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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SACRAMENTO
16

17 ENVIRONMENTAL LAW FOUNDATION,) Case No.:
18 PACIFIC COAST FEDERATION OF)
19 FISHERMEN'S ASSOCIATIONS; INSTITUTE) **PETITION FOR WRIT OF**
20 FOR FISHERIES RESOURCES; and DOES 1-) **MANDAMUS AND COMPLAINT FOR**
100,) **DECLARATORY AND INJUNCTIVE**
21 Petitioners,) **RELIEF**
)
22 vs.) BASED UPON THE CALIFORNIA
) PUBLIC TRUST DOCTRINE
23 STATE WATER RESOURCES CONTROL)
24 BOARD, COUNTY OF SISKIYOU; and DOES) Date:
1-100, inclusive,) Time:
25 Respondents) Dept.:
) Judge:
26)
)
27) Original Complaint filed:
)
28)

I.
INTRODUCTION

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4 1. Petitioners Environmental Law Foundation (“ELF”), Pacific Coast Federation of
5 Fishermen’s Associations (“PCFFA”) and Institute for Fisheries Resources (“IFR”) (collectively
6 “Petitioners”) bring this action for a writ of mandate to challenge the pattern and practice of the
7 California State Water Resources Control Board (“SWRCB” or “Water Board”) and Siskiyou
8 County (“County”) (collectively “Respondents”) of failing to manage groundwater resources
9 interconnected with the Scott River in a manner consistent with the Public Trust Doctrine of
10 California (“PTD”). The failures of the SWRCB and the County injure the Scott River as well as
11 the fish and wildlife therein, which are protected public trust (“PT”) resources. Petitioners bring this
12 action on their own behalf, and on behalf of the general public and in the public interest.
13

14 2. Respondents SWRCB and Siskiyou County have identical and concurrent duties
15 to comply with the PTD, and protect various PT resources on behalf of the people of California.
16

17 3. By continuing to issue permits and administer water rights to groundwater
18 interconnected with the Scott River without any meaningful analysis as to the impacts to the Scott
19 River, Respondents continue to act in a manner contrary to their duties under the PTD.
20

21 4. Petitioners seek an order from the Court declaring that 1). the protection of
22 groundwater interconnected with the Scott River falls within the Respondents’ duties under the PTD
23 and, 2). this pattern and practice by Respondents is in violation of the PTD.

24 5. Petitioners also seek writs, 1). compelling the SWRCB to determine an accurate
25 and current zone of hydrological interconnectedness between the groundwater and surface flows of
26 the Scott River, 2). compelling the SWRCB to review their regulatory and management obligations
27 regarding groundwater interconnected with the Scott River in light of their duties under the PTD and
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1 to adopt implementation plans, as are necessary to protect and restore the PT resources of the Scott
2 River, and 3). enjoining the issuance or renewal of groundwater extraction or well-drilling permits
3 within the Scott River sub-basin by Respondents until such a time as the County and/or SWRCB
4 have established permitting or other management practices that will protect the Public Trust
5 resources of the Scott River.
6

7 **II.**
8 **PARTIES**

9
10 6. Petitioner ELF is a California 501(c)(3) non-profit organization, formed in 1991,
11 and located in Oakland, California. ELF's legal practice focuses on both Proposition 65 litigation,
12 as well as the protection of water resources in the state of California, including the PTD. ELF brings
13 this action on its own behalf, as an organization in the state of California, and on behalf of the people
14 of the State of California.

15
16 7. Petitioner PCFFA is a California non-profit trade association representing the
17 interests of approximately 1,200 commercial fishing families operating throughout the oceans of
18 the west coast, most of them based in California. Many of PCFFA's individual members derive all
19 or part of their livelihoods from the ocean commercial harvest of Pacific salmon, which traditionally
20 included salmon which originate in the Klamath River (including its tributaries such as the Scott
21 River). Decades of groundwater depletion, and the resultant loss of surface water inflows within the
22 Scott River sub-basin needed to support healthy salmon reproduction in that river system, has
23 destroyed access to, and the biological viability of, much of the Scott River's once-productive
24 salmon habitat. The livelihoods of PCFFA's member associations and their individual members are
25 directly and adversely affected by the loss of coho and chinook salmon production within the now
26 frequently dewatered Scott River. Scott river coho salmon runs, once abundant, have in recent years
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1 been so damaged by these excessive and largely unregulated water withdrawals, that those stocks
2 now require protection under the federal Endangered Species Act (ESA), and similar state protection
3 under the California Endangered Species Act (CESA). Under legally required “weak stock
4 management” principles, very weak Klamath salmon stocks such as those from the Scott River can
5 trigger ocean harvest restrictions (or even total closures) over more than 700 miles of coastline,
6 resulting in enormous economic losses to PCFFA members. PCFFA likewise brings this action on
7 its own behalf, as an organization in the state of California, and on behalf of the people of the State
8 of California.
9

10
11 8. Petitioner IFR is PCFFA’s closely affiliated sister organization and is a California
12 non-profit public benefit corporation dedicated to the protection and restoration of anadromous fish
13 habitat throughout the region, and in particular in the Klamath Basin. IFR has been working on
14 salmon habitat restoration in the Klamath Basin, including in the Scott River sub-basin, since its
15 formation by PCFFA in 1992. IFR has invested considerable time, effort and resources over the
16 years toward the restoration of biologically and economically important salmon runs in the Klamath
17 Basin, including in its Scott River sub-basin. Those IFR investments continue to be damaged and
18 jeopardized by largely unregulated groundwater depletion in the Scott River sub-basin which in turn
19 depletes instream flows within the river needed for salmon. IFR also brings this action on its own
20 behalf, as an organization in the state of California, and on behalf of the people of the State of
21 California.
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24 9. Respondent SWRCB is a California agency created under the laws and regulations
25 of the State of California and is a state agency charged with the management of both surface and
26 subsurface water rights and resources, including the management of groundwater interconnected
27 with the Scott River. The SWRCB is also a state agency that is charged with the ongoing and
28

1 continuing duty to protect and manage California's waters and wildlife in a manner consistent with
2 the PTD. The SWRCB participated in a statutory adjudication of the Scott River's water resources,
3 including the interconnected groundwater, pursuant to Section 2500.5 of the California Water Code,
4 in 1980. Accordingly, the SWRCB shares jurisdiction with Siskiyou County over the management
5 of groundwater resources interconnected with the Scott River.
6

7 10. Respondent Siskiyou County is the governmental entity which has a right and
8 duty to govern the management and extraction of groundwater resources within its jurisdiction in
9 order to protect the health, welfare and safety of the residents of the county. Siskiyou County also
10 has an ongoing and continuing duty to protect and manage its waters and wildlife in a manner
11 consistent with the PTD. Siskiyou County has adopted a limited groundwater management
12 ordinance and keeps minimal recordation of wells within the County, through a permitting system
13 for well drilling and destruction. Siskiyou County's Public Health and Community Development
14 Department is the specific department that manages the well-drilling and destruction permitting
15 within the County.
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19 **III.**
20 **JURISDICTION AND VENUE**

21
22 11. This action commences pursuant to the California Code of Civil Procedure §1085.
23 Plaintiffs have performed all conditions precedent to filing suit or are excused from such conditions.

24 12. This petition is filed in the California Superior Court in Sacramento. The
25 Superior Court of California has jurisdiction over this case. Venue is proper in Sacramento under
26 California Code of Civil Procedure § 401(l), because SWRCB is a California state agency and venue
27 is proper where the Attorney General has an office. There is an Attorney General's office in
28

1 Sacramento, and the SWRCB is headquartered in Sacramento.

2 **IV.**

3 **REQUEST FOR AND DENIAL OF ADMINISTRATIVE RELIEF**

4
5 13. Petitioners have requested action from Respondents and participated in all
6 administrative actions concerning this claim. Respondents have taken ongoing and final actions
7 contrary to their duties under the PTD, and Petitioners have exhausted administrative remedies
8 before the filing of this petition.

9
10 14. On March 23, 2009 and July 1, 2009 ELF petitioned the SWRCB to review its
11 policies and practices corresponding to the management of the Scott River groundwater resources,
12 and were summarily denied both times primarily on the basis that Petitioners were not holders of
13 water rights.

14
15 15. On July 1, 2009, ELF petitioned Siskiyou County's Public Health and
16 Community Development Department to review its policies and practices corresponding to the
17 management of the Scott River groundwater resources. The County's reply was vague and
18 unresponsive to the issues raised regarding the County's responsibilities under the Public Trust.
19 Respondent Siskiyou County has made few attempts to monitor, manage or limit groundwater
20 extractions from the Scott River's interconnected groundwater in a way that is consistent with the
21 County's duties under the PTD.

22
23 **V.**

24 **FACTUAL AND LEGAL BACKGROUND**

25
26 16. The Scott River, located in Siskiyou County, is a public trust resource under
27 California's PTD. The PTD establishes that the waters and wildlife of the state belong to the people,
28 and the State acts as a trustee to manage and protect those resources for the benefit of the people of

1 the state. The Scott is a navigable waterway used for boating, rafting and fishing, and provides water
2 supply for domestic and agricultural purposes. It also provides habitat for many fish and wildlife
3 protected under the PTD, including coho and chinook salmon and steelhead as well as other special
4 status fish and wildlife.
5

6 17. The hydrology of the Scott River includes the river and its tributaries, as well as a
7 hydrologic connection between the surface flow and groundwater in the Scott River Valley. The
8 supply of groundwater is inextricably linked and vital to the hydrology of the Scott River, as it
9 contributes to and helps regulate the flow as well as water quality within the Scott River, so it
10 remains a sustainable habitat for aquatic life during the dry summer months. California Water Code
11 § 2500.5 recognizes this, and mandates the inclusion of interconnected groundwater in any
12 determination of water rights to the Scott River.
13

14 18. In 1980, the Scott River underwent a water rights adjudication. The
15 adjudication's final order and decree authorizes additional wells or sumps to be constructed, so long
16 as they are located "at least 500 feet from the Scott River or at the most distant point from the river
17 on the land that overlies the interconnected groundwater, whichever is less." (California State Water
18 Resources Control Board. Jan.16, 1980. Scott River Adjudication, Decree No. 30662 Superior
19 Court for Siskiyou County, 6). No groundwater beyond that 500-foot (or less) zone of adjudication
20 was considered in or regulated through the adjudicative process.
21
22

23 19. The Scott River (as well as groundwater within the 500 foot zone of adjudication)
24 is fully appropriated during the irrigation season. However, beyond the zone of adjudication, the
25 groundwater remains unregulated, unmanaged and unprotected from hundreds of well owners and
26 water users who extract groundwater to either substitute for or supplement surface water allocations.
27 An increasing agricultural trend of growing water-intensive crops in Siskiyou County is encouraged
28

1 by the lack of regulation over groundwater resources. There is no adequate system in place by either
2 the SWRCB or Siskiyou County to monitor with any accuracy or regularity the extractions of those
3 with groundwater rights under the current adjudication scheme to ensure protection of the public
4 trust or their compliance with their duties under the PTD.
5

6 20. The physical hydrologic connection between the surface flow and groundwater
7 extends beyond 500 feet from the Scott River, and the continual extraction of the interconnected
8 groundwater both within and beyond the zone of adjudication is contributing to the Scott River's
9 current deteriorating environmental condition, and injuring these valuable PT resources. However,
10 there is no adequate system in place by either SWRCB or Siskiyou County to manage, monitor, limit
11 or regulate groundwater extractions from new or existing wells beyond that zone of adjudication to
12 ensure protection of the public trust or their compliance with their duties under the PTD.
13

14 21. In recent years, the Scott River has experienced a general decrease in base flow
15 during the dry summer months, increases in water temperature and decreases in overall water
16 quality. These conditions have injured the populations of salmon, steelhead and other special status
17 fish and wildlife in the river. Specifically, the decrease in base flow during summer months has
18 injured salmon and steelhead in the Scott River by negatively impacting juvenile rearing, spawning,
19 migration and other vital life cycle processes of the fish.
20

21 22. Coho salmon inhabiting the Scott River have so diminished in numbers in recent
22 years that they have been protected under the federal Endangered Species Act (ESA) (16 U.S.C. §
23 1531, et seq.) since May 6, 1997 (62 Fed Reg. 24,588). Scott River coho salmon have also been
24 protected since August 30, 2002 under the California Endangered Species Act (CESA) (Cal. Fish
25 & Game Code § 2050, et seq.). The Scott River has also been federally listed under the ESA as
26 "critical habitat" for ESA-listed coho salmon since May 5, 1999 (64 Fed. Reg. 24,049). The
27
28

1 California Fish and Game Commission also adopted a *Recovery Strategy for California Coho*
2 *Salmon* on February 4, 2004 which contains numerous measures to protect coho salmon in the Scott
3 River basin.

4
5 23. Chinook salmon and steelhead also spawn and rear within the Scott River, and
6 their numbers too are today greatly diminished from their historical abundance. Coho, chinook and
7 steelhead public trust resources within the Scott River have continued to diminish since the last Scott
8 River water rights adjudication was completed in 1980.

9
10 24. In 1983, the California Supreme Court extended the PTD's protections to
11 non-navigable tributaries of larger waterways. (*National Audubon Society v. Superior Court*, 33 Cal.
12 3d 419 (1983)). The Court in *National Audubon* recognized an ongoing and continuing duty of the
13 State to manage and regulate these non-navigable tributaries to protect these public trust resources.
14 Since 1980, and notably since the *National Audubon* decision, SWRCB has not revisited the Scott
15 River adjudication or their determination as to the extent of the current hydrologic connection, and
16 groundwater interconnected with the Scott has not been managed or monitored with any regularity
17 by either the SWRCB or Siskiyou County in a manner consistent with their ongoing duties under the
18 PTD.
19

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21
22 **VI.**
23 **FIRST CAUSE OF ACTION –Against Respondent SWRCB**
24 **(Violations of the California Public Trust Doctrine)**

25 25. Petitioners incorporate by reference the allegations in the paragraphs set forth
26 above.

27 26. The PTD in California establishes that the waters, stream and lake beds, and fish
28

1 and wildlife in the State of California belong to the people of California and that the State holds
2 those resources in trust for the people and for future generations. The PTD confers a continuing and
3 ongoing duty on the State to protect and manage public trust resources for the benefit of the people
4 of the State. A failure to do so constitutes a breach of that duty and a clear violation of the PTD.
5

6 27. Navigable waters and fish in California are traditional public trust resources held
7 in trust by the State as trustee for the people of California. The Scott River and the resources that
8 are part of and dependent upon the river system are public trust resources.
9

10 28. Both the SWRCB and Siskiyou County have a duty to protect and manage
11 groundwater that is interconnected with public trust waters, a duty articulated by the California
12 Supreme Court in *National Audubon* in its recognition that non-navigable tributaries that are
13 interconnected with navigable public trust waters must themselves be managed to protect the public
14 trust waters under the PTD. Furthermore, the California Supreme Court imposed a continuing duty
15 to so review and if necessary change the management of those tributaries to protect the public trust
16 resources. Respondents failed to uphold this duty by neither monitoring groundwater nor regulating
17 nor limiting new or existing extractions of groundwater beyond the 500 foot zone in the 1980
18 adjudication, nor undertaking any review of whether changes are necessary to fully protect PT
19 resources in the Scott River.
20

21 29. By the conduct (or lack thereof) described above, Respondent SWRCB is
22 allowing destruction of the Scott River itself and the fish therein, which are PT resources under
23 California's PTD. Specifically, Respondent SWRCB has failed and refused to review the
24 groundwater rights conferred by the 1980 Scott River adjudication in light of their duties under the
25 PTD. Moreover, the SWRCB has a duty to determine the boundary on either side of the navigable
26 surface flow within which percolating groundwater is hydrologically connected to the surface waters.
27
28

1 However, the SWRCB has not done so in more than 30 years. With respect to the Scott River, this
2 zone of interconnectedness extends far beyond the 500-foot boundary included in the 1980
3 adjudication. The SWRCB itself made that assessment in its official *Report of Hydrogeologic*
4 *Conditions in the Scott River Valley* in 1975 as well as in a series of technical maps incorporated into
5 the adjudication in 1980. However, the reliance on this 500-foot zone, which is arbitrarily based (at
6 best) on antiquated scientific data, allows new and continuing injurious extractions of groundwater
7 that is interconnected with the Scott River, harming its flows. Until a more precise determination
8 is made, no additional permits or permit renewals to drill wells should be issued to any water user
9 from the County within the Scott River sub-basin. Petitioners request that the SWRCB make a more
10 precise determination at this time. Petitioners are not requesting a re-opening of the 1980
11 adjudication, unless and until it is deemed a necessary step by the SWRCB to managing and
12 regulating groundwater pursuant to the State's duties under the PTD.
13

14
15 30. The SWRCB fails to protect the Scott River from extractions of interconnected
16 groundwater. In turn, these unchecked and unregulated groundwater extractions are causing injury
17 to the Scott River and the fish and wildlife therein. Respondent SWRCB is neglecting its continuing
18 and ongoing duty under the PTD by allowing new and existing extractions of groundwater
19 interconnected with the Scott River without any meaningful analysis of the impacts to the Scott and
20 its PT resources.
21

22
23 31. Respondents' failure to protect the Scott River from new and existing injurious
24 extractions of interconnected groundwater is a violation of the PTD. This failure is causing
25 irreparable harm to Petitioner and the people of the State of California by allowing irreparable harm
26 to the public trust resources of the Scott River.
27

28 32. Respondents' pattern and practice of failing to manage groundwater resources

1 interconnected with the Scott River in a manner consistent with the PTD, and without any analysis
2 of the impacts of groundwater extractions on the Scott River and the populations of fish and wildlife
3 therein, is injuring public trust resources to the detriment of Petitioners and the people of the State
4 of California. Thus, unless Petitioners are granted relief as set forth herein, they and the people of
5 California will suffer irreparable harm.
6

7 33. There is no adequate remedy at law for this injury to public trust resources.
8 Respondents will continue to neglect their duties under the PTD unless ordered by the Court to do
9 otherwise.
10

11 34. An actual controversy exists between parties concerning the SWRCB's duties
12 under the PTD. Petitioners contend that the SWRCB has a duty under the PTD to continuously
13 review, manage and protect groundwater resources that are hydrologically connected to PT waters,
14 a duty that is particularly applicable in the Scott River sub-basin. Respondent SWRCB denies it has
15 a duty or authority to protect percolating groundwater. Petitioners request a judicial determination
16 of the SWRCB's authority and duties to protect groundwater which is hydrologically connected to
17 navigable, public trust waterways, under the PTD of California. Declaratory relief is necessary and
18 appropriate, and Petitioners respectfully request it at this time.
19
20

21
22 **VII.**
SECOND CAUSE OF ACTION—Against Respondent Siskiyou County
23 **(Violations of the California Public Trust Doctrine)**
24

25 35. Petitioners incorporate by reference the allegations in the paragraphs set forth
26 above.

27 36. Siskiyou County has never completed a detailed or comprehensive scientific study
28

1 to determine whether excessive groundwater pumping, and consequent aquifer depletion, is
2 occurring within the Scott River sub-basin, and thus the County has no way of knowing, much less
3 of controlling, any adverse impacts from such groundwater pumping on aquifer levels generally, on
4 interconnected surface water flows to the Scott River from the aquifer, or on fish and wildlife within
5 the Scott River that are caused, or may be caused, by continuing to issue well permits in that
6 sub-basin. There is, however, increasing evidence of such adverse impacts on interconnected
7 instream flows that the County continues to ignore in deciding whether or not to issue new well
8 permits.
9

10
11 37. By the conduct (or lack thereof) described above, Respondent Siskiyou County is
12 allowing destruction of the Scott River itself and the fish therein, which are public trust resources
13 under California's PTD. Specifically, the County is failing to protect the Scott River from numerous
14 and injurious extractions of interconnected groundwater through their pattern and practice of issuing
15 new well drilling permits without any analysis of the impacts those potential groundwater extractions
16 could have on the Scott River. In turn, these groundwater extractions are causing injury to the Scott
17 River and the fish and wildlife therein.
18

19 38. Respondent Siskiyou County's failure to protect the Scott River from numerous
20 and injurious extractions of interconnected groundwater, causing injury to the Scott River and the
21 populations of fish and wildlife therein, violates the PTD. As a result, Respondent Siskiyou County
22 is causing irreparable harm to the Petitioners and the people of the State of California.
23

24 39. There is no adequate remedy at law for this injury to public trust resources.
25 Respondents will continue to neglect their duties under the PTD unless ordered by the Court to do
26 otherwise.
27

28 40. Unless Petitioners are granted relief as set forth herein, they will suffer

1 irreparable harm in that Respondents' pattern and practice in failing to manage groundwater
2 resources interconnected with the Scott River in a manner consistent with the PTD, and without any
3 analysis as to the impacts of groundwater extractions on the Scott River and the fish and wildlife
4 therein, is injuring public trust resources to the detriment of Petitioners, to public trust resources and
5 to the people of the State.

7 41. The zone in which the groundwater in the Scott River Basin is presently
8 interconnected with the Scott River is unknown. The SWRCB is charged with the task of
9 determining this zone, but has not done so in more than 30 years. This zone of interconnectedness
10 certainly extends beyond the original 1980 determination, and so until a more precise zone is
11 determined, no new or additional permits, or permit renewals, to extract groundwater or drill
12 additional wells should be issued to any water user by Respondents for any applications for sites
13 within the Scott River sub-basin.

15 42. Petitioners ask the Court to prohibit Respondent Siskiyou County from further
16 issuing groundwater extraction permits or well drilling permits within the Scott River sub-basin until
17 the County has in place a permit or management plan for new wells that will proactively and
18 affirmatively protect the public trust resources of the Scott River sub-basin

21
22 **VIII.**
PRAYER FOR RELIEF

- 24 1. An order from the Court declaring against each Respondent that:
- 25 A. Groundwater which is hydrologically connected to navigable surface flows,
26 protected by the PTD, should also be managed and protected in a manner
27 consistent with the PTD, and;

1 B. Failing to manage, monitor or limit extractions of groundwater
2 interconnected with the Scott River is a violation of their continuing and
3 ongoing duties under the California PTD.
4

5
6 2. Alternative and peremptory writs or preliminary and permanent injunctions
7 compelling SWRCB to:

8 A. Determine the current zone of hydrological interconnectedness between the
9 groundwater and surface flows of the Scott River, and;

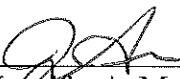
10 B. Perform such continuing groundwater monitoring and review, including
11 adoption and implementation of groundwater management plans, as are
12 necessary to fully protect and restore the public trust resources of the Scott
13 River.
14

15 3. Alternative and peremptory writs or preliminary and permanent injunctions to
16 Respondents compelling the cessation of the issuance or renewal of groundwater extraction permits
17 or well drilling permits within the Scott River sub-basin until such time as they are not in violation
18 of their public trust duties.
19

20 4. Costs of suit, expenses, including reasonable attorney fees according to the California
21 Code of Civil Procedure § 1021.5, and other provisions of law; and
22

23 5. Such other and further relief as the Court deems appropriate.

24 Executed on the 13 day of June, 2010 at Oakland, California.

25
26 
27 Jennifer A. Maier, on behalf of
28 ENVIRONMENTAL LAW FOUNDATION