November 23, 2026

Chair E. Joaquin Esquivel and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Via email: commentletters@waterboards.ca.gov

Re: 12/01/2026 BOARD MEETING – ITEM #5 Update on flow-related efforts in the Shasta River and Scott River Watersheds, including long-term efforts

Dear Chair Esquivel and Members of the Board:

I am David Collenberg, a fifth-generation farmer in Siskiyou County. I operate a hay and livestock operation in Fort Jones. I hold pre-1914 appropriative water rights. I submit this comment on Item 5 for the December 1, 2026 Board meeting. Place the entire letter in the administrative record and give it a written, issue-specific response. Do not reduce it to a generic note that a farmer opposes regulation.

I start where this Board is required to start: with the rights the law already recognizes and with the judgment the Siskiyou County Superior Court already entered. My pre-1914 rights are not a Board permit. They do not come from this agency, and they are not yours to rewrite. The water rights of the Scott River stream system were adjudicated in a statutory proceeding and fixed by a court decree. That decree is a judgment. It is conclusive. The court kept continuing jurisdiction to change it. You do not get to set it aside by an "emergency" regulation, and you do not get to use Item 5 to turn drought-era survival flows into a permanent substitute for that decree.

Item 5 is labeled informational. It is not harmless. Staff will report on implementing California Code of Regulations, title 23, sections 875 through 875.9, and on work toward "long-term baseline minimum instream flow requirements." I oppose that project. I oppose making drought-emergency "survival-level" minimum flows permanent. I oppose using those flows as a baseline for any long-term rule. I demand that this Board stop treating a terminated drought emergency as a standing water-rights regime over a stream system a court has already adjudicated.

I demand the following, in full and without compromise:

1. Honor my pre-1914 appropriative rights and the Scott River adjudication. Do not rewrite, override, or sidestep the Siskiyou County Superior Court's Decree No. 30662, or the 1932 Shasta River decree, by regulation.

2. Repeal and sunset the emergency regulation now. The Governor has terminated the drought emergency. This Board is still using emergency power after that emergency officially ended.

3. Do not adopt permanent minimum instream flows built on this emergency article, and do not use the emergency "survival-level" flows as the baseline for long-term rules.

4. Lift all remaining Scott River surface-water curtailments now.

5. Complete and publish a full economic-impact analysis of irrigated agriculture and livestock in these watersheds, and take comment on it, before proposing any permanent flow rule.

6. End the September-through-March "inefficient" livestock-diversion ban in section 875.7, and do not carry it into any permanent rule.

The North Coast Regional Water Board's separate Draft Scott and Shasta Order and Draft EIR, with comments due December 16, 2026, is a different proceeding, and I oppose that proposal as well.

I. The Scott River decree already adjudicated this stream system. You cannot rewrite a court judgment with a regulation.

I hold pre-1914 appropriative water rights. Those rights were initiated before the Water Commission Act permit system took effect on December 19, 1914. They are not held under a permit or license from this Board. Water Code section 1201 declares public, and subject to appropriation under the Water Code, only that water in a natural channel that has not already been applied to beneficial use, is not reasonably needed for riparian use, and has not been "otherwise appropriated." Water already appropriated—including a perfected pre-1914 right—is not in the Board's permit pool. Water Code section 1202 defines "unappropriated water." It is not a grant of power to permit, reallocate, or extinguish valid pre-1914 rights.

The California Supreme Court has stated the basic limit. "No one disputes that the Water Board does not have jurisdiction to regulate riparian and pre-1914 appropriative rights." (California Farm Bureau Federation v. State Water Resources Control Bd. (2011) 51 Cal.4th 421, 429, as quoted in Young v. State Water Resources Control Bd. (2013) 219 Cal.App.4th 397.) The same cases recognize that the Board may prevent illegal diversions and may prevent waste or unreasonable use, regardless of the basis of right. That is a limited enforcement power. It is not a license to treat my pre-1914 right as if it were a revocable Board permit, and it is not authority to ignore a superior court decree that has already determined the rights on this stream.

On the Scott River, the rights were not left in doubt for this Board to re-decide by emergency rule. They were determined in a statutory adjudication under Water Code section 2500 et seq., including section 2500.5, which expressly brought interconnected Scott River groundwater into the "stream system" so the judgment would be fair and effective. The Board investigated the claims and issued an Order of Determination. The Superior Court of Siskiyou County then entered a decree.

That judgment is Decree No. 30662, entered January 30, 1980, and amended September 11, 1980, in the matter of the determination of the rights of the various claimants to the waters of the Scott River stream system, except rights to water of Shackleford Creek, French Creek, and

tributaries downstream of the USGS gaging station below Fort Jones. The court "ORDERED, ADJUDGED, AND DECREED that the several rights of all existing claimants in and to the use of water of the Scott River Stream System … are as hereinafter set forth." Paragraph 1 decrees all surface water rights in that system, all rights to supporting underflow, and all rights to interconnected groundwater as defined and mapped in the decree. Paragraph 14 states that claimants "are entitled to the use of water" in the amounts allotted under the priorities in the decree's schedules. Schedule E separately lists post-1914 appropriative rights. Water Code section 2768 required the court to enter a decree determining the rights of all persons involved. Water Code section 2773 states: "The decree is conclusive as to the rights of all existing claimants upon the stream system lawfully embraced in the determination." The decree itself is just as plain: "This decree is conclusive and determines all rights in the Scott River stream system as defined herein."

The court did not forget fish. Paragraph 45 already awards the United States Forest Service a right to streamflow at the Fort Jones gage for instream use for fish and wildlife. The decree states that those amounts "are necessary to provide minimum subsistence-level fishery conditions including spawning, egg incubation, rearing, downstream migration, and summer survival of anadromous fish, and can be experienced only in critically dry years without resulting in depletion of the fishery resource." The priority of that right "is equal and correlative with first priority rights in Schedule D4." It is not senior to every irrigation right in the valley. Paragraph 46 reserves specified high flushing flows after allowance for "all other rights determined in this decree." Paragraph 15 already forbids waste and diversion in excess of what is reasonably necessary for beneficial use. The decree is not a blank page for this Board to fill in with new "emergency" minimums that curtail decreed diversions as if the court had never spoken.

The court kept the case. It "retains continuing jurisdiction of the parties to these proceedings, and of the subject matter hereof, and upon application of any party hereto, or successor in interest thereto, or upon its own motion or the motion of the State Water Resources Control Board, to review its decree and to change or modify the same as the interests of justice may require." Paragraph 64 is the path for a change in the exercise of decreed rights: Board investigation, then "any changes or modifications of the decree recommended by the Board shall be entered, subject to court review and approval, as a supplemental decree." That is how decreed rights are changed—by going back to the court that entered the judgment. It is how Shasta decreed rights have been modified, including by the Siskiyou County Superior Court's July 17, 2014 supplemental decree in Case No. 7035, the Shasta River adjudication entered December 30, 1932, and earlier modified October 30, 1956. There is no 1958 Shasta River decree. French Creek was determined separately (the Board's own regulation, title 23, section 875.5, subdivision (d)(3), cites the judgment entered July 1, 1959, in Siskiyou County Superior Court Case No. 14478, Mason v. Bemrod). Shackleford Creek was decreed April 3, 1950, in Case No. 13775. Those judgments are still judgments. This Board does not sit as a court of appeal over them.

I will not pretend the Board has never been before a court on pre-1914 rights. Young held that, in an enforcement proceeding under Water Code section 1831, the Board may make a preliminary determination whether a claimed riparian or pre-1914 right actually exists before issuing a cease-and-desist order against unauthorized diversion, with judicial review afterward. Millview County Water Dist. v. State Water Resources Control Bd. (2014) 229 Cal.App.4th 879 held that the Board may issue a cease-and-desist order against excessive diversion under a pre-1914 right and may determine the perfected scope of the claim, but it reversed the Board's forfeiture finding for use of the wrong legal standard. Those cases are about whether a claimed right exists, or has been exceeded or forfeited. They are not a holding that this Board may issue a regulation that curtails rights a superior court has already adjudged and decreed, or that it may substitute a new instream schedule for the one the court already set, with a new priority the court did not decree.

The Court of Appeal has already rejected the idea that drought, standing alone, lets the Board shut off valid pre-1914 rights. In California Water Curtailment Cases (2022) 83 Cal.App.5th 164, involving among others Byron-Bethany Irrigation District and West Side Irrigation District, the court held that Water Code section 1052, subdivision (a), allows the Board to enjoin diversion outside the scope of a valid pre-1914 right, but does not authorize the Board to curtail holders of valid pre-1914 appropriative rights "on the sole ground that there is insufficient water to service their priorities of right due to drought conditions." That is exactly the kind of power this emergency article is being used to exercise on the Scott.

I also know what this Board will cite against me. Light v. State Water Resources Control Bd. (2014) 226 Cal.App.4th 1463 and Stanford Vina Ranch Irrigation Co. v. State of California (2020) 50 Cal.App.5th 976, together with Water Code section 275 and California Constitution, article X, section 2, hold that the Board may act to prevent waste and unreasonable use regardless of the claim of right, and that there is no vested right to use water unreasonably. Stanford Vina upheld temporary emergency minimum-flow regulations and curtailments on Deer Creek during the 2014–2015 drought, in a case where the drought emergency itself was not disputed. The Board's own regulation cites Stanford Vina. I do not ignore those cases. I reject their use as a blank check here.

Light was a frost-protection regulation aimed at an unreasonable method of diversion. It was not a decision that this Board may rearrange a statutory stream-system decree by emergency rule. Stanford Vina was a temporary emergency measure during an actual, undisputed drought, on a stream that was not shown to be governed by a decree like Decree No. 30662, which already fixed "minimum subsistence-level fishery" instream amounts, gave those amounts a stated priority equal and correlative with Schedule D4 first-priority rights, and reserved high flushing flows only after allowance for all other rights determined in the decree. Article X, section 2, and Water Code section 100 require beneficial use to the fullest extent and forbid waste and unreasonable use. The same constitutional section states that nothing in it "shall be construed as depriving any riparian owner of the reasonable use of water … or as depriving any appropriator of water to which the appropriator is lawfully entitled." Reasonable use cuts both ways. Water Code section 106 declares irrigation the next-highest use of water after

domestic use. Calling decreed irrigation "unreasonable" whenever a Board-set drought target is missed, after the court already allocated both irrigation and subsistence-level fishery flows, is not a reasonableness determination. It is a reallocation of a judgment.

A water right confirmed or held under that decree, and a pre-1914 appropriative right, is property. California Constitution, article I, section 7, and the Fourteenth Amendment provide that a person may not be deprived of property without due process of law. Article I, section 19, and the Fifth Amendment protect property against uncompensated taking. I do not claim that a court has already entered a judgment finding a taking of my property. I do say this: a permanent minimum-flow rule, or continued post-emergency curtailment, that reduces diversions already fixed by a conclusive court decree is a taking and a due-process violation, and Stanford Vina does not hold otherwise for a lapsed emergency or for a rewrite of a stream-system judgment. If this Board wants the decree changed, go back to the Siskiyou County Superior Court, on the record, under the jurisdiction that court reserved. Do not do it in an "informational" update or in a regulation that pretends the judgment is not there.

Demand: Honor pre-1914 appropriative rights and Decree No. 30662. Honor the 1932 Shasta River decree. Stop curtailing decreed and pre-1914 rights under this emergency article. Do not adopt any permanent flow rule that overrides those judgments or treats interconnected groundwater the court already adjudicated as an unprotected afterthought.

II. The drought emergency is over. This Board is still using emergency power anyway.

On March 24, 2026, the Governor issued a proclamation terminating the May 10, 2021 drought state of emergency for the Klamath River, Sacramento-San Joaquin Delta, and Tulare Lake watershed counties, effective immediately. The Governor found, pursuant to Government Code section 8629, that the conditions of extreme peril to the safety of persons and property underlying that proclamation no longer exist. That is the State's own finding.

Water Code section 1058.5, subdivision (c)(1), provides that an emergency regulation adopted under that section may remain in effect for up to one year, and "is deemed repealed immediately upon a finding by the board that due to changed conditions it is no longer necessary for the regulation to remain in effect." Renewal is allowed only if the Board determines that the drought-type conditions in section 1058.5, subdivision (a)(2), are still in effect. The Governor's drought emergency for these watersheds has been terminated. Changed conditions exist. The premise of a "Drought Emergency Requirements" article has ended.

Assembly Bill 263 (Stats. 2025, ch. 130), approved September 26, 2025—before that termination—added Water Code section 1058.5, subdivision (c)(2). That subdivision states that, notwithstanding paragraph (1), Article 23.5, as operative January 27, 2025, "shall remain in effect until January 1, 2031, or until permanent rules establishing and implementing long-term instream flow requirements … are adopted, whichever occurs first." I will say this plainly and without attributing a motive to any named person: after the official drought emergency ended, this Board has kept the emergency apparatus in force. Scott surface water is still curtailed. The livestock-diversion ban is still being applied. Staff is still building "long-term baseline minimum instream flow requirements" on this emergency article. That is

emergency-style authority being held after the drought that was used to justify it has been declared over. AB 263 is the statute that allows the article to remain on the books. It is not a command to pretend the emergency still exists, to keep decreed rights shut off, or to convert survival-level drought flows into permanent rules that substitute for a court decree.

I demand that the Board find this emergency article is no longer necessary and repeal it. If the Board takes the position that subdivision (c)(2) strips it of repeal authority, put that legal position in writing in the record for this item. Then use every power you still have. Do not expand the article. Do not build a permanent flow regime on it. Use the Deputy Director's existing authority under section 875, subdivision (b), to suspend curtailment orders. Stop implementing a lapsed drought emergency as if it were still in force.

III. Do not make "survival-level" drought flows permanent, and do not use them as a baseline.

The findings in AB 263 itself state that the Department of Fish and Wildlife "used well-established science to determine survival-level flows for the Scott River and Shasta River watersheds." Survival-level drought flows are not a year-round, ordinary-year standard. They are not a lawful baseline for permanent instream-flow requirements. The Scott River decree already described certain instream amounts as "minimum subsistence-level fishery conditions" that "can be experienced only in critically dry years," and it assigned those amounts a priority equal and correlative with Schedule D4 first-priority rights. This Board does not get to take a drought "survival" schedule, apply it as if it outranked the rights the court allotted, and then call that the "baseline" for a permanent rule.

Section 875, subdivision (c), still uses those drought emergency minima as the trigger for curtailment. Staff is now, by your own Item 5 memorandum, developing "long-term baseline minimum instream flow requirements" on the back of that article. The Board has already taken comment, now closed, on a draft range of baseline minimum flows for the Shasta River for evaluation in a scientific basis report and economic analysis. That is the path to making an emergency schedule permanent. I oppose it.

Demand: Do not adopt permanent instream-flow requirements derived from, calibrated to, or "baselined" on the section 875, subdivision (c), drought emergency minima, or on any schedule that overrides the priorities and allotments in Decree No. 30662 or the 1932 Shasta decree. Do not take any further step toward that result.

IV. Lift Scott River surface-water curtailments now.

Your own Scott-Shasta program page, as reviewed in preparing this comment, states that curtailments are still in effect for all surface water rights in the Scott River watershed under Orders WR 2024-0024-DWR and WR 2026-0005-DWR. Overlying and adjudicated groundwater in Priority Group 9 was only conditionally suspended on July 2, 2026, by Addendum 1 to Order WR 2026-0008-DWR, and only when flows exceed the minimum flow requirements, with advance notice, Fort Jones gage checks at least every 12 hours, and an immediate stop when flow is at or below the minimum. That addendum states: "All other water

rights in the Scott River watershed remain curtailed under other curtailment orders and may not divert unless those orders are amended."

On November 20, 2026, the Board issued Addendum 7 to Order WR 2024-0006-DWR, suspending all curtailments in the Shasta River watershed. The addendum states that the Yreka gage at 1:00 p.m. on November 20, 2026, was 148 cubic feet per second, above the November minimum of 125 cubic feet per second. I am not inventing a current Fort Jones gage number. I am using your documents. Shasta was released. Scott surface water—including rights the 1980 decree already determined—was not.

Section 875, subdivision (b), already authorizes the Deputy Director to issue, suspend, or decline to issue curtailment orders. You have the tools. Use them.

Demand: Suspend, immediately, all remaining Scott River surface-water curtailments. Publish a plain-language account of why Scott surface water remains curtailed after Shasta curtailments were suspended and after the drought emergency ended. Do not leave Scott Valley irrigators shut off under an emergency article the Governor's own proclamation has overtaken.

V. No permanent rule without a full economic-impact analysis of irrigated agriculture and livestock.

Government Code section 11346.3 requires a state agency proposing to adopt, amend, or repeal any administrative regulation to assess the potential for adverse economic impact on California business enterprises and individuals, and to avoid unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. The proposal "shall be based on adequate information concerning the need for, and consequences of, proposed governmental action." Before submitting a proposal to the Office of Administrative Law, the agency must consider the proposal's impact on business and must consider information supplied by interested parties. The assessment must address the creation or elimination of jobs and businesses, and the expansion of businesses in the State. For a major regulation, section 11346.3, subdivision (c), requires a standardized regulatory impact analysis in the manner prescribed by the Department of Finance.

Item 5 says staff will "analyze the economic impacts of implementing long-term baseline minimum flows." An internal staff discussion is not compliance with section 11346.3. I demand a complete, published economic-impact analysis of the effects of any proposed permanent instream-flow rule on irrigated agriculture and livestock operations in the Scott River and Shasta River watersheds—including jobs, farm and ranch businesses, feed supply, and the ability of those operations to continue—with a full opportunity for public comment, before any such rule is proposed. Do not move a permanent rule forward on the back of an emergency article that skipped ordinary rulemaking.

VI. End the September-through-March livestock-diversion ban.

Section 875.7 prohibits, from September through March 31, "inefficient" surface-water diversions for livestock watering—defined as diversions, at the point of diversion, of more

than ten times the livestock quantities in title 23, section 697—unless a stack of conditions is met, including no active curtailment orders, Department of Fish and Wildlife determinations that flows have stimulated fall-run Chinook and, after November 1, coho migration, and a requirement to bypass 90 percent of flow at the point of diversion, or 80 percent only when flows exceed specified high thresholds.

Stockwatering is a beneficial use. Ranchers cannot run cattle through fall and winter on a 90-percent bypass and a fish-agency permission structure designed for a drought emergency. Addendum 7 confirms that even after all Shasta curtailments were suspended, this livestock regime remains in force through March 31, 2027, for all surface-water priorities, not only junior rights. That is not a narrow health-and-safety exception. It is a seasonal shutdown of ordinary livestock watering, kept in force after the drought emergency ended.

Demand: Stop enforcing section 875.7 as a drought-emergency measure. Do not write this ban, or anything like it, into a permanent instream-flow rule.

Do not convert a terminated drought emergency into a permanent water-rights regime over a stream system a court has already adjudicated. I hold pre-1914 appropriative rights. The Scott River decree is still the judgment. I oppose what you are doing, and I will not bargain it down.

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