

19 September 2014

Honorable Chief Justice Tani Cantil-Sakauye
and the Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *County of Siskiyou v. Superior Court of Sacramento County*
(*Environmental Law Foundation et al.*), No. S220764

**AMICI CURIAE LETTER
IN SUPPORT OF REVIEW OF THE DECISION BELOW**

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Supreme Court:

Currently pending before this Court is a petition for writ of mandate asking that this Court review a trial court decision holding that the public trust doctrine protects the Scott River, a navigable waterway, from harm caused by overwithdrawal of the river's interconnected groundwater. The case revisits this Court's thirty-year-old decision in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419. There, the Court acted to protect Mono Lake from harm caused by diversions of the tributaries connected to that lake. The Court found that outcome to be important enough to merit review, in light of the considerable risk to Mono Lake if the public trust doctrine had not operated to intervene. The current matter on the Scott River raises issues of environmental and legal significance as great as those in *Audubon*.

We represent the Karuk Tribe, California Sportfishing Protection Alliance, California Coastkeeper Alliance, the Northcoast Environmental Center, Clean Water Action, and Friends of the Eel River. We urge this Court to review the decision below. Like the real parties in interest (here referring to the petitioners below: the Environmental Law Foundation, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources), we believe that trial court's decision was correct. But we agree with the County and the real parties that the questions presented by this case merit this Court's consideration. The legal questions involved in this case are weighty and of first impression, and they are, in our view, of significant enough public interest to merit review on that basis alone.

But we urge the Court's review additionally because of the case's potential effects on very real interests at stake. We discuss these below. Through this letter, which we file on behalf of the undersigned amicus pursuant to Rule 8.500(g)(1) of the Rules of Court, we respectfully ask that the Court accept review of this case. By exercising its discretion to consider the petition, the Court can then answer the longstanding questions about the reach of the public trust doctrine that are presented by this case, and in so doing protect not only the Scott River but also any other water system similarly affected by groundwater withdrawals, preserve the ecological and human interests affected, and provide guidance to all future actors in the field of groundwater rights, especially government agencies as the State embarks on its attempts to answer the current water crisis.

Interests of the Amici

The tribe and the environmental groups we represent have a long-standing interest in the protection of public trust resources in the rivers of California. The fisheries, environmental and aesthetic assets, and the cultural values associated with them, are at the core of the interests the tribe and the groups seek to promote and protect.

Reasons for Reviewing the Case

We urge the Court to review the decision below. The potential impacts from a ruling of this Court are monumental, whether seen at the level of the specific water system involved (the Scott River) or at the level of statewide water policy moving forward into the future. No matter how wide of a lens through which one views the potential consequences of this case, the impacts are significant, urgent, and ripe for this Court to review.

At the most local level, a ruling from this Court in favor of the real parties has the potential to save the Scott River. As the real parties alleged in their operative petition in the trial court below, the Scott River is under threat from a plethora of sources. Decreased base flow in the dry months, increases in water temperature, and decreases in overall water quality have damaged the river's water. These in turn have had devastating impacts on the river's population of salmon, steelhead trout, and other special status fish and wildlife. (Petitioner's Appendix ("App'x") 99-101.) These results are directly attributable to increased groundwater pumping near the river, as USGS data and other studies have shown. (App'x 99-100, 120-22.)

That damage occurs to the public trust when these resources are harmed should be obvious. But the human cost is visible as well. For example, today Karuk Tribal members still fish, both for subsistence and to participate in cultural activities and religious ceremonies. Although the Karuk Tribe's primary fishery is 70 miles downstream of the Scott River confluence, tagging of adult and juvenile salmon reveals that a large

proportion of salmon that travel through the fishery either spawn or rear in the Scott River system. In addition, the Southern Oregon/Northern California coho salmon population is listed under the Endangered Species Act as Threatened. A large portion of that population depends on the Scott River for spawning and rearing habitat. The Karuk Tribe as well as agency and university scientists contend that recovery of this ESA-listed species hinges on habitat conditions in the Scott River.

This Court should recognize that the rule of *Audubon Society* was not only applicable to the facts of that case, but also applies to this situation. If the Court in *Audubon* sought to remedy a threat facing Mono Lake, so too should this Court remedy the threats facing the Scott River. The river, the fish and wildlife, and members of the Karuk Tribe, among others, depend on the Scott River's continued viability as a thriving, ecologically intact water system.

Nor do these interests stop at the river's boundaries: whether the public trust doctrine operates to protect navigable waters from harm caused by groundwater pumping is a statewide concern. If there is any court in the best position to clarify what this means, it is this Court. Moreover, the Governor recently signed the Legislature's package of groundwater management bills, making guidance from this Court even more important. (See Sen. Bills Nos. 1168, 1319; Assem. Bill No. 1739.) The newly created groundwater sustainability agencies, along with local governments and state-level agencies such as the State Water Resources Control Board, will need to know, as a threshold matter, whether and to what extent public trust doctrine considerations must factor into their deliberations and actions. Only the judiciary—and in particular this Court in its traditional role as the ultimate expositor of the public trust doctrine—can provide this guidance. As representatives of tribes and other groups with keen interest in how these agencies move going forward with respect to resources like the Scott River, we are hopeful that the Court will choose to review the case and provide the guidance that we believe these agencies need.

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Conclusion

Thirty years ago, this Court ushered in a new era of water rights in California by recognizing that the public trust doctrine can constrain diversions of nonnavigable tributaries in the interest of protecting a navigable waterway. (*Natl. Audubon Soc.*, *supra*, 33 Cal.3d at 437.) Now, we urge the Court to weigh in on whether the public trust doctrine can similarly constrain extractions of groundwater connected to surface waters. No less than the very fate of the Scott River hangs in the balance.

Sincerely yours,

A handwritten signature in blue ink, consisting of a large, stylized initial 'D' followed by a horizontal line that tapers to the right.

Daniel Cooper
Lawyers for Clean Water. Inc.
Attorneys for Karuk Tribe,
California Sportfishing Protection
Alliance, California Coastkeeper
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