



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
Sonoma Avenue, Room 325
Santa Rosa, California 95404

In Response Refer to:

February 13, 2003 151416SWR01SR317:WEH

Mr. Paul Murphey
Associate Engineering Geologist
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000

Dear Mr. Murphy:

The National Marine Fisheries Service (NOAA Fisheries) has reviewed the Draft Order, dated February 3, 2003, in the matter of Permit 14853 (Application 21883) of North Gualala Water Company, and Request for Determination of Legal Classification of Groundwater. We support your finding based on the evidence that the North Gualala Water Company's diversions from Wells 4 and 5 and proposed Wells 6 and 7 are extracted from a subterranean stream flowing through a known and definite channel. This is an important finding in that diversions from those wells have the potential to adversely affect aquatic resources, including federally listed threatened populations of steelhead trout and coho salmon. Recognizing the interconnection of subterranean flow at these sites and surface flows in the North Fork Gualala River is a first step in ensuring that diversions from these wells do not adversely affect aquatic resources.

The draft Order states that the classification of groundwater should be based on factual inquiry, given that *"not every valley that may resemble the San Fernando Valley or Elk Prairie necessarily has a subterranean stream flowing through it."* And that *"not all waters in a valley that has a subterranean stream are necessarily part of the subterranean stream."* The order also states that *"Any future determinations regarding the classification of groundwater must be factually based, and must be made on a case-by-case basis."* NOAA Fisheries recognizes the importance of site-specific facts in determinations of groundwater classification. However, we are concerned that this language in the proposed draft may lead to very costly efforts to those seeking to protect aquatic resources in cases where it is very likely that subterranean flow is present. For example, innumerable cases exist in which water is withdrawn from a well in alluvium that is only 10 to 20 feet from the bank of a perennial stream. If the State Water Resources Control Board declined jurisdiction on all of these cases, then the very real impacts to surface waters would be addressed in only a negligible number of cases. Only those cases in which parties were prepared to prove the four-point criteria of subterranean streams would be



-2-

addressed. Those cases require considerable site-specific data concerning geology and groundwater movements. We recommend that the order address this issue; otherwise numerous surface diversions will shift to offset wells, with likely catastrophic effects to our watersheds and the public trust resources that they support.

We appreciate having the opportunity to provide comment on this important draft order. If you have questions concerning this letter, please contact Dr. William Hearn at 707-575-6062.

Sincerely,



Miles M. Croom
Northern California Supervisor
Habitat Conservation Division

cc: R. Floerke, DFG (Yountville)
A. Levine, Coast Action Group
K. Delfino, Defenders of Wildlife
R. Roos-Collins, Natural Heritage