stated in this order, we impose administrative civil liability of \$16,000 on Respondent Stephen Griset for his failure in September 2021 to file the required curtailment certification forms for his sales of water pumped from his groundwater wells to people for conveyance to other parcels for uses on those parcels. The first installment of \$12,000 is due within 30 days. The second installment of \$4,000 will be suspended if Respondent complies with the curtailment certification form filing requirements in this order. This installment will become due if Respondent does not comply with these requirements.

2.0 BACKGROUND

2.1 Griset Parcels and Wells

The Respondent, Stephen Griset, is the primary owner of record of Siskiyou County Assessor Parcel Numbers (APNs) 019-661-420-000 and 019-021-100-000. (Exh. PT-1, p. 1, ¶ 1.)¹ The general locations of these two parcels are shown on the attached Figure 1.

During the AHO hearing described in section 2.12,² Mr. Griset testified there is a well on the 80-acre parcel where he lives, which supplies two center-pivot sprinkler systems he uses to irrigate about 45 acres on this parcel. (Hearing Recording, May 19, 2022, 01:52:28-01:52:43.)³ Mr. Griset testified his other well is located on his 190-acre parcel, and he uses this well to irrigate approximately 160 acres on this parcel (*Id.*, 01:52:43-01:52:48). The Board's Division of Water Rights (Division) assigned these wells Water Right Identification Numbers (Water Right IDs) SG005923 and SG005924. (Exh. PT-1, p. 1, ¶ 1.)⁴

Mr. Griset testified that "Griset Farms" is the title of the company his father incorporated in the 1970s. (Hearing Recording, May 19, 2022, 1:50:10-1:50:26). The Division listed Mr. Griset as the addressee of the transmittal letter for the specific Order WR 2021-

¹ Citations to exhibits in this order refer to exhibits in the administrative record prepared by the AHO for this proceeding, in the "Parties' Exhibits" folder, which is in the "Hearing Documents" folder. "Exh. PT-" refers to the Prosecution Team's exhibits and "Exh. Respondent-" refers to Respondent's exhibits.

² Unless the context indicates otherwise, "section" refers to sections of this order.

³ The Hearing Documents folder in the administrative record prepared by the AHO contains recordings of the hearings the AHO held on May 19 and June 2, 2022. Each citation in this order to "Hearing Recording" is to one of those two recordings, with the hearing date and start and stop times of the cited portion of the recording indicated in hours, minutes and seconds.

⁴ Specific Order WR 2021-0082-DWR (Stephen Griset) (discussed in section 2.6) refers to a "Login (Water Right ID)" that the Division assigned to each APN. (See exh. PT-3, p. 5.) In this order, we refer to these login numbers as "Water Right IDs," which is the shorthand term the Division uses for them. Our use of the term in this order should not be construed as our taking any position on the issue of whether Respondent has any water rights associated with these APNs or Water Right IDs.

0082-DWR that the Division issued to Mr. Griset (see section 2.6), apparently because he is the primary owner of record of the two APNs where the wells associated with SG005923 and SG005924 are located. (Exh. PT-3.) The Division addressed its January 10, 2022 Notice of Violation (exh. PT-5) and its February 18, 2022 Administrative Civil Liability Complaint (ACL Complaint) transmittal letter (exh. Respondent-5, p. 1) to Mr. Griset. The hearing requests from both Mr. Griset and his attorney list “Stephen David Griset” as the person requesting the hearing. (2022-02-28 Griset hearing request; 2022-03-09 P. Minasian hearing request.)⁵ Thus, even though the ACL Complaint lists “Griset Farms” as the “Diverter” (see exh. Respondent-5, p. 3, caption and ¶ 1),⁶ this order lists Stephen Griset as the Respondent and it is directed to him. This is appropriate because Mr. Griset is the primary owner of record of APNs 019-661-420-000 and 019-021-100-000 and the listed primary owner for Water Right IDs SG005923 and SG005924.

Mr. Griset’s father, George Griset, is the owner of record of Siskiyou County APNs 019-021-070-000 and 019-021-430-000. (See exh. Respondent-3, p. 1.) During the AHO hearing, Stephen Griset testified that there are two wells on George Griset’s properties, a large well on George Griset’s 40-acre parcel, which apparently is being used regularly, and another well has been used only sparingly over the past 40 years and is basically abandoned. (Hearing Recording, May 19, 2022, 1:51:30-1:52:17). The Division assigned the George Griset wells Water Right IDs SG005922 and SG005925. (See exh. Respondent-1, p. 7.) These parcels, wells and Water Right IDs are not involved in this proceeding. References in this order to “Mr. Griset” and “Respondent” are to Stephen Griset.

⁵ References in this order to file names that contain dates in year-month-day format followed by brief descriptions are to files in the various folders of the administrative record the AHO has prepared for this proceeding.

⁶ Unless the context indicates otherwise, citations to page numbers in administrative record documents are to the page numbers of the pdf files of those documents. The written page numbers at the bottoms of some of the pages of some of these documents may be different.

2.2 Stephen Griset Well Water Uses

Mr. Griset testified “that between my dad and I we own close to a thousand acres and irrigate close to six hundred acres.” (Hearing Recording, May 19, 2022, 1:50:26-1:50:45.) Mr. Griset testified that he grows primarily alfalfa and grain hay and some sorghum Sudan crops. (*Id.*, 1:50:45-1:50:55.) Mr. Griset testified that, beginning in 2016 and continuing through the end of his irrigation season in October 2021, he allowed some people who live in the nearby Shasta Vista Subdivision to receive water from his irrigation system to fill containers and tank trucks and to transport that water to their homes for uses there. (*Id.*, 1:58:30-1:59:05; 2:28:45-2:30:27.) Mr. Griset stated that, as far as he knew, that is where the water from his system went. (*Id.* 2:29:35-2:30:27.) The approximate area of the Shasta Vista Subdivision is depicted in the attached Figure 1 as the “Approximate Place of Use of Trucked Water.”

2.3 Governor’s Emergency Drought Proclamation

On April 21, 2021, Governor Gavin Newsom issued a State of Emergency Proclamation, which declared a state of emergency in Mendocino and Sonoma Counties due to drought conditions. (2021-04-21 Governor’s Emergency Proclamation.) On May 10, 2021, Governor Newsom issued a Proclamation of a State of Emergency, which referred to his April 21, 2021 proclamation and stated that additional expedited actions were needed in 41 listed counties, which included Siskiyou County. (2021-05-10 Governor’s Emergency Proclamation, p. 1.)

After describing the effects of climate change and impacts of droughts in the Klamath Basin, this proclamation concluded that it was necessary to act expeditiously to mitigate the effects of drought conditions in the Klamath River watershed, both to ensure the protection of health, safety and the environment and to prepare for potential sustained drought conditions. (*Ibid.*) Among other things, the May 2021 Proclamation directed the State Water Board to consider adopting emergency regulations that would direct water users in the Klamath River watershed counties to curtail their diversions when water was not available for diversion at their water-right priorities. (*Id.*, p. 3, ¶ 5.)

2.4 State Water Board's Emergency Drought Regulations

On June 15, 2021, California Department of Fish and Wildlife (CDFW) sent a letter to the State Water Board urging the Board to adopt emergency minimum flow requirements for the Scott River and Shasta River watersheds, which are parts of the Klamath River watershed. (Order WR 2022-0143-EXEC, p. 5.)⁷ On July 1, 2021, Division and CDFW staffs held a public meeting regarding potential drought actions for Shasta River and Scott River watersheds. (*Ibid.*) On July 16, 2021, Division staff issued a Notice of Public Meeting and Opportunity to Comment on Draft Drought Emergency Regulations for the Scott River and Shasta River Watersheds. (*Ibid.*) This notice announced the release of draft drought emergency regulations for public review and comments and a July 20, 2021 public meeting. (*Ibid.*)

During the July 20, 2021 public meeting, Division and CDFW staffs described the draft drought emergency regulations, presented responses to past comments on the CDFW flow recommendations, answered questions and solicited comments. (*Ibid.*) The public comment period on this draft of the emergency regulations was from July 16 through July 23, 2021, and the State Water Board received more than 100 written comments. (*Ibid.*) Division staff met with members of the agricultural community several times during July and August 2021 (on Jul. 8, 15, 22 and 30, and Aug. 10, 2021) to receive additional input on the Board's proposed drought response actions and emergency regulations, and to support development of voluntary collaborative actions to enhance flows and habitats for Southern Oregon Northern California Coast coho salmon and fall-run Chinook salmon. (*Ibid.*) State Water Board staff made changes to the draft regulations based on this input. (*Ibid.*)

On August 17, 2021, the State Water Board adopted emergency regulations establishing drought emergency minimum flows in the Scott River and Shasta River watersheds. (*Id.* P. 6; Cal. Code Regs., tit. 23, §§ 875-875.9.) The Office of

⁷ Unless context indicates otherwise, "Order" refers to orders of the State Water Board, its Executive Director, and the Division. Executive Director orders have "EXEC" after the order numbers. Division orders have "DWR" after the order numbers. Exhibit Respondent-7 is a copy of Order WR 2022-0143-EXEC.

Administrative Law (OAL) reviewed and approved these regulations, and they went into effect when they were filed with the Secretary of State on August 30, 2021. (Order WR 2022-0143-EXEC, p. 6.) The regulations were in effect for one year. (*Ibid.*) On July 29, 2022, OAL approved the Board's re-adoption of these regulations, with some amendments. (2022-07-29 OAL notice of approval of emergency regulatory action.)

2.5 General Order WR 2021-0082-DWR

On September 10, 2021, the Division issued the General Order WR 2021-0082-DWR. (Exh. Respondent-1.) This order directed approximately 100 water users, listed in Attachment A to the order, to cease diverting water on September 11, 2021. (*Id.*, p. 3, ¶ 2, pp. 7-10.) This order also required each water user, referred to in the order as a "Primary Owner," to submit by September 20, 2021 under penalty of perjury an online Scott-Shasta Curtailment Certification form in accordance with section 875.6 of the emergency regulations. (*Id.*, p. 3, ¶ 4.) Stephen Griset and Water Right ID's SG005923 and SG005924 were included in the list of water users in Attachment A to this order. (*Id.*, p. 7.)

On September 10, 2021, the Division issued another order, also labeled Order WR 2021-0082-DWR, which was specific to Stephen Griset. (Exh. PT-3, pp. 7-12.) That order is discussed in section 2.6. To distinguish between these two versions of Order WR 2021-0082-DWR, this order refers to the version of Order WR 2021-0082-DWR that listed approximately 100 water users in its Attachment A as "General Order WR 2021-0082-DWR," and to the version of this order that is specific to Stephen Griset as "Specific Order WR 2021-0082-DWR (Stephen Griset)."

Based on forecasted precipitation and other factors, the Division issued addenda to General Order WR 2021-0082-DWR on September 23, October 21 and 29, and December 17, 22 and 29, 2021, and January 26 and February 25, 2022. (Order WR 2022-0143-EXEC, p. 6.) These addenda partially suspended diversion curtailment requirements, contingent on the required minimum Shasta River flows at the Yreka United States Geological Survey (USGS) gage being met and sustained. (*Ibid.*) In addition, pursuant to section 875, subdivision (c)(2)(B) of the emergency regulations,

the State Water Board modified the diversion curtailment orders twice based on the recommendation of CDFW that lower alternative flows at the Yreka USGS gage would provide equal or better protection for the pertinent species' relevant life stages. (*Ibid.*) On March 15, 2022, the State Water Board reinstated diversion curtailments for the most junior water rights in the Shasta River watershed based on ongoing dry conditions, the approach of the irrigation season, and multiple unexpected decreases in flows below the minimum flow requirement. (*Id.*, pp. 6-7.)

2.6 Specific Order WR 2021-0082-DWR (Stephen Griset)

On September 10, 2021, the Division issued Specific Order WR 2021-0082-DWR to Mr. Griset. (Exh. PT-3, pp. 7-12.) Division records indicate that the certified mail package with this order and the related transmittal letter was picked up at the Grenada, California post office on September 17, 2021. (Exh. PT-4.)

Term 4 of this Order directed Mr. Griset to submit under penalty of perjury an online Scott-Shasta Water Right Curtailment Certification form for each Water Right ID by September 20, 2021. (Exh. PT-3, p. 9, ¶ 4.) Attachment A of this order listed Mr. Griset's Siskiyou County APNs 019-661-420-000 and 019-021-100-000 and Water Right IDs SG005923 and SG005924, and listed passwords for Mr. Griset to use to log in and complete these forms. (*Id.*, p. 11.)

2.7 George Griset's Petition for Reconsideration; Order WR 2022-0143-EXEC

On September 23, 2021, Paul Minasian, Mr. Griset's attorney, filed with the State Water Board a petition for reconsideration of the State Water Board's Drought Emergency Regulations described in section 2.4 and the provisions of General Order WR 2021-0082-DWR that applied to Siskiyou County APNs 019-021-070-000 and 019-021-430-000. (Exh. Respondent-3, p. 1.) These are the two parcels described in section 2.1 that are owned by Mr. Griset's father, George Griset. The petition listed Water Right IDs SG005922 and SG005925, the Water Right IDs the Division assigned to these two parcels. (*Ibid.*) This petition stated that the petitioners were Stephen Griset, George Griset, individually and as trustee of the George S. Griset Revocable Trust, and Griset Farms, Inc. (*Ibid.*) This petition did not refer to Stephen Griset's parcels, Siskiyou

County APNs 019-661-420-000 and 019-021-100-000, or to the Water Right IDs for these parcels, SG005923 and SG005924. (*Ibid.*)

This petition asserted that: (1) General Order WR 2021-0082-DWR improperly took property interests without due process of law or payment of just compensation (*id.*, pp. 3-8), (2) the State Water Board violated the Sustainable Groundwater Management Act (Water Code §§ 10720-10737.8) when it adopted this order (*id.*, pp. 9-11); and (3) the Board's adoption of the drought emergency regulations was a violation of separation of powers (*id.*, pp. 11-13).

On April 8, 2022, the Board's Executive Director issued Order WR 2022-0143-EXEC, which denied this petition. (Exh. Repondent-7.) During the AHO hearing, Mr. Griset testified that he was not aware of any legal challenge by his attorney to this order (Hearing Recording, May 19, 2022, 2:18:15-2:18:35), and Respondent did not submit any evidence of any such legal challenge.

2.8 Division Actions Following Issuance of General Order WR 2021-0082-DWR and Specific Order WR 2021-0082-DWR (Stephen Griset)

On December 10, 2021, Division and CDFW staffs hosted an in-person compliance assistance meeting in Yreka. (Exh. PT-1, p. 3, ¶ 8.) On January 4 and January 26, 2022, Division staff sent e-mail messages through the Board's LYRIS e-mail system to community members, reminding diverters of the requirement that they submit their curtailment certification forms. (*Ibid.*)

On January 10, 2022, the Division issued a Notice of Violation (NOV) to Mr. Griset. (Exh. PT-1, p. 3, ¶ 9, exh. PT-5.) Division staff confirmed that Mr. Griset received the NOV on January 24, 2022 through certified mail. (Exh. PT-1, p. 3, ¶ 9, exh. PT-6.) The NOV contained information describing how to log in to a State Water Board website for each Water Right ID with a password. (Exh. PT-5, pp. 1-2.) The NOV stated that the Division would not issue an ACL complaint to Mr. Griset if he submitted the online curtailment certification forms within 14 days. (*Id.*, p. 1.) Mr. Griset did not submit the curtailment certification forms by this deadline. (Exh. PT-1, pp. 3-4, ¶ 9.)

On February 18, 2022, the Division issued an ACL Complaint to Mr. Griset. (Exh. PT-1, p. 4, ¶ 10; exh. Respondent-5.)

2.9 Respondent's Requests for Hearing and Subsequent Filings

The AHO received a request for hearing from Mr. Griset, postmarked February 28, 2022. (2022-02-28 Griset hearing request.) On March 9, 2022, the AHO received an e-mail request for hearing from Mr. Minasian. (2022-03-09 P. Minasian hearing request.) The AHO issued an e-mail and a letter acknowledging these hearing requests on March 11, 2022. (2022-03-11 AHO e-mail to S. Griset and P. Minasian; 2022-03-11 AHO ltr. to S. Griset and P. Minasian.)

On March 9, 2022, Mr. Minasian sent a letter to Robert Cervantes, the Program Manager for the Division's Enforcement Section. (2022-04-22 PT Mtn. to Quash, Att. C.) This letter asserted that the State Water Board does not have jurisdiction over groundwater users like Mr. Griset until it obtains a court order adjudicating the rights of such users. (*Id.*, p. 1.) It referred to two statutes that authorize awards of attorney fees when public agencies take actions without justification. (*Id.*, p. 2.)

On March 30, 2022, Mr. Minasian sent a similar letter to the State Water Board. (2022-04-22 PT Mtn. to Quash, Att. D.)

On May 11, 2022, Mr. Minasian filed a memorandum of points and authorities with the AHO, which asserted that the AHO should dismiss the Prosecution Team's ACL complaint, which his memorandum referred to as the "SWRCB claim for fines". (2022-05-11 Respondent's Memo of Pts. and Authorities, p. 6:2.) This document repeated the argument that the State Water Board does not have jurisdiction over the Grisets' wells because no court has adjudicated their rights to pump water from these wells. (*Id.*, p. 2:22-25.) It also asserted that "[t]he SWRCB's internet site had no entry for a claim that the Grisets' water was being used on overlying lands of the basin and was not an appropriative use of water." (*Id.*, pp. 2:28-3:2.) It argued that the State Water Board's action was an improper taking of property and that it could result in an award of attorney fees. (*Id.*, p. 4:23-28.)

2.10 AHO Hearing Notice

The AHO issued its hearing notice on April 8, 2022. (2022-04-08 AHO Hearing Notice (Griset Farms).) The hearing notice scheduled the AHO hearing for May 19, 2022, and listed the following five hearing issues:

- 1) Did the Deputy Director of the Division of Water Rights issue a curtailment order to Respondent under California Code of Regulations, title 23, division 3, chapter 2, article 23.5 (sections 875-875.9)?
- 2) Did the Respondent submit, under penalty of perjury, within seven calendar days of the date of the curtailment order, a certification as described in California Code of Regulations, title 23, section 875.6?
- 3) Did Respondent violate a State Water Board regulation or order that requires the Respondent to file a certification as stated under California Code of Regulations, title 23, section 875.6?
- 4) If Respondent violated a State Water Board regulation or order, should the AHO hearing officer impose administrative civil liability on Respondent?
- 5) If the State Water Board decides to impose administrative civil liability on Respondent, what is the appropriate amount of such administrative civil liability?

(*Id.*, pp. 1, 3-4.)

2.11 Griset Document Requests and Subpoena

On April 14, 2022, Mr. Minasian sent a request for production of documents to the Prosecution Team's attorneys. (2022-04-22 PT Mtn. to Quash, Att. A.)⁸ The request asked the Prosecution Team to produce, within 10 days, all written materials within 11 listed topics, which included various topics regarding Mr. Griset's and George Griset's wells, potential Division actions regarding these wells, Division communications with Siskiyou County officials, pending federal court proceedings regarding Siskiyou County,

⁸ The is a separate folder for the Prosecution Team's April 22, 2022 Motion to Quash within the Hearing Documents folder in the administrative record for this proceeding. The files cited in this section (except for those cited in the last paragraph of this section) are in that folder.

and the costs, expenses and burdens of the notices of curtailments on people occupying lands within the Shasta Vista Subdivision. (*Id.*, Att. A, pp. 2-4.)

On April 22, 2022, the Prosecution Team filed a motion to quash this request. (2022-04-22 PT Mtn. to Quash.) On May 3, 2022, Mr. Minasian filed his opposition to this motion. (2022-05-03 Resp. Griset Farms Opp. to Mtn. to Quash.) On May 10, 2022, the AHO hearing officer issued a ruling granting the Prosecution Team's motion. (2022-05-10 Hearing Officer's Ruling Letter (PT's Mtn. to Quash.)

On May 11, 2022, Mr. Minasian issued a subpoena to Erik Ekdahl, the Board's Deputy Director for Water Rights. (2022-05-11 Respondent's subpoena to E. Ekdahl.)⁹ However, Mr. Minasian apparently did not arrange to have this subpoena served. (See 2022-05-13 AHO e-mail to P. Minasian.)

2.12 AHO Hearings

2.12.1 May 19, 2022 Hearing

The AHO held its first hearing day on May 19, 2022. (2022-05-19 Griset Farms Hearing Recording.) Deborah Ores and Andrew Tauriainen of the Board's Office of Enforcement appeared as attorneys for the Prosecution Team. Mr. Minasian appeared as the attorney for Mr. Griset. (*Id.*, 6:08-7:29.)

The Prosecution Team called one witness, Mr. Cervantes. (Exh. PT-1; Hearing Recording, May 19, 2022, 11:57-12:34, 21:50-1:42:35.) Mr. Cervantes is the Supervising Water Resource Control Engineer for the Division's Enforcement Section. (Exh. PT-1, p. 2, ¶ 2.)

Mr. Cervantes testified about the Board's drought emergency regulations for the Klamath River watershed (see section 2.4) and the Division's curtailment order to Mr. Griset (see section 2.6). (Exh. PT-1, p. 2, ¶ 4.) Mr. Cervantes testified about the Division's outreach efforts to the community to remind diverters like Mr. Griset that they

⁹ The two documents cited in this paragraph are in the Hearing Documents folder in the administrative record for this proceeding.

needed to file their curtailment forms, and that Division staff were available daily to provide technical assistance to all diverters who sought help filing their forms online. (*Id.*, p. 3, ¶ 6.)

Mr. Cervantes testified that Mr. Griset had not filed the required curtailment certification forms by February 18, 2022, the day on which the Division issued the ACL Complaint to Mr. Griset. (*Id.*, p. 4, ¶ 13.) Mr. Cervantes testified that, for the 151 days between the September 20, 2021 deadline for filing these forms and February 18, 2022, at the rate of \$500 for each day of violation, for two water-right IDs, the maximum ACL the Board could impose was \$151,000 (151 days x \$500/day x 2 water-right IDs = \$151,000). (*Ibid.*)

Mr. Cervantes testified about the statutory factors in Water Code section 1055.3 and section 1848, subdivision (d), regarding the appropriate amount of ACL the Board should impose on Mr. Griset. (Exh. PT-1, pp. 4-6, ¶¶ 14-21.) After discussing these factors, Mr. Cervantes concluded that the Prosecution Team's proposed ACL amount of \$4,000 "is the minimum amount suitable to deter future noncompliance, while accounting for the resources spent by the State Water Board staff compelling Respondent to file the requisite certification form." (*Id.*, p. 6, ¶ 20.)

Mr. Minasian called one witness, Mr. Griset. (Hearing Recording, May 19, 2022, 1:49:25-2:43:45.)

Mr. Griset first testified about the properties he and his father own and farm. (*Id.*, 1:50:00-1:53:10; see section 2.1.) He then discussed the Shasta Vista Subdivision and stated that there are 1,600 lots in the subdivision, ranging in size from two to four acres. (Hearing Recording, May 19, 2022, 1:53:41-1:54:20.) He described the lands within this subdivision as "basically hilly, rock, sand and junipers, basically worthless land." (*Id.*, 1:54:10-1:54:56.)

Mr. Griset testified that the Siskiyou County Flood Control and Water Conservation District conducted a study regarding what lands should be treated as overlying the Shasta Groundwater Basin, and that he believed the district expanded this basin in

2017 to include his lands and the part of the Shasta Vista Subdivision that is west and south of County Road A12. (*Id.*, 1:54:48-1:55:40.)¹⁰ He testified that these subdivision lands and his lands overlie the same groundwater basin, but that the lots in the subdivision do not have wells because that area “is the hardest place in the world to drill a well, it’s drilling through solid rock, its takes twice as long, not guaranteed you will get water, might be drilling 500 feet, it’s extremely expensive.” (*Id.*, 1:55:57-1:57:18.)

Mr. Griset testified that, starting in about 2016, some of the people who have homes in the Shasta Vista Subdivision asked him for water from his irrigation system to fill containers and tank trucks to take water from his wells to their homes. (*Id.*, 1:58:30-1:59:05.) He testified that he sold water to these people during every year from 2016 through 2021 except 2019. (*Id.*, 2:28:45-2:29:35.) He testified that he continued to allow these people to receive water from his system for uses at their homes after he received the Division’s curtailment order in September 2021. (*Id.*, 2:06:15-2:07:07; 2:26:53-2:27:16; 2:30:27-2:30:48.) He testified that he did not keep track of where the water he sold went, but, as far as he knew, it all went to parcels in the Shasta Vista Subdivision. (*Id.*, 2:28:52-2:30:27.) He testified that he “has no way of knowing” how many truckloads he sold each year, but it probably was more than 100 truckloads per year. (*Id.*, 2:31:48.) About half the truckloads were 4,000 gallons each, and the other half were 2,000 gallons each. (*Id.*, 2:31:48-2:32:51.)

Mr. Griset testified that he did not call the Division to discuss the curtailment order “because he didn’t believe it had anything to do with him.” (*Id.*, 2:11-41-2:14:07.) He testified that he did not ask the Division for a stay of the curtailment order “because he did not believe it applied to him and did not affect him because his wells are not adjudicated, and he does not affect the Shasta River.” (*Id.*, 2:14:45-2:14:54.)

On the question of when Mr. Griset or his attorney first advised the State Water Board that they contended Mr. Griset’s pumping of water and all users of that water were

¹⁰ Mr. Griset testified that he and his attorney provided this study to the AHO, and they referred to it as “the study done by Larry Walker Associates.” (Hearing Recording, May 19, 2022 1:55:40-1:55:56.) Although Mr. Griset did not mention any exhibit number, he apparently was referring to exhibit Respondent-11, pages 1-10.

authorized by overlying rights, he testified “it’s in the wording of the curtailment order, so I didn’t see the need to explain it to them.” (*Id.*, 2:36:42-2:37:11.) When asked why he did not submit the certification form, he testified that he contended his pumping was pursuant to overlying rights, so “we went with the reconsideration as our action,” and that he relied on his attorney to decide what to do. (*Id.*, 2:37:30-2:40:18.)

After Mr. Griset concluded his testimony, the AHO hearing officer ruled that Mr. Minasian should have the opportunity to subpoena the Division staff member most knowledgeable about the Division’s preparation of the list of the approximately 100 water users listed in Attachment A to General Order WR 2021-0082-DWR that were subject to the order’s curtailment and certification requirements. (*Id.* 2:59:09-3:03:49.) Following the hearing, the AHO issued a notice for an additional hearing day on June 2, 2022 for this purpose. (2022-05-19 AHO Supp. Hearing Notice (Griset Farms).)

2.12.2 June 2, 2022 Hearing

The Division designated Senior Water Resources Control Engineer Rajaa Hassan as the person most knowledgeable about the preparation of Attachment A to General Order WR 2021-0082-DWR, and she submitted written proposed testimony for the hearing. The AHO labeled this document as exhibit Respondent-13. The AHO held its second hearing day on June 2, 2022. During this hearing, Ms. Hassan confirmed that this document was her testimony. (Hearing Recording, June 2, 2022, 9:02-9:26.)

Ms. Hassan testified that, to develop Attachment A to General Order WR 2021-0082-DWR, she compiled ownership information and addresses for the various holders of water-right claims in the Shasta River watershed, and information about the priorities of these claims. (Exh. Respondent-13, p. 1, ¶ 2.) For appropriative rights subject to the Shasta River Adjudication, she used the watermaster’s field notes and annual statements of water diversion and use to obtain current information about the owners of the rights and which rights were abandoned. (*Id.*, pp. 1-2, ¶ 5.) For surface-water appropriative rights initiated after the Adjudication, she used the application dates listed on the State Water Board’s Electronic Water Rights Information Management System (eWRIMS) for the relevant water-right permits and licenses. (*Ibid.*) For claims of

groundwater appropriative rights, she obtained information from the Department of Water Resources (DWR) well completion report database. (*Id.*, p. 2, ¶ 7.) Ms. Hassan testified that the Division did not give Water Right ID numbers (SG numbers) to well owners that were pumping their wells solely for overlying uses on their own parcels in the Shasta River watershed. (Hearing Recording, June 2, 2022, 1:25:44-1:26:15; 1:30:50-1:31:05.)

Because the DWR well completion report database did not identify all groundwater wells in the Shasta River watershed that were being used to provide water for uses off the parcels where the wells were located, Ms. Hassan obtained information regarding wells being used for bulk water hauling in Siskiyou County. (*Id.*, p. 2, ¶ 8.) Ms. Hassan then asked two of her colleagues to use Google Earth and County parcel information to identify the owners of parcels in the Shasta River watershed on which wells were being used for such uses. (*Ibid.*)

Using information regarding water availability and demands for water, Ms. Hassan determined that, for the Division's September 2021 curtailment order, it was necessary to curtail diversions under all appropriative water rights for diversions in the Shasta River watershed with priority dates on or after November 25, 1912. (*Id.*, p. 1, ¶ 3.) Although Ms. Hassan did not have information regarding the dates on which water pumped by wells in this area first was used, the DWR database indicated that the earliest wells in this area were constructed in the 1950s. (*Id.*, pp. 2-3, ¶ 9.) She therefore concluded that that any appropriative rights associated with uses of water from such wells have priority dates many years after November 25, 1912.

After Ms. Hassan completed her testimony, the AHO hearing officer considered the remaining parts of the subpoena from Mr. Minasian and the objections to, and the motion to quash, this subpoena filed by the Board's Office of Chief Counsel. (See 2022-05-23 Respondent's subpoena; 2022-06-01 Off. Chief Counsel objection and mtn. to quash; Hearing Recording, June 2, 2022, 1:53:18-2:06:25.) The hearing officer denied the motion to the extent it applied to Ms. Hassan's testimony and granted the motion in all other respects. (Hearing Recording, June 2, 2022, 2:02:35-2:06:15.)

2.12.3 Post-Hearing Briefs

The parties filed their closing briefs on June 15 and 16, 2022. (2022-06-15 Respondent's Closing Brief; 2022-06-16 Prosecution Team's closing brief.)

On October 13, 2022, the AHO hearing officer sent an order to the parties. (2022-10-13 AHO order for supp. briefing.) It discussed the rules regarding overlying rights discussed in section 3.1 and most of the reported court decisions cited in that section. It directed the parties to file supplemental briefs addressing five listed issues, which concerned these rules and applications of them to the present proceeding. (*Id.*, p. 2.) (*Id.*, pp. 2-3.)

The parties filed supplemental briefs on November 14, 2022. (2022-11-14 PT supp. brief; 2022-11-14 Respondent's supp. brief.) Neither party asked the AHO for leave to file any additional evidence regarding the five issues listed in the AHO's October 13, 2022 notice. (*Ibid.*)

3.0 DISCUSSION

3.1 Applicable Principles of California Groundwater Rights Law

California courts "typically classify water rights in an underground basin as overlying, appropriative, or prescriptive." (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240.)

"An overlying right, 'analogous to that of the riparian owner in a surface stream, is the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto.'" (*Ibid.*, internal citation omitted.)

In contrast, a groundwater appropriative right "depends upon the actual taking of water." (*Id.*, p. 1241.) "Any water not needed for the reasonable beneficial use of those having prior rights is excess or surplus water and may rightly be appropriated on privately owned land for non-overlying use, such as devotion to public use or exportation beyond the basin or watershed." (*Ibid.*) Any pumping and use of groundwater that is not

authorized by overlying rights normally is made pursuant to groundwater appropriative rights. (See *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 925-926.)

In *City of Barstow v. Mojave Water Agency*, the court stated:

Proper overlying use . . . is paramount and the rights of an appropriator, being limited to the amount of the surplus, must yield to that of the overlying owner in the event of a shortage, unless the appropriator has gained prescriptive rights through the adverse, open and hostile taking of nonsurplus waters. As between overlying owners, the rights, like those of riparians, are correlative; i.e., each may use only his reasonable share when water is insufficient to meet the needs of all. As between appropriators, however, the one first in time is the first in right, and a prior appropriator is entitled to all the water he needs, up to the amount he has taken in the past, before a subsequent appropriator may take any.

(*City of Barstow v. Mojave Water Agency*, *supra*, 23 Cal.4th, at p. 1241 (buckets and citations omitted).)

We are not aware of any reported court or State Water Board decision that directly addresses the issue of whether the holder of an overlying right to water in a groundwater basin may exercise the right by pumping water from the basin at a location off the overlying right holder's parcel and then conveying the pumped water to the parcel for beneficial use there. We conclude that the holder of such an overlying right may exercise the right in this manner. This conclusion is consistent with the rule that the holder of a riparian right to divert and use water from a surface water stream may divert water from the stream at a point of diversion that is not on the right holder's parcel, and then convey the diverted water to the parcel for beneficial use there, provided no unreasonable loss of water is caused by these actions. (See *Holmes v. Nay* (1921) 186 Cal. 231, 240; *Turner v. James Canal Co.* (1909) 155 Cal. 82, 92.)

There are, however, two important limitations on this conclusion.

First, when the natural flow of the stream is not sufficient to reach a riparian parcel, the parcel owner's riparian rights do not authorize the diversion of water from the stream at an upstream point for conveyance to the parcel. (*Drake v. Tucker* (1919) 43 Cal.App. 53, 58.) By analogy, the owner of a parcel with an overlying right to a groundwater basin may not exercise the right by pumping water through a well located somewhere

else and conveying the pumped water to the parcel, if water from the basin could not be pumped on the parcel where the water is used. This conclusion is consistent with the court's statement in *Hudson v. Dailey* (1909) 156 Cal. 617, 628 that rights to pump and use percolating groundwater extend to all "who by their natural situation have access to" the source. By implication, such rights do not extend to those who do not have access to the source. (See *Burr v. Maclay Rancho Water Co.* (1908) 154 Cal. 428, 434-436 (in a dispute between two users of water from a "common strata of percolating water," one who pumps water from the strata for use on "distant lands not situated over the same water-bearing strata" is exercising an appropriative right, not an overlying right, following *Katz v. Walkinshaw* (1903) 141 Cal. 116, 135).)

Second, an owner of a well on a parcel that pumps water through that well that then is conveyed to other parcels for beneficial uses may not exercise the overlying rights of the other parcels simply through such pumping and conveyance. Rather, to exercise the overlying rights of the owners of the parcels where the water is used, the pumper and the parcel owners must enter into agreements that authorize the pumper to pump water under such rights for conveyance to those parcels for those uses. Absent such agreements, the pumper is exercising groundwater appropriative rights. (See *City of San Bernardino v. City of Riverside* (1921) 186 Cal. 7, 25-26, 31; *Eden Township Water Dist. v. City of Hayward* (1933) 218 Cal. 634, 640.)

3.2 Shasta Valley Groundwater Basin

The California Department of Water Resources (DWR) has designated the Shasta Valley Groundwater Basin as Groundwater Basin Number 1-4. (Exh. AHO-1, p. 1.)¹¹ In its 2004 edition of Bulletin 118, DWR described this basin as containing 56,640 acres (82 square miles), "located along the west side of Shasta Valley." (*Ibid.*)

¹¹ The AHO downloaded exhibit AHO-1 from DWR's website, https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/1_004_ShastaValley.pdf. This exhibit is in a folder labeled "AHO Exhibits," which is within the Hearing Documents folder in the administrative record for this proceeding. We take official notice of this document pursuant to California Code of Regulations, title 23, section 648.2.

During the AHO hearing, Respondent submitted a copy of a January 4, 2019 technical memorandum prepared by various technical experts at Larry Walker Associates. (Exh. Respondent-11, pp. 1-10.) This memorandum, which we refer to as the “LWA memorandum,” discusses DWR’s November 29, 2018 denial of the Siskiyou County Flood Control and Water Conservation District’s request to modify the boundaries of the Shasta Valley Groundwater Basin. (*Id.*, p. 1.) The LWA memorandum states that four figures and three other documents are included as attachments. (*Id.*, p. 10.) Respondent did not submit any of these attachments with this exhibit or any other exhibits for this proceeding. The AHO downloaded the four figures and saved them as exhibit AHO-4.¹²

Besides the LWA memorandum text, Respondent also included in exhibit Respondent-11 black-and-white copies of 13 slides regarding a proposed Shasta Valley Groundwater Basin Boundary Modification. (Exh. Respondent-11, pp. 11-24.) Respondent did not identify these slides, but the AHO located them on a Siskiyou County website, downloaded them and saved color copies of them as exhibit AHO-2.¹³ According to this website, this presentation was dated June 12, 2018. The AHO also downloaded, from this same website, slides from a subsequent presentation and labeled them as exhibit AHO-3. The website indicates that this presentation was dated October 11, 2018.¹⁴

The attached Figure 2 is a copy of slide 1 from the October 11, 2018 presentation, with modifications made by the AHO to add a legend and depictions of Respondent’s parcels

¹² The AHO downloaded these figures from part J of the webpage accessible at <https://sgma.water.ca.gov/basinmod/modrequest/preview/185>. Although the first two figures in exhibit AHO-4 are not labeled, they are figures 1 and 1a that are cited in exhibit Respondent-11, page 10. We take official notice of these four figures pursuant to California Code of Regulations, title 23, section 648.2.

¹³ This website is <https://www.co.siskiyou.ca.us/naturalresources/page/shasta-valley-basin-boundary-modification>. We take official notice of these color versions of these slides and their presentation date pursuant to California Code of Regulations, title 23, section 648.2.

¹⁴ We take official notice of the slides in exhibit AHO-3 and their presentation date pursuant to California Code of Regulations, title 23, section 648.2.

and the approximate place of use of the water that was trucked from his wells. This figure shows in solid blue location of the Shasta Valley Groundwater Basin before the 2019 amendments. The blue outline in this figure shows the proposed basin boundary amendment the Siskiyou County Flood Control and Water Conservation District apparently presented to DWR in 2018, which DWR did not adopt.

The green outline in attached Figure 2 shows the basin boundary amendment the district apparently proposed to DWR in 2019. This green outline is depicted as the current basin boundary in DWR's report, California's Groundwater Update 2020 Highlights, Bulletin 118. (See exh. AHO-4, pdf p. 391; exh. AHO-5, pdf pp. 2, 4.) The DWR bulletin states that this basin now has an area of 218,210 acres (341 square miles). (Exh. AHO-6.)¹⁵

The attached Figures 3 through 6 are copies of slides 7 through 10 of the June 12, 2018 presentation. The AHO added legends to these figures and depictions showing Respondent's parcels, the approximate place of use of the water that was trucked from his wells, and the current boundary of the Shasta Valley Groundwater Basin.¹⁶ Figure 3 shows the irrigated lands in the Shasta Valley Groundwater Basin area, with different colors for the different types of water sources. Figure 4 shows the surface geology in this area. Figure 4 shows that the surface geology at Respondent's parcels is Qrv, which stands for "Recent (Holocene) volcanic flow rocks, minor pyroclastic deposits." The surface geologies in the approximate place of use of the trucked water are Qrv and Q, which stands for "Alluvium lake, playa, and terrace deposits; unconsolidated and semi-consolidated." Figures 5 and 6 show DWR's counts per section of production and domestic wells in this area.

¹⁵ The AHO downloaded exhibits AHO-4, AHO-5 and AHO-6 from DWR's website https://data.cnra.ca.gov/dataset/calgw_update2020. We take official notice of these documents pursuant to California Code of Regulations, title 23, section 648.2.

¹⁶ The slides used to prepare Figures 3 and 4 had depictions of the location of the former basin. (See exh. AHO-2, slides 7-8.) It is shown with yellow diagonal hatching in Figure 3 and in solid light blue in Figure 4. The slides used to prepare Figures 4, 5 and 6 had depictions of the unadopted proposed basin boundary. (See *id.*, slides 8-10.) It is shown in red in these figures.

3.3 Respondent's Overlying Rights Arguments

The Prosecution Team agrees with Respondent that Respondent's pumping of groundwater for beneficial uses on his parcels is authorized by overlying rights. (See 2022-06-16 Prosecution Team's closing brief, p. 6:14-16.)

The parties dispute whether Respondent's pumping of his wells and providing that water to others for trucking to Shasta Vista Subdivision parcels for uses there are authorized by overlying rights. Respondent's closing brief and supplemental brief repeatedly argue that such pumping and use is authorized by overlying rights. (2022-06-15 Respondent's Closing Brief, pp. 5:27-6:7, 6:24-27, 7:15-19; 8:11-16, 9:22, 10:12-14, 10:17-19; Respondent's supp. brief, pp. 4:26-7:7.) In contrast, the Prosecution Team's briefs argue that such pumping and use is pursuant to groundwater appropriative rights. (2022-06-16 Prosecution Team's closing brief, p. 3:17-25; Prosecution Team's supp. brief, pp. 1:26-4:20.)

To support the argument that Respondent's pumping of water for trucking to and use on Shasta Vista Subdivision parcels is authorized by overlying rights, Respondent's closing brief asserts that Respondent testified that these parcels are in "an area overlying the same groundwater aquifers as Griset lands as concluded in the Basin Report, submitted to and accepted by the Department of Water Resources as the basis for modifying the Shasta Valley Groundwater Basin boundary." (2022-06-15 Respondent's Closing Brief, p. 8:12-16.) Respondent's supplemental brief repeats this argument. (2022-11-14 Respondent's supp. brief, p. 5:1-11.)

As discussed in section 3.2, Respondent submitted exhibit Respondent-11 during the AHO hearing. The LWA memorandum that is the first 10 pages of this exhibit states that it was prepared by technical consultants working for the Siskiyou County Flood Control and Water Conservation District (District). (Exh. Respondent-11, p. 1.) Although not cited in Respondent's briefs, this memorandum presumably is the "Basin Report" discussed in these briefs. The LWA memorandum states that the district is the Groundwater Sustainability Agency for the Shasta Valley Groundwater Basin and had applied for a basin boundary modification. (*Ibid.*) ("Groundwater sustainability agency")

is defined in Water Code section 10721, subdivision (j), which is part of the Sustainable Groundwater Management Act, Water Code sections 10720-10737.8.)

The LWA memorandum states that “it is probable that the alluvial and volcanic aquifers are connected.” (*Id.*, p. 6.) The LWA memorandum concludes that “the vast majority of land use and groundwater pumping that exists outside of the current Bulletin 118 (2003) alluvial basin boundary has direct and indirect impacts on groundwater in the alluvium and the baseflow of streams,” and that, because of these impacts, the basin boundaries should be expanded to include the areas of these volcanic formations. (*Id.*, p. 8.)

These discussions indicate that the LWA memorandum was focused on analyzing the impacts of existing groundwater pumping and supporting the proposed expansion of the Shasta Valley Groundwater Basin for groundwater management purposes.

The LWA memorandum states that the “groundwater-irrigation areas of the “Pluto’s Cave Basalt” are depicted within the larger red circle in the attached Figure 3.¹⁷ The LWA memorandum states that, in this formation, “[t]he interface between individual lava flows, fractures and lava tubes provides preferential flow paths capable of transmitting large quantities of water [citation],” and that this unit “provides substantial quantities of water to wells with yields averaging 1,300 gal/min . . . and as high as 4,000 gal/minute . . . [citation].” (Exh. Respondent-11, p. 4.)

The attached Figure 3 indicates that wells were developed for, and now support, irrigation in areas over parts of the Pluto’s Cave Basalt (shown in dark blue within the larger red circle in Figure 3), including irrigation on Respondent’s parcels. As shown in the attached Figure 3, these irrigated areas do not include the approximate area where water trucked from Respondent’s wells were used. The attached Figure 5 shows that there are no production wells in this approximate area, and the attached Figure 6 shows that there are relatively few domestic wells in this approximate area.

¹⁷ See exh. Respondent-11, p. 7, which refers to figure 3 to that memorandum, and exh. AHO-4, p. 4, which is that figure 3. It shows the same larger red circle as the larger red circle shown in the attached Figure 3.

The LWA memorandum does not discuss or demonstrate that productive wells could be drilled on the parcels on which water trucked from Respondent's wells was used.¹⁸ Rather, this memorandum and the attached figures are consistent with Respondent's testimony that the lots in the Shasta Vista Subdivision do not have wells because that area "is the hardest place in the world to drill a well, it's drilling through solid rock, it takes twice as long, not guaranteed you will get water, might be drilling 500 feet, it's extremely expensive." (Hearing Recording, May 19, 2022, 1:55:57-1:57:18; see section 2.12.1.) While wells developed on some of these parcels might tap the parts of volcanic formations that transmit large quantities of water, wells developed on most parcels in this area probably would not produce any significant amounts of water.

Based on the LWA memorandum and Mr. Griset's testimony, we find that it is very unlikely that the owners of all the parcels where water trucked from Respondent's wells was used could develop productive wells on their parcels. The fact that many of these parcels are within the boundaries of the current DWR-designated Shasta Valley Groundwater Basin alone is not sufficient to change this finding.

As discussed in section 3.1, the owner of a parcel with a claimed overlying right to a groundwater basin may not exercise the claimed right by pumping water through a well located somewhere else and conveying the pumped water to the parcel, if water from

¹⁸ The AHO hearing officer accepted exhibit Respondent-11 into evidence, but subject to the limitations in Government Code section 11513, subdivision (d), on the use of hearsay evidence. (Hearing Recording, May 19, 2022, 2:50:30-2:52:55.) That statute provides that hearsay evidence "may be used for the purpose of supplementing or explaining other evidence but over objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

During the AHO hearing, the Prosecution Team objected to this exhibit. (*Id.*, 2:43:55-2:45:05.) Pages 1-10 of this exhibit (the LWA memorandum) are hearsay, because they contain statements that were made by people not testifying, and Respondent has offered these pages to prove the truths of those statements. (See Evid. Code, § 1200.) Respondent has not offered these pages of this exhibit to supplement or explain any other evidence, and Respondent has not argued that these pages would be admissible over objection in civil actions. Thus, even if the LWA memorandum did support Respondent's arguments about overlying rights, it would not be admissible for that purpose.

the basin could not be pumped on the parcel where the water is used. Following this rule, we conclude that, for many, and probably most, of the parcels that received water from Respondent's wells, his sales of that water to others for trucking to those parcels, and the use of that water on those parcels, were not authorized by overlying rights.¹⁹

We also reach our conclusion on this issue for the independent reason that Respondent did not enter into any agreements with the owners of the parcels where the pumped water was used that authorized him to pump water under their rights for conveyance to their parcels under their overlying rights. (See section 3.1.) Respondent does not dispute the fact that there were no such agreements. (See 2022-11-14 Respondent's Supp. Brief, p. 7:24.)²⁰

¹⁹ Respondent's supplemental brief to the AHO argues that the Division's September 10, 2021 "Notice of the SWRCB" (presumably referring to Specific Order WR 2021-0082-DWR (Stephen Griset)) did not require proof that groundwater could have been pumped by wells developed on the parcels where water conveyed from Respondent's wells was used. (2022-11-14 Respondent's Supp. Brief, p. 5:12-16.)

This argument is incorrect. Respondent's argument that overlying rights authorized such pumping, conveyance and use was an affirmative defense to the Prosecution Team's argument in its ACL complaint that Respondent had to file the curtailment certification forms because this pumping, conveyance and use was pursuant to groundwater appropriative rights. To prevail on this defense, Respondent had to demonstrate that the owners of these parcels could have developed and pumped such wells to produce the same amounts of water they obtained from Respondent. (See section 3.1.) Respondent did not submit sufficient evidence to demonstrate this. Rather, the weight of the evidence in the administrative record indicates that the owners of all or most these parcels could not have developed such wells.

²⁰ Respondent's supplemental brief argues that nothing in the Division's September 10, 2021 "Notice of the SWRCB" required Respondent to prove that there were agreements between Respondent and the owners of the parcels where water conveyed from Respondent's wells was used that authorized such pumping, conveyance and use under the parcel owners' overlying rights. (2022-11-14 Respondent's Supp. Brief, p. 7:14-15.)

This argument is incorrect. As discussed in the preceding footnote, Respondent's argument that overlying rights authorized such pumping, conveyance and use was an affirmative defense. To prevail on this defense, Respondent had to demonstrate that Respondent and the owners of these parcels entered into such agreements. (See section 3.1.) There is no evidence that Respondent entered into any such agreements.

We therefore conclude that Respondent's pumping of his wells and his sales of the pumped water to people for conveyance to parcels in the Shasta Vista Subdivision for uses on those parcels were not authorized by overlying rights for two independent reasons. First, the weight of the evidence indicates that the owners of some, and probably most, of these parcels could not have developed productive wells on their parcels that would have produced water from the same water-bearing strata that provide water to Respondent's wells, and that these parcels therefore did not have overlying rights authorizing such pumping, conveyance and uses. Second, the owners of these parcels did not enter into agreements with Respondent under which Respondent could have exercised their overlying rights (if they had any) to provide water to them.

Because this pumping and these sales, conveyances and uses were not authorized by overlying rights, they were made pursuant to groundwater appropriative rights. (See section 3.1)

3.4 AHO Hearing Issues

With this background, we now discuss the five issues in the AHO's hearing notice (see section 2.10).

Issue 1: Did the Deputy Director for the State Water Board's Division of Water Rights issue a curtailment order to Respondent under California Code of Regulations, title 23, division 3, chapter 2, article 23.5 (sections 875-875.9)?

Discussion: Yes. The Deputy Director issued Specific Order WR 2021-0082-DWR (Stephen Griset) to Respondent. (See section 2.6.) This order directed Respondent to curtail diversions of water pursuant to Water Right IDs SG005923 and SG005924 on September 11, 2021, and to file curtailment certification forms in accordance with California Code of Regulations, title 23, section 875.6. (Exh. PT-3, pdf pp. 9, 11.) Respondent concedes that the Deputy Director issued this order. (2022-06-15 Respondent's Closing Brief, p. 1:22.)

Issue 2: Did the Respondent submit, under penalty of perjury, within seven calendar days of the date of the curtailment order, a certification, as described in California Code of Regulations, title 23, section 875.6?

Discussion: No. Respondent never submitted curtailment certification forms for Water Right IDs SG005923 and SG005924. (See sections 2.6 and 2.8.) Respondent concedes he did not submit these forms. (2022-06-15 Respondent's Closing Brief, p. 2:15-16.)

Issue 3: Did Respondent violate a State Water Board regulation or order that requires the Respondent to file a certification, as stated under California Code of Regulations, title 23, section 875.6?

Discussion: Yes. Respondent violated Specific Order WR 2021-0082-DWR (Stephen Griset) by not filing the required curtailment certification forms for Water Right IDs SG005923 and SG005924.

Respondent argues that this order did not "clearly and explicitly announce that a holder of an overlying ground water right who was operating its well for supplying overlying lands had a duty to report anything or make any entry on an internet website." (2022-06-15 Respondent's Closing Brief, p. 1:25-28.)

This argument is incorrect. Specific Order WR 2021-0082-DWR (Stephen Griset) states, without any exceptions, that Respondent

is required, by September 20, 2021, to submit under penalty of perjury an online Scott-Shasta Water Right Curtailment Certification from (Curtailment Certification) in accordance with section 875.6 subdivision (a) for each water right listed in Attachment A.

(Exh. PT.3, p. 9, ¶ 4.) Attachment A to that order lists the APNs of Respondent's two parcels and the Water Right IDs the Division assigned to these parcels. (*Id.*, p. 11.) This order therefore clearly and explicitly directed Respondent to file curtailment certification forms for these two parcels and Water Right IDs.

While the Division's September 10, 2021 letter transmitting this order stated that "This curtailment order does not extend to overlying groundwater users in the Shasta River watershed," the letter then stated later in the same paragraph that "**Selling groundwater to be hauled and used at a different location is an appropriative use and must cease immediately (subject to exceptions described below), if the use started after November 1912.**" (Exh. PT-3, pdf p. 4, bolding in original.) This bolded text clearly notified Respondent that the Division was requiring Respondent to file curtailment certification forms for any well pumping he made for sales of groundwater to be conveyed to and used on other parcels. This text did not contain any exceptions to this filing requirement for wells owners who contended that their sales of water pumped by their wells to owners of other parcels for uses on those parcels were authorized by overlying rights,

Also, as discussed in this order, these sales of water pumped by Respondent for uses on these other parcels and these uses were not authorized by overlying rights. (See section 3.3.)

Issue 4: If Respondent violated a State Water Board regulation or order, should the AHO hearing officer impose administrative civil liability on Respondent?

Discussion: Water Code section 1846, subdivisions (a)(2) and (c), authorize the Board to impose administrative civil liability on any person or entity that violates an order adopted by the Board. We have concluded that Respondent violated Specific Order WR 2021-0082-DWR (Stephen Griset), which the Division adopted under authority delegated to it by the Board. We conclude that we should impose administrative civil liability on Respondent for these violations.

Issue 5: If the State Water Board decides to impose administrative civil liability on Respondent, what is the appropriate amount of such administrative civil liability?

Discussion: Water Code section 1846 provides that the administrative civil liability the State Water Board may impose may not exceed \$500 per day for each day in which the violation occurs.

During the AHO hearing, Mr. Cervantes testified that, for the 151 days between the September 20, 2021 deadline for filing these forms and February 18, 2022, at the rate of \$500 for each day of violation, for two water-right IDs, the maximum ACL the Board could impose was \$151,000. (151 days x \$500/day x 2 water-right IDs = \$151,000.) (See section 2.12.1.) While Respondent argues that the Board should not impose any administrative civil liability, Respondent does not challenge Division's calculation of this maximum ACL amount. (2022-06-15 Respondent's Closing Brief, pp. 3:2-4:2.)

Water Code section 1055.3 and section 1848, subdivision (d), each provide that, in determining the appropriate administrative civil liability amount, the board "shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator." The following paragraphs discuss these factors.

Extent of Harm Caused by the Violation

During the AHO hearing, Mr. Cervantes testified that the harm caused by Respondent's failure to file the curtailment certification forms "can be categorized as generally as harm to the orderly and efficient administration of the state's water resources" and that "[i]nformation contained in the curtailment certification form is critical for administering water rights and managing water supply." (Exh. PT-1, p. 5, ¶ 16.) He testified that, without this information, the State Water Board "is limited in its ability to perform numerous essential functions," include drought management, determining availability of water, issuing accurate water-right permits developing instream flow requirements and protecting public trust resources, building and calibrating water resource planning models, and responding to and evaluating complaints of alleged illegal diversions. (*Ibid.*)

Nature and Persistence of Violation

During the AHO hearing, Mr. Cervantes testified about the Division's outreach efforts to the regulated community before the Division issued the Administrative Civil Liability complaints, and the Division's subsequent efforts to notify Respondent about the need

to file the curtailment certification forms and the Division's notice of violation, which gave Respondent another opportunity to file the form without incurring any administrative civil liability. (*Id.*, p. 5, ¶ 17.)

During the AHO hearing, the Prosecution Team submitted exhibit PT-8, which is the blank curtailment certification form for Water Right ID SG005923. (Hearing Recording, May 19, 2022, 1:01:20-1:05:10.) The Prosecution Team also submitted exhibit PT-9, which the Prosecution Team's attorney explained showed that the Division made a similar curtailment certification available to Respondent for Water Right ID SG005924, but Respondent never logged in to open this form. (*Ibid.*) Mr. Cervantes confirmed these facts, the Prosecution Team offered these two exhibits into evidence, and Respondent did not object. (*Id.*, 1:42:43-1:44:26.)

In the curtailment certification form section titled "Certification of Compliance with Curtailment Order," the form has four possible responses. (Exh. PT-8, pp. 1-2.) The third possible response states:

I certify that continued use is under other water rights not subject to curtailment, and I have specifically identified those other rights, including the basis of right and quantity of diversion in the box below.

(*Id.*, p. 2.) The following text is immediately before the "box below":

If you checked the third option "Continued use is under other water rights...", please specify the water right that is being used and quantity diverted:

(*Ibid.*, bolding in original.)

To preserve his argument about overlying rights while also complying with the requirement in Specific Order WR 2021-0082-DWR (Stephen Griset) to file curtailment certification forms, Respondent could have provided the requested information about his selling water from his wells to the people who conveyed the water to their Shasta Vista Subdivision parcels for uses on those parcels, while also checking the box by this third possible response and adding text in the "box below" (or in an attachment to the form) describing his argument that overlying rights authorized those sales, conveyances and uses. Those simple actions would have prevented the need for the ACL complaint the

Division issued to Respondent and the need for this proceeding while also preserving Respondent's arguments about overlying rights.

Respondent also could have filed a petition for reconsideration of Specific Order WR 2021-0082-DWR (Stephen Griset) pursuant to Water Code section 1122 and made his legal arguments about alleged overlying rights in that petition. Then there would have been an orderly process for the Board to resolve the issues associated with those arguments.

Respondent did not take any of these actions. He never filed a curtailment certification form for Water Right ID SG005923 or Water Right ID SG005924, and he never filed a petition for reconsideration of Specific Order WR 2021-0082-DWR (Stephen Griset).²¹

As discussed above, the Division's September 10, 2021 transmittal letter for Specific Order WR 2021-0082-DWR (Stephen Griset) stated "**Selling groundwater to be hauled and used at a different location is an appropriative use and must cease immediately (subject to exceptions described below), if the use started after November 1912.**" (Exh. PT-3, p. 4, bolding in original). This bolded text clearly informed Respondent that the Division was taking the position that Respondent's sales of water for conveyance to and use on Shasta Vista Subdivision parcels was an appropriative use, and therefore was not authorized by overlying rights.

Thus, even if Respondent asserted that his sales of water from his wells to others for uses on their parcels was authorized by overlying rights, he still was required to fill out and file the curtailment certification forms with the required information. He could have stated his overlying rights argument when he filled out these forms. Given this bolded

²¹ Although Respondent's attorney filed a petition for reconsideration of the version of Order WR 2021-0082-DWR that the Division apparently sent to George Griset (see section 2.7), that petition did not challenge the statement in the Division's transmittal letter for Specific Order WR 2021-0082-DWR (Stephen Griset) (which presumably also was in the Division's transmittal letter for the specific order to George Griset) that pumping of groundwater for sales to others for uses on their parcels was an appropriative use. (Exh. Respondent-3; see exh. Respondent-2, p. 4; exh. PT-3, p. 4.)

text about selling groundwater to be hauled and used at a different location, Respondent was not authorized to simply ignore the filing requirements for these forms. Also, as discussed in section 3.3, Respondent's argument about overlying rights was incorrect.

Instead of making these filings, Respondent's attorney incorrectly argued that the State Water Board did not have jurisdiction over Respondent's wells, that the curtailment certification forms did not allow Respondent to make his arguments about overlying rights, and that, by taking these actions, the State Water Board was risking an adverse attorney fee award. (See section 2.9.)

The persistence of Respondent's violation continued in Respondent's closing brief. It argues:

Here, no information was requested to be entered on the internet site if overlying landowners pumped wells and sold water or used the water or transported it to a different parcel. The internet site had no place for that information to be entered.

(2022-06-15 Respondent's Closing Brief, p. 8:23-26.)

As discussed above, these arguments are incorrect. The Division's September 10, 2021 transmittal letter required Respondent to fill out and file the curtailment certification forms with information about his sales of water from his wells to the people who conveyed the water to their Shasta Vista Subdivision parcels for uses on those parcels, and the forms had an option that allowed Respondent to provide this information while also making his overlying rights argument.

In summary, Respondent did not take any actions to comply with the filing requirements of Specific Order WR 2021-0082-DWR (Stephen Griset), and Respondent's attorney persisted, before, during and after the AHO hearing, in making incorrect arguments about the Division's order, the Division's letter transmitting this order to Respondent, and his compliance options. Respondent's attorney also persisted in incorrectly asserting that overlying rights authorized Respondent's sales of water from his wells to others for conveyance to and uses on their parcels in the Shasta Vista Subdivision. For

these reasons, we conclude that the nature and persistence of Respondent's violations were very serious.

Length of Time Over Which the Violation Occurred

As discussed above, Mr. Cervantes testified that Respondent's violation of the curtailment certification form filing requirement lasted for 151 days between the September 20, 2021 deadline for filing these forms and February 18, 2022. It has continued since then to the date of this order.

Corrective Action, If Any, Taken By the Violator

Respondent still has not filed the required curtailment certification forms for Water Right IDs SG005923 and SG005924.

Conclusions Regarding Amount of Administrative Civil Liability

During the AHO hearing, Mr. Cervantes testified that the Prosecution Team's proposed ACL amount of \$4,000 "is the minimum amount suitable to deter future noncompliance, while accounting for the resources spent by the State Water Board staff compelling Respondent to file the requisite certification form." (*Id.*, p. 6, ¶ 20.)

We conclude that \$16,000 is the appropriate administrative civil liability amount for Respondent's failure to file the curtailment certification forms. This amount, which is substantially higher than the Prosecution Team's recommended amount, is appropriate because all the statutory factors discussed above support substantial administrative civil liability. This amount is particularly appropriate because of Respondent's abject refusal to fill out and file the curtailment certification forms, even though these forms clearly gave Respondent the option to complete them in a manner that would have provided the required information while preserving his legal arguments.

Of the \$16,000 administrative civil liability amount, \$12,000 will be due immediately and the remaining \$4,000 will be suspended pending Respondent's preparation and filing of the curtailment certification forms for Water Right IDs SG005923 and SG005924 that were required by Specific Order WR 2021-0082-DWR (Stephen Griset). If Respondent

does not make a timely payment of this \$12,000 or does not file those forms as required by this order, then that \$4,000 will become due.

Respondent's curtailment certification forms must be consistent with all provisions of this order. This order specifies a dispute-resolution process that the Prosecution Team and Respondent must follow if they cannot resolve any disputes about these forms.

The \$12,000 amount is three times the \$4,000 amount recommended by the Prosecution Team. This multiplier is consistent with the multiplier we used in Order WR 2021-0001, where we concluded that the respondent in that proceeding had seriously disregarded his filing requirements. In that order, we did not impose any additional contingent administrative civil liability because the respondent in that proceeding had filed the required forms before the AHO hearing (although substantially after the filing deadline). Additional contingent liability is appropriate in this proceeding because Respondent still has not filed the required forms.

4.0 CONCLUSION

We impose administrative civil liability in the total amount of \$16,000 for Respondent's failures to file curtailment certification forms for Water Right IDs SG005923 and SG005924. On this amount, \$12,000 is due immediately. The remaining \$4,000 is suspended pending Respondent's filing of the curtailment certification forms. This amount will become due if Respondent does not pay the \$12,000 by the specified deadline or does not file these forms by the deadlines specified in this order.

ORDER

IT IS HEREBY ORDERED THAT:

1. Pursuant to Water Code sections 1055 and 1846, the Board orders Respondent Stephen Griset to pay administrative civil liability in the amount of \$16,000, which is due in two installments as follows:
 - a. The first installment of \$12,000 is due immediately. Within 30 days after the date on which the Board adopted this order, Respondent shall remit a check or money order payable to the State Water Resources Control Board in the amount of \$12,000, and shall transmit it to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P. O. Box 2000
Sacramento, CA 95812-2000

If Respondent does not make this payment by the deadline specified in this subparagraph a., then Assistant Deputy Director for the State Water Board's Division of Water Rights Permitting and Enforcement Branch (Assistant Deputy Director) shall seek recovery of the administrative civil liability imposed by this subparagraph a., pursuant to Water Code section 1055.4.

- b. The second installment is for \$4,000. If Respondent meets all the requirements of subparagraph 1.a. and paragraph 2. of this order by the specified deadlines, then the \$4,000 second installment will be permanently suspended. If Respondent fails to timely pay the first installment described in subparagraph 1.a. or fails to meet any of the requirements of paragraph 2 by the specified deadlines, then the Assistant Deputy Director shall issue a written order directing Respondent to immediately pay the second installment. If all or any portion of the second installment is unpaid 30 days after the date of delivery of the Assistant Deputy Director's written order to Respondent, then the Assistant Deputy Director shall seek recovery of the administrative civil liability of the second installment pursuant to Water Code section 1055.4.

2. Respondent shall file with the Division of Water Rights Enforcement Section (Enforcement Section), within 30 days after the date on which the Board adopted this order, for the Enforcement Section's review, compliance certification forms for Water Right IDs SG005923 and SG005924 for Respondent's well pumping during the period covered by Specific Order WR 2021-0082-DWR (Stephen Griset). These forms, as completed by Respondent, shall be consistent with all provisions of this order and Specific Order WR 2021-0082-DWR (Stephen Griset).

Within 30 days after the Enforcement Section's receipt of these compliance certification forms, the Enforcement Section shall advise Respondent whether or not

the Enforcement Section believes these forms are consistent with all provisions of this order and Specific Order WR 2021-0082-DWR (Stephen Griset).

If the Enforcement Section advises Respondent that the Enforcement Section believes these forms are consistent with all provisions of these orders, then Respondent shall be deemed to have complied with this paragraph 2.

If the Enforcement Section advises Respondent that the Enforcement Section believes that there are any inconsistencies, then, within 30 days after the date on which the Enforcement Section advises the Respondent of any such inconsistencies, representatives of Respondent and the Enforcement Section shall meet and confer regarding any disputed issues associated with these curtailment certification forms and shall attempt to resolve the disputes and agree to amended curtailment certification forms. If they reach such agreement, then Respondent shall file the amended curtailment certification forms within 10 days.

If the Respondent and the Enforcement Section do not resolve these disputes and agree to amended curtailment certification forms within 30 days after the date on which the Enforcement Section advises Respondent of any such inconsistencies, then the Enforcement Section shall advise the Board's Deputy Director for Water Rights (Deputy Director). The Deputy Director then shall consider the arguments of the Respondent and the Enforcement Section and, within 30 days, issue a written order resolving the relevant issues in a manner that is consistent with this order. Respondent then shall file amended curtailment certification forms that are consistent with the Deputy Director's order within 30 days after Respondent's receipt of that order.

3. Fulfillment by Respondent of his obligations under this Order will constitute full and final satisfaction of Respondent's liability for the violations described in this Order. The State Water Board retains its right to take further enforcement actions for any other or future violations.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on _____, 2023.

AYE:

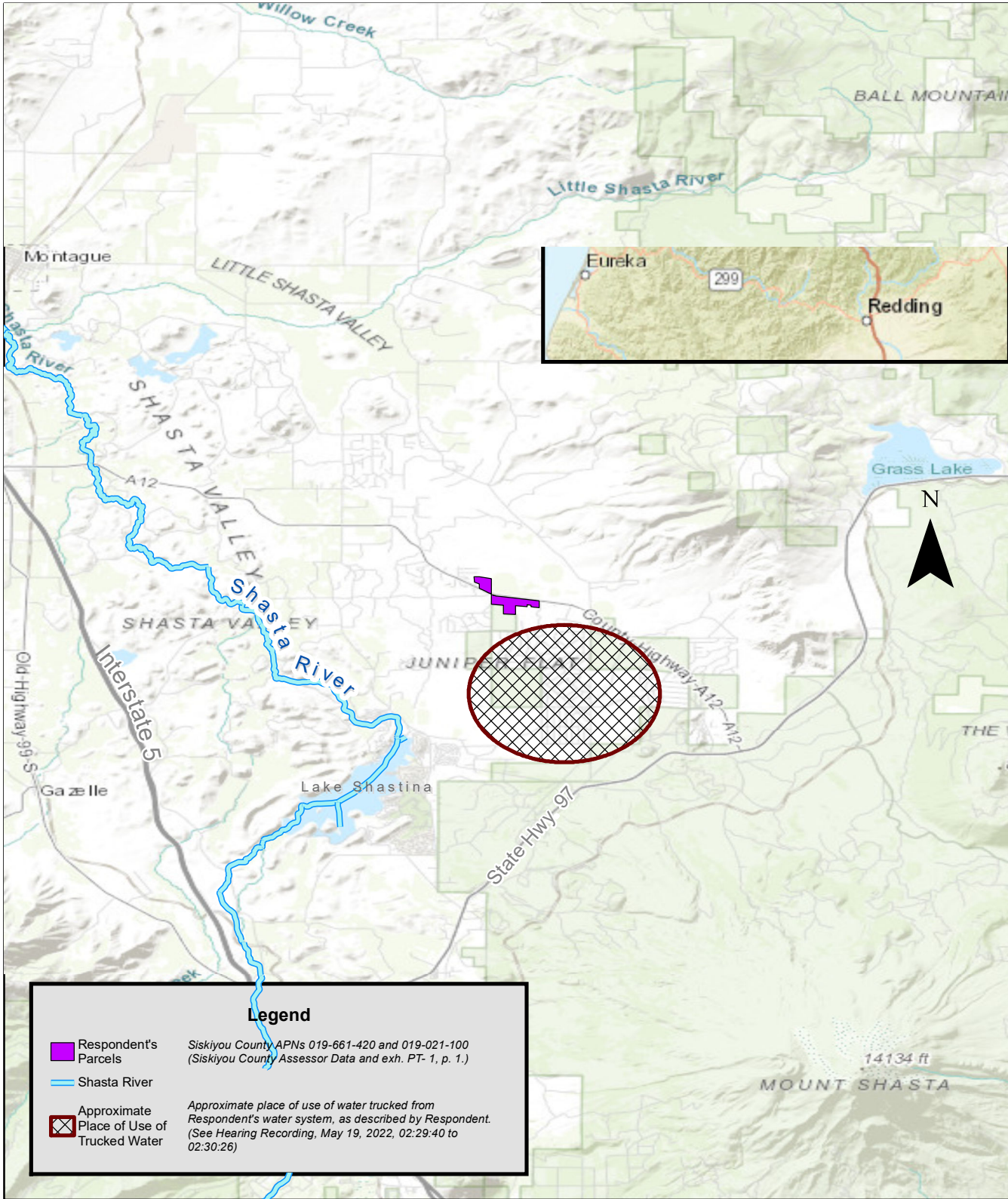
NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend, Clerk to the Board

Figure 1 Area Map with Respondent's Parcels and Approximate Place of Use of Trucked Water

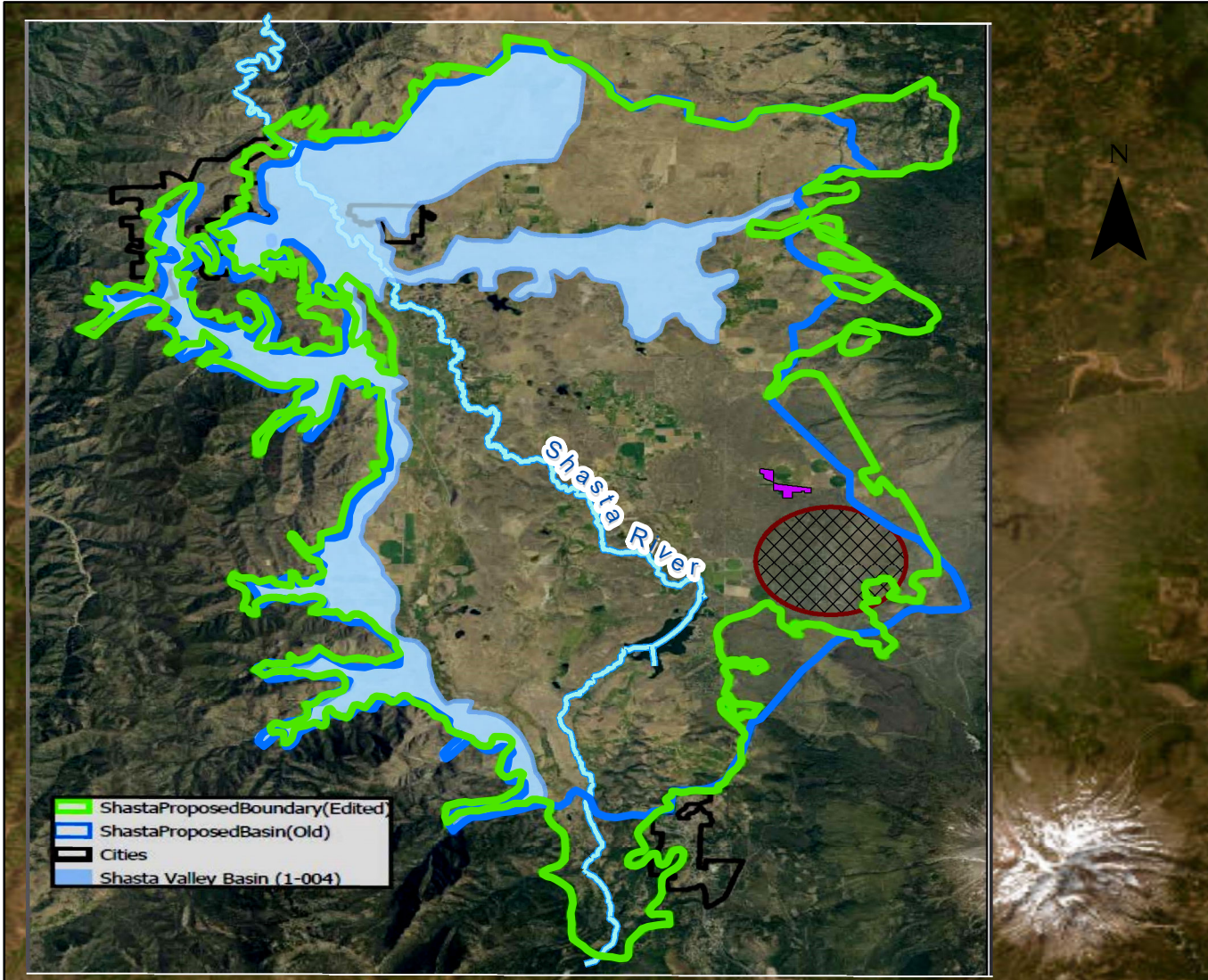
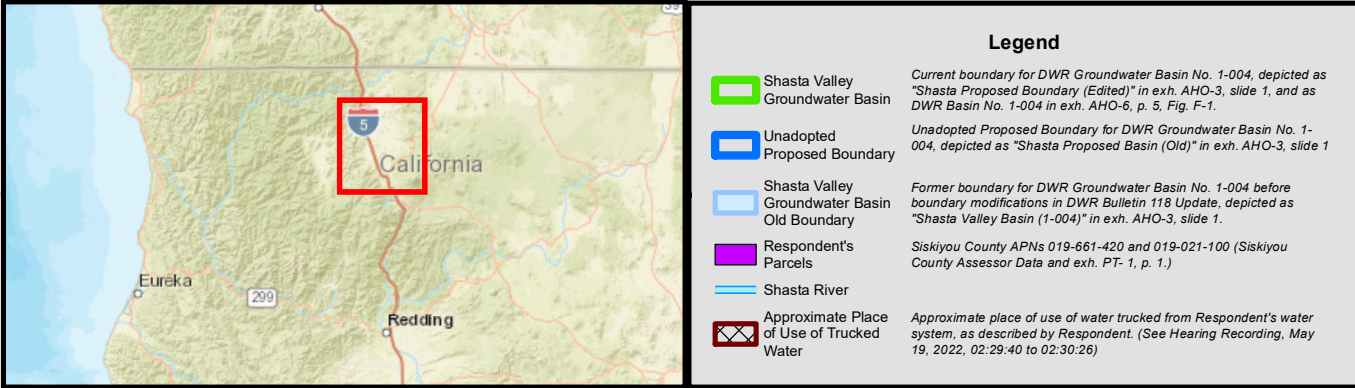


Area Map with Respondent's Parcels and Approximate Place of Use of Trucked Water	
Date: January 12, 2023	Scale: 1: 250,000
Office: Administrative Hearings Office	Author: Kyle Wooldrige



Figure 2 Shasta Valley Groundwater Basin Former Boundary, Unadopted Proposed Boundary, and Current Boundary

Georeferenced Overlay from:
Exh. AHO-3, 2018-10-11 Siskiyou CFCWCD slide presentation, slide 1



Shasta Valley Groundwater Basin Boundaries	
Date: January 12, 2023	Scale: 1: 375,000
Office: Administrative Hearings Office	Author: Kyle Wooldridge

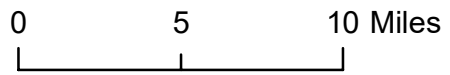
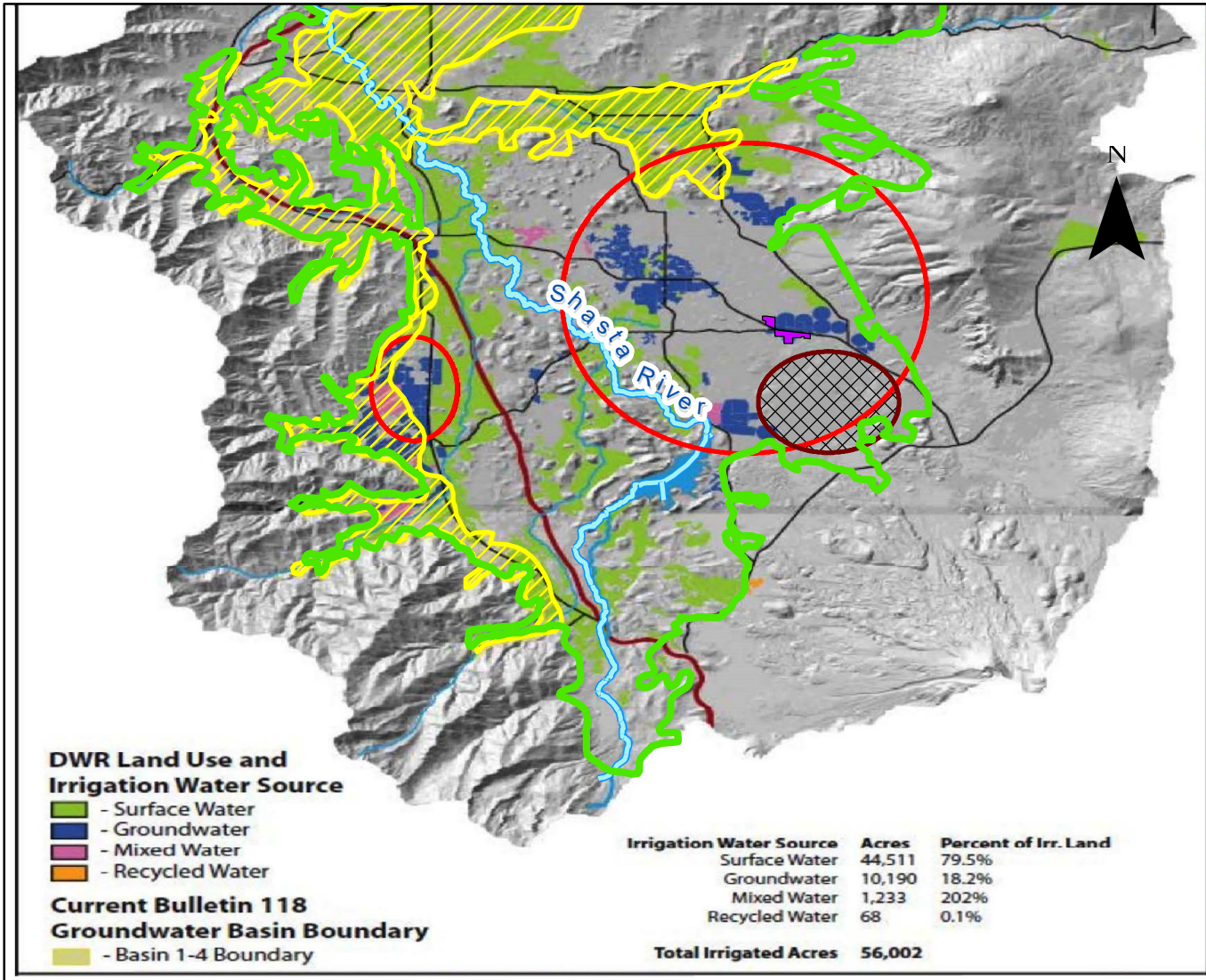
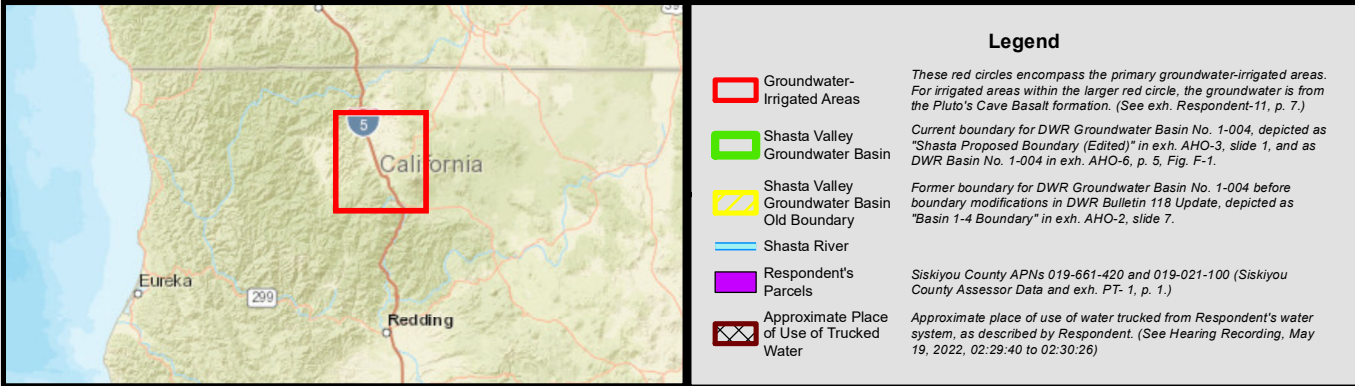


Figure 3 Irrigation Water Sources within Shasta Valley Groundwater Basin, Locations of Respondent's Parcels, and Approximate Place of Use of Trucked Water

Georeferenced Overlay from:
Exh. AHO-2, 2018-06-12 Siskiyou CFCWCD slide presentation, slide 7



Irrigation Water Sources Within Shasta Valley Groundwater Basin	
Date: January 12, 2023	Scale: 1: 400,000
Office: Administrative Hearings Office	Author: Kyle Woodridge

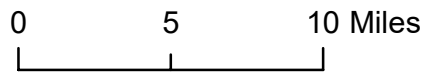
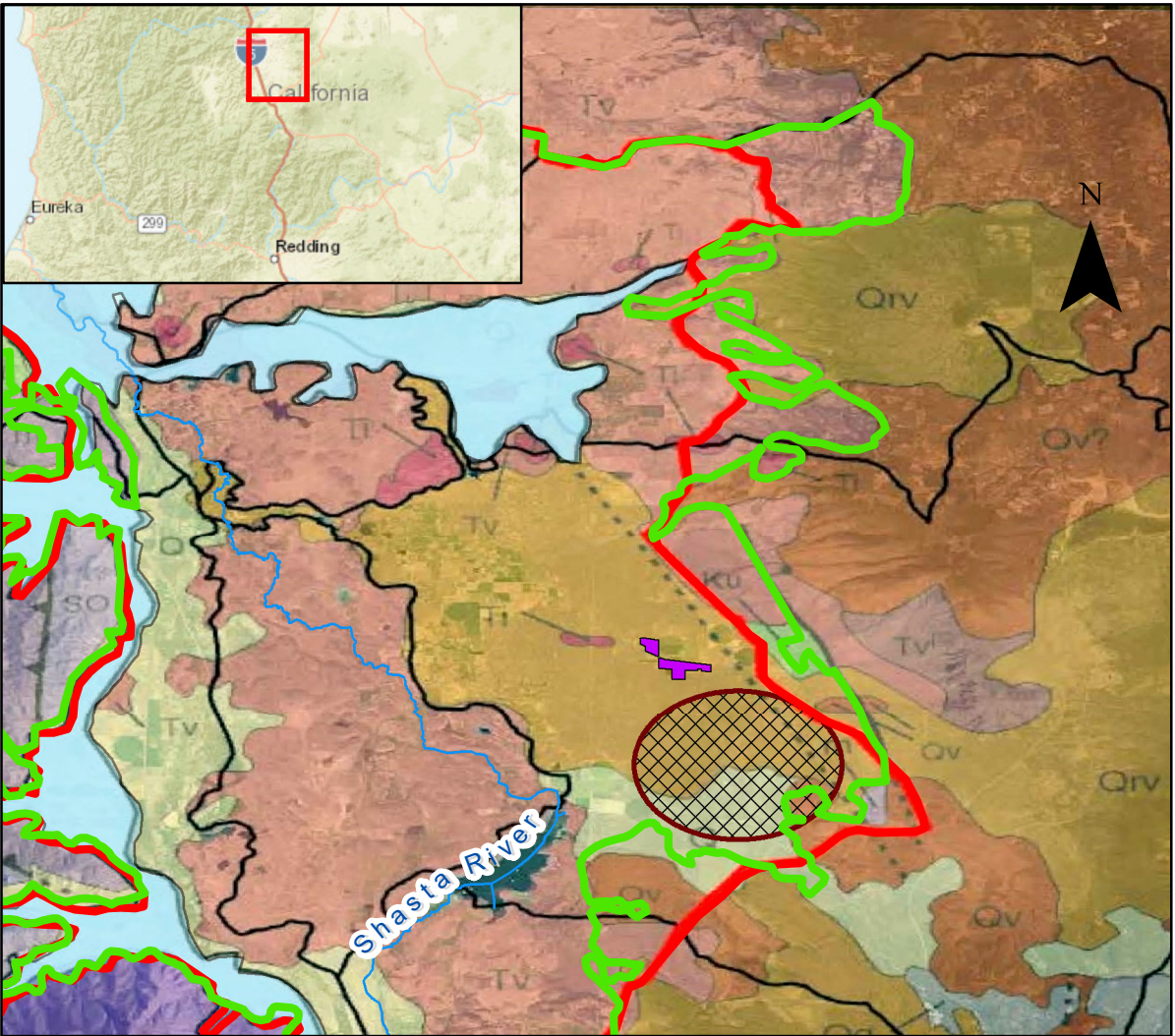


Figure 4 Geologic Features Near Respondent's Parcels and Approximate Place of Use for Trucked Water

Georeferenced Overlay from:
Exh. AHO-2, 2018-06-12 Siskiyou County Power Point Presentation, Slide 8



Legend

- Shasta Valley Groundwater Basin
Current boundary for DWR Groundwater Basin No. 1-004, depicted as "Shasta Proposed Boundary (Edited)" in exh. AHO-3, slide 1, and as DWR Basin No. 1-004 in exh. AHO-6, p. 5, Fig. F-1.
- Unadopted Proposed Boundary
Unadopted Proposed Boundary for DWR Groundwater Basin No. 1-004, depicted as "Shasta Proposed Basin (Old)" in exh. AHO-3, slide 1
- Shasta Valley Groundwater Basin Old Boundary
Former boundary for DWR Groundwater Basin No. 1-004 before boundary modifications in DWR Bulletin 118 Update, depicted as "Basin 1-4 Boundary" in exh. AHO-2, slide 7.
- Respondent's Parcels
Siskiyou County APNs 019-661-420 and 019-021-100 (Siskiyou County Assessor Data and exh. PT- 1, p. 1.)
- Shasta River
- Approximate Place of Use of Trucked Water
Approximate place of use of water trucked from Respondent's water system, as described by Respondent. (See Hearing Recording, May 19, 2022, 02:29:40 to 02:30:26)

QUATERNARY DEPOSITS

- Qs Extensive marine and nonmarine sand deposits, generally near the coast or desert plays
- Q Alluvium, lake, playa, and terrace deposits; unconsolidated and semi-consolidated
- Qls Selected large landslides
- Qg Glacial till and moraines. Found at high elevations mostly in the Sierra Nevada and Klamath Mountains
- Qoa Older alluvium, lake, playa, and terrace deposits
- QPc Pleistocene and/or Pliocene sandstone, shale, and gravels deposits; mostly loosely consolidated

QUATERNARY VOLCANIC ROCKS

- Qrv Recent (Holocene) volcanic flow rocks; minor pyroclastic deposits
- Qrv^c Recent (Holocene) pyroclastic and volcanic mudflow deposits
- Qv Quaternary volcanic flow rocks; minor pyroclastic deposits
- Qv^c Quaternary pyroclastic and volcanic mudflow deposits

TERTIARY VOLCANIC ROCKS

- Tv Tertiary volcanic flow rocks; minor pyroclastic deposits
- Tv^c Tertiary pyroclastic and volcanic mudflow deposits.
- Ti Tertiary intrusive rocks; mostly shallow (hypabyssal) plugs and dikes

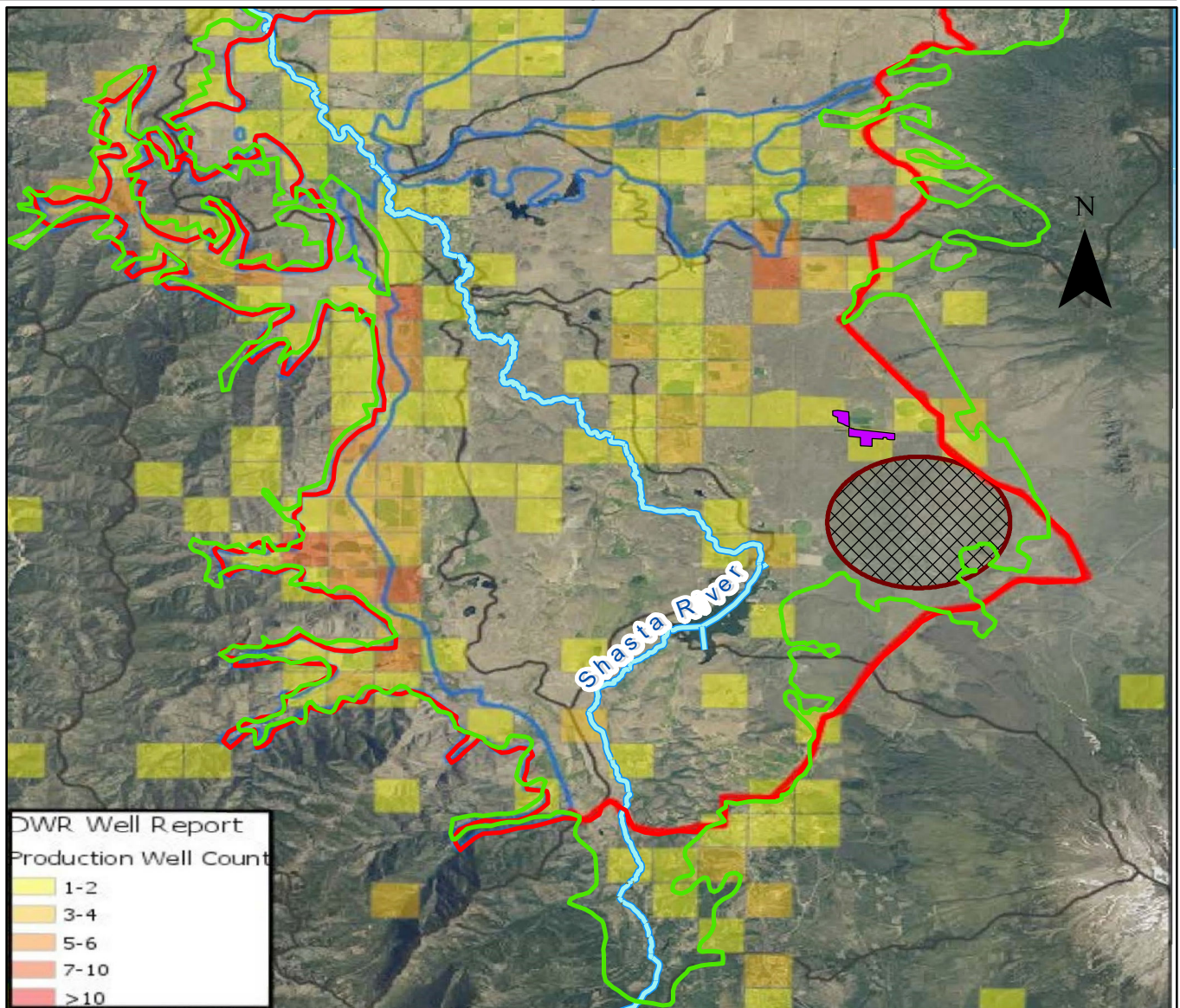
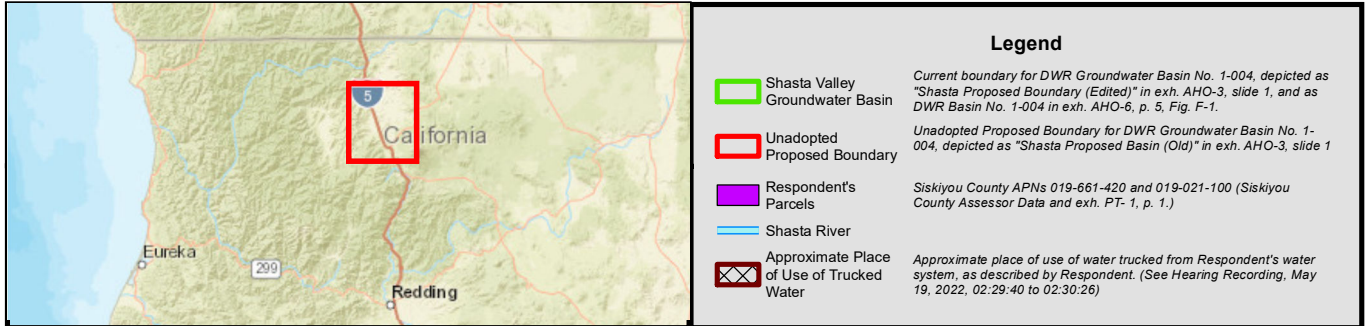
MESOZOIC SEDIMENTARY AND METASEDIMENTARY ROCKS

- Ku Upper Cretaceous sandstone, shale, and conglomerate

Geologic Features Near Respondent's Parcels	
Date: January 12, 2023	Scale: 1: 300,000
Office: Administrative Hearings Office	Author: Kyle Wooldrige

Figure 5 DWR Well Report for Production Wells Near Shasta Valley Groundwater Basin With Locations of Respondent's Parcels and Approximate Place of Use of Trucked Water

Georeferenced Overlay from:
Exh. AHO-2, 2018-06-12 Siskiyou CFCWCD slide presentation, slide 9

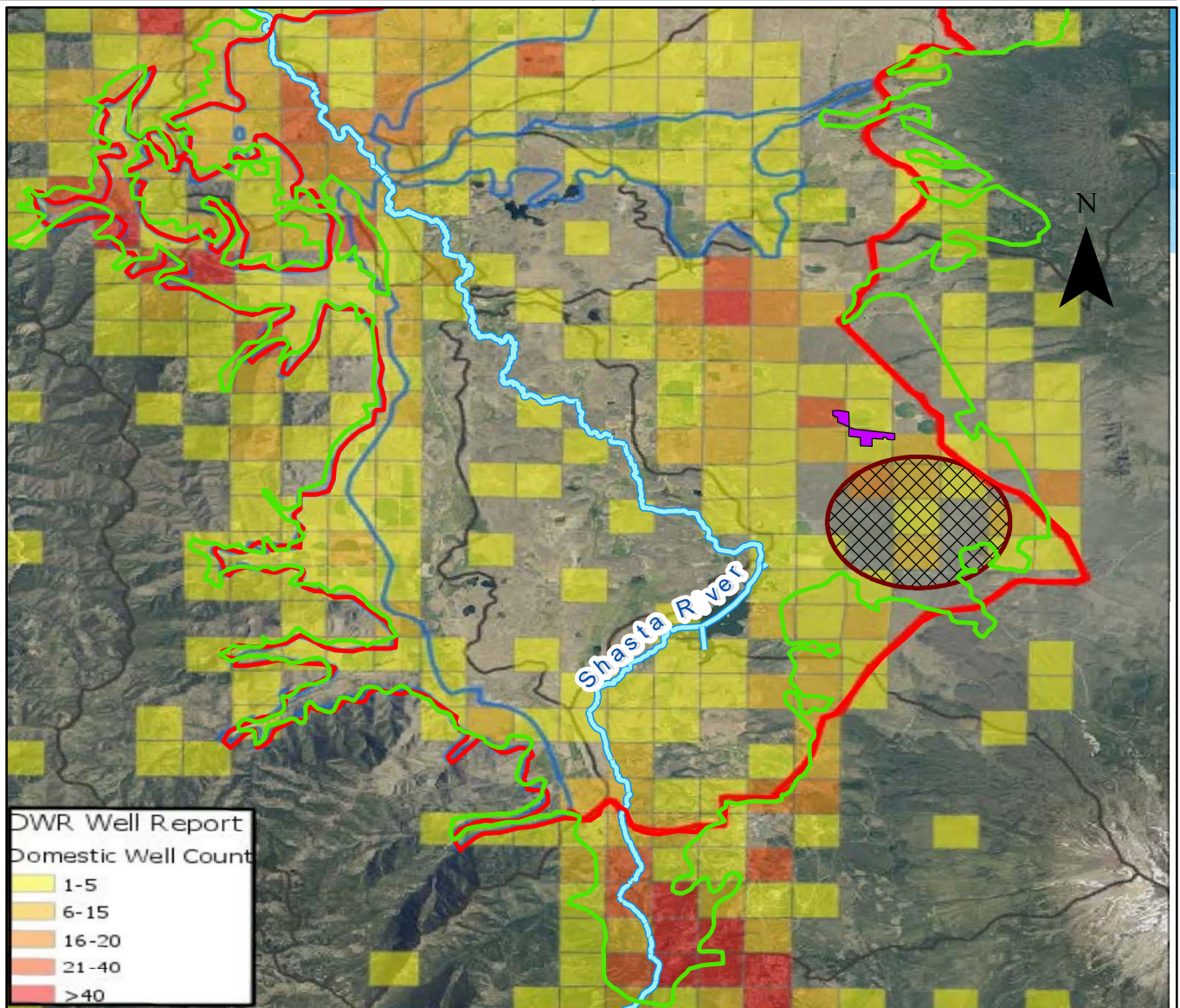
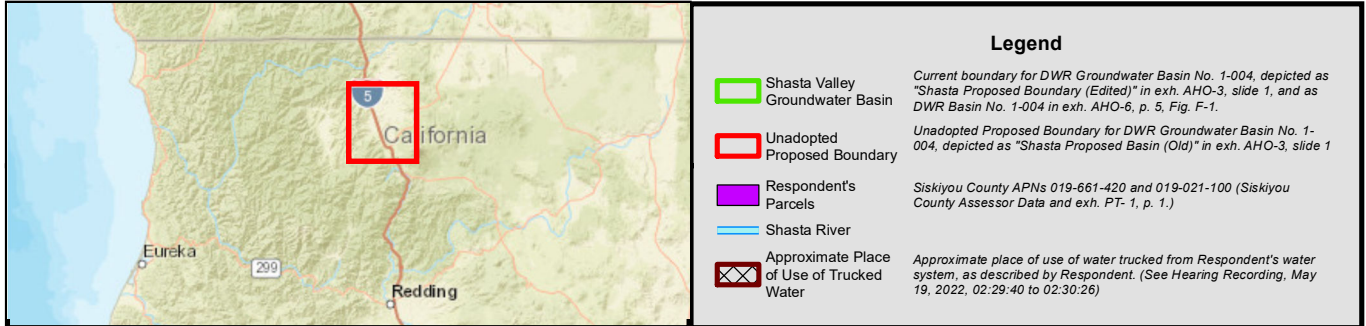


DWR Well Report for Production Wells	
Date: January 12, 2023	Scale: 1: 300,000
Office: Administrative Hearings Office	Author: Kyle Woodridge



Figure 6 DWR Well Report for Domestic Wells Near Shasta Valley Groundwater Basin With Locations of Respondent's Parcels and Approximate Place of Use of Trucked Water

Georeferenced Overlay from:
Exh. AHO-2, 2018-06-12 Siskiyou CFCWCD slide presentation, slide 10



DWR Well Report for Domestic Wells

Date: January 12, 2023	Scale: 1: 300,000
Office: Administrative Hearings Office	Author: Kyle Woodridge

