
State Water Resources Control Board

August 29, 2024

Rod Dowse, Board Chair



CONDITIONAL APPROVAL OF LOCAL COOPERATIVE SOLUTION FOR FRENCH CREEK WATER USERS

Dear Mr. Dowse:

The State Water Resources Control Board (State Water Board) adopted a regulation that went into effect on February 1, 2024, that establishes emergency minimum flows in the Scott River and Shasta River watersheds (Cal. Code Regs., tit. 23, §§ 875-875.9) (Regulation). Under the Regulation, local cooperative solutions by individuals or groups may be proposed by petition to the Deputy Director of the Division of Water Rights (Deputy Director) as an alternative means of reducing water use to meet or preserve the emergency minimum flows, or to provide other fishery benefits, in lieu of curtailment. The Deputy Director may approve a petition from a diverter or group of diverters if the California Department of Fish and Wildlife (CDFW) finds that the in-tributary or downstream benefits are equal to or greater than those provided by the curtailment (Cal. Code Regs., tit. 23, § 875(f)(4)(B)(ii)).

The State Water Board received a petition from the Scott Valley and Shasta Valley Watermaster District (Watermaster) on behalf of participating French Creek water users,¹ requesting approval for an equal-or-better local cooperative solution that proposes to maintain critical habitat in French Creek by providing the bypass flows listed in the table below at two compliance points at Mid-French Creek and at the Department of Water Resources operated French Creek (FCC) gage:

¹ French Creek water users participating in this local cooperative solution include the following, per the clarification e-mail from Watermaster staff on August 26, 2024: (a) first-priority water rights for Diversion #10 (0.10 cfs), Diversion #36 from Miners Creek only (0.25 cfs), and Diversion #44 (1.46 cfs); (b) second priority water rights for Diversion #3 (2.08 cfs) and Diversion #10 (0.70 cfs); and (c) third priority water rights for Diversion #11 (1.00 cfs), Diversion #43 (0.25 cfs), and Diversion #44 (0.25 cfs).

Date	Bypass Amounts (cfs)	
	Mid-French	FCC
July 1-15	10	7
July 15-30	7	4.5
August 1-31	5.5	3.5
September 1-30	4.5	3

The proposal indicates that the instream flow contributions provided by participating French Creek water users substantially increase bypassed flow at the FCC gage and at the confluence to the Scott River, when compared to the historically bypassed minimum amount of 0.50 cubic feet per second (cfs) at the FCC gage. Furthermore, the Watermaster has indicated that the instream flow contributions made by participants operating under increased bypass-flow conditions in July may have delayed issuance of curtailments in the Scott River watershed. The proposal includes a plan to provide CDFW with weekly average diversion flows between the Mid-French Creek compliance point and the confluence with the Scott River, as well as granting landowner access for CDFW staff to perform weekly fish, water quality, and habitat monitoring. The proposal was posted to the State Water Board's webpage for local cooperative solutions associated with the Regulation on August 16, 2024, and augmented with additional information on August 19, 2024. A further description of the site and conservation actions is provided in the submitted proposal. The State Water Board received public comments on a previous draft of the proposal that were considered in acting on this proposal.

On August 16, 2024, the State Water Board received a letter from CDFW that includes a document titled *Conservation Actions, Binding Agreement, and Recommendation for Local Cooperative Solution (Agreement and Recommendation)*, executed between the Watermaster and CDFW. Per the Agreement and Recommendation, "CDFW has determined that this LCS [local cooperative solution] provides equal to or greater actions for the benefit of anadromous salmonids compared to the protection provided by SSWD's [Watermaster's] contribution to flow described in section 875, subdivision (c)(2)." CDFW makes its recommendation for approval based on the proposed instream flow contributions in consideration of SSWD's full portfolio of adjudicated water rights and SSWD's commitment to coordinate with National Oceanic and Atmospheric Administration Fisheries, the State Water Board, the North Coast Regional Water Quality Control Board, and CDFW in data sharing and access for CDFW monitoring.

In approving a petition for a local cooperative solution, the Deputy Director must find that any continued diversions under the local cooperative solution are reasonable and do not result in unreasonable harm to other legal users of water and may coordinate with the Watermaster or other parties in evaluating local cooperative solutions (Cal. Code Regs., tit. 23, §875(f)(1)(B) and (C)). The Division of Water Rights evaluated the proposal and supplemental information relative to its reasonableness and potential injury to other legal water users. Diversions under the LCS serve primarily agricultural

needs, and the proposal includes measurements that will be useful in this and future years and under bypass flow conditions adhered to throughout the irrigation season. CDFW has found that the fishery impacts of the local cooperative solution are equal to or better than those of curtailment. There is no indication that use of these limited amounts of water for the beneficial purposes specified in the water rights is unreasonable in light of other demands in the watershed. Continued diversion under the proposal, as conditioned, is reasonable. Additionally, continued diversions by the participating French Creek water users are unlikely to impact the flow at the Fort Jones gage² at this time due to the limited amount of water available for diversion (i.e., approximately one cubic foot per second). However, if more water becomes available for diversion due to improved hydrologic conditions in the watershed, continued diversions in French Creek under the proposal could potentially delay the timing of when curtailments are suspended for other diverters in the broader Scott River watershed or for those diverters in the French Creek watershed that are not participating in the local cooperative solution. This approval includes conditions to ensure that diversions do not injure other legal users of water under such circumstances.

The local cooperative solution proposal meets the requirements of Regulation 875, subdivision (f)(4), and is approved with the following conditions:

- The Watermaster shall immediately end diversions covered under this local cooperative solution if the State Water Board determines that continuing such diversions under the then-existing hydrologic conditions could harm other legal users of water through affecting the timing of curtailment suspensions.
- Upon commencement of diversions under this local cooperative solution, the Watermaster shall notify the State Water Board of the amount of water being diverted for local cooperative solution participants by diversion number and provide updates to the diversion amount daily while the local cooperative solution is in effect; if there is no change on a given day, the Watermaster does not need to provide an update, but must do so on the next day the diversion amount changes. This tracking will inform the Board's implementation of the Regulation, including the assessment of injury in bullet one.
- The Watermaster and participating French Creek water users shall grant property access, upon 24-hour notice, to State Water Board staff to verify compliance with the proposal.
- The Watermaster shall adhere to all terms and requirements outlined in the executed binding agreement with CDFW.

The local cooperative solution proposal is hereby approved, as conditioned. Any failure to implement the proposal or violation of the conditions of this approval are subject to enforcement as a violation of the Regulation. Additionally, violations of other provisions

² The Regulation identifies the United States Geological Survey gage near Fort Jones as the compliance point for maintaining the Regulation's minimum flows for the Scott River watershed.

of the Regulation (e.g., groundwater curtailment) may result in termination of this approval.

If you have questions regarding this letter, please reach out to staff by email to: ScottShastaDrought@waterboards.ca.gov or by phone call to: (916) 327-3113.

Sincerely,



Erik Ekdahl
Deputy Director
Division of Water Rights

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