

Resolution No. 24-96

**A Resolution of the Board of Supervisors of the County of Siskiyou,
State of California, Adopting the Siskiyou County Groundwater Well Application
Process Guidelines 2024**

Whereas, on August 29, 2018, the California Court of Appeal, Third Appellate District held that Siskiyou County has an obligation to consider the impact to public trust resources, whenever the County issues a permit for a new or existing groundwater well; and

Whereas, on March 28, 2022, to protect health, safety, and the environment, Governor Gavin Newsom issued Executive Order N-7-22 to address the state's ongoing drought conditions; and

Whereas, under Executive Order N-7-22, the County shall not approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act (SGMA) and classified as a medium- or high-priority without first obtaining written verification from the local Groundwater Sustainability Agency (GSA) managing the basin that groundwater extraction by the proposed well would not be inconsistent with any applicable Groundwater Sustainability Plan adopted by the GSA and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; and

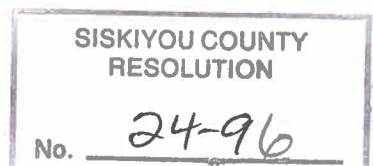
Whereas, under Executive Order N-7-22, the County shall not issue a permit for a new groundwater well or alteration to an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely affect impact or damage nearby infrastructure; and

Whereas, on February 13, 2023, Governor Gavin Newsom issued Executive Order N-3-23, which revised Paragraph 9 of EO N-7-22 to clarify that the groundwater well permit requirements of EO N-7-22 do not apply to permits for wells that are replacing existing, currently permitted wells with new wells that will produce an equivalent quantity of water as the well being replaced because it has been acquired by eminent domain or acquired while under threat of condemnation; and

Whereas, on June 20, 2023, staff was directed by the Board of Supervisors to conduct public meetings with each of the local GSA's and to develop groundwater well permitting application process guidelines; and

Whereas, on November 14, 2023, Environmental Health Division staff presented the draft Siskiyou County Groundwater Well Application Process Guidelines to the Board of Supervisors and received further direction from the Board to remove from the well permitting process the requirement for an indemnification agreement; and

Whereas, the Siskiyou County Community Development Department, Environmental Health Division and the Siskiyou County Administrator's Natural Resources Division have developed the Siskiyou County Groundwater Well Application



Process Guidelines to be consistent with the County's public trust obligations regarding well permitting and the requirements of Executive Orders N-7-22 and N-3-23; and

Whereas, on May 21, 2024, Environmental Health Division staff brought back a revised draft Siskiyou County Groundwater Well Application Process Guidelines, based on feedback from the Board of Supervisors, for approval; and

Now, Therefore, Be It Resolved the Board of Supervisors hereby resolves as follows:

1. The Board of Supervisors determines that the Siskiyou County Groundwater Well Application Process Guidelines 2024 are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15307 and 15061(b)(3) of the CEQA Guidelines.
2. The Siskiyou County Groundwater Well Application Process Guidelines 2024 are consistent with the County's public trust doctrine obligations and Executive Orders N-7-22 and N-3-23.
3. The Siskiyou County Board of Supervisors do hereby adopt the Siskiyou County Groundwater Well Application Process Guidelines 2024 attached as Exhibit A of this Resolution attached and incorporated herein.


Passed and Adopted this 21st day of May, 2024 at a regular meeting of the Board of Supervisors by the following vote:

AYES: Supervisors Valenzuela, Criss, Ogren and Kobseff

NOES: None


ABSENT: Supervisor Haupt

ABSTAIN: None



Michael N. Kobseff, Chair
Board of Supervisors ATTEST:

LAURA BYNUM, CLERK,
Board of Supervisors

By 
Deputy

Attachments:

Exhibit A: Proposed Siskiyou County Groundwater Well Application Process Guidelines 2024



SISKIYOU COUNTY GROUNDWATER WELL APPLICATION PROCESS GUIDELINES 2024

I. Purpose

These Guidelines are informational in nature. They have been prepared to explain to permit applicants the various authorities that currently impact the Department of Environmental Health's processing of well applications and to guide applicants in completing the well application process.

II. Authority

◆ WATER WELL STANDARDS

In California, permitting authority over well drilling activities rests with the local well permitting agency. In Siskiyou County, the permitting agency is the Siskiyou County Department of Environmental Health. Environmental Health permits both domestic and production wells pursuant to Chapter 8, Title 5 of the Siskiyou County Code. The California Department of Water Resources developed well standards to protect groundwater quality, including protection against adverse effects caused by improper well construction or abandonment of wells, as published in the "California Well Standards – Bulletin 74-81"¹ ("Bulletin"). The Siskiyou County Code incorporates the standards set forth in the Bulletin.

◆ EXECUTIVE ORDER

On March 28, 2022, Governor Gavin Newsom signed Executive Order N-7-22 ("Executive Order") in response to extreme and expanding drought conditions, which prohibits Environmental Health from issuing a construction permit for a

new (or replacement) groundwater well or for alteration / modification of an existing groundwater well pursuant to Chapter 8, Title 5 of the Siskiyou County Code unless certain requirements are met or the permit falls within the limited exception to the requirements. On February 13, 2023, Governor Newsom signed Executive Order N-3-23, which revised Paragraph 9 of Executive Order N-7-22 to read as follows:

To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not:

a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan; or

b. Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.

This Paragraph shall not apply to permits for wells (i) that will provide less than two acre-feet per year of groundwater for individual domestic users, (ii) that will exclusively provide groundwater to public water supply systems as defined in section 116275 of the Health and Safety Code, or (iii) that are replacing existing, currently permitted wells with new wells that will produce an equivalent quantity of water as the well being replaced when the existing well is being replaced because it has been acquired by eminent domain or acquired while under threat of condemnation.

A complete copy of the Executive Order N-7-22 is available here:

<https://www.gov.ca.gov/wp-content/uploads/2022/03/March-2022-Drought-EO.pdf> (see Paragraph 9). A complete copy of Executive Order N-3-23 is

available here: <https://www.gov.ca.gov/wp-content/uploads/2023/02/Feb-13-2023-Executive-Order.pdf>.

◆ PUBLIC TRUST DOCTRINE

The Third District Court of Appeal has found that the common law Public Trust Doctrine applies to the County's issuance of well construction permits in the Scott Valley watershed. Under this doctrine, the County, as a political subdivision of the state, considers impacts to public trust resources in the Scott River -- such as navigation, recreation, and fisheries -- whenever the County issues a permit for a new well that, through the extraction of groundwater interconnected with the Scott River's surface waters, may substantially impair the Scott River's public trust resources. The Board of Supervisors has adopted a resolution making standardized public trust findings for domestic and stock wells in the Scott Valley that deliver two acre-feet of groundwater per year or less on property under the same ownership as the parcel on which the well is located.

Per Board direction, the County's consideration of the Public Trust Doctrine has been extended to well permitting in the Shasta Valley.

As additional hydrological data is obtained in other areas of the County, the County's consideration of the Public Trust Doctrine will extend to those areas for which hydrological data evidences the presence of groundwater interconnected with navigable surface waters.

The state of California, as trustee, holds all navigable water ways in trust for the benefit of the public and has the duty to protect these waterways.² The State, through the State Water Resources Control Board (SWRCB), took action to protect public trust resources in the Scott River and the Shasta River by adopting and implementing emergency curtailment regulations from August 2021 to August 2023. Through those curtailment regulations, SWRCB established a priority list of water rights and users, which in some cases prohibit and/or restrict groundwater pumping by well owners in the Shasta Valley and Scott Valley when necessary to help maintain minimum instream flows to protect multiple fish species and the environment. On December 19, 2023, the SWRCB adopted a new emergency regulation for the Scott and Shasta River Watersheds. The Office of Administrative Law approved the emergency regulation on February 1, 2024 and it is in effect for one year, unless re-adopted or rescinded.

◆ CALIFORNIA ENVIRONMENTAL QUALITY ACT

On August 27, 2020, in *Protecting Our Water and Environmental Resources v. County of Stanislaus*, the California Supreme Court held that Stanislaus County could not categorically classify its issuance of groundwater well construction permits as ministerial decisions exempt from environmental review under the

² The Third District Court of Appeal found the County's obligations under the public trust doctrine in the Scott River watershed arose because the County is a subdivision of the state.

California Environmental Quality Act (“CEQA”) (Pub. Resources Code, §§ 21000 et seq.); however, the permit approvals might still be ministerial “[i]f the circumstances of a particular project do not require the exercise of independent judgment”.

Domestic and stock water well permitting under 2 acre feet per year is generally presumed to be ministerial for most projects. Permit approval for production wells will be determined on a case-by-case basis and depending on the circumstances of the particular project may be subject to CEQA review.

These Guidelines explain Environmental Health’s application process in the context of the above authorities.

III. Implementation: Well Standards

Water Well Construction Standards for the State of California are provided in Department of Water Resources Bulletin 74-81 and Siskiyou County Ordinance Chapter 8 title 5 of the Siskiyou Code. Domestic wells that utilize less than two-acre feet per year will be issued ministerial permits subject to basic setback requirements. Production wells will be subject to joint review by the Siskiyou County Natural Resources Department and the Environmental Health Division.

IV. Implementation: Executive Order

Applications for Exempt Domestic and Public Wells:

The requirements of Executive Order N-7-22 (at Paragraph 9), as revised by Executive Order N-3-23, do not apply to permits for wells that will provide **less than two (2) acre-feet per year** of groundwater **for individual domestic users** or that will exclusively provide groundwater to public water supply systems as defined in Health and Safety Code Section 116275 (“Exempt Well(s)”).

If a water well construction permit application for a new groundwater well or for alteration of an existing groundwater well is signed by the well owner and identifies the “intended use” in the “well proposal details” as “domestic,” Environmental Health will treat the permit as exempt from the requirements of the Executive Order.

If a water well construction permit application for a new groundwater well or for alteration of an existing groundwater well is signed by the well owner and identifies the “intended use” in the “well proposal details” as “public / community water system,” Environmental Health will treat the permit as exempt from the requirements of the Executive Order.

◆ Applications for Non-Exempt Wells

Stock Water Wells Countywide: Environmental Health Determination

A stock water well, for the purposes of this guideline document, is any well that will deliver less than 2-acre feet of groundwater for the purpose of providing drinking water to livestock and other on-farm animals. Regardless of the well's location, the water well construction permit application for a new or altered **stock water groundwater well** will required an in-house Environmental Health determination that both the extraction of groundwater from the well (1) "is not likely to interfere with the production and functioning of existing nearby wells" and (2) "is not likely to cause subsidence that would adversely impact or damage nearby infrastructure." (See Paragraph 9(b) of the Executive Order N-7-22, as modified by Executive Order N-3-23).

Production Wells Countywide: Licensed Professional Geologist Report Required.

A production groundwater well, for the purposes of this guideline document, is considered any well for agricultural or industrial use that will deliver 2 acre feet or more of groundwater per year. Regardless of the well's location, the water well construction permit application for a new or altered **production groundwater well** must be accompanied by a report signed by a California licensed Professional Geologist that concludes both that extraction of groundwater from the well (1) "is not likely to interfere with the production and functioning of existing nearby wells" and (2) "is not likely to cause subsidence that would adversely impact or damage nearby infrastructure." (See Paragraph 9(b) of the Executive Order N-7-22, as modified by Executive Order N-3-23).

Applications shall also be accompanied by the base application fee, and any applicable CEQA review fees.

◆ Stock Wells and Production Wells in SGMA Basins: Verification from Groundwater Sustainability Agency Required.

Environmental Health will not issue a water well construction permit for a new or altered stock or production groundwater well located within the Scott Valley Groundwater Subbasin, the Shasta Valley Groundwater Subbasin, the Butte Valley Groundwater Subbasin, or the Tule Lake Groundwater Subbasin (as identified by the Department of Water Resources) without first obtaining from the

relevant **Groundwater Sustainability Agency**³ the **verification** required by Paragraph 9(a) of the Executive Order (in addition to the report described above).

In addition to the fees that are described above, applications for production wells in SGMA basins shall also be accompanied by any SGMA Basin review fee imposed on Environmental Health by the relevant Groundwater Sustainability Agency, which is directly passed through to the applicant.

The requirements of this Section IV will be observed until the Executive Order is lifted.

V. Implementation: Public Trust Doctrine

Scott River and Shasta River Watersheds:

Production Wells

In May of 2021, Larry Walker Associates (LWA) introduced the Siskiyou County Board of Supervisors and the public to a hydrologic modeling tool that LWA developed to inform individual well permitting decisions in the Scott Valley and to help the Environmental Health Division evaluate potential public trust impacts to the Scott River. For wells that fall outside of the domestic and stock wells addressed in the Board's resolution making standardized public trust findings, the Environmental Health Division intends to use LWA's modeling tool to make findings on whether the pumping from a proposed well site in its reasonably foreseeable volumes and seasons will substantially impair or interfere with any public trust uses or values within interconnected downstream navigable waters, including the Scott River.⁴

LWA has also developed the Shasta Watershed Groundwater Model (SWGM) v 1.0, which is an evolving, integrated hydrological model that represents the entire Shasta Valley watershed. It is a preliminary effort to characterize the Shasta River watershed and will be used to inform individual well permitting decisions on

³ The Siskiyou County Flood Control and Water Conservation District serves as the Groundwater Sustainability Agency for the Scott, Shasta, and Butte Valley groundwater subbasins and reviews and provides verifications for production wells in these subbasins.

The Tulelake Irrigation District serves as the Sustainability Plan Manager for the multi-agency Tulelake Subbasin Groundwater Sustainability Agency, and reviews and provides verifications for production well applications in this subbasin.

⁴ In the future, Environmental Health would like to explore with LWA the possibility of creating a defined Public Trust Review Area (PTRA) for the Scott and Shasta rivers based on best available data, which may streamline permitting. The PTRA would establish both lateral and vertical boundaries within the portion of the interconnected zone that identifies areas with moderate to high risk of impacts to Public Trust resources due to present day groundwater pumping.

production wells in the Shasta Valley and to help the Environmental Health Division evaluate potential public trust impacts to the Shasta River.

In addition to the other fees referenced under Section V. above, applicants for production wells in the Shasta Valley or Scott Valley shall be financially responsible for the actual cost to the County of LWA's application of its hydrologic modeling tools to a proposed well site.

Domestic and Stock Wells Delivering 2 Acre-Feet or Less

In January of 2022, the Board adopted public trust findings related to well permitting in the Scott Valley. These findings were set forth in a resolution (see Attachment 3), which found domestic and stock well pumping from existing and future well sites delivering 2 acre-feet or less in the Scott Valley watershed will not substantially impair or interfere with public trust uses or values within interconnected downstream navigable waters, including the Scott River. These findings are attached to and relied upon for well applications in the Scott Valley wherein applicants represent the intended use of the well is for two acre-feet of groundwater per year or less for domestic or stock water use specifically for watering stock.

The form of these findings are a template for Environmental Health's consideration of domestic and stock wells delivering 2 acre-feet or less at well sites in the Shasta River watershed.

As additional hydrological data is obtained in other areas of the County, the County's consideration of the Public Trust Doctrine will extend to those areas for which hydrological data evidences the presence of groundwater interconnected with surface waters.

Countywide:

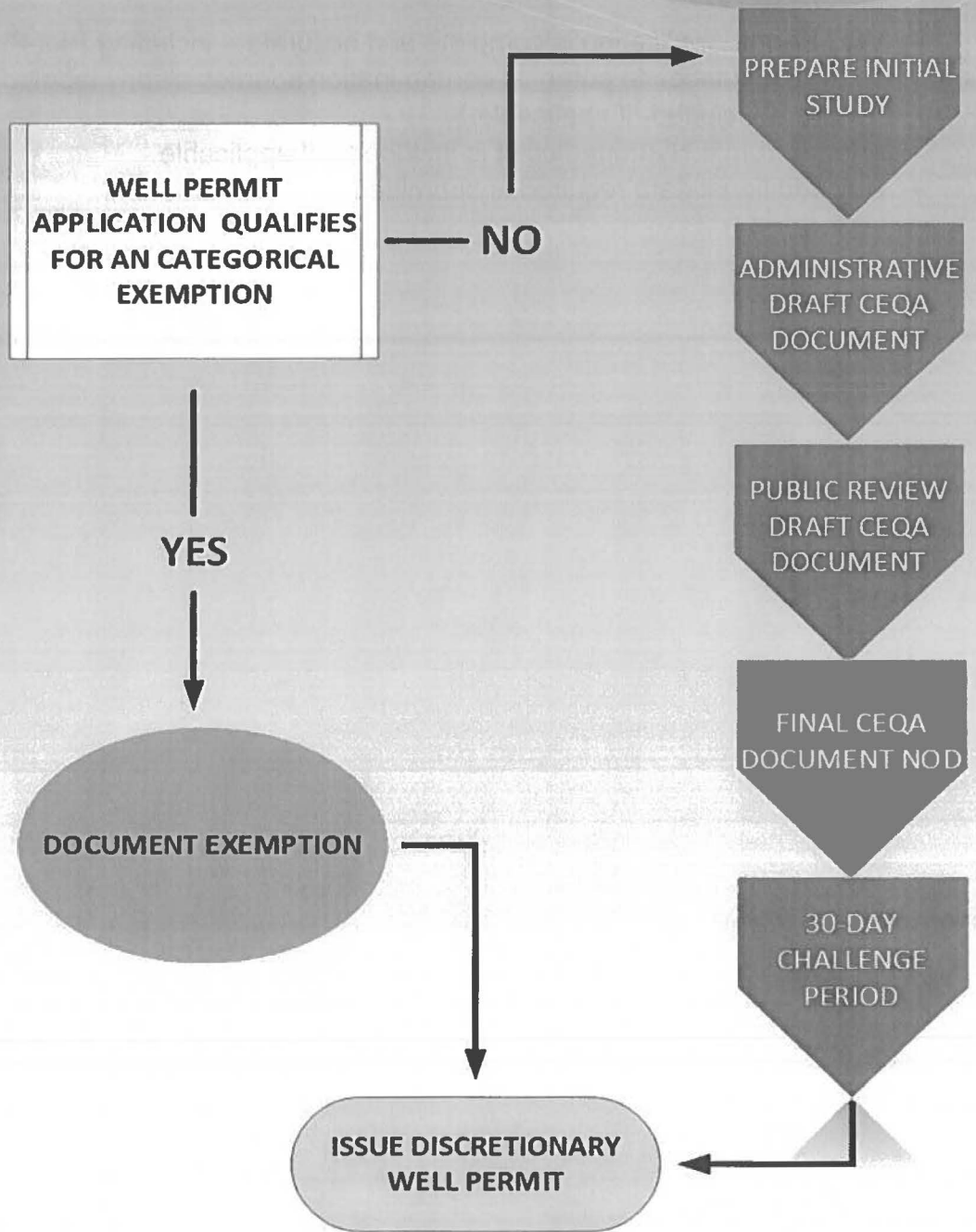
VI. Implementation: CEQA

Domestic wells and stock water well permitting for wells that deliver less than 2 acre feet per year are presumed to be ministerial for most projects. Permit approval for production wells will be determined on a case-by-case basis. Below is a visual flow chart that sets forth the well permitting CEQA process for the approval or denial of a discretionary well permit.

DISCRETIONARY PERMIT PROCESS



CEQA REVIEW : APPLICATION PROCESSING DISCRETIONARY WELL PERMITS



ATTACHMENT 1

Groundwater Well Permitting Guidelines

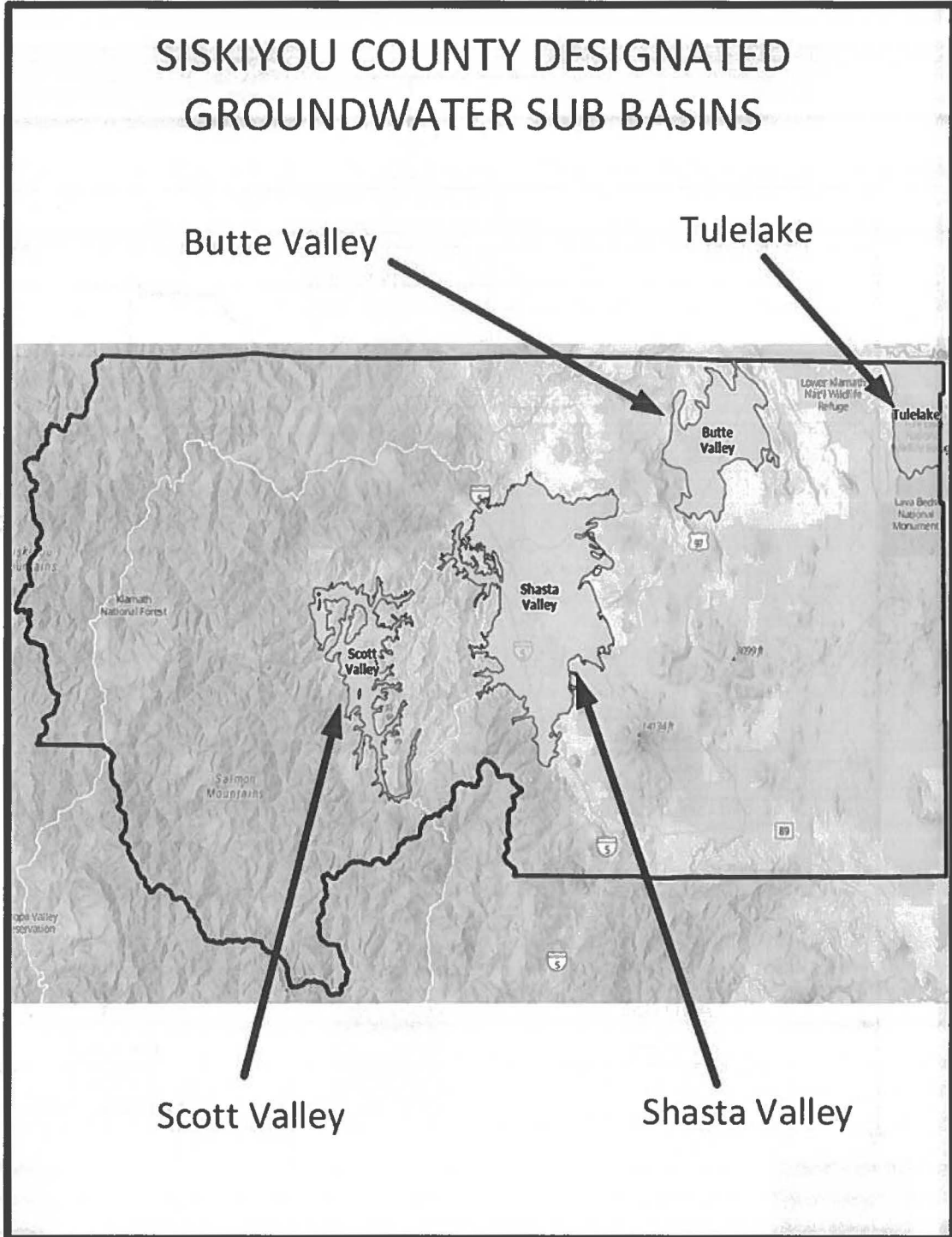
Pre-Application Checklist

- Well Permit Application is complete and accurate – including Plot Plan, with specific distances to potential contamination sources clearly labeled.
- Fees are included- if applicable.
- A letter from a Hydrogeologist is included – if applicable.
- Any additional data required is submitted.

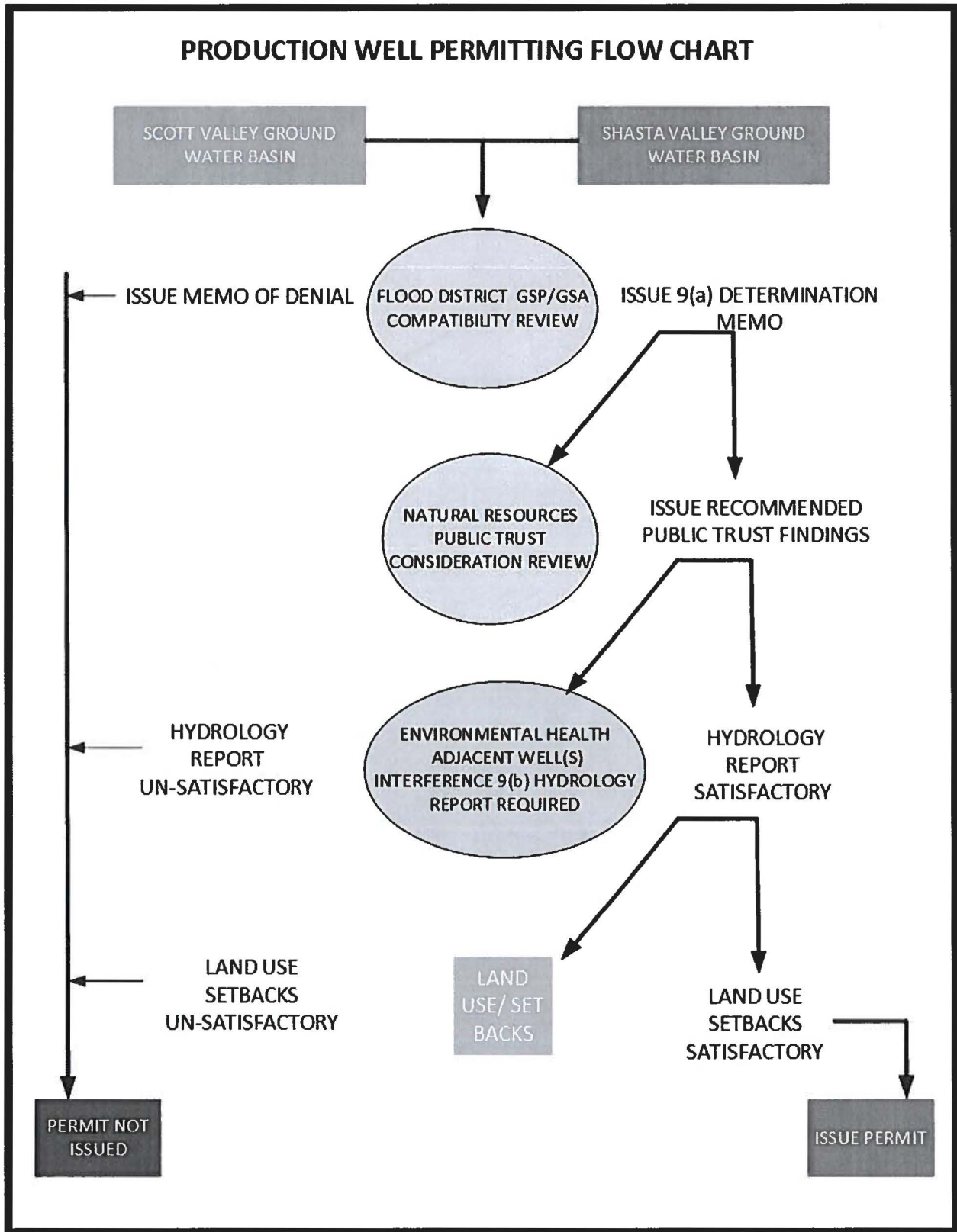
ATTACHMENT 2

Groundwater Well Permitting Guidelines

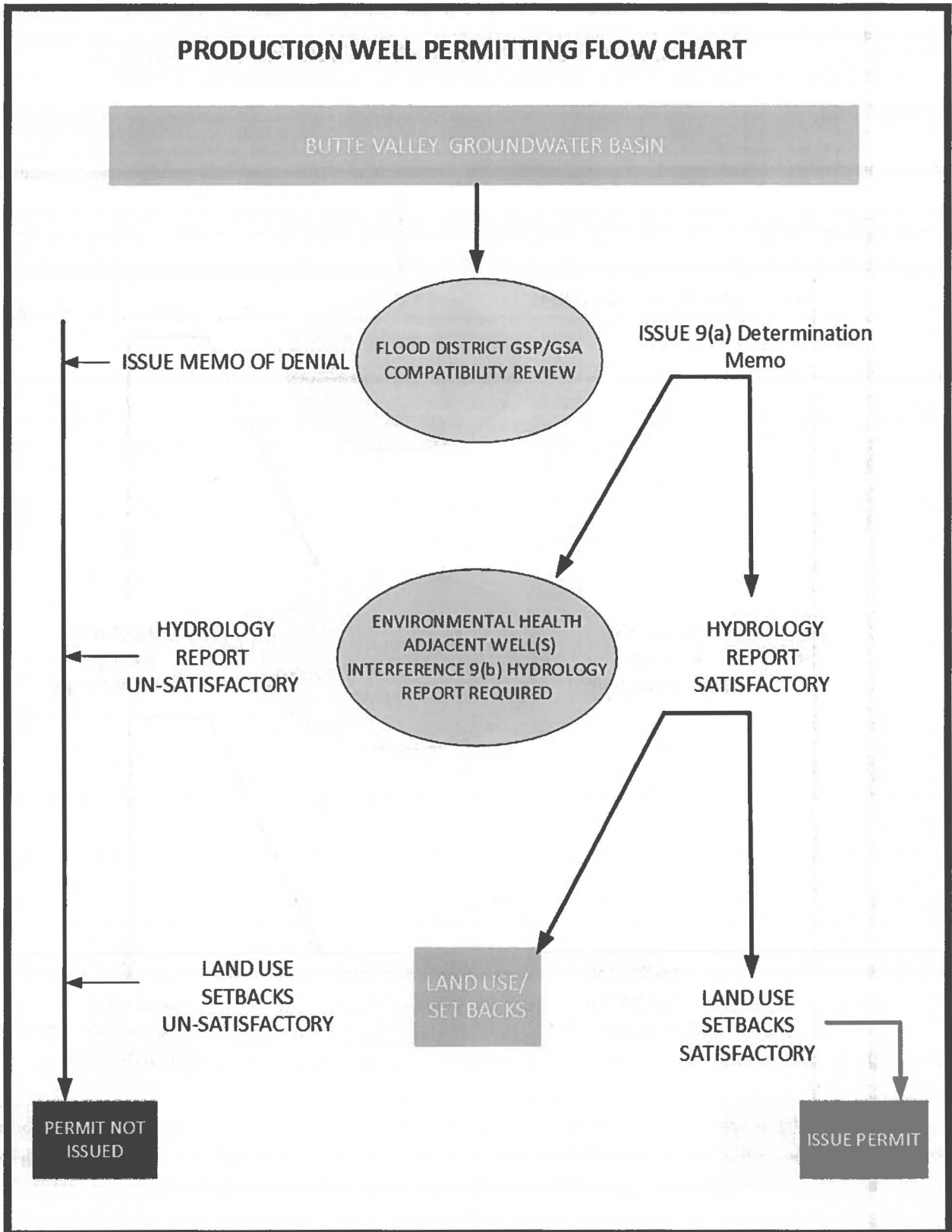
SISKIYOU COUNTY DESIGNATED GROUNDWATER SUB BASINS



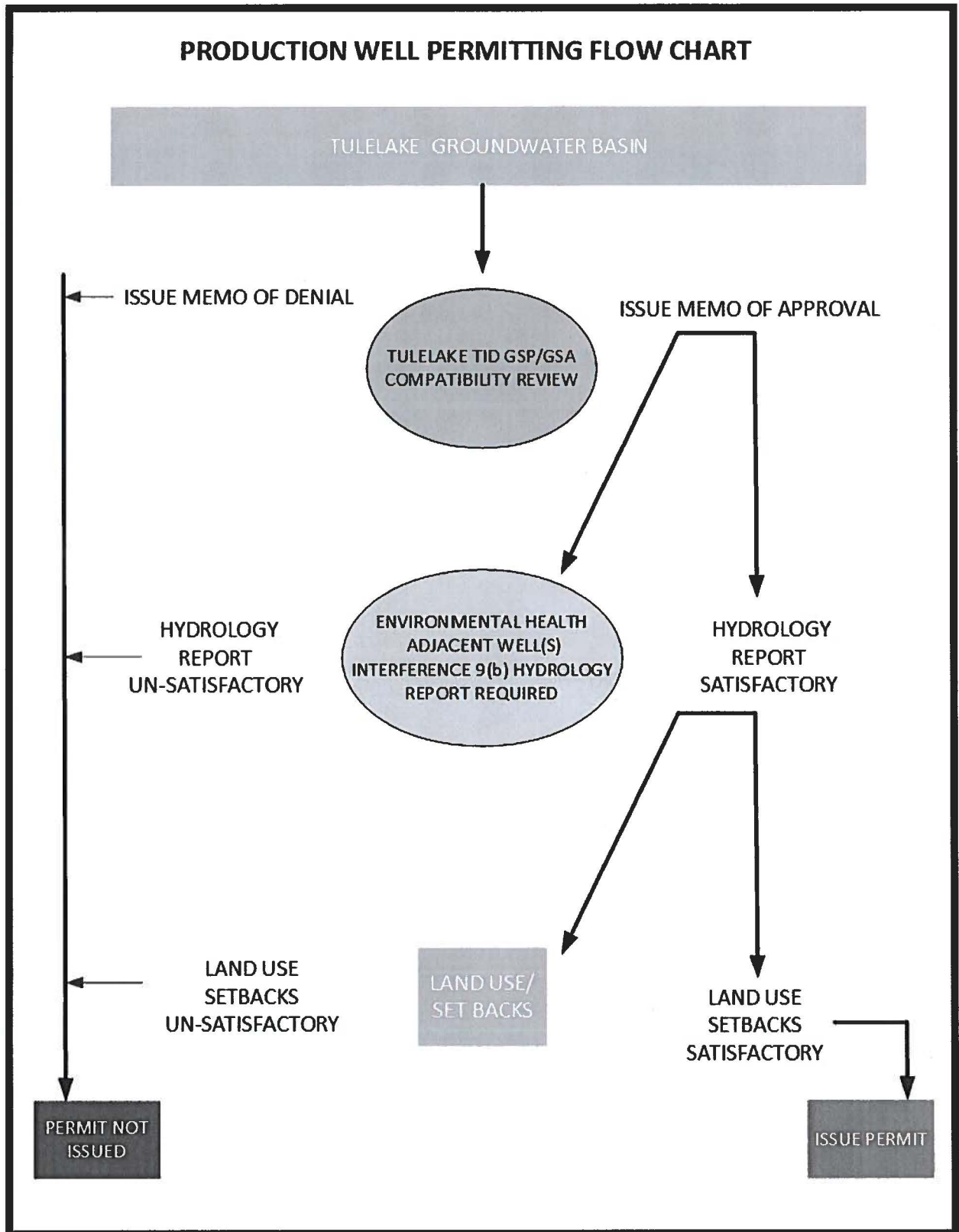
Application Processing Flowcharts and groundwater sub-basin map



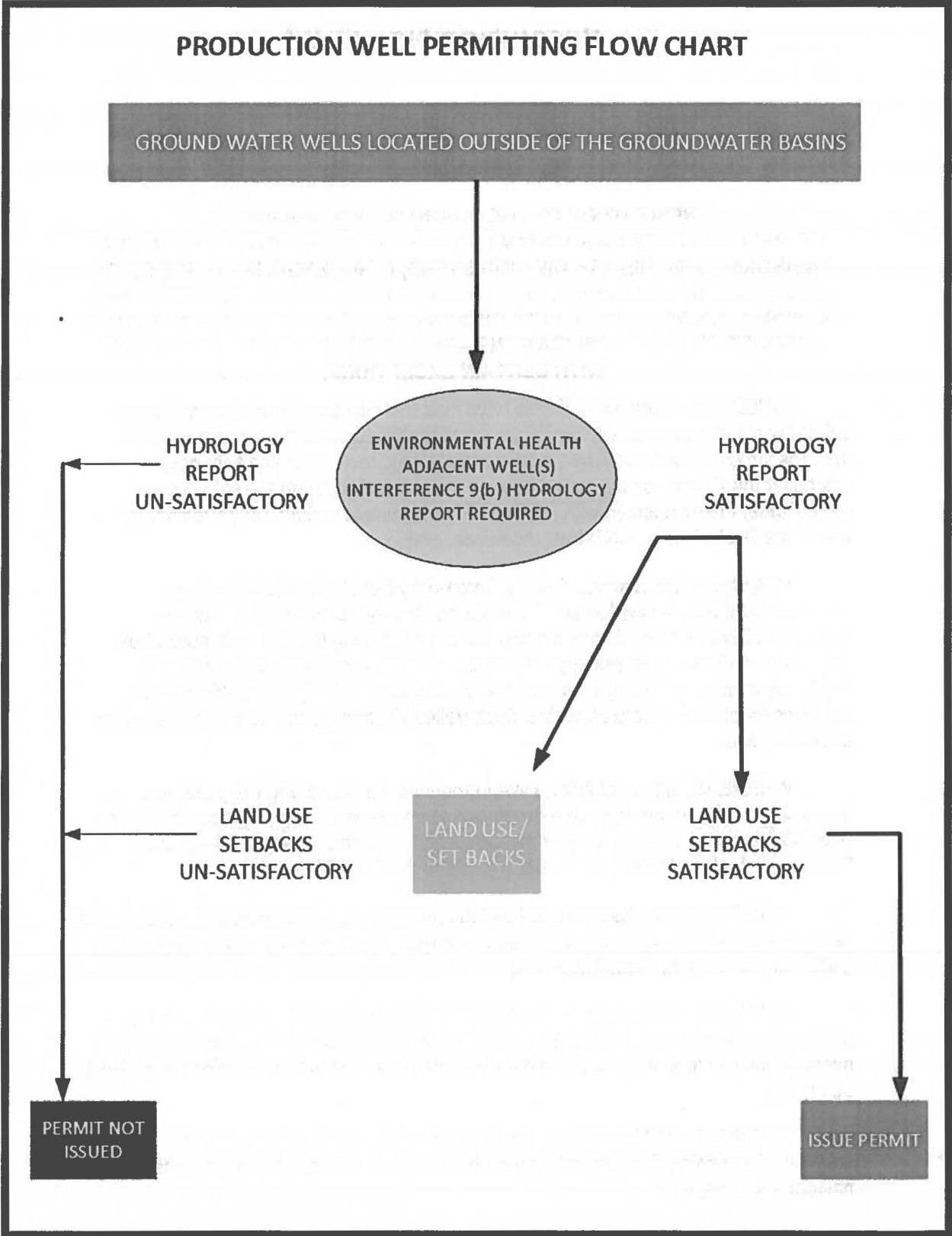
PRODUCTION WELL PERMITTING FLOW CHART



PRODUCTION WELL PERMITTING FLOW CHART



PRODUCTION WELL PERMITTING FLOW CHART



ATTACHMENT 3

Resolution No. 22-07

RESOLUTION NO. 22-07

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SISKIYOU MAKING PUBLIC TRUST FINDINGS FOR THE
ENVIRONMENTAL HEALTH DIVISION'S (EHD) MINISTERIAL ISSUANCE OF DE
MINIMIS WATER WELL PERMITS IN THE SCOTT VALLEY AND DIRECTING EHD
TO BRING FORWARD AN INTERIM ORDINANCE FOR A MORATORIUM ON NEW
PRODUCTION WELL APPLICATIONS AND PERMITS IN THE SCOTT VALLEY,
WITH CERTAIN EXCEPTIONS.**

WHEREAS, courts in California have held that Siskiyou County, as a political subdivision of the state of California, has an obligation to consider impacts to public trust resources in the Scott River, such as navigation, recreation and fisheries, whenever the County issues a permit for a new well that, through the extraction of groundwater interconnected with the Scott River's surface waters, may substantially impair the Scott River's public trust resources; and

WHEREAS, the Siskiyou County Community Development Department, Environmental Health Division and the Siskiyou County Administrator's Natural Resources Division have committed themselves to meeting the County's public trust obligation and have been working with environmental consultants Drs. Harter and Foglia, as contracted through Larry Walker Associates ("LWA"), to identify interim solutions for obtaining data about the Scott Valley's hydrology to inform well permitting decisions; and

WHEREAS, in May of 2021, LWA introduced the Board and the public to a hydrologic modeling tool that LWA developed to inform well permitting decisions in the Scott Valley and to help the Environmental Health Division and Natural Resources Division evaluate potential public trust impacts to the Scott River; and

WHEREAS, LWA has modeled various pumping scenarios across the watershed using its tool, which has resulted in a series of maps that delineate color-coded impact zones surrounding the Scott River; and

WHEREAS, these maps model impacts from the pumping of either a new non-production well, such as a domestic well, or a new production well in either a year with average flows or in a dry year using data collected over a twenty-year period from 1991-2011; and

WHEREAS, LWA's modeling evidences that new non-production wells, will not substantially impair or interfere with public trust uses or values within interconnected navigable waters; and

WHEREAS, there is a high degree of groundwater aquifer recharge associated with household water use (recycling); and

WHEREAS, there is an overall limited volume of groundwater extracted from non-production wells, such as domestic water wells and stock wells; and

WHEREAS, the majority of domestic wells are located on the margins of the valley where geologic water bearing stratigraphy has reduced hydraulic conductivity and influence on Scott River and its trust resources; and

WHEREAS, the limits of development within the Scott Valley based on density restrictions in the Scott Valley specific plan further limit the potential impact on public trust uses or values from domestic wells in the Scott Valley; and

WHEREAS, non-production wells are de minimis groundwater wells that have a limited potential impact on trust uses or values in the Scott Valley; and

WHEREAS, de minimis groundwater wells are water wells in aggregate on a single parcel delivering two acre-feet of groundwater per year or less for domestic or stock water use on property under the same ownership as the parcel on which the well is located;

WHEREAS, in considering impacts to public trust resources from de minimis wells the Board held a public hearing across multiple days and received and considered public comment from interested members of the public, and then closed the public hearing; and

WHEREAS, contrasting with de minimis wells, LWA's modeling suggests that new production wells in the Scott Valley could create significant additional consumptive use in the watershed that needs to be evaluated more thoroughly for potential impact on public trust uses or values within interconnected navigable waters; and

WHEREAS, the Board desires to direct staff to bring forward an interim ordinance that would implement a moratorium on new production well applications and production well permits in the Scott Valley, with certain exceptions, including when a production well applicant is able to show no significant impact, or mitigate for, increased "consumptive use effects" from a proposed production well as associated with the subject property's overall groundwater use.

NOW, THEREFORE, BE IT RESOLVED that the Siskiyou County Board of Supervisors that:

1. The Board finds the above recitals are true and correct and incorporates them herein.
2. The Board finds that pumping from existing and future de minimis well sites in the Scott Valley watershed in reasonably foreseeable domestic volumes will not substantially impair or interfere with public trust uses or values within interconnected downstream navigable waters, including the Scott River.
3. The Board directs that well applications shall provide space for applicants to represent whether or not the subject well will be a de minimis well delivering two acre-feet of groundwater per year or less for domestic or stock water use on property under the same ownership as the parcel on which the well is located.

4. For purposes of this resolution and its direction, the Board defines a production well as any water well constructed with a well casing having an inside diameter greater than six inches, regardless of use (e.g., agricultural, industrial) or any well delivering more than two acre-feet per year.
5. The Board finds that to the extent a proposed de minimis well may ultimately contribute to cumulative reductions in surface waters in downstream navigable waters, the production of groundwater for livestock, drinking, bathing, cooking, and other domestic uses on parcels in the Scott Valley is within the public interest because these parcels hold inchoate unexercised groundwater rights intended to be put to beneficial use consistent with Article X, section 2 of the California Constitution.
6. These findings shall be included in the Environmental Health Division's ministerial issuance of individual Scott Valley de minimis permits as evidence of the County's consideration of the impacts to public trust resources in the Scott River in its issuance of a permit for a new domestic well.

BE IT FURTHER RESOLVED that the Environmental Health Division is directed to bring forward an ordinance to implement a moratorium on new production well applications and production well permits in the Scott Valley, subject to any staff recommended exceptions, such as repairs, deepenings, replacements or applications that demonstrate no significant impact, or mitigate for, increased consumptive use effects on public trust resources.

BE IT FURTHER RESOLVED that the Board directs the Natural Resources Division to continue to work towards identifying opportunities for the Siskiyou County Flood District and Water Conservation District and the County to partner or share information that will assist the County in meeting its public trust duty in well permitting.

BE IT FURTHER RESOLVED that the Board finds this resolution is exempt from the California Environmental Quality Act (CEQA) because it is not a project under CEQA. Moreover, if it were deemed a project, it would be categorically exempt under section 15321 of Title 14, Article 7 of the California Code of Regulations because it amounts to an action by an agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency. Furthermore, this ordinance is not subject to CEQA under the following sections of Title 14, Article 7 of the California Code of Regulations: i.) Section 15307, because it regulates activities to assure the maintenance, restoration, or enhancement of natural resources; ii). Section 15308, because it regulates activities to assure the maintenance, restoration or enhancement of the environment including groundwater resources within Siskiyou County; iii.) Section 15061(b)(3), because there is no possibility this resolution making public trust findings for domestic wells and directing staff to bring forward a moratorium on production wells in the Scott Valley may itself have a significant effect on the environment.

PASSED AND ADOPTED by the Siskiyou County Board of Supervisors at a special meeting of said Board, held on the 4th day of January, 2022, by the following vote

AYES: Supervisors Kobseff, Valenzuela, Ogren and Criss
NOES: None
ABSENT: Supervisor Haupt
ABSTAIN: None

Brandon A. Criss
Brandon A. Criss, Chair
Siskiyou County Board of Supervisors

ATTEST:
LAURA BYNUM,
COUNTY CLERK

By Wendy Dyer

