



State Water Resources Control Board

NOTICE OF ASSIGNMENT

The State Water Resources Control Board's
Executive Director has partially assigned to the
Administrative Hearings Office

Pending Petitions for Change and Extension of Time for Permit 14853
(A021883) and Pending Water Right Application A031792 of

North Gualala Water Company

WATER-RIGHT APPLICATION 21883 AND PETITIONS FOR CHANGE AND EXTENSION OF TIME FOR WATER RIGHT PERMIT 14853

North Gualala Water Company (NGWC) holds water right permit 14853 (A021883) to divert water from the North Fork Gualala River. It is the primary source of water for the residents of the town of Gualala and neighboring areas. The permit contains minimum bypass flow requirements that are rarely met, which led to the State Water Board issuing an Administrative Civil Liability Complaint and a draft Cease and Desist Order (ACL/CDO) in 2008. As part of a 2009 settlement agreement in response to the ACL/CDO, NGWC filed application A031792. During the processing of the application, NGWC also filed a petition to change the place of use and Term 9 of Permit 14853, and a petition for an extension of time for permit 14853.

The application was filed on July 21, 2009, and publicly noticed on May 6, 2010. Protests against the application alleging environmental impacts were received from the California Department of Fish and Wildlife (CDFW), the Coast Action Group, Trout Unlimited, and Jerome Lucey. The petitions for extension of time and change were filed on October 19, 2010 and July 13, 2018, respectively, and were publicly noticed together on January 30, 2019. Protests against the petitions alleging environmental impacts were received from CDFW, the National Marine Fisheries Service, Coast Action Group, and Jerome Lucey. None of the protests against the application or petitions have been resolved.

During the processing of the application and petitions, NGWC has conducted studies regarding the instream flow requirements for the North Fork Gualala River in order to determine the appropriate bypass flow requirements. CDFW has raised concerns

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

regarding the methods and results of NGWC's studies and has conducted their own studies. There is significant disagreement regarding the approach for determining the appropriate bypass flow requirements as well as the results of completed studies.

The State Water Resources Control Board is the Lead Agency for compliance with the California Environmental Quality Act. Uncertainty regarding the appropriate bypass flow requirements has contributed to delays regarding the preparation of an environmental document for the project. In addition, the water availability analysis for the application requires an understanding of the instream flow needs for fishery resources.

All the protests raised concerns regarding the effects of NGWC's water diversions on fishery resources in the North Fork Gualala River. Consideration of evidence relevant to identifying appropriate bypass flow requirements for NGWC's water diversions may resolve or narrow most or all of the concerns of protestants.

ASSIGNMENT TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO.

On August 7, 2024 Erik Ekdahl, Deputy Director of the Division of Water Rights (Division), transmitted a memorandum to Eric Oppenheimer, Executive Director of the State Water Board, recommending the State Water Board assigned the pending petitions and application to the AHO (Attachment 1).

On August 19, 2024, the Board's Executive Director, Eric Oppenheimer, partially assigned Application 21883 to the AHO for further proceedings based on the Division's recommendation (Attachment 2).

HEARING OFFICER AND HEARING TEAM

AHO Hearing Officer Sam Bivins will preside over any hearing in this matter. Other members of the AHO may be present and assist the hearing officer throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Board's Division of Water Rights and the Board's Office of Research, Planning, and Performance, attorneys in the Board's Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

ADMINISTRATIVE RECORD AND FTP SITE

The AHO will maintain the administrative record for this proceeding on the State Water Board's FTP site. The AHO has moved documents maintained by the Division for the Authority's application and petitions and saved them in a folder for this proceeding. The AHO will save in this folder all future communications and documents submitted by the parties; any notices and rulings issued by the AHO; recordings of any pre-hearing conferences and days of hearing; and any other materials received by the AHO that are relevant to this proceeding. The folder on the State Water Board's FTP site for this

proceeding is named “North Gualala Water Company Hearing” and may be accessed at <https://ftp.waterboards.ca.gov/>.

Anyone may view and download documents from the FTP site. To access the North Gualala Water Company folder, please email the AHO at adminhrgoffice@waterboards.ca.gov with “Request for AHO-ftp login credentials” in the subject line. After receiving the e-mail request, the AHO will send a reply e-mail with a username and password to access the folder. It is not necessary to cc the service list for such an e-mail request.

PROHIBITION ON EX PARTE COMMUNICATIONS

Parties and interested persons are prohibited from having any ex parte communications (i.e., off-the-record communications) with any members of the Hearing Team, including executive management of the State Water Board and State Water Board members. (See Wat. Code, § 11110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For additional information about ex parte communications, see the response to FAQ No.16 of the AHO FAQs, which are posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2022/aho-faq.pdf.

If any party or interested person wants to communicate with the AHO or any member of the Hearing Team regarding a procedural or substantive issue related to this proceeding, with the limited exception for communications about non-controversial procedural matters described below, the party or interested person shall make the communication in writing, shall serve all parties listed on the service list for this proceeding with copies of the communication, and include a proof of service demonstrating such service with the written communication to the AHO. Any such communication shall be sent to the AHO by e-mail to adminhrgoffice@waterboards.ca.gov or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
RE: North Gualala Water Company Hearing
P.O. Box 100
Sacramento, CA 95814-0100

A party or interested person may provide the proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic mail “cc” (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter. Until the AHO issues an updated service list, parties should use the initial service list attached to this notice (Attachment 3).

Communications concerning non-controversial procedural issues are not subject to the prohibition on ex parte communications. (Gov. Code, § 11430.20, subd. (b).) Parties and interested persons may communicate with members of the Hearing Team about

non-controversial procedural matters such as requests for log-in credentials, assistance accessing documents or uploading documents to the FTP site, or requests to update the service list. These communications should be sent to the AHO using the e-mail address or physical address listed above and may be sent without serving all parties on the service list with copies of the communication.

Please do not attempt to communicate by telephone or in person with AHO staff or any member of the Hearing Team about these proceedings. If oral communications with members of the Hearing Team are necessary to discuss a procedural or substantive issue, the AHO may set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above with a copy to the service list.

UPDATES TO SERVICE LIST

The AHO prepared the attached service list using information in the Division's files for Application 21883 and current information available to the AHO. If any party or interested person on the service list wants to change any of their information included in the current service list, the party or interested person should submit this information by e-mail to adminhrgoffice@waterboards.ca.gov. The party or interested person does not need to send copies of the e-mail to the service list.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for internet website accessibility in Government Code section 11546.7, the AHO has posted and will post all notices and other documents regarding these proceedings on the AHO's webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Any interested person may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html.

Date: August 23, 2024

/s/ Sam Bivins
Sam Bivins
Hearing Officer

Attachments:

- Attachment 1 – August 7, 2024, Memo from E. Ekdahl to E. Oppenheimer (North Gualala Water Company)
- Attachment 2 - August 19, 2024, Memo from E. Oppenheimer to N. Kuenzi (North Gualala Water Company)
- Attachment 3 - Initial Service List

ATTACHMENT 1
August 7, 2024, Memo from E. Ekdahl to E. Oppenheimer



State Water Resources Control Board

TO: Eric Oppenheimer
Executive Director
STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink, appearing to read "Erik Ekdahl".

FROM: Erik Ekdahl
Deputy Director
DIVISION OF WATER RIGHTS

DATE: AUG 7, 2024

SUBJECT: PETITIONS FOR CHANGE AND EXTENSION OF TIME OF PERMIT 14853 AND APPLICATION A031792: CONSIDERATION OF APPROPRIATE BYPASS FLOW REQUIREMENTS FOR THE NORTH GUALALA WATER COMPANY'S DIVERSIONS OF WATER FROM THE NORTH FORK GUALALA RIVER

The Division of Water Rights (Division) proposes that you partially assign the North Gualala Water Company (NGWC)'s petitions for change and extension of time for permit 14853 and application A031792 to the Administrative Hearings Office (AHO) pursuant to Water Code section 1112, subdivision (c)(2).

Background

NGWC holds water right permit 14853 (A021883) to divert water from the North Fork Gualala River. It is the primary source of water for the residents of the town of Gualala and neighboring areas. The permit contains minimum bypass flow requirements that are rarely met, which led to the State Water Board issuing an Administrative Civil Liability Complaint and a draft Cease and Desist Order (ACL/CDO) in 2008. As part of a 2009 settlement agreement in response to the ACL/CDO, NGWC filed application A031792. During the processing of the application, NGWC also filed a petition to change the place of use and Term 9 of Permit 14853, and a petition for an extension of time for permit 14853.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

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The application was filed on July 21, 2009 and publicly noticed on May 6, 2010. Protests against the application alleging environmental impacts were received from the California Department of Fish and Wildlife (CDFW), the Coast Action Group, Trout Unlimited, and Jerome Lucey. The petitions for extension of time and change were filed on October 19, 2010 and July 13, 2018, respectively, and were publicly noticed together on January 30, 2019. Protests against the petitions alleging environmental impacts were received from CDFW, the National Marine Fisheries Service, Coast Action Group, and Jerome Lucey. None of the protests against the application or petitions have been resolved.

During the processing of the application and petitions, NGWC has conducted studies regarding the instream flow requirements for the North Fork Gualala River in order to determine the appropriate bypass flow requirements. CDFW has raised concerns regarding the methods and results of NGWC's studies and has conducted their own studies. There is significant disagreement regarding the approach for determining the appropriate bypass flow requirements as well as the results of completed studies.

The State Water Resources Control Board is the Lead Agency for compliance with the California Environmental Quality Act (CEQA). Uncertainty regarding the appropriate bypass flow requirements has contributed to delays regarding the preparation of an environmental document for the project. In addition, the water availability analysis for the application requires an understanding of the instream flow needs for fishery resources.

All of the protests raised concerns regarding the effects of NGWC's water diversions on fishery resources in the North Fork Gualala River. Consideration of evidence relevant to identifying appropriate bypass flow requirements for NGWC's water diversions may resolve or narrow most or all of the concerns of protestants.

Issues to be Considered by the Administrative Hearings Office

Water Code section 1112, subdivision (c)(2), authorizes the State Water Board to assign an adjudicative hearing, in whole or in part, to the AHO. Hearing officers also have "wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 531, 560, disapproved on other grounds in *Mileikowsky v. West Hills Hospital and Medical Center* (2009) 45 Cal.4th 1259, 1273.)

Thus, an AHO hearing officer could conduct a phased hearing on NGWC's petitions and application that first considers the appropriate fishery protection measures that are required to balance the water needs of NGWC's customers with the needs of instream resources for the NGWC's ongoing water diversions and prepare a preliminary AHO ruling that can be used by the Division of Water Rights to continue processing the application and petitions, including CEQA compliance.

To the extent a hearing remains necessary after the Division finishes processing the petitions and application, an AHO hearing officer could conduct further proceedings and issue a proposed order to the State Water Board under Water Code section 1114, subdivision (c).

Currently, other priorities of Division of Water Rights staffing do not provide sufficient resources for the Division to focus on this request over other higher priority matters, including drought response. Given the public interest benefit of assisting with the resolution of a dispute regarding the primary water source for a community, this matter would be aided by the AHO's expertise and ability to conduct hearings in a timely manner.

Therefore, the Division proposes that the AHO conduct a phased hearing on NGWC's petitions and application, the first phase of which should address:

1. The bypass flow requirements for NGWC's diversions from the North Fork Gualala River to protect fishery resources; and,
2. Any necessary changes to the rate or timing of water diversions by NGWC to protect fishery resources while also balancing the need of NGWC to provide water to the community.

The AHO would prepare a preliminary ruling on these issues¹ and transmit it to the Division of Water Rights for continued processing, including preparation of an environmental document in compliance with CEQA. If further hearings are necessary after the Division of Water Rights has processed the petitions and application, the AHO could conduct such hearings and prepare a proposed order for the State Water Board's consideration under Water Code section 1114, subdivision (c).

Conclusion and Recommendation

Given the complexity and controversial nature of the issues associated with this matter, it would be most effectively addressed through a phased hearing process conducted by the AHO. Therefore, I am recommending that you partially assign NGWC's petitions and application to the AHO as described in this memorandum under Water Code section 1112, subdivision (c)(2).

¹ This preliminary ruling would not be a final order and would not be binding on the AHO hearing officer or the Board in future decisions.

ATTACHMENT 2

August 19, 2024, Memo from E. Oppenheimer to N. Kuenzi



State Water Resources Control Board

TO: Nicole Kuenzi
Presiding Hearing Officer
ADMINISTRATIVE HEARING OFFICE

FROM: Eric Oppenheimer
Executive Officer
STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in black ink that reads "Eric Oppenheimer".

DATE: August 19, 2024

SUBJECT: PARTIAL ASSIGNMENT OF PETITIONS FOR CHANGE AND EXTENSION OF TIME FOR PERMIT 14853 (A021883) AND APPLICATION A031792 OF THE NORTH GUALALA WATER COMPANY TO THE ADMINISTRATIVE HEARINGS OFFICE

The Division of Water Rights (Division) has recommended partial assignment of petitions for change and extension of time for permit 14853 (A021883) and application A031792 of the North Gualala Water Company to the Administrative Hearings Office. I have enclosed the Division's memorandum recommending the assignment for your information. Based upon the Division's recommendation, I partially assign these petitions and application to the Administrative Hearings Office.

If you have any questions regarding this memo, please contact Amanda Montgomery, Manager of the Permitting Section at 916-341-5438 or by email at Amanda.Montgomery@waterboards.ca.gov.

cc: Erik Ekdahl, Deputy Director, Division of Water Rights
Jule Rizzardo, Assistant Deputy Director, Permitting and Enforcement Branch
Amanda Montgomery, Permitting Manager, Division of Water Rights
Michael Lauffer, Chief Counsel
Conny Mitterhofer, Hearings Section Chief, Division of Water Rights

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

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**ATTACHMENT 3
INITIAL SERVICE LIST**

By e-mail and U.S. mail:

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By U.S. mail only:

Jerome P. Lucey



North Gualala Water Company
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