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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2023-

ADOPTING AN EMERGENCY REGULATION THAT PROVIDES CURTAILMENT AUTHORITY IN THE KLAMATH RIVER WATERSHED, AND ESTABLISHES MINIMUM INSTREAM FLOW REQUIREMENTS AND INFORMATION ORDER AUTHORITY IN THE SCOTT RIVER AND SHASTA RIVER WATERSHEDS

WHEREAS:

1. Western North America is experiencing a mega-drought. Across California and within the Klamath Basin, the water years from 2013-2015 and 2020-2022 were some of the driest on record. Even after more normal precipitation in the Klamath basin in water year 2022-2023, the Klamath River watershed continues to experience drought effects. The Scott and Shasta rivers, important tributaries to the Klamath river, specifically continue to experience drought effects. Increases in weather extremes on a global and more local scale, as well as the extended mega-drought conditions, heighten the risk of continued or worsening drought effects in 2024.
2. On May 10, 2021, Governor Newsom proclaimed a State of Emergency for 41 counties, including those in the Klamath River watershed ([May 2021 Proclamation](#)), in response to drought conditions. The May 2021 Proclamation finds that it is 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. On July 8, 2021, the Governor [expanded the emergency declaration](#) and called upon Californians to voluntarily reduce their water use by 15 percent. On October 19, 2021 the Governor expanded the [drought state of emergency](#) to the entire state of California.
3. On March 24, 2023, the Governor issued [Executive Order N-5-23](#), repealing many provisions of the various drought proclamations in light of significant precipitation, particularly in the Sierra Nevada range. However, the executive order specifically found that the severe drought conditions in the Klamath River watershed had not abated, and that continued action is needed to abate drought harm to native fish in the Klamath River watershed.
4. Executive Order N-5-23 directs the State Water Resources Control Board (State Water Board or Board) and California Department of Fish and Wildlife (CDFW) to evaluate minimum instream flows and other actions to protect salmon, steelhead, and other native fishes in critical systems in the

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Klamath River and Clear Lake watersheds and work with water users, tribes, and other parties on voluntary measures to implement those actions. To the extent voluntary actions are not sufficient, the State Water Board, in coordination with CDFW, is to consider emergency regulations to establish minimum instream flows to mitigate the effects of drought conditions.

5. The Southern Oregon/Northern California Coast (SONCC) coho salmon is listed as a threatened species under both the federal and state Endangered Species Acts (ESAs). The Scott River and Shasta River coho salmon are both “core, functionally independent” populations of the SONCC Evolutionarily Significant Unit under the federal ESA, indicating that the Scott River and Shasta River have a critical role in the continuation and recovery of SONCC coho. The species is at high and moderate risk of extinction in the Shasta River and Scott River, respectively. The species spawns, hatches, and rears in tributaries to the Klamath River, including the Scott River and Shasta River, and is divided into three run-years or “cohorts.” Any cohort failure represents loss of a significant component of the population, increases the potential for extirpation, and greatly impedes recovery.
6. The Scott River and Shasta River are also key streams in the Klamath Basin for the fall-run Chinook salmon. The fall-run Chinook is a fish species of high commercial importance, as the major salmon stocks targeted by ocean fisheries south of Cape Falcon are Sacramento River fall-run Chinook salmon and Klamath River fall-run Chinook salmon. For most of the past three decades, Klamath River fall-run Chinook salmon has been more constraining on the troll fishery than the Sacramento River fall-run Chinook salmon, and low returns of Klamath River fall-run Chinook salmon have resulted in a complete closure of hundreds of miles of the coast to commercial fishing multiple times in the past 15 years, including this year. Coastal ocean fishing-dependent communities have suffered severe economic impacts due to decreases in fish numbers and related harvest limitations. The species also supports commercial and tribal river fishing. The river fisheries have also been closed multiple times in the past decade when the numbers of returning Klamath River fall-run Chinook salmon are low, including at times foregoing even ceremonial fishing.
7. Steelhead in the Scott River and Shasta River watersheds are part of the federally-designated Klamath Mountains Province (KMP) Distinct Population Segment (DPS). KMP steelhead are a United States Forest Service Sensitive species, and Summer-run steelhead in this DPS are a CDFW recognized species of special concern. Steelhead populations have declined dramatically in the Klamath River watershed compared to historical levels. While recent monitoring in the Scott River and Shasta River watersheds is incomplete, the

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trends in those watersheds similarly show significant decline, with both watersheds having record-low adult returns in 2022.

8. The coho and Chinook salmon and steelhead in the Klamath River watershed are of particular cultural, spiritual, and nutritional significance to many Klamath Basin tribes, including but not limited to the Karuk Tribe, the Yurok Tribe, the Hoopa Valley Tribe, the Quartz Valley Indian Reservation, the Shasta Nation, and the Shasta Indian Nation, which have all raised concerns regarding these species with the State Water Board in recent years.
9. The Quartz Valley Indian Reservation's land base is in the Scott River watershed. Traditionally used fish resources of the Scott River include Chinook and coho salmon, steelhead, and Pacific lamprey. The Quartz Valley Indian Reservation relies on these fish for sustenance and their spiritual well-being.
10. Prior to the drought proclamation in 2021, the State Water Board, CDFW, diverters, tribes, federal agencies, nonprofit organizations, and other interested parties have undertaken efforts to protect the fish in the Scott River and Shasta River watersheds, short of curtailments for minimum instream flows. These efforts include: sending notices of water unavailability in the Scott River watershed; distributing educational materials to promote voluntary conservation efforts; providing information on funding availability at public meetings; making planting decisions for a dry year; contracting to cease diversions earlier in the year; coordination of diversions to protect redds and juvenile salmon; dedications of water to instream use; and funding and technical assistance for restoration and forbearance actions and groundwater substitutions to improve water temperatures. Such efforts improved the availability of water, including for instream uses, but did not result in meeting flows necessary to adequately protect fish in the ongoing drought situation.
11. Without the ability to protect instream flows or to provide greater incentives for voluntary action and cooperation, voluntary efforts have not yet been sufficient to adequately support important fisheries in the Scott River and Shasta River watersheds.
12. Flows in the Shasta River dropped sharply immediately after expiration of the drought emergency regulations on July 31, 2023. Subsequent coordination by a group of major diverters in the Shasta River watershed resulted in improved flows that generally met a lower, locally recommended flow target that the Board had rejected in 2022. However, Shasta River flows did not consistently meet the expired minimum flows until September 26th, 2023. In the Scott River watershed, flows gradually fell to below expired drought emergency flow

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requirements for most of August 2023 until recovering on September 4 after rainfall. Flows have remained greater than the expired drought minimum flow requirements from early September until December 2023. Flows have varied in December, at times failing to meet and at times exceeding the expired drought minimum flow requirements.

13. Even with more normal annual precipitation in the Winter and Spring of 2023, on June 29, 2023, curtailment of diversions was necessary to maintain the drought minimum flows in the Shasta River watershed.
14. Decades of flow and hydrologic data for the Scott River and Shasta River show that these streams are unlikely to maintain minimum flows for Chinook, coho, and steelhead over the next year without reduced or curtailed water use. Flows in the Scott and Shasta rivers do not regularly achieve the drought minimum flows except in very wet water years in large part due to water development and diversion.
15. The Scott River may not maintain the baseline thresholds to support fish in the most extreme drought situations. When flows are at such minimum levels, every increment of water is important to the species.
16. These proposed drought emergency minimum flows provide rearing habitat and migration corridors that are essential for species survival. There is a continued urgent need to address severe water shortages in the Scott River and Shasta River watersheds to protect minimum flows for critical fish species. There is a continued urgent need to address water shortages in the Scott and Shasta River watersheds to protect minimum flows for critical fish species, particularly in light of their fragility with many years of reduced numbers, limited habitat access, and significant successive periods of drought. Water shortage conditions present during drought, and especially extended drought periods, pose particular risks to steelhead, SONCC coho, and fall-run Chinook that require sufficient cold water throughout their life cycles. Emergency regulatory action to address this need is warranted.
17. During the 2013-2015 drought, localized efforts to manage the coho salmon fishery were insufficient to address the impacts of low flows and high temperatures associated with ongoing diversions and extreme dry conditions. In letter dated May 3, 2021, California Fish and Wildlife explains that the 2013-2015 drought in Scott River watershed resulted in a significant population drop in the strongest coho salmon cohort, from which the cohort has still not recovered. In fall and winter of 2020 and 2022, coho and Chinook salmon both faced significant migration barriers from reduced flows in the Scott River. It is not yet clear the degree of impact this delay may have had

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on the species. Repeated stress events, such as drought conditions affecting multiple cohorts or affecting the same cohort in short succession, can reduce the resilience of a species.

18. The State Water Board adopted a drought emergency regulation in August 2021, establishing minimum flows for the Scott and Shasta rivers. The emergency regulation was readopted with minor amendments in June 2022, and expired on August 1, 2023.
19. The drought minimum flows adopted in 2021 were based on recommendations provided by CDFW in a letter dated June 15, 2021, and were supported by the National Marine Fisheries Service. These flows were based on best available information regarding the survival-level minimum flows required for fisheries, even in a severe drought. In light of continued information development, the regulations include the ability to modify the minimum flow requirements during implementation. During the drought, the State Water Board implemented small amendments to the 2021 CDFW flow recommendations as refinements as new information was developed. These changes were based on CDFW recommendations to lower winter flow requirements in the Shasta River and established transitional flows in both watersheds for key months to avoid harm to fish from a rapid change in flows. The Board and CDFW also considered and rejected other recommendations for flow modifications, as insufficiently supported or contraindicated by available evidence. In light of the importance of water for all uses, this drought emergency regulation maintains the provision included in the previous drought emergency regulations that CDFW, after coordination with the National Marine Fisheries Service (NMFS), may notify the Deputy Director if lower alternative flows at the compliance gage provide equal or better protection for the pertinent species' relevant life stages.
20. On May 23, 2023, the Karuk Tribe of California, Environmental Law Foundation, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources submitted to the State Water Board a Petition for Rulemaking to Set Minimum Flows on the Scott River in Siskiyou County (Petition). On August 15, 2023, the Board held a hearing to consider the Petition. The Board expanded the scope of the hearing to include the Shasta River watershed due to rapid and alarming decreases in flow that were observed when the previous regulation expired on August 1, 2023.
21. On July 20, 2023, CDFW submitted a comment letter in support of setting interim backstop flows for the Scott River. The anticipated benefits of establishing interim flows for the Scott River included increased west side tributary habitat for coho salmon juveniles, increased groundwater elevation, and increased surface flows and stream connectivity during adult Chinook,

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- coho, and steelhead migration. For the Shasta River, the expected benefits included maintaining lower water temperatures throughout the year and an increase to surface flows during cold water species migration. In addition, NMFS submitted comments to the State Water Board in support of the preliminary draft emergency regulation and emphasizing the need to set minimum instream flows for both Scott River and Shasta River.
22. At the August 15, 2023, hearing the Board directed staff to move forward with an emergency regulation re-establishing minimum flows in the Scott River and Shasta River watersheds in light of immediate needs and also to develop science and options that could support long-term flows in the watersheds.
 23. To help inform potential updates to the emergency regulation, staff held a workshop on October 6, 2023, to solicit input on the state of the fisheries, the minimum instream flows, groundwater local cooperative solutions, and data needs. Additionally, on October 30, 2023, State Water Board staff met in Siskiyou County with community members and held listening sessions with interested parties regarding the emergency regulation. These specific events were in addition to outreach and discussion meetings, that include technical meetings held every two weeks with tribal, agricultural, and county representatives, and meetings with individual parties to discuss specific aspects of the regulation.
 24. A preliminary draft of the proposed regulation was notified on November 7, 2023 and a meeting to answer questions and provide for comments on the preliminary draft regulation was held on November 14, 2023. Comments on the preliminary draft of the proposed emergency regulation were accepted through November 16, 2023, and were considered in developing the proposed emergency regulation.
 25. The Shasta River largely met drought minimum flows under the emergency regulation. The Division issued curtailment orders to junior water rights not subject to an exception in order to meet flows in fall of 2021 and much of the 2022 irrigation season, while curtailment of more senior rights was limited to later in the 2022 irrigation season. The most senior rights, including overlying users and riparian, were not curtailed. In the 2023 irrigation season curtailment of junior rights was required for just over a month prior to the expiration of the emergency regulation.
 26. The Scott River watershed required curtailment of all diversions not covered by a local cooperative solution (or other exception) in much of Fall 2021, all of December 2021, several days in January of 2022, and much of the 2022 irrigation season. In 2023, no curtailment was required prior to the expiration

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of the regulation. Despite curtailments, the Scott River did not achieve minimum instream flows in significant portions of Fall 2021 and late summer and fall of 2022.

27. The effects of the drought regulation are still under evaluation; For the fisheries, monitoring of salmonid populations through video weirs, redd surveys, and screw traps helps inform the analysis on how the minimum flows may have benefited various salmonid life stages (e.g., spawning, rearing, and migration into and out of the rivers). Adult migration occurred in both the Scott and Shasta watersheds (albeit with delayed migration and limited spawning habitat in the Scott River watershed in 2022 when flows were not met for an extended period). It is clear that sufficient water for successful juvenile rearing and outmigration was achieved. Regulation implementation appears to have improved water quality and in 2022 and 2023 when salmonids were observed in the Shasta River in reaches where habitat is frequently limited due to poor flow and associated water quality. NMFS has indicated that degraded hydrologic function, including passage impacts and unsuitable water quality conditions, remains a key barrier to recovery. The drought regulation resulted in multiple benefits including significant reductions in groundwater pumping, increased community engagement on water conservation and drought actions, improved understanding of area water use, improved water data, installation of more efficient irrigation equipment, and better gaging. While assessment is still ongoing, comparison of precipitation with streamflow indicates that the regulations resulted in earlier stream reconnection and achievement of the minimum instream flows in the Scott River in Fall and Winter 2021 and 2022. Improved reconnection in 2023 is also likely attributable to increased groundwater levels from previous implementation of the emergency regulations (in 2021 and 2022) as well as from improved hydrology in 2023.

28. The August 2021 drought emergency regulation included provisions for individual, tributary, or watershed local cooperative solutions in lieu of curtailments, and was crafted to build on, support, and allow for expansion of voluntary efforts. Such local cooperative solutions may be granted when the proposal demonstrates the benefits of the actions proposed in the local cooperative solution are equal to or greater than the protections provided by the flow contribution associated with curtailment. Individuals in the Shasta River watershed have entered into Safe Harbor Agreements with NMFS and CDFW that in some instances include flow-related actions and which may be considered as elements of or as independent local cooperative solutions if they meet the standard established in the regulation.

29. Another pathway for groundwater local cooperative solutions was built into the August 2021 and carried forward in the 2022 drought emergency

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regulation to both encourage early reductions in groundwater use and allow for greater economic certainty to the agricultural community around water availability during curtailments. Approximately 97 percent of groundwater-irrigated lands in the Scott River watershed operated under overlying groundwater local cooperative solutions during the 2022 irrigation season.

30. Critiques of overlying groundwater local cooperative solutions indicate a lack of data on implementation and the connection of specific conservation actions to surface flows. Other evidence suggests that the program was important in driving innovation and investments in conservation that can improve groundwater levels and associated surface flows in all years, while avoiding the business-threatening risk of sudden loss of water and crops from unplanned curtailment. The overlying groundwater local cooperative solutions offered the agricultural community an alternative to direct curtailment. The proposed regulation requires changes in data and oversight mechanisms to provide for improved information in the current year and help inform future efforts. Specifically, this regulation includes a new provision that requires installation of meters to measure groundwater extraction and use associated with the overlying groundwater local cooperative solutions. The purpose of the metering requirement is to provide improved information to support water use reduction estimates that were claimed during the previous regulations. The proposed regulation also expands options for overlying groundwater local cooperative solutions and allows for early cessation of irrigation and use of the most efficient pivots with limited corner irrigation as two additional and easily-verifiable options that evidence indicates will be effective in conserving groundwater.

31. There is a need to ensure that continued minimum human health and safety needs are met, notwithstanding the water shortage conditions. The California Water Code declares water supplies for consumption, sanitation, and cooking, as a human right (Wat. Code, § 106.3); identifies domestic use as the highest water use (Wat. Code, § 106); and provides water suppliers with authority to declare a water shortage emergency to allow sufficient water for human consumption, sanitation, and fire protection (Wat. Code, § 350). In light of the need to curtail other uses of water in order of priority to ensure drought emergency minimum flows to support fish in the Shasta River and Scott River watersheds, regulatory action is needed in the Klamath River watershed this year to ensure that water right holders and claimants without other means to access water for basic human health and safety, fire prevention, and fire recovery efforts, are able to continue to access water for these uses under the regulation.

32. In the Shasta watershed in particular, community members and advocates have noted that it is difficult for sellers of water hauled to areas not served by

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public water systems or private wells, to certify the amount of water needed for human health and safety purposes, as opposed to commercial agriculture. Modifications to the minimum health and human safety exemption adopted in previous drought emergency regulations are being proposed to allow a qualified nonprofit or governmental entity to submit certifications related to the use of curtailed water for human health and safety. This change is designed to prevent curtailment orders from resulting in reduced access to water for basic human needs, while also ensuring that any continued diversion under curtailed rights for other uses is curtailed.

33. Further, there is a need for regulatory action to ensure that water remains available for minimum livestock watering purposes, notwithstanding the drought conditions and the associated curtailment of water rights in order of priority. Cattle ranching is a primary economic activity in the Scott River and Shasta River watersheds, with pasture and growing of alfalfa comprising the predominant manner of land cultivation. California law recognizes the obligation to provide sufficient water for livestock (see Penal Code, section 597, subdivision (b)), and the proposed regulation will continue to provide reasonable amounts of water for livestock watering. (See Cal. Code Regs., tit. 23, section 697, subdivision (c).)
34. A number of diversions in the Scott River and Shasta River watersheds involve surface diversions of water through long, unlined ditches in order to provide relatively small amounts of water for livestock use. Diverting into these inefficient ditches can result in removing orders of magnitude greater amounts of water from the stream than will actually be used for livestock. These livestock diversions typically occur during the winter-early spring months, at the time when the water is required throughout the watershed to enable adult salmon migration, as well as rearing, incubation, and juvenile migration. Water is needed in the adult salmon migration periods to provide cues to the salmon that it is time to migrate upstream, as well as ensure there are adequate flows for fish to move upstream and access tributaries where the salmon will incubate and rear. Water is needed during and after the adult salmon migration period to ensure redds are not dewatered and tributaries remain connected so juvenile salmon can move within the system. Additionally, in drought years, inefficient livestock diversions have the potential to interfere with seasonal storage needed to support minimum human health and safety needs and the environment.
35. Alternatives exist to provide water for livestock more efficiently and many people in both watersheds have developed other methods for livestock water delivery in recent decades. While it can be costly over the long term, it is possible for those who do not currently have such an alternative to divert water to trucks for delivery to livestock on a short-term basis. Ranchers may

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also implement long-term water conservation solutions for post-irrigation-season livestock watering, such as developing groundwater wells, purchasing heated troughs, lining ditches, or switching to piped diversions. There are financial resources available to assist ranchers in finding alternative water during the drought emergency. Such funding has been provided in the past and funding opportunities focused on installation and use of such livestock systems remains available to diverters in these watersheds.

36. While large diversions of water through inefficient ditches may in some circumstances provide for some amount of recharge of groundwater for later beneficial use, such recharge is uncertain, location-specific, and has not been quantified. Some water users in the Scott River watershed are engaging in groundwater recharge efforts under a temporary permit from the Board and are working with researchers to better understand the potential for managed groundwater recharge in the basin. Potential for additional recharge projects also exists, though temporary water right applications have not yet been filed. The Siskiyou County Flood Control and Water Conservation District, which is the local groundwater sustainability agency for implementation of the Sustainable Groundwater Management Act, supports investigation of groundwater recharge, and has obtained significant funding for additional projects. Such projects and the associated data will provide information that can be used to understand the long-term potential for such projects in the watershed and to tailor groundwater recharge efforts in the most effective manner possible.
37. In light of the ongoing emergency, the fisheries need, the importance of assuring minimum amounts of storage, and the availability of alternative water supply options, it is generally not reasonable to divert more than 10 times the amount of water that livestock require for drinking, as described in the reasonable water quantities for water rights applications (See Cal. Code Regs., tit. 23, section 697, subdivision (c).), during the September through March period. Changes to the proposed regulation from the prior drought emergency regulation build on the experience of implementation of the prohibition on inefficient livestock watering diversions, and the determination that such diversions are not unreasonable during high flow periods, after the adult coho salmon peak migration season has concluded, under conditions to preserve tributary connectivity and protect redds, when accompanied by appropriate reporting requirements.
38. The regulation provides a new local cooperative solution option for livestock diversions during the prohibition period. This local cooperative solution provides for continued diversions for livestock via inefficient methods (i.e., greater than the 10 times the amount livestock require) under conditions that avoid unreasonable harm to adult or juvenile salmonids and redds.

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Provisions for this new local cooperative solution option provide that such diversions will not impact the attainment of the drought emergency regulation's minimum flow requirements.

39. Providing for livestock diversions through inefficient means under conditions described in the proposed regulation provides the opportunity for potential groundwater recharge outside of permitted projects, recognizing that the benefits of recharge are uncertain.

40. Division of Water Rights staff have been working with University of California at Davis to update the Scott Valley Integrated Hydrologic Model (SVIHM). SVIHM which was initiated by the North Coast Regional Water Quality Control Board and built on by Siskiyou County's groundwater sustainability agency as part of the Sustainable Groundwater Management Act, with input and data from local landowners and other contributors. Division of Water Rights staff have been informed by the preliminary results of the new version of SVIHM as presented in an October 6 staff workshop as well as Scott Valley Groundwater Sustainability Plan (GSP) model results on the efficient timing and effectiveness of local cooperative solutions on streamflow, as well as the contribution of past curtailments in improving flow conditions. Division of Water Rights staff plan work under a contract with the University of California at Davis to continue to refine and update the model with new information, as available, and to run additional targeted drought and curtailment scenarios, and develop and improve tools to inform water management and drought planning in the Scott River watershed. In the coming years, as part of this modeling effort, staff will be evaluating the effectiveness of various local cooperative solutions and other non-curtailment strategies (e.g., groundwater recharge projects) to improve instream flow.

41. Division of Water Rights staff are currently working on a hydrology modeling effort in the Shasta River watershed to help inform long-term instream flow and water management planning. As part of this effort, Division of Water Rights implemented a memorandum of understanding with Siskiyou County to coordinate on the development and refinement of hydrology models for the Shasta Valley. These Shasta Valley hydrology models will help inform instream flow and other water management strategies in the watershed. Staff anticipates submitting the model for peer review in 2024.

42. During emergency drought conditions in the Klamath River watershed, it is imperative that water right holders and claimants who do not have water available at their priority of right and do not have a need or obligation to provide water for minimum human health and safety or minimal livestock watering uses cease diversions of water that is needed for the minimal protection of fisheries resources and to protect more senior water rights.

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43. Water Code section 1058.5 provides the State Water Board the authority to adopt emergency regulations in certain drought years or when the Governor proclaims a drought state of emergency in order to prevent unreasonable use, require curtailment of diversions when water is not available under the diverter's priority of right, and require reporting of diversion or use or the preparation of monitoring reports.
44. Article X, section 2 of the California Constitution declares that the water resources of the state must be put to beneficial use to the fullest extent possible and the unreasonable use of water be prevented. Relevant to drought conditions, the California Supreme Court has clarified that "[w]hat may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist. (1935) 3 Cal.2d 489, 567.) The reasonable use doctrine applies to the diversion and use of both surface water and groundwater, and it applies irrespective of the type of water right held by the diverter or user. (Peabody v. City of Vallejo (1935) 2 Cal.2d 351, 367.) Further, the reasonable use doctrine extends to the adoption of drought emergency minimum instream flows under Water Code, section 1058.5 to protect specific species in critical watersheds, and to implementation of these through curtailment of diversions based on water rights priority. (Stanford Vina Ranch Irrigation Co. v. State of California (2020) 50 Cal.App.5th 976.) This regulation is in furtherance of article X, section 2 during this drought emergency.
45. Both the Scott River and Shasta River watersheds have groundwater that is closely interconnected with surface flows. Because of this, it is necessary to address both groundwater and surface water in a curtailment regulation. Where groundwater and surface waters are interconnected, the "common source" doctrine applies, integrating the water rights and applying priorities without regard to whether the diversion is from surface water or groundwater. (Hudson v. Dailey (1909) 156 Cal. 617, 627–628.).
46. Adoption of an emergency regulation is necessary to address ongoing dire water shortages in the Klamath River watershed. The emergency regulation will enable the State Water Board to act in a timely manner to protect vital flows for fisheries, and to enforce the water right priority system with respect to all water right holders and claimants, including groundwater diversions, while assuring water remains available for minimum human health and safety and livestock watering needs.

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47. Emergency regulations adopted under Water Code, section 1058.5 may remain in effect for up to one year.

48. Pursuant to Water Code, section 7, the State Water Board is authorized to delegate authority to staff.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts California Code of Regulations, title 23, Division 3, Chapter 2, Article 23.5, Sections 875, 875.1, 875.2, 875.3, 875.4, 875.5, 875.6, 875.7, 875.8, and 875.9 as appended to this resolution as an emergency regulation;
2. State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language or formatting of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director, the Deputy Director for the Division of Water Rights, or their designee, may make such changes;
4. This regulation shall remain in effect for one year after filing with the Secretary of State;
5. The State Water Board directs staff to process as expeditiously as possible any proposals for local cooperative solutions which may be offered as alternatives to curtailments;
6. The State Water Board directs staff to continue to work with CDFW to evaluate and refine the drought minimum instream flows adopted in this regulation if new scientifically-defensible information becomes available, and to continue to engage with affected stakeholders and other experts in on-going and longer-term efforts to establish instream flows, including consideration of what is achievable in the watersheds, for the Scott River and Shasta River watersheds beyond this drought emergency;

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7. The State Water Board directs staff to continue work with stakeholders this year and in future years on voluntary efforts to meet instream flow needs and avoid curtailments;
8. The State Water Board directs staff to continue to develop and use hydrologic modeling tools in the Scott River and Shasta River watersheds to better understand and support the planning and implementation of groundwater recharge projects, curtailments, local cooperative solutions, and other water management strategies; and
9. Except for purposes of enforcement of a curtailment order issued pursuant to this regulation, this regulation and any curtailment order issued hereunder shall not be cited as authority for, or evidence of, the validity or priority of any water right or claim affected or protected by this regulation. Given this, it would be inappropriate to consider compliance with the regulation to be an admission or waiver of any rights or claims of affected parties.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on December 19, 2023.

Courtney Tyler
Clerk to the Board