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Innovations in Reconciling Water Supply and Species
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**Hart Ranch Voluntary Efforts to Promote Species Conservation
Through Exercise of Pre-1914 Water Rights**

- I. **HART RANCH OBJECTIVE:** Provide regulatory assurances for long-term operation of historic (1852) cattle ranch in Siskiyou County, and ongoing exercise of pre-1914 water rights.

Hart Ranch Mission:

Building a sustainable, holistic property stewardship program that allows for equal economically viable ranching operations and wildlife habitat enrichment is the Hart Ranch’s primary objective. The program is and will continue to be based on scientifically proven, environmentally sound management practices, and will be for the betterment of the entire Little Shasta Basin. <https://www.sustainabilityfromthehart.com/>

II. **HART RANCH WATER RIGHTS**

Five appropriative rights to divert water from the Little Shasta River for irrigation and stockwatering purpose totaling 19.533 cfs, with priorities ranging from 1855 to 1861. Included in Shasta River Decree No. 7035 (In the Matter of the Determination of the Relative Rights, Based Upon Prior Appropriation, of the Various Claimants to the Waters of the Shasta River and Its Tributaries in Siskiyou County, California, Shasta County Superior Court Case No. 7035, December 29, 1932).

Pre-1914 Appropriative Water Rights:

- Rights established by diversions of water prior to effective date of Water Commission Act of 1913.
- No authorization is required for change in point of diversion, purpose or place of use. (Wat. Code, § 1706).

III. HART RANCH COHO SALMON CONSERVATION IMPLEMENTING ACTIONS

A. Federal ESA Safe Harbor Agreement and Enhancement of Survival Permit

Purpose: Safe Harbor Agreements (SHA), and the subsequent enhancement of survival permits (ESP) that are issued pursuant to section 10(a)(1)(A) of the federal Endangered Species Act (ESA), encourage private and other non-federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property-use restrictions as a result of their efforts to attract listed species to their property and increase the numbers or distribution of these species already on their property.

Authority: Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et seq.), and regulations governing ESA-listed fish and wildlife permits (50 CFR parts 222–227).

Criteria for Issuance:

Application requirements and issuance criteria for ESPs through SHAs:

- 50 CFR 222.308(b), 222.308(c)
- Final Safe Harbor Policy (64 FR 32717, June 17, 1999)

National Marine Fisheries Service (NMFS) findings that permits:

- (1) were applied for in good faith;
- (2) if granted and exercised would not operate to the disadvantage of the listed species that are the subject of the permit; and
- (3) are consistent with the purposes and policy set forth in section 2 of the ESA.

The authority to take listed species is subject to conditions set forth in the permits. Under a SHA, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA (16 U.S.C. 1531 et seq.).

ESP allows any necessary future incidental take of covered species above the mutually agreed-upon baseline conditions for those species in accordance with the terms and conditions of the permit and accompanying SHA. Actions to be performed under the ESP must not jeopardize the existence of federally listed species.

Safe Harbors policy encourages landowners to improve habitat for listed species on their property. Under the policy, NMFS determines a habitat baseline condition and any increase in a listed species population above that baseline condition that results from the landowner's voluntary stewardship efforts would not increase their regulatory responsibility or affect future land-use decisions.

Hart Ranch SHA/ESP:

Objective to promote the survival and recovery of the Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), which is listed as threatened under ESA.

Hart Ranch ESP authorizes the incidental taking of SONCC coho salmon that may be associated with covered activities, including beneficial management activities, routine ranch management activities, and the potential future return of the enrolled property to baseline conditions at the end of the SHA, as defined in the SHA.

SHA specifies the beneficial management activities to be carried out on the enrolled property and a schedule for implementing those activities. SHA is expected to promote the recovery of SONCC coho salmon within the Hart Ranch.

SHA also contains a monitoring component that requires Harts to ensure compliance with the terms and conditions of the SHA, and that the baseline levels of habitat for the covered species occurs on the enrolled property. Harts provide annual report of results of monitoring efforts to NMFS for duration of the 10-year permit term.

B. Petitions for Instream Flow Dedication

Purpose: A condition of the Hart Ranch SHA, to ensure documentation and protection of water dedicated to fish and wildlife enhancement from downstream diversion.

Authority: Water Code section 1707 (authorizes adding the purposes of preserving or enhancing wetland habitat, fish and wildlife resources, or recreation in or on the water.) Exempt from California Environmental Quality Act (CEQA) (minor alterations to land, agency actions for protection of natural resources or the environment) (Cal. Code Regs., tit. 14, §§ 15301, 15304, 15307, 15308), existing facilities (Cal. Code Regs., tit. 14, § 15301) and “common sense exemption” [can be seen with certainty that there is no possibility that instream dedication will have a significant effect on the environment] (Cal. Code Regs., tit. 14, § 15061(b)(3).)

Required findings by SWRCB:

- No initiation of new water right (Cal. Code Regs., tit. 23, § 791.)
- No increase in the amount of water the person is entitled to use.
- No injury/unreasonable effect on any legal user of water and otherwise meets requirements of Water Code. (Wat. Code, § 1707; Cal. Code Regs., tit. 23, § 791.)
- In the public interest.
- No unreasonable effects on public trust resources (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.)

Hart Ranch 1707 Petitions:

- Add fish and wildlife preservation and enhancement as an authorized beneficial use.
- Permanent dedication of 0.5 cfs and permissive dedication of remaining amount of water available under all of Harts' Little Shasta River water rights. Permissive dedication occurs when Harts exercise the option of permissively using the water for instream beneficial uses instead of diverting and using that amount of water for other uses within the authorized place of use.
- Includes compliance plan developed in coordination with Scott-Shasta Watermaster District describing how any dedication of water for fish and wildlife preservation and enhancement will be implemented and monitored.

C. CESA Consistency Determination

Purpose: Incidental take authorization under California Endangered Species Act (CESA), for incidental take of coho salmon from ranch activities covered under SHA/ESP.

Authority: Fish and Game Code section 2089.22

Under Fish and Game Code section 2089.22, if a federal SHA is approved pursuant to applicable provisions of federal law and that SHA includes species that are both federal and state listed, no further approval under the state SHA Program (Fish & G. Code, § 2089.2 et seq.) is required for incidental take of those species.

Issuing Agency: California Department of Fish and Wildlife (CDFW)

Hart Ranch Consistency Determination:

Issued by CDFW following NMFS approval of SHA and Hart receipt of necessary related state approvals to implement certain SHA-related actions (e.g. LSAA).

D. Local Cooperative Solution

Purpose: Relief from drought curtailment regulations establishing minimum flows in the Scott River and Shasta River Watersheds.

Curtailment Process: When the amount of water available in a surface water source is not sufficient to support the needs of existing water right holders and in-stream uses, the SWRCB may issue notices of curtailment to water rights holders based on California's water rights priority system. If there is enough water for some but not all water right holders, the most junior water right holders are curtailed before restrictions are imposed on more senior water right holders. Seniority is determined by the type and age of the water right.

Authority: State Water Resources Control Board (State Water Board) 2021 Drought Emergency Regulation for the Scott River and Shasta River Watershed (Drought Emergency Regulation), Section 875(f)(4)(C)(ii).

Drought Emergency Regulations provide that individuals or groups may propose local cooperative solutions to the Deputy Director of the State Water Board as an alternative means of reducing water use to meet or preserve drought emergency minimum flows, or to provide other fishery benefits (such as cold water refugia, localized fish passage or redd protection, in lieu of curtailment).

Requirements:

- Recommendation by CDFW for an exemption to curtailment based on assessment that benefits of the actions to anadromous fish in a specific time are equal to or greater than the protections provided by the water right holders' contribution to flow under curtailment.
- Binding agreement between diverter and a coordinating entity to perform actions for the benefit of anadromous salmonids.

Hart Ranch LCS:

Additional voluntary conservation actions above and beyond Hart Ranch SHA, in consideration of a cumulative 19.5 cfs surface water rights, including:

- 1.5 cfs dedication of Harts' third priority Little Shasta River right.
- Once full 1.5 cfs has been achieved, Harts may divert up to 5.5 cfs to meet management and/or conservation purposes.
- Any water available to Harts above aggregate volume of 7 cfs will be left instream in coordination with Watermaster and other water diverters, to extent permitted under Shasta River Decree.

CDFW approval recognized Harts' numerous conservation contributions and actions, including SHA, Little Shasta River habitat improvements (riparian planting and fencing off cattle from river), channel restoration for fish passage, Harts' efforts to encourage local conservation efforts, and contribution to surface and groundwater conservation for beneficial uses and sharing of important data to inform watershed improvement efforts.