CALIFORNIA TROUT

FOR 50 YEARS. FOREVER.

September 24, 2021
Via E-mail
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RE: California Trout Comments on Scott Valley Groundwater Sustainability Plan

Dear Ms. Nielsen, Mr. Parker, Ms. Foglia, and Ms. Duncan,

Thank you for the opportunity to comment on the draft Groundwater Sustainability Plan (GSP) for the Scott Valley. We acknowledge the considerable effort that went into producing this document.

This letter is intended to supplement California Trout (CalTrout)'s Comment Reviewer Form (above). Specifically, we would like to highlight our concerns that the Siskiyou County Flood Control and Water Conservation District, acting as the groundwater sustainability agency (GSA) for the Scott Valley Basin, is not complying with the Public Trust Doctrine because it has failed to develop a GSP that adequately protects the Scott River, a public trust resource. CalTrout-001

I. Background

A. Existing Watershed Conditions

The Scott River and its tributaries are hydrologically connected to groundwater in the Scott Valley Basin, and because of this interconnectedness, groundwater pumping in the Scott Valley contributes significantly to streamflow depletion in these watercourses during the dry season. GSP Ch. 2 at 123, 124; Ch. 3 at 54. Since the 1970s, groundwater pumping in the Scott Valley has increased despite the watershed experiencing more frequent and more severe drought conditions due to low-precipitation years, GSP Ch. 2 at 91, leading to late summer baseflows in the Scott River that, on average, are more than 40% less than they were historically– often falling to below 10 cfs in critically dry years. *See* California Department of Fish and Wildlife, *Interim Instream Flow criteria for the Protection of Fishery Resources in the Scott River Watershed*, Siskiyou County (2017) ("CDFW Flow Criteria Study) at 5-6.

These insufficient streamflow conditions, caused in large part by streamflow depletion due to groundwater pumping for agricultural irrigation, have caused significant ecological stress to the Scott River and its tributaries. GSP Ch. 3 at 54. Notably, streamflow depletion in the Scott River has adversely impacted the migration, spawning, and reproduction of anadromous fish, including coho salmon coho salmon (*Oncorhynchus kitsutch*), Chinook salmon (*O. tshawytscha*), and steelhead trout (*O. mykiss*),[5] since the 1970s. GSP Ch. 2 at 25; GSP Ch. 3 at 54; CDFW Flow Criteria Study at 5. Low streamflow during the beginning of fall hinders adult in-migration, while low flow conditions during the summer hinders access to crucial rearing habitat for juvenile fish. CDFW Flow Criteria Study at 6. Significantly increased instream flows in the Scott River are essential to the recovery of the basin's anadromous fish species.[6]

B. The Sustainable Groundwater Management Act

The Sustainable Groundwater Management Act ("SGMA"), Cal. Water Code § 10720 *et seq*., requires GSAs (here, the Siskiyou County Flood Control and Water Conservation District) to develop and implement GSPs that will allow for the sustainable management of groundwater within high and medium priority groundwater basins. These GSPs must contain "measurable objectives" and "minimum thresholds" that enable the achievement of defined groundwater sustainability goals. Cal. Water Code § 10727.2(b)(1); 23 C.C.R. § 354.28. Additionally, GSPs must prevent "undesirable results" caused by groundwater conditions, including "[d]epletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water." Cal. Water Code § 10721(x)(6); 23 C.C.R. § 354.26. The GSP may also address existing "undesirable results" already present in the basin prior to 2015. Cal. Water Code § 10727.2(b)(4). In the Scott Valley, existing streamflow depletion in the basin's interconnected surface waters adversely impacts beneficial uses and is an "undesirable result" under SGMA. GSP Ch. 3 at 55.

Besides meeting SGMA's requirements, a GSP must also comply with other legal obligations relating to groundwater management, including the common-law public trust doctrine, as explained below. SGMA does not displace the public trust doctrine, which imposes additional duties on state and county water management agencies independently of SGMA. *Environmental Law Foundation v. State Water Resources Control Board*, (2018) 26 Cal.App.5th 844, 866-868 ("*ELF v. SWRCB*"). Thus, a GSP's compliance with SGMA does not mean that it is sufficient to satisfy a GSA's public trust obligations.

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[5] Coho salmon in this watershed are listed as threatened under the federal Endangered Species Act and the California Endangered Species Act, while Chinook salmon and steelhead trout are listed by CDFW as species of special concern (GSP Ch. 2 at 84; GSP Ch. 3 at 56).

[6] The National Marine Fisheries Service's recovery plan for coho salmon identifies an "increase [in] instream flows" as one of the highest-priority recovery actions in the Scott River watershed. *See* NOO Fisheries, *Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon*; CDFW Flow Criteria Study at 3. That recovery plan calls for reduced water consumption by landowners and re-assessment of water allocation to provide adequate instream flows. *Id*., *see* CDFW Flow Criteria Study at 4. CSFW has calculated the instream, flow needed to sustain coho and Chinook salmon and steelhead trout in the Scott River watershed. *See* CDFW Flow Criteria Study. To protect these species, CDFW recommends instream flows of at least 77 cfs in August and 62 cfs in September, more than double the levels often recorded in the Scott River during that period. CDFW Flow Criteria Study at 26.

II. The public trust doctrine requires the GSA to protect public trust uses in the Scott River, whenever "feasible", when developing and implementing the Scott Valley GSP

The Public Trust Doctrine is a common law doctrine that "imposes an affirmative duty on the state to act on behalf of the people to protect their interest in navigable water." *ELF v.* SWRCB, 26 Cal.App.5th at 857. This interest includes "the preservation of trust lands in their natural state . . . as environments which provide food and habitat" for fish and wildlife. *Id*. (quoting *National Audubon Society v. Superior Court*, (1983) 33 Cal.3d 418, 441("*National Audubon*")). The doctrine is expansive and covers any activity that has an impact on a public trust resource, even if that activity involves non-navigable waters.[7] As such, the public trust doctrine applies to an agency's management of groundwater resources if management of those resources affects a navigable waterway. Here, the public trust doctrine requires the GSA to protect the public's interest in the Scott River (a navigable waterway and public trust resource) and its fish species when making groundwater management decisions, which include the development and implementation of the Scott Valley GSP. CalTrout-002

Moreover, the California Supreme Court has made clear that water allocation decisions may harm public trust uses only in very limited circumstances, and then only to the extent that the harm is necessarily and unavoidably compelled by the public interest:

> The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses *whenever feasible*. Just as the history of this state shows that appropriation may be necessary for efficient use of water despite *unavoidable* harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause *unnecessary and unjustified* harm to trust interests [Citations.] As a matter of practical *necessity* the state may have to approve appropriations despite foreseeable harm to public trust uses. In doing so, however, the state must bear in mind its duty as trustee to consider the effect of taking on the public trust [citation], and to preserve, *so far as consistent with the public interest*, the uses protected by the trust.

National Audubon, 33 Cal.3d at 446-447 (emphasis added); *see also ELF v. SWRCB*, 26 Cal.App.5th at 862, 865. Therefore, the GSA must protect public trust resources "whenever feasible" and "so far as consistent with the public interest," and any harm to public trust resources must be justified by "practical necessity." *Id*.

III. The draft Scott Valley GSP does not comply with the GSA's public trust obligations.

As discussed above, the public trust doctrine requires the GSA to protect the Scott River, a public trust resource, "whenever feasible." *See National Audubon*, 33 Cal.3d at 446-447; *ELF v. SWRCB*, 26 Cal.App.5th at 862,865. Because implementation of the GSP may impact the Scott River due to the interconnected nature of the Basin's groundwater and surface water systems, the GSP may not permit management actions (such as allowing groundwater withdrawals) that harm public trust

[7] *ELF v SWRCB*, 26 Cal.App.5th at 859 ("the determinative fact is the impact of the activity on the public trust resource"); *see National Audubon*, 33 Cal.3d 418 holding that the PTD applied to the diversion of water from tributaries to Mono Lake–a public trust resource–even though the tributaries themselves were not navigable.

uses in the Scott River, including fish and wildlife habitat, unless the GSA shows that the harm cannot be feasibly avoided, and that the harm is necessary and justified to further the public interest. *See National Audubon*, 33 Cal.3d at 441, 446-447; *ELF v. SWRCB*, 26 Cal.App.5th at 857,862. The draft Scott Valley GSP fails to meet this standard because it does not adequately protect against harm to public trust resources due to groundwater withdrawals, nor does it explain why this inadequacy should be allowed considering the public interest. Therefore, the GSP does not comply with the GSA's public trust obligations. CalTrout-003

A. The GSP's minimum threshold for the depletion of interconnected surface waters must avoid harm to public trust uses.

Although the GSP proposes to avoid additional streamflow depletion due to groundwater pumping in the Scott River–beyond 2015 depletion levels, as required by SGMA– it would reverse or mitigate only a small fraction of existing streamflow depletion levels. GSP Ch. 3 at 60. Based on the recommendations of an advisory committee, the GSP aims to reverse existing streamflow depletion by a minimum threshold of 15%, so that streamflow depletion would remain at 85% of what it would be under a "business as usual" scenario. *Id.* Beyond this minimum threshold, there would be a nonbinding 20% reversal target (a "measurable objective" under SGMA) for streamflow depletion. GSP Ch. 3 at 57-58.

The GSP acknowledges that the public trust doctrine requires the GSA to at least partially reverse stream depletion due to groundwater pumping, but incorrectly asserts that the public trust doctrine gives no target or threshold required for compliance. GSP Ch. 3 at 57, 59, 64. Under the public trust doctrine, the minimum threshold for the depletion of interconnected surface waters must be whatever level of reduction in streamflow depletion that will prevent harm to public trust uses in the Scott River, including impacted fish species. Nothing less is acceptable, unless the GSA can show that it is infeasible to avoid harm public trust uses in the Scott River, and that such harm is necessary and justified to further the public interest. *See National Audubon*, 33 Cal.3d at 446-447; *ELF v. SWRCB*, 26 Cal.App.5th at 862, 865. The draft GSP fails to make this showing because it proposes to reduce streamflow depletion by only 15% below existing "business as usual" levels without analyzing whether that standard is sufficient to eliminate the existing harm to public trust uses. Further, the GSP does not explain how the GSA concluded that this minimum threshold would be sufficient to meet its public trust obligation, and there is no discussion of the biological effects that would result from the proposed minimum threshold, or of whether a 15% reduction would avoid adverse impacts to fish species in the river. CalTrout-004

The GSA must set a minimum threshold for depletion of interconnected surface waters that will ensure the continued viability of the Scott River for the migration and spawning of anadromous fish, which is an essential public trust use of the Scott River. That these fish species were already impacted by streamflow depletions prior to SGMA's 2015 benchmark is irrelevant under the public trust doctrine. The fact that groundwater extraction is not the only cause of streamflow depletion in the Scott Valley does not affect the GSA's obligation to reduce groundwater pumping until harm to public trust resources is avoided. Rather, the public trust requires that groundwater extraction not harm public trust uses, regardless of when the harm began or whether there are other contributing factors. CalTrout-005

B. The GSP must base its minimum thresholds on feasibility in light of the public interest and not on economic cost.

The draft GSP incorrectly asserts that the GSA may consider the "economic cost" of mitigation measures and other balancing factors when setting minimum thresholds that are compliant with the public trust doctrine. GSP at 56, 59. In setting the minimum threshold for the depletion of interconnected surface waters, the GSA purports to apply "a balancing test between economic cost and environmental improvement" when defining what is an "unreasonable amount of streamflow depletion" or a "reasonable amount of avoided groundwater use." GSP Ch. 3 at 59. However, the public trust doctrine does not permit such a test where harm to trust uses is "balanced" against "economic costs." Instead, as discussed above, public trust uses must be protected from harm unless the public interest renders such protection *infeasible*. *See National Audubon*, 33 Cal.3d at 446-447; *ELF v. SWRCB*, 26 Cal.App.5th at 862, 865. This means that the GSP must fully eliminate harm to public trust uses unless the GSA can demonstrate with substantial evidence that the public interest demands otherwise. Here, the GSA has failed to meet this standard because the GSP offers nothing more than an arbitrary determination that its proposed minimum threshold for the depletion of interconnected surface waters constitutes a "reasonable" amount of avoided groundwater use, with no explanation of how this determination was made or substantial evidence to support this claim. CalTrout-006

C. The GSP's delayed timeline for meeting streamflow reduction targets is inadequate to meet public trust obligations.

Although consistent with SGMA, the GSP's proposed timeframe for meeting the 15% minimum threshold for depletion of interconnected surface waters is insufficient to meet the GSA's public trust obligations because delaying enforcement of GSP thresholds for decades risks irreparable harm to public trust uses in the Scott River.[8] As the GSP acknowledges, public trust fisheries in the Scott River are already adversely impacted by streamflow depletion. GSP Ch. 3 at 54-57. Urgent short-term action is needed to mitigate impacts to anadromous fish species–including threatened coho salmon, Chinook salmon, and steelhead trout–by significantly increasing instream flows as soon as possible. However, instead of making minimum thresholds enforceable sooner to meet this need, the GSP instead uses the SGMA deadline of 2042 for compliance. CalTrout-007

As discussed above, the GSA's public trust obligations are not limited by SGMA, but rather are additional to and independent of SGMA's statutory scheme. As such, public trust uses impacted by groundwater extraction must be protected immediately, unless such a timeline is demonstrably inconsistent with the public interest (in which case measures must be implemented as expeditiously as can be feasibly undertaken). Here, the GSA has not demonstrated why it would be infeasible to achieve minimum thresholds on a more expeditious timeframe than that allowed under SGMA to ensure the trust uses are not irreparably harmed. CalTrout-008

[8] The GSP's proposed 15% minimum threshold for reduction of existing streamflow depletion would not become enforceable until 2042. GSP Ch. 3 at 61-62. Instead, the GSA would gradually ramp up to this level with a series of intermediate milestones (e.g., a 5% reduction by 2027 and a 10% reduction by 2032). *Id.*

D. The GSP does not demonstrate that its proposed mitigation measures to reduce the depletion of interconnected surface waters are adequate to meet the GSA's public trust obligations.

The GSP does not meet public trust doctrine requirements because it does not evaluate whether its proposed mitigation measures would be sufficient to eliminate harm to the Scott River's public trust uses, including coho, Chinook, and steelhead fisheries impacted by streamflow depletion. The GSA proposes a variety of mitigation measures to reduce streamflow depletion, including groundwater demand management, groundwater recharge, green infrastructure, increased irrigation efficiency, conservation easements, stream habitat improvement, and crop changes. GSP Ch. 4 at 7-10. However, most of these measures are voluntary or incentive-based, and reductions in groundwater extraction are not proposed until 2027 at the earliest.[9] This is unacceptable given that current groundwater extraction is contributing to streamflow depletions that harm public trust fisheries. Therefore, the GSA must limit current groundwater pumping until it can provide substantial evidence that the other proposed mitigation measures are enough to protect public trust uses in the Scott River.

CalTrout-009

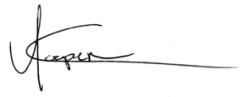
CalTrout-010

IV. Conclusion

For the foregoing reasons, the draft Scott Valley GSP is not sufficient to comply with the GSA's public trust obligations. To remedy this deficiency, the Siskiyou County Flood Control and Water Conservation District must revise the GSP to set a minimum threshold for the depletion of interconnected surface water that is sufficient to eliminate adverse impact to the Scott River's public trust resources, including fisheries. Additionally, that minimum threshold must be based on feasibility considering the public interest, and not on economic cost, and must be implemented expeditiously. Finally, the GSP's mitigation measures must include reductions in current groundwater extraction until harm to public trust uses is avoided.

Thank you for your consideration of these comments. Please do not hesitate to contact me if I can provide any further information or clarification.

Sincerely,



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[9] One near-term mitigation measure calls for the GSA to avoid increased groundwater use via zoning and well permitting (GSP Ch. 4 at 12), but this would not require existing water users to reduce groundwater pumping.

COUNTY OF SISKIYOU

Flood Control & Water Conservation District

Review Form

Scott Groundwater Sustainability Plan

Dear Reviewer,

Per SGMA requirements, a Groundwater Sustainability Plan (GSP) has been developed for the Scott Valley groundwater basin. The GSA has released a complete draft GSP and has initiated a 45-day public review and comment period and seeks input from all beneficial users of groundwater.

REVIEWER INSTRUCTIONS:
Given the large number of reviewers, accommodating track changes or other editing options within the original draft sections distributed to all committee members is not possible. Please consider using this reviewer form with the following instructions:

- Use the form below to provide comments. Feel free to add additional lines to the form as needed.
- For suggested text changes, please copy and paste the text you wish to change and place your suggested edits in track changes or strikethrough features in this document. What's important is that technical staff can see *both* the original draft text and your distinct suggestions.
- Note the **Chapter, Page, Section, and line number**—from the ***PDF version*** of the draft GSP section—where your comment, question or suggested text edit begins.
- Examples of how to provide feedback are listed in the review form below. These examples are not actual comments and are made up to show how the table should be used. Feel free to delete these examples with your submission, and only include your feedback.
- To comment on a figure or table, in the line number column on the reviewer form note the figure number *and* the page number and type your comment in the text section to the right.

Please email comments directly to (sgma@co.siskiyou.ca.us). Include in the subject line the basin you are commenting on. If you are making comments on multiple basins, send as separate comments.

Please send your comments no later than end of day September 26, 2021. Comments will not be accepter on or after September 27th, 2021.

Please use the following file nomenclature in saving your review document:
ScottGSP_PublicReviewDRAFT_[Your name]_date

Thanks for contributing to the draft Groundwater Sustainability Plan for the Scott Valley Groundwater Basin

CALIFORNIA TROUT

FOR 50 YEARS. FOREVER.

Reviewer name: Amanda Cooper
Submission date: September 24, 2021
GSP sections reviewed: Draft Scott Valley GSP

Chapter	Page	Section	Line/Table/Figure #	Comment (*please delete example text below once you submit*)	
ES	3	ES-2	102-105	SGMA mandates an assessment of the location, timing, and magnitude of ISW depletions, and to demonstrate that projected ISW depletions will not lead to significant and unreasonable results for beneficial uses and users of surface water. The standard for determining undesirable results due to depletions of ISW is whether those depletions have adverse effects on the users of the ISW, *not* on users of groundwater, per the definition of undesirable results under SGMA, Cal. Water Code §10721(x)(6): "Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the *surface water*" (emphasis added).	CalTrout-011
ES	6	ES-2	129-130	Citations would be helpful when quoting statutory or regulatory language. Here, SGMA is quoted, but the language comes from the regulations, 23 C.C.R. § 351(m).	CalTrout-012
2	7	2.1.1.1	Figure 2	Why is SVID shown on a map of jurisdictional areas that also includes the Quartz Valley Indian Reservation and National Forest? Is SVID responsible for groundwater management? Also, a demarcation of the Adjudicated Zone should be included on this figure.	CalTrout-013
2	14	2.1.2	340-341	Litigation proceeds regarding Siskiyou County's duty to consider the Public Trust when taking action that affects groundwater that is interconnected with the Scott River (a public trust resource). The original wording confuses the issue of the case, which was not what the impacts of well permits were on surface water, but rather (a) whether the County had a duty to consider the Public Trust before issuing such permits; and (b) whether SGMA absorbed this duty (the court found that it	CalTrout-014

				did not). *See Environmental Law Foundation v. State Water Resources Control Board*, 26 Cal.App.5th 844, 859-870 (2018) (ELF).	CalTrout-014, Cont'd
2	29	2.1.3	786	The GSP states that "[t]he public trust doctrine [PTD] was considered throughout development of the GSP." Clarification about how the GSA considered the PTD is necessary. What specific actions did the GSA take in considering the Public Trust?	CalTrout-015
2	33, 37, 41	2.1.3. 2.14, 2.15	994, 1137, 1305, 1307	Is this feedback still needed? If so, why haven't these questions been answered during the GSP development process?	CalTrout-016
2	39	2.1.5.2	1245	Appendix [ ] → Which Appendix does this refer to?	CalTrout-017
2	73	2.2.1.6	1960-1971	The figure described in this paragraph–Figure 18–does not match the Figure 18 provided on page 72.	CalTrout-018
2	75	2.2.1.7	2038	Why is only the date range modeled from September-October? Why not include the entire irrigation season?	CalTrout-019
2	76	2.2.1.8	2088	The GSP acknowledges that "identifying [environmental] users and uses of surface water is the first step to address undesirable results due to surface water depletions," yet fails to identify/discuss these users. The plan discusses groundwater dependent ecosystems (GDEs) and groundwater dependent species; what about environmental users such as Tribes, anglers, birdwatchers, and other recreators? i.e., (*See* Cal. Water Code § 1243(a): "The use of water for recreation . . . is a beneficial use of water;" *see also* SWRCB's definition of beneficial use, which includes both water contact recreation and non-water contact recreation. [1]	CalTrout-020
2	77	2.2.1.8	2097	Is this the correct citation? 23 C.C.R. §354.8(a)(3) describes requirements for maps that are included in the Description of the Plan Area.	CalTrout-021
2	113	2.2.3.1	3090-3091	"Agricultural irrigation is calculated based on daily crop demand. Perfect farmer foresight is assumed."	CalTrout-022

[1] Available at https://www.waterboards.ca.gov/about_us/performance_report_1314/plan_assess/docs/bu_definitions_012114.pdf

				Does the model assume that the amount of water used for irrigation is limited to the amount of water that the plants need? How does the water budget account for irrigators that over-irrigate?	CalTrout-022, Cont'd
2	113	2.2.3.1	3091-3093	"The water volume is attributed to *either* diverted surface water . . . or pumped groundwater."→ Are any irrigators using a combination of the two?	CalTrout-023
2	115	2.2.3.2	3148	Figure 25 shows the water budgets of each of those three subsystems.	CalTrout-024
2	118	2.2.3.2	3275-3277	"[I]n fields with access to both surface and groundwater, it is assumed that irrigators will use surface water whenever it is available." → Why is this assumption made?	CalTrout-025
2	118	2.2.3.2	3278-3279	Some clarification would be helpful to understand why "surface water diversion for irrigation is considered an inflow to the Basin, not a diversion from the streams within the Basin," especially since not all applied irrigation water makes it into the Land (Soil) Zone.	CalTrout-026
3	3	3.1	111	Is this the correct citation? 23 C.C.R. §354.28(c)(1)-(6) provides minimum threshold requirements. 23 C.C.R. §354.26 addresses Undesirable Results, which are defined under Cal. Water Code §10721(x) (SGMA).	CalTrout-027
3	7	3.3	253	Per 23 C.C.R. Section 351(l)	CalTrout-028
3	10	3.3.1.1	393-394	"The remaining wells are privately owned and data gathered to date from these wells have been provided voluntarily." → Are there access agreements in place to assure continued access to these wells/data?	CalTrout-029
3	15	3.3.3.1	541	The footnote for Table 3 references monitoring schedules from EPA's Safe Drinking Water Information System but does not provide a link to this specific data. Instead, only a link to the SDWIS search engine is provided. Citation to the referenced Fort Jones monitoring schedule would be helpful.	CalTrout-030
3	31	3.4.1.1	1102	"Chronic lowering of groundwater levels is considered significant and unreasonable when a significant number of private, agricultural, industrial, or municipal production wells can no longer pump enough groundwater to supply beneficial uses." → What about environmental concerns related to groundwater levels? Line 1123 refers to groundwater-dependent ecosystems, but these are not considered when defining "significant and unreasonable" for this Undesirable Result.	CalTrout-031

3	32	3.4.1.1	1117-1124	Lines 1117-1124 refer to different scenarios as potential "undesirable results," which is inappropriate given that here "undesirable result" is a term of art meaning the "chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon." Cal. Water Code §10721(x)(1). Were these scenarios instead used to define what is a "significant and unreasonable depletion of supply?"	CalTrout-032
3	35	3.4.1.2	1219-1222	How does having a minimum threshold below current historic lows prevent an undesirable result? Further explanation/clarification would be helpful.	CalTrout-033
3	38	3.4.1.4	1279	Figure 9	CalTrout-034
3	38	3.4.1.4	1289-1290	Where the cause of groundwater level decline is unknown, the GSA will conduct additional or more frequent monitoring or initiate additional modeling. → What use is a GSP if the GSA *may* (but is not required to) act in a situation that could lead to an undesirable result?	CalTrout-035
3	40-41	3.4.1.6	1355-1362	23 C.C.R. §354.28(b)(2) states that "the description of minimum thresholds shall include . . . the relationship between the minimum thresholds for each sustainability indicator, including an explanation of how the Agency has determined that basin conditions at each minimum threshold *will avoid undesirable results for each of the sustainability indicators* (emphasis added)" The GSP's discussion of the groundwater level MT's relation to Depletions of Interconnected Surface Water does not meet the required standard. Instead of explaining the relationship between groundwater level and the chosen MT for ISW, the plan merely states that groundwater levels are not a suitable proxy for surface water depletion and says that "additional analysis during GSP update will be used to determine if the current groundwater level minimum thresholds would have a negative impact on depletions of interconnected surface water." Given that the MT	CalTrout-036

				for interconnected surface water is obtained using the SVIHM, why can't this be determined now?	CalTrout-036, Cont'd
3	43	3.4.3.1	1487-1488	"Groundwater quality changes that occur independent of SGMA activities do not constitute an undesirable result."→ Clarification of what constitute "SGMA activities" is needed. Does this mean that there are instances in which groundwater can be significantly degraded without being considered an undesirable result? If so, how does this affect the GSP's compliance with other applicable laws as required by SGMA?	CalTrout-037
3	57	1977	1977	*Environmental Law Foundation v. State Water Resources Control Board*, 26 Cal.App.5th 844 (2018) (ELF)identifies the County of Siskiyou as a subdivision of the State of California with responsibilities for protecting the public trust when taking action that could impact public trust resources.. The current language of the GSP understates the County's responsibilities under the public trust doctrine, as the court's ruling on the County's public trust duties was not limited to the issuance of well permits. Rather, "the dispositive issue is not the source of the activity, or whether the water that is diverted or extracted is itself subject to the public trust, but whether the challenged activity allegedly harms a navigable waterway." (*ELF* at 860). Therefore, the County has a duty to consider the public trust whenever taking an action that could adversely impact a public trust resource, like the Scott River. Interestingly, the language about issuing groundwater well permits was not included in previous draft versions of chapter 3 (*see* GSP Chapter 3 Draft – April 23 public comment Draft, line 1776[2]).	CalTrout-038
3	57	3.4.5.1	2014-2017	"The undesirable result that is relevant to SGMA is the stream depletion that can be attributed to groundwater pumping *outside of the adjudicated*	CalTrout-039

[2] Available at https://www.co.siskiyou.ca.us/sites/default/files/fileattachments/natural_resources/page/27332/scottvalleygsp_chapter_3_publicreviewdraft_4-23-21.pdf

				zone to the degree it leads to significant and unreasonable impacts on beneficial uses of surface water" (emphasis added). Limiting the definition of undesirable results to the proportion of depletion attributable to groundwater extraction outside of the adjudicated zone is inconsistent with the requirements of SGMA, which define undesirable results as "effects caused by groundwater conditions throughout the *basin*." Cal. Water Code §10721(x) (emphasis added). Here, the "basin," as defined by Bulletin 118, includes the entire Scott Valley Basin, including the adjudicated zone. (GSP, Chapter 2 at p.5). Although the GSA does not have direct regulatory control over the adjudicated zone, nothing in SGMA permits the GSP to ignore the effects of pumping within the adjudicated zone when defining an undesirable result (*see* 23 CCR § 354.26(a): "[u]ndesirable results occur when significant and unreasonable effects for any of the sustainability indicators are caused by groundwater conditions *throughout the basin*" (emphasis added)). To be consistent with SGMA, the undesirable result for the depletion of interconnected surface water must consider depletions caused by groundwater pumping in both the adjudicated and non-adjudicated zones. For the GSA to do otherwise is in direct violation of the law.	CalTrout-039, Cont'd
re3	58	3.4.5.1	2025-2034	Neither the referenced section of the California Constitution nor the cited cases are on point. Article 10, section 2 applies to the diversion of water and water rights. Likewise, all the cited cases pertain to controversies between water rights holders, and what amounts and/or water diversion practices are considered reasonable.[3]	CalTrout-040

[3] *Gin Chow v. Santa Barbara*, 217.Cal. 673, 705-706 (1933) determined that the doctrine of Reasonable Use as it applied to riparian rights was also applicable in controversies between a riparian right holder and an appropriator.
Peabody v. City of Vallejo, 2 Cal.2d 351 (1935) (in bank) affirmed the ruling in *Gin Chow*, interpreting Article 10 § 2 of the California Constitution to require the application of the reasonable use doctrine to all water rights.
City of Lodi v. East Bay Mun. Utility Dist., 67 Cal.2d 316, 339-341(1936) involved a controversy between appropriative rights holders: the City of Lodi, which held a senior right to groundwater supplied by the Mokelumne River, and the East Bay Municipal Utility District, a junior appropriative right holder that sought

3	58	3.4.5.1	2032	Line 2032 discusses the "reasonableness of groundwater use that may contribute to stream depletion." However, the reasonableness of groundwater use is not what SGMA tasks the GSA with defining for this undesirable result. Rather, the GSA must determine what is constitutes significant and unreasonable adverse impacts on beneficial uses of surface water; or put otherwise, what is the amount of depletion that can occur before these significant and unreasonable impacts occur (*see* Cal. Water Code § 10721(x)(6)).	CalTrout-041
3	59	3.4.5.1	2076-2077	What is meant by substantial streamflow depletion reversal? The GSP sets a goal of 15% by 2037, which does not seem adequate to avoid undesirable results.	CalTrout-042
3	59	3.4.5.1	2087-2097	This discussion about the "reasonableness" as it relates to the ISW undesirable result is convoluted at best. First, the GSP states that the "exact quantification of stream depletion that constitutes the Undesirable Result depends on a balancing test between public interest considerations and environmental improvements;" where does this test come from? If the GSA is using this test to determine what constitutes a significant and unreasonable adverse impact, then the GSP should contain a description of the public interest and environmental factors that were balanced. Further, what about the environmental improvements that are *in* the public interest? Second, the GSP reframes the question of "what is an 'unreasonable' amount of stream depletion?" as "what is a 'reasonable' amount of avoided groundwater use?" (Lines 2089-2090). Given that these two questions are not equivalent, does this mean that the GSA is defining	CalTrout-043 CalTrout-044

to impound and divert water from the Mokelumne. The case was remanded back to the lower court to determine the levels that the City of Lodi's supply wells could be lowered without substantial danger to the city's water supply.

Josin v. Marin Mun. Water Dist., 67 Cal.2d 132, 141 (1967) settled a dispute between riparian landowners (plaintiff) claiming a property interest in rock and gravel deposits and an appropriative rights holder (defendant) operating a dam upstream of the riparian landowners. The plaintiff claimed that defendant had no right to collect and store the flood water that transported and deposited rock and gravel onto plaintiff's property (which the plaintiffs then sold). The court found that the plaintiff had no property interest in the rocks and gravel, and therefore using flood flows to transport sediment was not a reasonable use.

Erikson v. Queen Valley Ranch Co., 22 Cal.App.3d 578, 585-586 (1971) concerned the forfeiture of appropriative water rights.

"reasonableness" in terms of the economic impact to groundwater users instead of environmental impact on the river system? While the GSA is permitted to consider the cost of compliance when defining what is "reasonable," it must also account for the costs to the public, tribes, and commercial fisheries for the loss of fish populations resulting from depletion of streamflow.

CalTrout-044, Cont'd

Third, line 2092 states that "the only way to answer these questions was to simultaneously evaluate the flow benefits and public interest impacts of various PMAs." This statement is confusing as PMAs are intended to prevent undesirable results, not define them.

CalTrout-045

Lastly, the discussion concludes with "it would be *reasonable* to undertake some combination of PMAs to reduce stream depletion while exposing stakeholders to reasonable economic costs." Admittedly, this statement is true because *it is what SGMA requires*. Implementing PMAs to avoid undesirable results is not discretionary under the law, and it is curious that the Advisory Committee spent any time debating the reasonableness of doing so.

CalTrout-046

Ultimately, this GSP fails to explain what is considered a significant and unreasonable adverse impact on beneficial uses of surface water, which is inconsistent with the law (*see* 23 C.C.R. §354.26(b)(2) ("the description of undesirable results shall include . . . the criteria used to define when and where the effects of the groundwater conditions cause undesirable results for each . . . sustainability indicator")).

CalTrout-047

In contrast, the Shasta Valley Draft GSP–developed by the same GSA–clearly states that "the depletion of interconnected surface water is considered significant and unreasonable when there is a significant impact to environmental and agricultural uses of surface water in the Basin. Potential impacts and the extent to which they are considered significant and unreasonable include inadequate flows to support riparian health and

CalTrout-048

				ecosystems; [and] diminished agricultural surface water diversion, beyond typical reductions for any given water year type." (Shasta Valley Draft GSP, Ch.3, pg. 41 at lines 751-756)[4]	CalTrout-048, Cont'd
3	60	3.4.5.1	2107-2215	The GSP once again fails to comply with the law by setting an inadequate Minimum Threshold (MT) for the depletion of interconnected surface waters. After an incoherent discussion, the GSP defines this minimum threshold as "any portfolio of PMAs that achieves an individual monthly stream depletion reversal similar to, but not necessarily identical to, the stream depletion reversal achieved by the specific MAR-ILR scenario presented to the Advisory Committee. The average stream depletion reversal of the implemented PMAs during September-November must exceed 15% of the depletion caused by groundwater pumping from outside the adjudicated zone in 2042 and thereafter" – whatever that means. This definition for the MT is problematic: (1) The regulations require minimum thresholds to be numeric values that "represent a point in the basin that, if exceeded, my cause undesirable results." 23 C.C.R. § 354.28(a). Instead of providing such a numerical value, the GSA has chosen to provide a narrative description of what it claims to be a MT. (2) The 15% of stream depletion reversal proposed as a MT violates the regulations, which clearly state that the minimum threshold for the depletion of interconnected surface water "shall be *the rate or volume* of surface water depletions caused by groundwater use that has adverse impacts on beneficial uses of the surface water and may lead to undesirable results." 23 CCR § 354.28(c)(6)(emphasis	CalTrout-049 CalTrout-050

[4] Available at https://www.co.siskiyou.ca.us/sites/default/files/fileattachments/natural_resources/page/27336/shasta_gsp_draft_chapter_3.pdf

				added). Understandably, setting a numeric MT for the depletion of interconnected surface waters is not an easy task, as conditions in the watershed are constantly changing. However, this is exactly what the GSA has been tasked with doing. (3) Even if a percentage of streamflow depletion reversal was an acceptable metric for the MT, without defining an amount of depletion that can occur without causing an adverse impact (or put another way, without setting a minimum streamflow necessary to avoid undesirable results), this percentage is meaningless as a metric for achieving sustainability. What if the overall amount of depletion is so great that significant and unreasonable adverse impacts to beneficial uses of the surface water will still occur despite achieving a 15% depletion reversal rate? (4) Again, the GSA defines a standard for sustainability in terms of PMAs. How does making the MT dependent on the implementation of the very PMAs for which it is supposed to act as a trigger for ensure sustainable management of the basin's groundwater? Some of the confusion surrounding this MT may be alleviated if the GSP did a better job of discussing the process and considerations used to select this MT (why percentage of reversal was chosen over defining quantities of depletion, feasibility of achieving certain levels of reversal, economic factors, etc.).	CalTrout-050, Cont'd CalTrout-051
3	60	2110-2111	3.4.5.1	The GSP incorrectly states that PTD requirements would be met with "some reversal of existing undesirable results" The PTD demands more, requiring harm to public trust resources to be avoided "whenever feasible." (*See National Audubon*, 33 Cal. 3d at 446-447; *ELF v. SWRCB*, 26 Cal.App.5th at 862, 865).	CalTrout-052
3	60	2113-2117	3.4.5.1	The GSA attempts to justify the use of an insufficient Minimum Threshold for the depletion of ISW by referencing 23 C.C.R. §354.28(c)(6): " This	CalTrout-053

				framework for the minimum threshold is consistent with [the regulation] which (A) specifies the use of models to measure stream depletion, (B) implies that consideration of impacts on beneficial uses and surface water flows is necessary, but (C) does not require that streamflow itself is used to set the minimum threshold, triggers, or interim targets." However, this refence is a misleading and inaccurate statement of the law. 23 C.C.R. §354.28(c)(6) states that "[t]he minimum threshold for depletions of interconnected surface water *shall be the rate or volume of surface water depletion caused by groundwater use that has adverse impacts on beneficial uses of the surface water* and may lead to undesirable results." (Emphasis added). Therefore, while a model can be used to "measure" streamflow depletion, the regulation *requires* that the GSA consider impacts on beneficial uses of surface water when setting a MT that is, in turn, a quantifiable rate or volume of surface water depletion.	CalTrout-053, Cont'd
3	63-64	2217-2265	3.4.5.2	The same issues that exist with the GSP's proposed Minimum Threshold exist with its Measurable Objective, which is similarly insufficient and inconsistent with the law.	CalTrout-054
4	3	107-109	4.1	"[P]riorities for consideration include effectiveness toward maintaining the sustainability of the Basin (including the amount of environmental benefit to be gained through implementation of the PMA); minimizing impacts to the Basin's economy; seeking cost-effective solutions for external funding; and prioritizing voluntary and incentive-based programs over mandatory ones."	CalTrout-055
4	4	143-144	4.1	The GSA has more than an "obligation to oversee progress towards groundwater sustainability." Rather, the GSA is responsible for implementing the plan and achieving sustainability within 20 years of its adoption. (*See* Cal. Water Code § 10721(j) defining "groundwater sustainability agency" as "one or more local agencies that *implement* the provisions of this part (emphasis added)."	CalTrout-056
4	7-10	224	Table 1	Many of the Project and Management actions are contingent on other groups–primarily environmental conservation groups–acting. What	CalTrout-057

				happens if these groups cannot/will not continue their efforts? Will the GSA step in to implement the necessary projects? Where will the funding for such implementation come from? Also, the actions put a lot of emphasis on increasing the amount of water available through environmental improvements, rather than on regulating the users of groundwater–regulating the use of/curtailment of groundwater is only mentioned once, as a tier 3 action. This seems to put the burden of sustainability on environmental users of water, rather than sharing the responsibility between all the watershed's interest groups.	CalTrout-057, Cont'd
5	10	5.1.2	299-305	The only management actions that the GSA commits to taking are "coordination" and "outreach." What are the other actions the GSA is going to take to ensure that the basin reaches its sustainability goal?	CalTrout-058