

Date of Hearing: April 8, 2025

**ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE**

Diane Papan, Chair

AB 263 (Rogers) – As Introduced January 16, 2025

**SUBJECT:** Scott River: Shasta River: watersheds

**SUMMARY:** Provides that emergency drought regulations for the Scott and Shasta Rivers shall remain in effect until the State Water Resources Control Board (State Water Board) adopts permanent regulations to implement long-term instream flow requirements for these rivers.

**EXISTING LAW:**

- 1) Authorizes the State Water Board to adopt emergency regulations during times of drought to enforce the reasonable use doctrine, promote water recycling or conservation, curtail diversions due to lack of water availability, or to require reporting on water use. Provides such emergency regulations are not subject to review by the Office of Administrative Law (OAL) and may only remain in effect for one year. Sets penalties for violations of emergency regulations at \$500 per day (Water Code § 1058.5).
- 2) Provides that violations of a curtailment order issued by the State Water Board are subject to a penalty of \$10,000 per day and \$2,500 per acre-foot of water diverted in violation of a curtailment order (Water Code § 1846).
- 3) Provides the adoption, amendment, or repeal of an emergency regulation is not subject to review by OAL. An emergency regulation must still be filed with OAL and takes effect once such filing occurs. Requires the adopting agency to notify interested parties of the pending adoption of an emergency regulation at least five days before submitting the emergency regulation to OAL (Government Code § 11346.1).
- 4) Requires a notice of the adoption, amendment, or repeal of an emergency regulation to include specified information including: the time, place, and nature of proceeding relative to the adoption, amendment, or repeal; reference to the authority for the emergency regulation; a digest summarizing the emergency regulation and explaining the objectives and benefits of the emergency regulation, among other information; and an estimate of the costs or savings to any state or local agency resulting from the emergency regulation (Government Code § 11346.5).

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** According to the author, “We have made tremendous strides to restore the salmon runs in the Klamath River, but more must be done further upstream to ensure salmon populations can grow and flourish. This bill simply maintains the current status quo until long-term regulations are finalized. This legislation will protect some of the most critical salmon habitat in California and will complement the restoration efforts associated with Klamath dam removal. This is a matter of survival for salmon, tribal residents, and the historic fishing industry that is a centerpiece of the North Coast’s unique culture.”

- 2) **Background.** The Scott and Shasta are important tributaries to the Klamath River, the second largest river in California. These rivers are crucial sources of water for Siskiyou County and have immense economic, ecological, and cultural importance. Siskiyou County is home to 43,500 people. The Scott and Shasta watersheds provide water for agriculture, domestic users, the environment, fire protection, municipalities, Tribal Nations, and recreation. Both rivers provide habitat for commercially significant and culturally important fall-run Chinook salmon, steelhead, and Coho salmon [listed as threatened under the federal Endangered Species Act (ESA) and California ESA].

These fisheries have declined substantially compared to historical levels. According to the State Water Board, populations of Coho salmon in the Klamath River have declined between 52% and 95%; fall-run Chinook salmon populations have declined between 92% and 96%, spring-run Chinook salmon have declined 98%, and steelhead populations have declined 61%. In May 2021, the Department of Fish and Wildlife (DFW) recommended that the State Water Board develop permanent flow standards to protect public trust resources on the Scott River; likewise, in July 2023, DFW expressed support for the establishment of minimum flows for both the Scott and Shasta Rivers to protect fish populations against further decline.

Due to the impact of the 2020-23 drought on fish populations, the National Marine Fisheries Service closed the commercial and recreational ocean salmon fisheries from southern Oregon to the U.S.-Mexico border in 2023 and 2024. Similarly, the Fish and Game Commission closed the recreational salmon fishing season in the Klamath River Basin and Central Valley rivers in 2023 and 2024.

*Importance of fisheries to tribes.* Salmon are an essential resource and of cultural significance to Tribes in the Klamath River watershed, including the Yurok Tribe, Karuk Tribe, Quartz Valley Indian Reservation, and Hoopa Valley Tribe. Salmon populations support tribal subsistence, as well as traditional and ceremonial practices. In recent years, Tribes have severely restricted or closed subsistence, commercial, and ceremonial fisheries. For example, since 2015 the Yurok Tribe has closed its commercial fishery all but one year to preserve fish runs. Additionally, Yurok Tribal leaders decided not to serve salmon at the Tribe's 2023 Klamath Salmon Festival, for the third time since 2016, because the Klamath River's forecasted fish run was one of the lowest on record. These restrictions and closures disrupt traditional diets and impact cultural needs.

*Emergency drought regulations.* On May 10, 2021, Governor Newsom declared a drought emergency for 41 counties, including Siskiyou County, where accelerated action was needed to protect public health, safety, as well as the environment. Due to the drought emergency, the State Water Board adopted emergency regulations setting minimum flows on the Scott and Shasta Rivers in August 2021 to protect fish and maintain water quality. These emergency regulations have been re-adopted four times since 2021 (emergency regulations can remain in effect for up to one year). While Governor Newsom signed an executive order removing emergency drought provisions in many counties on September 5, 2024, the drought emergency in Siskiyou County remained in place due to continuing dry conditions in the region. On January 7, 2025, the State Water Board readopted an emergency regulation for the Scott and Shasta River Watersheds. OAL approved the emergency regulation on January 27, 2025 and the emergency regulation will remain in effect through January 27, 2026, unless re-adopted or rescinded. This bill keeps these emergency regulations in effect until the State Water Board is able to adopt permanent regulations.

*Economic impact of emergency regulations.* According to the State Water Board’s fiscal impact analysis of the emergency regulations, “the estimated loss in revenue (income before expenses are subtracted) to municipal water suppliers from the proposed Emergency Regulation is estimated to be \$765,752 (\$1629.26 per acre-feet of water multiplied by 470 acre-feet) for the expected-range scenario, \$972,668 (\$1629.26 per acre-feet of water multiplied by 597 acre-feet) for the extreme-drought scenario, and \$286,750 (\$1629.26 per acre-feet of water multiplied by 176 acre-feet) for the above-average scenario. “The loss in crop sales revenue in 2024 in the Scott and Shasta River watersheds is estimated to be \$5,994,000 for the expected-range scenario, \$10,014,122 for the extreme-drought scenario, and \$152,393 for the above-average scenario.” (Out of an estimated total crop revenue of \$316,125,604.)

*Shasta River Water Association (SRWA) August 2022 incident.* Under the emergency drought regulations at issue in this bill, the State Water Board issued curtailment notices to senior water right holders on the Shasta River on August 2, 2022. Though subject to this curtailment order, SRWA began diverting water from the Shasta River on August 17, 2022. State Water Board staff observed a precipitous decline in flows on the Shasta River once SRWA began illegally diverting water. The State Water Board immediately provided notice and a draft cease and desist order (CDO) to SRWA, which had 20 days to request a hearing. After eight days, SRWA ceased its illegal diversion and a hearing never occurred. The State Water Board eventually imposed the maximum penalty allowable on SRWA: \$4,000 (\$500 per day for eight days). It appears that SRWA viewed that paying the minimal allowable fine was simply a cost of doing business. AB 460 (Bauer-Kahan) enacted last year substantially increased penalties for violations of curtailment orders in response to this incident (see #2 under Existing Law, above, and below under Related Legislation).

- 3) **Arguments in support.** The Karuk Tribe is one of the co-sponsors of this bill and writes “Since time immemorial, Karuk People have subsisted on the bounty of the Klamath River and surrounding forests. Salmon are a cornerstone of Karuk culture. Our ceremonies celebrate the annual migration of salmon and the harvest and preservation of salmon are central to many community activities.” The Karuk Tribe has worked for years to restore salmon on the Klamath River and its tributaries, including the Scott and Shasta Rivers because “the Shasta is the largest producer of wild Chinook salmon in the Klamath Basin; the Scott the largest producer of wild Coho salmon.” The Karuk Tribe asserts this bill is necessary because the drought proclamation is likely to be lifted in the near future and the process to adopt permanent standards will take years, hence, leaving these important salmon runs unprotected. Finally, the Karuk Tribe states “while flows naturally are at their lowest during a drought, we note that flows in both Scott and Shasta consistently dip below levels deemed to the minimum necessary for fish survival even in average water years due to excessive diversions and groundwater pumping. Given the real risk of extinction, we cannot afford to not have flow regulations in place.”
- 4) **Arguments in opposition.** The Siskiyou County Farm Bureau and others oppose this bill arguing that establishing “in statute the continuation of the emergency order for the Scott and Shasta watersheds regardless of regional hydrologic conditions, would undermine efforts at the State Water Board to establish permanent regulations for these watersheds, would circumvent public process protections in the Administrative Procedures Act, would set a troubling precedent, and would undermine the current local collaborative process.” Further, Siskiyou County Farm Bureau maintains this bill will undermine existing collaborative

efforts to develop a holistic plan for supporting salmon on these rivers and short-circuits public process and participation. Finally, the Association of California Water Agencies asserts this bill establishes a “precedent for interests in other watersheds to extend emergency regulations through legislation rather than the current process to establish and renew emergency regulations at the State Water Board. This precedent could have negative impacts that extend emergency orders beyond their original intent and need.”

- 5) **Proposed committee amendments.** The Committee may wish to request that the author add a deadline for the adoption of permanent regulations on the Scott and Shasta Rivers. The State Water Board received \$711,000 in the current fiscal year for two permanent positions to establish and implement permanent flow standards for the Scott and Shasta Rivers and estimates that draft standards will be ready in FY 2028-29. A sunset date will help to ensure that permanent regulations are adopted under the planned time horizon and to help address concerns about the precedent of codifying emergency regulations.

#### Amendment 1

Add a deadline – Provide that this bill will sunset after five years or upon the adoption of permanent regulations for the Scott and Shasta Rivers, whichever occurs sooner.

- 6) **Related legislation.** AB 430 (Alanis) of the current legislative session requires the State Water Board to conduct a comprehensive economic analysis of the impacts of an emergency regulation before the second renewal of an emergency regulation or upon its repeal. AB 430 is currently pending in this Committee.

AB 460 (Bauer-Kahan), Chapter 342, Statutes of 2024, increases penalties for violations of CDOs and curtailment orders issued by the State Water Board and requires the State Water Board to annually adjust all civil and administrative penalties based on inflation beginning January 1, 2026.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

Karuk Tribe (co-sponsor)  
 Yurok Tribe (co-sponsor)  
 Amah Mutsun Tribal Band  
 Anchored in Trinidad  
 Audubon California  
 California Environmental Voters  
 California Native Plant Society, Alta Peak Chapter  
 California Sportsfishing Protection Alliance  
 CalWild  
 Center for Biological Diversity  
 Clean Water Action  
 Cleaneearth4kids.org  
 County of Humboldt  
 Defenders of Wildlife  
 Endangered Habitats League  
 Environmental Defense Fund

Environmental Law Foundation  
Environmental Protection Information Center  
Friends Committee on Legislation of California  
Friends of the Eel River  
Friends of the Inyo  
Friends of the Shasta River  
Golden State Salmon Association  
Humboldt Waterkeeper  
Inland Empire Waterkeeper  
Karmic Action Retribution Management Agency  
Los Angeles Waterkeeper  
Mendocino Producers Guild  
Mid Klamath Watershed Council  
Monterey Waterkeeper  
Mount Shasta Bioregional Ecology Center  
National Parks Conservation Association  
Native Fish Society  
Northern California Tribal Chairperson's Association  
Orange County Waterkeeper  
Pacific Coast Federation of Fishermen's Associations  
Planning and Conservation League  
Resource Renewal Institute  
San Diego Coastkeeper  
Santa Barbara Channelkeeper  
Save California Salmon  
Shasta Waterkeeper  
Sierra Club California  
Sierra Nevada Alliance  
South Yuba River Citizens League  
The Fire Restoration Group  
The Nature Conservancy  
The Otter Project  
Trout Unlimited  
Union of Concerned Scientists  
Water Climate Trust  
Watershed Research & Training Center  
Wholly H2o  
Yuba River Waterkeeper

**Opposition**

Association of California Water Agencies  
California Chamber of Commerce  
California Farm Bureau Federation  
California Municipal Utilities Association  
Regional Water Authority  
San Francisco Public Utilities Commission  
Siskiyou County Farm Bureau

Valley Ag Water Coalition  
Western Growers Association

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