



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 27, 2024

Hailey Lang
Planning Director
County of Siskiyou
806 South Main Street
Yreka, CA 96097
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SUBJECT: STATE CLEARINGHOUSE NUMBER 2024051038 - SISKIYOU COUNTY
GROUNDWATER WELL APPLICATION PROCESS INFORMATIONAL
GUIDELINES 2024 – NOTICE OF EXEMPTION

Dear Hailey Lang:

The California Department of Fish and Wildlife (CDFW) has reviewed the County of Siskiyou's (Lead Agency) Notice of Exemption (NOE) for the Siskiyou County Groundwater Well Applications Process Guidelines 2024 (Project). CDFW appreciates this opportunity to provide comments on the NOE and Project, pursuant to the California Environmental Quality Act (CEQA) Guidelines¹.

CDFW's Role

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Public Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its Trustee Agency capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. Likewise, to the extent implementation of the Project as proposed may result in “take,” as defined by state law, of any species protected under the California Endangered Species Act (CESA) (Fish and G. Code, § 2050 et seq.), or state listed rare plants pursuant to the Native Plant Protection Act (NPPA; Fish and G. Code § 1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Executive Summary

CDFW has a strong interest in the sustainable management of groundwater, as many sensitive ecosystems, species, and public trust resources depend on groundwater and interconnected surface water (ISW). A critical component of the Public Trust Doctrine is that groundwater planning should carefully consider and protect environmental beneficial uses and users of groundwater, including fish and wildlife and their habitats, Groundwater Dependent Ecosystems, and ISW. Furthermore, the Public Trust Doctrine imposes a distinct obligation to consider how groundwater management affects public trust resources, including navigable surface waters and fisheries. The Klamath River watershed and the associated tributaries provides aquatic habitat for four species of anadromous fish: Chinook Salmon (*Oncorhynchus tshawytscha*), Southern Oregon/Northern California Coast (SONCC) Coho Salmon (*O. kisutch*, CESA and federal Endangered Species Act (ESA) threatened), Steelhead Trout (*O. mykiss*), and Pacific Lamprey (*Lampetra tridentata*, State species of special concern).

Groundwater hydrologically connected to surface waters is subject to the Public Trust Doctrine to the extent that groundwater extractions or diversions affect or may affect public trust uses. (*Environmental Law Foundation v. State Water Resources Control Board* (2018), 26 Cal. App. 5th 844; *National Audubon Society v. Superior Court* (1983), 33 Cal. 3d 419.)

Specific Comments and Recommendations

1. *“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 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*

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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..... 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."

CDFW Comment: Executive Order N-7-22 (at Paragraph 9), as revised by Executive Order N-3-23 defines *de-minimis* residential and stock water well installations and caps the extraction from either at two acre-feet per year. Two acre-feet, while appearing to have individually limited impacts, may be cumulatively considerable when the incremental effects of related projects, past, present, and future are taken into account. CDFW recommends that the Lead Agency closely track key metrics when issuing new well permits, such as well location, depth, production, etc., and compare this to any additional hydrologic data that may become available in the future to ensure that cumulative impacts can be avoided before they impact Public Trust resources within the Scott River and Shasta River watersheds.

2. *"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 the verification required by Paragraph 9(a) of the Executive Order."*

CDFW Comment: The models utilized to evaluate extraction and recharge are continually under development and not yet finalized. The model iterations have not been sufficiently tested over multiple seasons to establish whether they provide an acceptable level of protection for Public Trust resources and beneficial users, notably fish and wildlife. It is uncertain whether the current models identify fish and wildlife as beneficial uses within the subbasin. The Lead Agency should consider a scenario whereupon a model is updated with a more accurate parameter for a subbasin, and the latest version of the model invalidates previously approved production wells or finds their approval to be inconsistent with Project guidelines.

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3. Currently the Butte Valley and Tule Lake Subbasin State Groundwater Management Act (SGMA) Groundwater Sustainability Plans (GSP) are deemed *Incomplete* by the Department of Water Resources (DWR).

CDFW Comment: CDFW recommends that the proposed wells withing these subbasins should go through additional project specific CEQA review until the GSP are deemed complete by DWR.

Conclusion

CDFW appreciates the opportunity to comment on the NOE and Project to assist the Lead Agency in thoroughly analyzing and minimizing impacts to the environment and Public Trust resources. CDFW encourages the Lead Agency to continuing evaluating the success of the *Groundwater Well Application Process Guidelines 2024* as new data, models, and GSPs become available to inform future decision making and refinement of the Lead Agency's groundwater well permitting process, as needed to protect fish and wildlife resources. If you have any questions regarding the information above, or for future CEQA consultation requests, please contact Philip Cramer, Senior Environmental Scientist, by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Jason Roberts, Acting for
Tina Bartlett, Regional Manager
Northern Region

ec: State Clearinghouse
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Michael R. Harris, Adam McKannay, Philip Cramer
California Department of Fish and Wildlife