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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU

JUL 17 2014

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Received
JUL 2014
Office of the
Chief Counsel

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SISKIYOU**

11 IN THE MATTER OF THE
12 DETERMINATION OF THE RELATIVE
13 RIGHTS BASED UPON PRIOR
14 APPROPRIATION, OF THE VARIOUS
15 CLAIMANTS TO THE USE OF THE
16 WATERS OF THE SHASTA RIVER
17 AND ITS TRIBUTARIES IN SISKIYOU
18 COUNTY, CALIFORNIA

Case/Decree No. 7035

PROPOSED SUPPLEMENTAL DECREE
CONFIRMING STATE WATER
RESOURCES CONTROL BOARD
ACTION AND ENTERING BOARD
RECOMMENDATIONS RELATED TO
ADJUDICATED RIGHTS J000014,
J000015, J000016, J000017, J000018,
J000019, J000020, J000021

17 Having received and fully considered the State Water Resources Control Board's report
18 recommending a supplemental decree in the above-entitled case to change the place of use and
19 add preservation or enhancement of fish and wildlife resources to the below-described rights,
20 and good cause appearing therefrom, the Court issues the following order.

21 IT HEREBY IS ORDERED:

- 22 1. The Decree of this Court entered on December 30, 1932 and modified on October 30,
23 1956 in the proceeding entitled: In the Matter of the Determination of the Relative Rights
24 Based Upon Prior Appropriation, of the Various Claimants to the Use of the Waters of
25 the Shasta River and Its Tributaries in the Siskiyou County, California, No. 7035 ("the
26 Decree") is hereby modified as follows:
27
28

- 1 a. The rights listed below shall be confirmed to include the beneficial use of
2 dedication of water to instream flows under section 1707 of the Water Code.
3
4 b. The purpose of use for Petitioner's Rights is modified to include fish and wildlife
5 preservation and enhancement.
6
7 c. The place of use for the water rights identified below is modified to include
8 portions of Hole in the Ground Creek, Little Springs Creek, Big Springs Creek,
9 and the Shasta River as described more fully below.
10
11 d. Paragraph 233 of the Decree is hereby amended as follows:
12
13 i. Add "fish and wildlife preservation and enhancement" to the purpose of use
14 listed for Points of Diversion 167, 168, 169, 170, 171, and 172.
15
16 ii. The location of the place of use for fish and wildlife preservation and
17 enhancement for Points of Diversion 167, 168, 169, 170, 171, and 172 is
18 modified to include the reach within Hole in the Ground Creek and the
19 Shasta River from the upstream limit located at Point of Diversion 168
20 (North 2,459,391 feet and East 6,445,691 feet by California Coordinate
21 System 1983, Zone 1, being within SE ¼ of SW ¼ of Section 9, T43N,
22 R5W, MDB&M) to the downstream limit located at the United States
23 Geological Survey Gage No. 11517500 (Shasta River near Yreka, Ca)
24 (North 2,548,013 feet and East 6,399,633 feet, Zone 1, being within SE ¼
25 of NE ¼ of Section 24, T46N, R7W, MDB&M).
26
27 iii. The quantity of the decreed right that may be used for fish and wildlife
28 preservation and enhancement is the consumptive portion of the total 1.50

1 cubic feet per second ("cfs") recognized in the Decree for Points of
2 Diversion 167, 168, 169, 170, 171, and 172, according to the following
3 schedule:
4

5 April: 0.05 cfs;

6 May: 0.40 cfs;

7 June: 0.54 cfs;

8 July: 0.65 cfs;

9 August: 0.56 cfs;

10 September: 0.39 cfs.

11
12 e. Paragraph 234 of the Decree is hereby amended as follows:

- 13 i. Add "fish and wildlife preservation and enhancement" to the purpose of use
14 listed for Point of Diversion 241.
15
16 ii. The location of the place of use for fish and wildlife preservation and
17 enhancement for Point of Diversion 241 is modified to include the reach
18 within Big Springs Creek and the Shasta River from the upstream limit
19 located at Point of Diversion 241 (North 2,466,096 feet and East 6,449,691
20 feet by California Coordinate System 1983, Zone 1, being within SE ¼ of
21 SW ¼ of Section 3, T43N, R5W, MDB&M) to the downstream limit
22 located at the United States Geological Survey Gage No. 11517500 (Shasta
23 River near Yreka, Ca) (North 2,548,013 feet and East 6,399,633 feet, Zone
24 1, being within SE ¼ of NE ¼ of Section 24, T46N, R7W, MDB&M).
25
26
27
28

1 iii. The quantity of the decreed right that may be used for fish and wildlife
2 preservation and enhancement is The Nature Conservancy's consumptive
3 portion of the total 10.00 cubic feet per second ("cfs") recognized in the
4 Decree for Point of Diversion 241, according to the following schedule:
5

6 April: 0.26 cfs;

7 May: 1.79 cfs;

8 June: 2.41 cfs;

9 July: 2.88 cfs;

10 August: 2.50 cfs;

11 September: 1.74 cfs.
12

13 iv. Add the following sentence to the end of paragraph 234 on page 120:
14 "Pursuant to Water Code section 1707, instream use of water for fish and
15 wildlife preservation and enhancement shall not be considered a waste of
16 water."
17

18 f. Paragraph 235 of the Decree is hereby amended as follows:
19

20 i. Add "fish and wildlife preservation and enhancement" to the purpose of use
21 listed for Point of Diversion 243.

22 ii. The location of the place of use for fish and wildlife preservation and
23 enhancement for Point of Diversion 243 is modified to include the reach
24 within Little Springs Creek, Big Springs Creek, and the Shasta River from
25 the upstream limit located at Point of Diversion 243 (North 2,463,591 feet
26 and East 6,447,068 feet by California Coordinate System 1983, Zone 1,
27 and East 6,447,068 feet by California Coordinate System 1983, Zone 1,
28

1 being within NW ¼ of NW ¼ of Section 10, T43N, R5W, MDB&M) to the
2 downstream limit located at the United States Geological Survey Gage No.
3 11517500 (Shasta River near Yreka, Ca) (North 2,548,013 feet and East
4 6,399,633 feet, Zone 1, being within SE ¼ of NE ¼ of Section 24, T46N,
5 R7W, MDB&M).

6
7 iii. The quantity of the decreed right that may be used for fish and wildlife
8 preservation and enhancement is the consumptive portion of the total 7.60
9 cubic feet per second ("cfs") recognized in the Decree for Points of
10 Diversion 243, 244, 255, and 246, according to the following schedule:

11
12 April: 0.25 cfs;

13 May: 1.97 cfs;

14 June: 2.77 cfs;

15 July: 3.30 cfs;

16 August: 2.85 cfs;

17 September: 2.00 cfs.

18
19
20 g. Paragraph 236 of the Decree is hereby amended as follows:

21 i. Add "fish and wildlife preservation and enhancement" to the purpose of use
22 listed for Point of Diversion 244.

23 ii. The location of the place of use for fish and wildlife preservation and
24 enhancement for Point of Diversion 244 is modified to include the reach
25 within Little Springs Creek, Big Springs Creek, and the Shasta River from
26 the upstream limit located at Point of Diversion 244 (North 2,462,090 feet
27
28

1 and East 6,445,305 feet by California Coordinate System 1983, Zone 1,
2 being within SW ¼ of NE ¼ of Section 9, T43N, R5W, MDB&M) to the
3 downstream limit located at the United States Geological Survey Gage No.
4 11517500 (Shasta River near Yreka, Ca) (North 2,548,013 feet and East
5 6,399,633 feet, Zone 1, being within SE ¼ of NE ¼ of Section 24, T46N,
6 R7W, MDB&M).

7
8 iii. The quantity of the decreed right that may be used for fish and wildlife
9 preservation and enhancement is the consumptive portion of the total 7.60
10 cubic feet per second ("cfs") recognized in the Decree for Points of
11 Diversion 243, 244, 245, and 246, according to the following schedule:
12

13 April: 0.25 cfs;

14 May: 1.97 cfs;

15 June: 2.77 cfs;

16 July: 3.30 cfs;

17 August: 2.85 cfs;

18 September: 2.00 cfs.
19

20
21 h. Paragraph 237 of the Decree is hereby amended as follows:

22 i. Add "fish and wildlife preservation and enhancement" to the purpose of use
23 listed for Point of Diversion 245.

24 ii. The location of the place of use for fish and wildlife preservation and
25 enhancement for Point of Diversion 245 is modified to include the reach
26 within Little Springs Creek, Big Springs Creek and the Shasta River from
27
28

1 the upstream limit located at Point of Diversion 245 (North 2,462,176 feet
2 and East 6,445,318 feet by California Coordinate System 1983, Zone 1,
3 being within SW ¼ of NE ¼ of Section 9, T43N, R5W, MDB&M) to the
4 downstream limit located at the United States Geological Survey Gage No.
5 11517500 (Shasta River near Yreka, Ca) (North 2,548,013 feet and East
6 6,399,633 feet, Zone 1, being within SE ¼ of NE ¼ of Section 24, T46N,
7 R7W, MDB&M).
8

9
10 iii. The quantity of the decreed right that may be used for fish and wildlife
11 preservation and enhancement is the consumptive portion of the total 7.60
12 cubic feet per second (“cfs”) recognized in the Decree for Points of
13 Diversion 243, 244, 245, and 246, according to the following schedule:
14

15 April: 0.25 cfs;

16 May: 1.97 cfs;

17 June: 2.77 cfs;

18 July: 3.30 cfs;

19 August: 2.85 cfs;

20 September: 2.00 cfs.
21

22 i. Paragraph 238 of the Decree is hereby amended as follows:

23 i. Add “fish and wildlife preservation and enhancement” to the purpose of use
24 listed for Point of Diversion 246.

25
26 ii. The location of the place of use for fish and wildlife preservation and
27 enhancement for Point of Diversion 246 is modified to include the reach
28

1 within Little Springs Creek, Big Springs Creek and the Shasta River from
2 the upstream limit located at Point of Diversion 246 (North 2,462,610 feet
3 and East 6,444,533 feet by California Coordinate System 1983, Zone 1,
4 being within SW ¼ of NE ¼ of Section 9, T43N, R5W, MDB&M) to the
5 downstream limit located at the United States Geological Survey Gage No.
6 11517500 (Shasta River near Yreka, Ca) (North 2,548,013 feet and East
7 6,399,633 feet, Zone 1, being within SE ¼ of NE ¼ of Section 24, T46N,
8 R7W, MDB&M).

9
10
11 iii. The quantity of the decreed right that may be used for fish and wildlife
12 preservation and enhancement is the consumptive portion of the total 7.60
13 cubic feet per second (“cfs”) recognized in the Decree for Points of
14 Diversion 243, 244, 245, and 246, according to the following schedule:
15

16 April: 0.25 cfs;

17 May: 1.97 cfs;

18 June: 2.77 cfs;

19 July: 3.30 cfs;

20 August: 2.85 cfs;

21 September: 2.00 cfs.
22

23 j. Paragraph 264 of the Decree is hereby amended as follows:

24 i. Add “fish and wildlife preservation and enhancement” to the purpose of use
25 listed for Point of Diversion 247.
26
27
28

1 ii. The location of the place of use for fish and wildlife preservation and
2 enhancement for Point of Diversion 247 is modified to include the reach
3 within the Shasta River from the upstream limit located at Point of
4 Diversion 247 (North 2,469,273 feet and East 6,437,934 feet by California
5 Coordinate System 1983, Zone 1, being within NE ¼ of NW ¼ of Section
6 5, T43N, R5W, MDB&M) to the downstream limit located at the United
7 States Geological Survey Gage No. 11517500 (Shasta River near Yreka,
8 Ca) (North 2,548,013 feet and East 6,399,633 feet, Zone 1, being within SE
9 ¼ of NE ¼ of Section 24, T46N, R7W, MDB&M).

10 iii. The quantity of the decreed right that may be used for fish and wildlife
11 preservation and enhancement is the consumptive portion of the total 2.30
12 cubic feet per second ("cfs") recognized in the Decree for Points of
13 Diversion 247 and 248, according to the following schedule:

14	April:	0.11 cfs;
15	May:	0.74 cfs;
16	June:	1.00 cfs;
17	July:	1.19 cfs;
18	August:	1.04 cfs;
19	September:	0.72 cfs.

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22 ///

1 k. Paragraph 331 of the Decree is hereby amended as follows:

2 i. Add "fish and wildlife preservation and enhancement" to the purpose of use
3 listed for Point of Diversion 248.

4
5 ii. The location of the place of use for fish and wildlife preservation and
6 enhancement for Point of Diversion 248 is modified to include the reach
7 within the Shasta River from the upstream limit located at Point of
8 Diversion 247 (North 2,469,250 feet and East 6,437,934 feet by California
9 Coordinate System 1983, Zone 1, being within NE ¼ of NW ¼ of Section
10 5, T43N, R5W, MDB&M) to the downstream limit located at the United
11 States Geological Survey Gage No. 11517500 (Shasta River near Yreka,
12 Ca) (North 2,548,013 feet and East 6,399,633 feet, Zone 1, being within SE
13 ¼ of NE ¼ of Section 24, T46N, R7W, MDB&M).

14
15
16 iii. The quantity of the decreed right that may be used for fish and wildlife
17 preservation and enhancement is the consumptive portion of the total 2.30
18 cubic feet per second ("cfs") recognized in the Decree for Points of
19 Diversion 247 and 248, according to the following schedule:

20
21 April: 0.11 cfs;

22 May: 0.74 cfs;

23 June: 1.00 cfs;

24 July: 1.19 cfs;

25 August: 1.04 cfs;

26 September: 0.72 cfs.
27
28

JUL 17 2014

SO ORDERED:

DATED: _____

LAURA MASUNAGA

JUDGE OF THE SUPERIOR COURT

598487.2

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Attorneys for the State Water Resources Control Board

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SISKIYOU

12 IN THE MATTER OF THE
13 DETERMINATION OF THE RELATIVE
14 RIGHTS BASED UPON PRIOR
15 APPROPRIATION, OF THE VARIOUS
16 CLAIMANTS TO THE USE OF THE
17 WATERS OF THE SHASTA RIVER
18 AND ITS TRIBUTARIES IN SISKIYOU
19 COUNTY, CALIFORNIA

Case/Decree No. 7035

REPORT OF STATE WATER
RESOURCES CONTROL BOARD
RECOMMENDING SUPPLEMENT
DECREE ENTERING CHANGES IN
PLACE OF USE AND PURPOSE OF
USE RELATED TO POINTS OF
DIVERSION ADJUDICATED RIGHTS
J000014, J000015, J000016, J000017,
J000018, J000019, J000020, J000021

INTRODUCTION

20 This Court issued a decree on December 30, 1932 in The Matter of the Determination of
21 the Relative Rights Based Upon Prior Appropriation, of the Various Claimants to the Use of the
22 Waters of the Shasta River and Its Tributaries in the Siskiyou County, California, No. 7035
23 (“the Decree”). On May 8, 2014, the State Water Resources Control Board (“State Board”)
24 approved petitions by The Nature Conservancy, which holds water rights under the Decree, to
25 dedicate a portion of its water rights to in-stream use for the purpose of fish and wildlife
26 preservation and enhancement. A copy of the State Board’s order is attached to this report as
27 Exhibit 1.

28 ///

1 Water Code section 1707 specifically authorizes the holder of a water right to petition the
2 State Board for an order approving a change in use (and attendant changes) of those rights for
3 the purpose of “preserving or enhancing wetlands habitat, fish and wildlife resources, or
4 recreation in, or on, water.” Water Code § 1707 (a). The State Board may approve the petition
5 upon a determination that the proposed change will not result in an increased entitlement to use
6 water, will not unreasonably affect any other legal user of water and otherwise meets the
7 requirements of Division 2 of the Water Code. Pursuant to Water Code section 2819, a
8 supplemental decree shall be issued for any change authorized by Water Code section 1707. As
9 described below, the State Board gave notice of the petitioned-for changes, resolved all protests
10 to the proposed changes, and issued an Order granting the petitions. Therefore, the State Board
11 respectfully requests that a supplemental decree reflecting the terms of the Order be entered by
12 the Court.

13 **FACTUAL BACKGROUND AND STATEMENT OF REASONS FOR THE**
14 **SUPPLEMENTAL DECREE**

15 On July 18, 2012, The Nature Conservancy petitioned the State Board for changes to its
16 decreed rights (which were assigned by the State Board the following numbers: J000014,
17 J000015, J000016, J000017, J000018, J000019, J000020, J000021)¹ on Big Springs Creek, Hole
18 in the Ground Creek, the Shasta River, and Little Springs Creek, all of which were the subject of
19 the Decree. These changes would allow The Nature Conservancy to leave a portion of its water
20 rights in-stream during the irrigation season for the purpose of fish and wildlife preservation and
21 enhancement at Points of Diversion 167, 168, 169, 170, 171, 172, 241, 243, 244, 245, 246, 247,
22 and 248.² As the holder of pre-1914 rights, The Nature Conservancy is not required to obtain
23 approval to change the purpose or place of use for its rights. Water Code § 1706. However, The
24 ///

25
26 ¹ For record keeping purposes, the State Board assigns adjudicated water rights a “J” number,
27 which allows the Board to record and track the rights.

28 ² Maps identifying the location of these diversions are attached as Exhibit 2.

1 Nature Conservancy submitted its petition to ensure that the changes in its water rights
2 would be adequately documented and enforceable.

3 The State Board gave public notice of The Nature Conservancy's petitions on November
4 8, 2012. Six parties filed protests to the petition: Rice Livestock, Emmerson Investments Inc.,
5 Siskiyou County Flood Control and Water Conservation District, Grenada Irrigation District, the
6 Shasta River Watermaster, and Siskiyou County Water Users Association. Prior to issuance of
7 the final Order, Emmerson Investments Inc., Siskiyou County Flood Control and Water
8 Conservation District, and the Shasta River Watermaster dismissed their protests on the
9 condition that the Order would include provisions to address their concerns. Rice Livestock and
10 the Grenada Irrigation District abandoned their protests. The State Board determined the issues
11 raised by the Siskiyou County Water Users Association did not raise a valid ground for protest.
12 Therefore, all of the issues raised by the protestants were resolved by the State Board's Order.
13 A detailed description of the protests and their resolution is included in the Order. *See Exhibit 1*
14 *at p. 4-6.*

15 The State Board gave notice of the issuance of its final order on May 8, 2014 and
16 provided a copy of the Order to each of the protestants. No party requested reconsideration of
17 the Order pursuant to Water Code section 1122.

18 The State Board's Order approves the addition of fish and wildlife preservation and
19 enhancement and a modification of the place of use to include areas within the reaches of the
20 Shasta River, Little Springs Creek, Big Springs Creek, and Hole in the Ground Creek, as more
21 specifically described in the attached Order. The State Board specifically found that the
22 petitioned-for changes do not injure any lawful user of water, initiate a new right or interfere
23 with the Decree. The State Board further found that the changes are in the public interest and
24 will not adversely affect public trust resources. Therefore, the Order approves the petitioned-for
25 changes.

26 ///

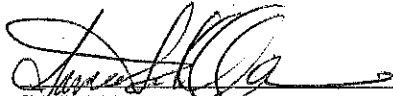
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1 The State Board respectfully requests that the Court enter the proposed supplemental
2 decree reflecting these changes.

3 DATED: July 16, 2014

OFFICE OF THE CHIEF COUNSEL

4
5 By: 
6 SAMANTHA K. OLSON
7 Attorneys for the
8 STATE WATER RESOURCES CONTROL
9 BOARD

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