



ENVIRONMENTAL LAW FOUNDATION

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BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

PETITION FOR EMERGENCY RULEMAKING TO SET MINIMUM FLOWS ON THE SCOTT RIVER

Pursuant to Cal. Const. art. 1, § 3
and Gov. Code § 11340.6

This summer presents as great a challenge as the Scott River has ever faced. Historic low precipitation and high temperatures coupled with increasing water extraction will result, again, in a disconnected, dry riverbed with potentially disastrous effects for protected fish populations. Compounding the challenge is the fact that the Scott basin is split in two by an out-of-date adjudication that allows unrestricted groundwater pumping in most of the valley. It is only June and the river is almost dry. The State Board must act and act fast.

At the same time, recent court decisions and administrative actions have confirmed that the State Board has the power to address these critically low flows without needing to go through the lengthy and expensive process of readjudicating the Scott River basin. First, the State Board has the power under its waste and unreasonable use authority, Water Code section 1058.5, and a drought proclamation to issue emergency regulations setting minimum instream flows for adjudicated rivers and declaring water use that reduces flows below those minimums to be per se unreasonable. (*Stanford Vina Ranch Irrigation Company v. State of California* (2020) 50 Cal.App.5th 976 (*Stanford Vina*)).) Second, the State Board has the authority and the duty to regulate groundwater extractions that affect public trust resources. (*Environmental Law Foundation v. State Water Resources Control Board* (2018) 16 Cal.App.5th 844, 858 (*ELF*)).) Meanwhile, the California Department of Fish and Wildlife (CDFW) has sent several letters to the State Board requesting the Board implement CDFW's 2017 interim stream flow criteria this season, and the Governor recently proclaimed a drought emergency that activates the State Board's powers under section 1058.5.

With all of this in place, the State Board now has everything it needs to issue emergency regulations that could, for the first time, set an enforceable minimum flow in the Scott River, applicable to all water users in the basin whose diversions or extractions affect flows on the Scott.

The Karuk Tribe (Tribe) and Environmental Law Foundation (ELF) now bring this Petition for Emergency Rulemaking to urge the State Board to use its authority and fulfill its duty by adopting an emergency regulation to protect flows in the Scott River