



*To promote the economic, social and environmental viability of Northern California
by enhancing and preserving the water rights and supplies of our members.*

January 2, 2003

Mr. Arthur G. Baggett, Jr., Chairman
State Water Resources Control Board
P. O. Box 100
Sacramento, California 95812-0100

Re: Proposed Order Determining Legal Classification Of Groundwater for
North Fork Gualala River

Dear Chairman Baggett and Members of the Board:

The Northern California Water Association (NCWA) is very concerned that the draft "Order Determining Legal Classification of Groundwater (Proposed Order)" for the North Fork Gualala River, if adopted by the State Water Resources Control Board (SWRCB), will create a new rule for groundwater classification that will expand the SWRCB's jurisdiction over groundwater throughout the state. Instead, we strongly urge the SWRCB to continue to use the standards for jurisdiction enunciated in City of Los Angeles v. Pomeroy ((1899) 124 Cal. 598 [57 P. 585]) to determine whether water within the North Gualala River is a "subterranean stream flowing through known and definite channels" as required by Water Code § 1200. These standards have served the State of California well and have provided known and consistent direction on groundwater that has been relied upon by water users and many others for a century.

NCWA represents seventy agricultural water districts and agencies, private water companies, and individual water rights holders with senior rights and entitlements to the surface waters of the Sacramento Valley. NCWA's members also have overlying and appropriative water rights to groundwater resources in Northern California, from the Northern reaches of Shasta County to Sacramento County, from the edge of the Sierra Nevada Mountains in El Dorado County to Glenn County which extends to the Coast range.

NCWA believes the preservation of Northern California's groundwater rights is critical to the long-term viability of the region's economic prosperity and environmental well-being. The region's economic and social fabric has been built and is dependent upon the stability of groundwater rights. Any changes that would transform today's groundwater rights into surface

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water rights would effectively turn the California water rights system upside down by commuting senior water rights into junior water rights that may not be available for use in many years. This would destabilize water rights and the local communities that depend upon these water rights and it would create additional uncertainty in California water management that would not be welcome at this time. For this reason, NCWA and its members are strongly opposed to any effort by the SWRCB or its staff to expand jurisdiction over groundwater resources in California.

NCWA has been following SWRCB deliberations on groundwater jurisdiction closely over the past decade. Most notably, in 1999, after the SWRCB issued its first proposed decision regarding the legal classification of groundwater in the Pala and Pauma groundwater basins in San Diego County, NCWA joined many others in submitting letters commenting on that proposed decision and we appeared at the SWRCB's meetings on the proposed decision. We were pleased that the SWRCB ultimately adopted water-rights Decision 1645 earlier this year. Although this decision states that it is not a precedent, we believe that the SWRCB correctly ruled that groundwater in the Pauma Basin is percolating groundwater. As a result, the users of groundwater from that basin may continue their groundwater uses and local management without any unnecessary re-ordering of water-right priorities. For the same reasons, we also expressed concerns with the final report regarding the legal classification of groundwater presented to the SWRCB on January 19, 2002.

NCWA's fundamental concern with the SWRCB's Proposed Order is that it abandons the standards enunciated by the California Supreme Court in Pomeroy. Additionally, although the Proposed Order purports to limit its analysis to the Elk Prairie area in Mendocino County, the Proposed Order's analysis could be applied to the vast majority of California's groundwater supplies and particularly every "gaining" watercourse in California. Almost all groundwater in California occurs in alluvial deposits that are bordered by "relatively impermeable" bedrock formations, and almost all groundwater in these deposits has sufficient flow to satisfy the Proposed Order's requirements for flow in a channel. As a result, we are very concerned that the Proposed Order's analysis may be applied to groundwater in the Sacramento Valley and other areas in Northern California.

As you know, in Northern California and the Sacramento Valley, water users are undertaking an ambitious integrated water management program that includes a broad array of ecosystem and water supply improvements. The program is intended to integrate the numerous water rights and supplies in Northern California in a comprehensive fashion to broaden the water supply benefits that can be achieved by maximizing the total water resource mix that is available in Northern California. The goal of the program is to be able to meet existing and future agricultural, M&I and refuge demands within Northern California, while also optimizing the benefits for the environment and water users in other parts of the state.

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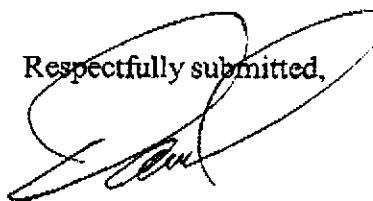
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This integrated program is the foundation for the Sacramento Valley Water Management Program, an unprecedented and exciting partnership involving water users throughout the state that will hopefully lead to resolution of Phase 8 of the Bay-Delta water rights proceedings later this month and other similar proceedings. Sound groundwater management and the conjunctive management of surface and groundwater resources at the local level is an important part of the integrated program. This program, unlike many efforts that have failed in the past, includes projects that are all locally proposed, developed and managed in the Sacramento Valley. Significantly, in the absence of any federal or state interference, Sacramento Valley water users are integrating various types of surface and groundwater rights to maximize the water available for farms, cities and the environment and they are doing so in a constructive and politically viable manner.

There are many positive currents in California water management, including a collaborative effort to resolve the most contentious water rights dispute before the SWRCB—the Phase 8 Bay-Delta proceedings. We encourage the SWRCB to acknowledge that this positive approach to integrated water management will help meet the growing demands for water in the state and it will do so in a far superior manner to a forced, regulatory approach such as that articulated in the Proposed Order for the North Gualala River. You can be sure that this approach in the Sacramento Valley would only breed conflict and serve as an undertow for these positive efforts.

Respectfully submitted,



David J. Guy
Executive Director