



**Linda S. Adams**  
*Secretary for  
Environmental Protection*

# State Water Resources Control Board

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**Division of Water Rights**  
1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov



**Arnold Schwarzenegger**  
*Governor*

## **NOTICE OF PUBLIC HEARING**

### **North Gualala Water Company**

### **North Gualala River tributary to Gualala River then Pacific Ocean in Mendocino County**

The State Water Resources Control Board will hold a  
Public Hearing to Determine Whether to Adopt a  
**Cease and Desist Order**  
and Impose an  
**Administrative Civil Liability Complaint**  
Against  
North Gualala Water Company

The **Public Hearing** will commence  
on  
**Wednesday, May 27, 2009**  
at **9:00 a.m.**  
in the  
Coastal Hearing Room  
Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor  
Sacramento, CA

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### **PURPOSE OF HEARING**

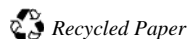
The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) and an Administrative Civil Liability (ACL) Complaint (Complaint) issued on October 24, 2008 against North Gualala Water Company (NGWC).

### **BACKGROUND**

When the State Water Board determines that any person is violating, or threatening to violate certain water-right-related requirements, the Board may issue an order to that person to cease and desist from that violation. (Water Code § 1831, subds. (a), (d).) The State Water Board may issue such a cease and desist order only after notice and an opportunity for hearing. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing.

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*California Environmental Protection Agency*



Water Code section 1052, subdivision (b), provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day of an unauthorized diversion or use of water as defined in Water Code section 1052, subdivision (a). Water Code section 1055, subdivision (a), authorizes the Executive Director of the State Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under section 1052.<sup>1</sup> If the recipients do not timely request a hearing, the Deputy Director for Water Rights may issue an order imposing administrative civil liability. ([State Water Board Resolution 2007-0057](#).)

On October 24, 2008, the Assistant Deputy Director for Water Rights issued the ACL Complaint and draft CDO against NGWC for the violation and threatened violation of the prohibition against unauthorized diversion and use of water under water right Permit 14853 (Application 21883). The basis of the Complaint and draft CDO is NGWC's alleged unauthorized diversion of water from the North Fork Gualala River tributary to the Gualala River in Mendocino County between 2004 and 2007 in violation of the terms and conditions of Permit 14853. The Complaint proposes imposition of liability in the amount of \$11,600. The draft CDO requires NGWC to comply with the terms and conditions of Permit 14853 with the corrective actions and time schedules specified in the draft CDO. A copy of the Complaint and the draft CDO are enclosed with this notice and can be found on the Division of Water Rights' website at: <http://www.waterrights.ca.gov/Hearings/ngwc.html>.

By letters received November 10 and 12, 2008, NGWC requested a hearing on the Complaint and draft CDO.

### **KEY ISSUES**

1. Should the State Water Board adopt the draft CDO issued on October 24, 2008? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order, and what would be the basis for such modifications?
2. Should the State Water Board order liability in response to the October 24, 2008 Administrative Civil Liability Complaint issued against NGWC? If the State Water Board orders liability, should the amount be increased or decreased, and if so, on what basis?

### **HEARING OFFICER AND HEARING TEAM**

State Water Board Member Arthur G. Baggett, Jr., will preside as hearing officer over this proceeding. Other members of the Board may be present during the hearing. State Water Board staff hearing team members will include Marianna Aue, Staff Counsel; Ernest Mona, Water Resource Control Engineer; and Paul Murphey, Engineering Geologist. The hearing team is supervised by Charles Lindsay, Hearings Unit Chief; Les Grober, Hearings and Special Projects Program Manager; and Victoria Whitney, Deputy Director for Water Rights. The hearing team and their supervisors will assist the hearing officer and other members of the State Water Board throughout this proceeding.

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<sup>1</sup> By memorandum dated May 17, 1999, the Executive Director of the State Water Board delegated this authority to the Chief of the Division (Deputy Director). This authority may be and has been redelegated to the Assistant Deputy Director for Water Rights.

## **SEPARATION OF FUNCTIONS**

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include David Rose, Staff Counsel; Chuck Rich, Senior Water Resource Control Engineer; and Laura Lavallee, Water Resource Control Engineer. The prosecution team is supervised by John O'Hagan, Enforcement Section Manager; and James Kassel, Assistant Deputy Director for Water Rights.

The prosecution team is separated from the hearing team, and is prohibited from having *ex parte* communications with the hearing officer, other members of the State Water Board, and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. This separation of functions also applies to the supervisors of each team.

## **HEARING PARTICIPATION**

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If NGWC fails to submit a Notice of Intent to Appear by the deadline specified in this notice, the State Water Board will deem their request for a hearing regarding both the CDO and the ACL to be withdrawn, and both actions may be imposed without further notice.**

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

**12 Noon, Wednesday, March 25, 2009**

Deadline for receipt of Notice of Intent to Appear.

**12 Noon, Wednesday, May 6, 2009**

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service.

## **SUBMITTALS TO THE WATER BOARD**

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board  
Attention: Ernest Mona  
P.O. Box 2000  
Sacramento, CA 95812-2000

Phone: (916) 341-5359  
Fax: (916) 341-5400

Email: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov)  
With Subject of "NGWC ACL/CDO Hearing"

**IF YOU HAVE ANY QUESTIONS**

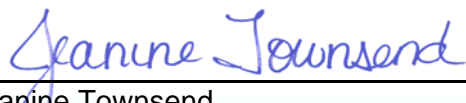
During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Staff Counsel Marianna Aue at (916) 327-4440, or by e-mail to [maue@waterboards.ca.gov](mailto:maue@waterboards.ca.gov) or Staff Engineer Ernest Mona at (916) 341-5359, or by e-mail to [emona@waterboards.ca.gov](mailto:emona@waterboards.ca.gov).

**PARKING, ACCESSIBILITY AND SECURITY**

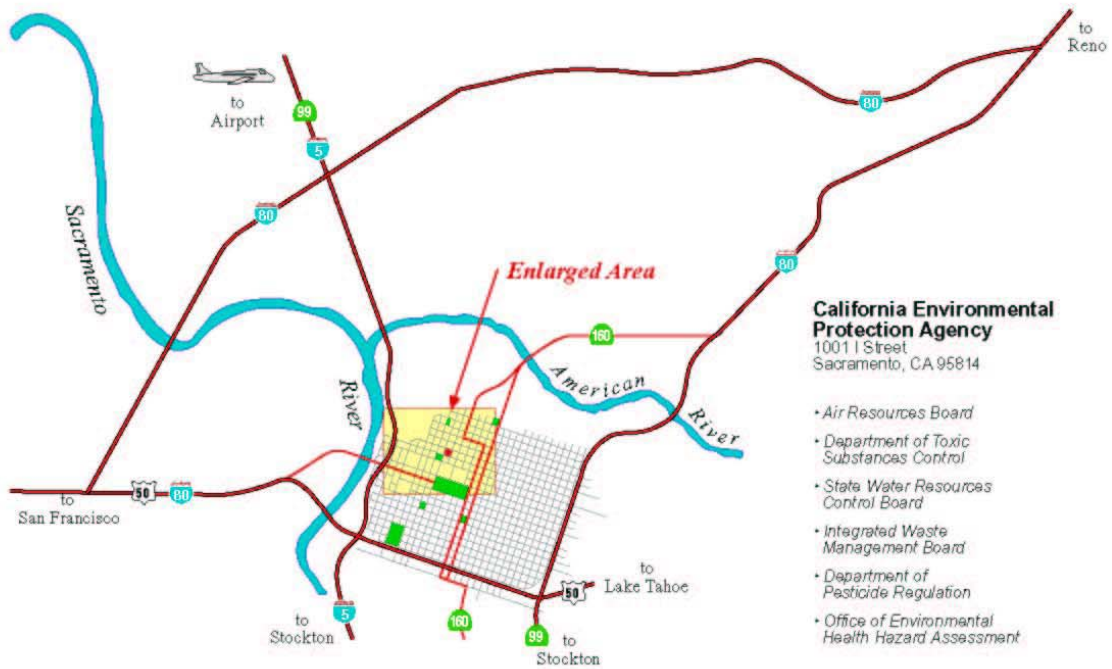
The enclosed maps show the location and parking for the Joe Serna Jr./Cal-EPA Building in Sacramento. The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

February 23, 2009  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board

Enclosures



**Parking Lot Locations**



**Parking Lot Locations**

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

In the Matter of Unauthorized Diversion by the

**NORTH GUALALA WATER COMPANY**

Enforcement Action 70

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SOURCE: North Fork Gualala River tributary to Gualala River thence Pacific Ocean

COUNTY: Mendocino County

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. North Gualala Water Company (NGWC) is alleged to have violated Water Code section 1052, subdivision (a), which states:

“The diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass.”
2. Water Code section 1052, subdivision (b), provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom administrative civil liability (ACL) may be imposed. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights<sup>1</sup> the authority to issue a complaint to impose an ACL under Water Code section 1055, subdivision (a). This authority may be and has been redelegated to the Assistant Deputy Director for Water Rights.

**ALLEGATIONS**

4. The following facts provide the basis for the alleged trespass:
  - a) On August 26, 1964, NGWC filed Application 21883 (A21883) with the Division of Water Rights (Division). NGWC sought to directly divert water at a rate of 2 cubic foot per second (cfs) year-round from the North Fork Gualala River. The water would be used for municipal purposes.
  - b) The California Department of Fish and Game (DFG) filed a protest against A21883 on the basis of injury to the instream resources of steelhead and silver salmon. The protest was resolved when both parties agreed to the inclusion of a permit term (Term 9) requiring NGWC to bypass the following minimum stream flows:

5 cfs, or the natural flow if it is less, during the period of November 1 to June 1  
1 cfs, or the natural flow if it is less, during the period of June 1 to November 1

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<sup>1</sup> Formerly Chief of the Division of Water Rights (Division Chief).



On September 3, 1965 Permit 14853 (P14853) was issued to NGWC with the above minimum bypass requirements.

- c) In 1974, NGWC petitioned the State Water Board for a change in the place of use authorized under P14853. DFG protested the change petition, and as a dismissal condition, requested that the minimum bypass flows of Term 9 be increased. The State Water Board did not receive an objection by NGWC to DFG's proposal. On December 13, 1978, the State Water Board issued an order approving NGWC's petition. The order also added a requirement for a stream flow measuring device (Term 10) and modified Term 9 by increasing the minimum bypass flow requirements to the following:
- 40 cfs, or the natural flow if it is less, during the period of November 15 to February 29
  - 20 cfs, or the natural flow if it is less, during the period of March 1 to May 31
  - 4 cfs, or the natural flow if it is less, during the period of June 1 to November 14
- d) In 1988, Division staff conducted a complaint investigation into allegations by two separate parties that NGWC violated its permit by diverting when minimum bypass flows could not be met. A report of the investigation, dated January 17, 1989, contained staff's finding that there was insufficient evidence to conclude that a violation of the permit occurred, however staff found NGWC's stream flow measuring device to be deficient. A follow-up inspection by Division staff on May 8, 1989 found that the deficiency had been corrected.
- e) Due to concerns regarding drinking water quality from the permitted diversion point, NGWC drilled wells in the alluvial aquifer of the Gualala River. Well 4 proved to be sufficiently productive to prompt NGWC to suspend its diversion of surface water from North Fork Gualala River. In submitting its progress reports for the years 1990 through 1992, NGWC stated that no water had been used under P14853. NGWC believed that its diversion from Well 4 was from percolating groundwater and outside the State Water Board's permitting authority. On December 21, 1992 Division staff notified NGWC that, consistent with the findings of a November 5, 1992 Hydrogeologic Assessment Report, prepared by Richard C. Slade, R.G., the Division considered the source of Well 4 to be a subterranean stream, and therefore subject to the permitting authority of the State Water Board. Reserving the right to provide evidence contradicting the Division's position, NGWC filed a petition with the State Water Board in February 1993 to add Well 4 and future Well 5 as points of diversion under P14853<sup>2</sup>. The petition was noticed to the public and numerous parties submitted protests based on environmental and public trust considerations.
- f) In 1993, Division staff conducted a compliance inspection regarding the diversion facilities under P14853. In a report dated November 18, 1993, staff found that the permitted point of diversion had been abandoned in favor of an alternative unauthorized well. NGWC had already filed a change petition for this new point of diversion. NGWC also did not have a stream flow measuring device as required by Term 10 of the permit. Staff agreed that the physical conditions of the river make a permanent and readable piece of equipment nearly impossible to maintain, although other methods of determining stream flow measurements are available. Staff also concluded there was a relatively small potential for adverse impacts to fisheries due to diversions at that time.
- g) In response to another complaint filed against NGWC for unauthorized diversions (also at Well 4) under P14853, Division staff conducted a complaint investigation in 1994. In a report dated September 28, 1994, staff concluded that NGWC was diligently pursuing its change petition, and that the concerns of the complainant would be addressed through the petition process. On November 2, 1994, NGWC requested amending the change petition to delete all points of diversion except existing Well 4 and future Well 5. Although NGWC and the protestants formed

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<sup>2</sup> The change petition also included a request to add 13 parcels to the place of use. Because it has no bearing on this enforcement action, all references to action involving the change in place of use have been omitted for brevity.

a conflict resolution group which, for several years, attempted to resolve the protests against the change petition, a resolution was never reached.

- h) By Memo dated January 15, 1998, Luhdorff and Scalmanini, Consulting Engineer for NGWC, released a final report entitled *Investigation of Ground-Water Occurrence and Pumping Impacts at Elk Prairie*. The report summarized the investigation to determine the classification of groundwater pumped from Well 4. The report concluded that the groundwater pumped from Well 4 was percolating groundwater and not subject to the permitting authority of the State Water Board. By letter dated May 4, 1998, Division Chief Edward C. Anton notified NGWC that the Division disagreed with Luhdorff and Scalmanini's findings.
- i) Division staff conducted a field investigation on October 7, 1998 to gather information necessary to resolve the protests to NGWC's change petition. Staff concluded that the petition should be approved and that additional conditions be added to the permit. On August 27, 1999, the Division Chief signed State Water Board Order WR 99-09-DWR, which included the following amendments to P14853:
  - 1. Delete the original point of diversion and add Wells 4 and 5 as points of diversion, and
  - 2. Replace Term 10 with terms requiring NGWC to measure the flow of the North Fork Gualala River per a schedule provided for in the order and a method to be approved by the Division Chief.
- j) NGWC did not challenge Order WR 99-09-DWR, but two other parties filed petitions for reconsideration by the State Water Board. In response to these petitions, the State Water Board adopted State Water Board Order WR 99-011, which dismissed the petitions for reconsiderations and added a requirement for a water supply contingency plan to address how NGWC will meet municipal water demands when the flows in the North Fork Gualala River fall below the minimum bypass requirements of Term 9.
- k) NGWC submitted to the Division Chief a Surface Flow Measurement Plan (Measurement Plan) on October 26, 1999, and a Water Supply Contingency Plan (Contingency Plan) on May 18, 2000. The Division Chief found both plans to be inadequate. Several attempts were made by both parties to reach an agreement on the plans. Finally, by letter dated April 2, 2001, the Division Chief advised NGWC that it could file a petition for reconsideration with the State Water Board if it disagreed with the Division's action disapproving the plans. NGWC filed a petition on May 1, 2001, requesting the State Water Board to hold a hearing not only on the adequacy of the plans, but also on the legal classification of the water pumped by Wells 4 and 5 and the correct interpretation of Term 9 (whether bypass flows must be met so long as operation of the wells do not affect surface flow). The State Water Board held a hearing on the petition, and on June 21, 2001 adopted State Water Board Order WR 2001-14 denying reconsideration, affirming the decision of the Division, and amending the requirements of the Contingency Plan including authorization for the Division Chief to approve a variance in the bypass flow requirements for the purpose of studying the effects of pumping from Wells 4 and 5 on surface flows.
- l) On July 19, 2001, NGWC filed a lawsuit against the State Water Board in the Mendocino County Superior Court to seek a judicial determination on the legal classification of the groundwater pumped by Wells 4 and 5. In consultation with the presiding judge, NGWC and the State Water Board agreed that if NGWC made a proper request for hearing on the issue the State Water Board would follow through and issue a decision or order by the end of 2002. On January 11, 2002, NGWC made such a request of the Board. The State Water Board held a hearing on the request, and on February 19, 2003 adopted State Water Board Order WR 2003-0004, which states that the groundwater pumped by NGWC's Wells 4 and 5 (along with the proposed Wells 6 and 7) is extracted from a subterranean stream and is therefore



under the permitting authority of the State Water Board. NGWC's petition for reconsideration of the order was denied by the State Water Board on May 6, 2003.

- m) NGWC pursued its lawsuit against the State Water Board. In 2004, the Mendocino County Superior Court upheld the State Water Board's determination, ruling that NGWC's wells fell under the permitting authority of the State Water Board. NGWC appealed the case, and in 2006 the Appellate Court upheld the ruling of the Superior Court. In August 2006, the California Supreme Court denied review of the litigation.
- n) As of this date, NGWC does not have an approved Contingency Plan or Measurement Plan. In a December 14, 2006 letter to Division staff, NGWC stated that they have received an estimate from an engineering firm of \$700,000 to prepare a report that will contain all the information required by Orders WR 99-011 and WR 2001-14. Because NGWC did not have the funds to cover this expense, it sought authorization with the California Public Utilities Commission (PUC) for a rate increase to cover the costs of the report. On March 13, 2008, the PUC approved Resolution W-4678, giving NGWC the authority to borrow \$100,000 from the Departments of Public Health (DPH) and Water Resources (DWR) for the purpose of financing a planning study on NGWC's water system. This loan amount appears inadequate to fund the cost of the report so additional loans from DPH, DWR, or other sources will be necessary.

The Department of Public Health issued Compliance Order No. 02-03-08CO-002 on September 9, 2008. This order contains a finding that NGWC does not have sufficient water rights to provide a reliable and adequate supply of pure, wholesome, healthful and potable water in accordance with California Health and Safety Code section 116555, subdivision (a) (3), and cannot provide source capacity to meet maximum daily demand requirements in accordance with California Code of Regulations, title 22, section 64554. This order is based on the following:

- The maximum daily demand in 2003 and 2004 was 299 gallons per minute (gpm) and the maximum daily demand with the current 1,033 service connections is 313 gpm.
- The maximum available supply from all surface sources is 100 gpm.
- The maximum reliable supply from Wells 4 and 5 is zero (0) gpm as diversions from these wells must be terminated when the bypass flows cannot be met.

The order further requires NGWC to submit a Source Capacity Planning Study by October 1, 2009 that includes information concerning NGWC's ability to reliably and adequately serve the existing service connections in compliance with all applicable laws and regulations and a discussion of NGWC's water rights. The order also requires NGWC to submit a plan of action by March 1, 2010, to address or resolve source capacity deficiencies including, but not limited to, increased water conservation, acquisition of additional source capacity and water rights, and/or restrictions on new service connections.

- o) Regardless of whether NGWC is in compliance with the term requiring approved Contingency and Measurement Plans, P14853 is explicit in its requirement to cease diversion when minimum bypass flows are not available. To ensure that adequate flows are available, P14853 requires NGWC to take flow measurements of the North Fork Gualala River by a prescribed schedule and to report the measured results to the Division. Between June 1 and December 15, the schedule requires a minimum of weekly measurements, and daily measurements if the flow falls below the bypass minimum.

- p) Based on reports of measurements taken from 2004 through 2007, there were at least 11 days in which the flows measured by NGWC were below the required minimum bypass flows. In addition, there was one day in which Division staff measured a flow that was below the required minimum bypass. NGWC has admitted that diversions from Wells 4 or 5 have continued daily throughout the years 2004 through 2007.
- q) Based on rainfall data recorded at the nearby Yorkville station, Division staff determined that an additional 46 days of diversion almost certainly occurred during 2004 through 2007 when, flows in the North Fork Gualala River were less than the required minimum<sup>3</sup>.

#### **PROPOSED CIVIL LIABILITY**

- 5. The basis of this complaint is NGWC's unauthorized diversions of water from North Fork Gualala River between the years 2004 and 2007, because diversions occurred during times when the flows in the river were less than the minimum bypass flows required under P14853. These unauthorized diversions of water constitute a trespass within the meaning of Water Code section 1052, subdivision (a).
- 6. The maximum civil liability that can be imposed by the State Water Board in this matter is \$500 for each day in which the trespass occurred. Between 2004 and 2007, NGWC made unauthorized diversions on at least 58 days, therefore, a maximum civil liability of \$ 29,000 could be considered (\$500 per day x 58 days) for the trespass.
- 7. In determining the amount of civil liability, Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator. In this case, NGWC, over a period of four years, continued to knowingly divert water from the North Fork Gualala River on days when its stream flow did not meet the minimum bypass requirement for diversion even though the terms and conditions of the permit prohibited such diversions.
- 8. The North Fork Gualala River has been designated by the National Marine Fisheries Service as critical habitat for two species listed as threatened under the federal Endangered Species Act: Central California Coast coho salmon (61 Fed.Reg 56138 (Oct. 31, 1996).) and Northern California steelhead (65 Fed.Reg 36074 (June 7, 2000).). NGWC's unauthorized diversions may have reduced the amount of flow in the surface portion of the North Fork Gualala River and may also have reduced the available habitat for the listed species. Absent an analysis demonstrating that the potential reduction in flow and habitat does not adversely impact these species, the potential for adverse impacts to listed species exists.
- 9. An economic advantage was obtained from the unauthorized diversions of water because customers were charged for water that the NGWC should have left in the stream system in order to comply with the fishery flow bypass requirement. The Division estimates the revenue generated to be approximately \$34,240 for the 58 days of unauthorized diversions. This amount is based on a rate of \$3.13 per 100 cubic-feet of water charged to municipal customers and average diversions of 13.3 acre-feet and 12.8 acre-feet for the months of November and December, respectively, as reported by the NGWC. Additionally, the Division estimates that its staff cost to review the existing project and develop the enforcement documents to be \$7,252. However, Water Code section 1052, subdivision (b) limits the amount of liability to a maximum of \$500 per day. For 58 days of unauthorized diversions, this limitation would be \$29,000.

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<sup>3</sup> NGWC did not comply with the requirement to measure instream flows on a daily basis if the flow dropped below the minimum required. This constitutes a violation of the terms and conditions of the NGWC's water right permit, but not necessarily an unauthorized diversion.

10. Having taken into consideration the factors described above, including NGWC's ability to pay, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of **\$11,600**. This liability amount is the minimum liability recommended by the Division; although the State Water Board may consider a different liability, if this matter goes to hearing.

#### **RIGHT TO HEARING**

11. NGWC may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this notice is received. (Wat. Code, § 1055, subd. (b).)
12. If NGWC requests a hearing, it will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
13. If NGWC requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
14. If NGWC does not wish to request a hearing, a cashier's check or money order should be remitted within 20 days of the date of this Complaint for the amount of the ACL set forth in paragraph 10 above, to:

State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000

15. If NGWC does not request a hearing and does not remit the ACL, the State Water Board may seek recovery of the ACL as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

**ORIGINAL SIGNED BY:**

*James W. Kassel*  
*Assistant Deputy Director for Water Rights*

Dated: OCT 24 2008

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**ORDER WR 2008 –00XX-DW**

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**CEASE AND DESIST ORDER**

In the Matter of Violation of Terms and Conditions of Permit 14853 by the

**NORTH GUALALA WATER COMPANY**

Enforcement Action 0

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SOURCE: North Fork Gualala River tributary to Gualala River, hence Pacific Ocean

COUNTY: Mendocino County

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 105 against the diversion of water subject to division 2 (commencing with section 100) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, registration, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 7 (commencing with section 1200) of division 2 of the Water Code, section 270, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {ADD DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the proposed CDO against the North Gualala Water Company (NGWC) for the violation and threatened violation of terms and conditions contained in Permit 14853 (Application 21883).

**FACTS AND INFORMATION**

The facts and information upon which this CDO is based are as follows:

1. On August 26, 1964, NGWC filed Application 21883 with the Division of Water Rights (Division). NGWC sought to directly divert water at a rate of 2 cubic foot per second (cfs) year-round from the North Fork Gualala River. The water would be used for municipal purpose.

2. The California Department of Fish and Game (DFG) filed a protest against A21883 on the basis of injury to the instream resources of steelhead and silver salmon. The protest was resolved when both parties agreed to the inclusion of a permit term (Term 9) requiring NGWC to bypass the following minimum stream flows:

5 cfs, or the natural flow if it is less, during the period of November 1 to June 1  
1 cfs, or the natural flow if it is less, during the period of June 1 to November 1

On September 3, 1965 Permit 14853 (P14853) was issued to NGWC with the above minimum bypass requirements.

3. In 1974, NGWC petitioned the State Water Board for a change in the place of use authorized under P14853. DFG protested the change petition, and as a dismissal condition, requested that the minimum bypass flows of Term 9 be increased. The State Water Board did not receive an objection by NGWC to DFG's proposal. On December 13, 1978, the State Water Board issued an order approving NGWC's petition. The order also added a requirement for a stream flow measuring device (Term 10) and modified Term 9 by increasing the minimum bypass flow requirements to the following:

40 cfs, or the natural flow if it is less, during the period of November 15 to February 29  
20 cfs, or the natural flow if it is less, during the period of March 1 to May 31  
4 cfs, or the natural flow if it is less, during the period of June 1 to November 14

4. In 1988, Division staff conducted a complaint investigation into allegations by two separate parties that NGWC violated its permit by diverting when minimum bypass flows could not be met. A report of the investigation, dated January 17, 1989, contained staff's finding that there was insufficient evidence to conclude that a violation of the permit occurred, however staff found NGWC's stream flow measuring device to be deficient. A follow-up inspection by Division staff on May 8, 1989 found that the deficiency had been corrected.
5. Due to concerns regarding drinking water quality from the permitted diversion point, NGWC drilled wells in the alluvial aquifer of the Gualala River. Well 4 proved to be sufficiently productive to prompt NGWC to suspend its diversion of surface water from North Fork Gualala River. In submitting its progress reports for the years 1990 through 1992, NGWC stated that no water had been used under P14853. NGWC believed that its diversion from Well 4 was from percolating groundwater and outside the State Water Board's permitting authority. On December 21, 1992 Division staff notified NGWC that, consistent with the findings of a November 5, 1992 Hydrogeologic Assessment Report, prepared by Richard C. Slade, R.G., the Division considered the source of Well 4 to be a subterranean stream, and therefore subject to the permitting authority of the State Water Board. Reserving the right to provide evidence contradicting the Division's position, NGWC filed a petition with the State Water Board in February 1993 to add Well 4 and future Well 5 as points of diversion under P14853<sup>1</sup>. The petition was noticed to the public and numerous parties submitted protests based on environmental and public trust considerations.
6. In 1993, Division staff conducted a compliance inspection regarding the diversion facilities under P14853. In a report dated November 18, 1993, staff found that the permitted point of diversion had been abandoned in favor of an alternative unauthorized well. NGWC had already filed a change petition for this new point of diversion. NGWC also did not have a stream flow measuring device as required by Term 10 of the permit. Staff agreed that the physical conditions of the river make a permanent and readable piece of equipment nearly impossible to maintain, although other methods of determining stream flow measurements are available. Staff also concluded there was a relatively small potential for adverse impacts to fisheries due to diversions at that time.

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<sup>1</sup> The change petition also included a request to add 13 parcels to the place of use. Because it has no bearing on this enforcement action, all references to action involving the change in place of use have been omitted for brevity.

7. In response to another complaint filed against NGWC for unauthorized diversions (also at Well 4) under P14853, Division staff conducted a complaint investigation in 1994. In a report dated September 28, 1994, staff concluded that NGWC was diligently pursuing its change petition, and that the concerns of the complainant would be addressed through the petition process. On November 2, 1994, NGWC requested amending the change petition to delete all points of diversion except existing Well 4 and future Well 5. Although NGWC and the protestants formed a conflict resolution group which, for several years, attempted to resolve the protests against the change petition, a resolution was never reached.
8. By Memo dated January 15, 1998, Luhdorff and Scalmanini, Consulting Engineer for NGWC, released a final report entitled *Investigation of Ground-Water Occurrence and Pumping Impacts at Elk Prairie*. The report summarized the investigation to determine the classification of groundwater pumped from Well 4. The report concluded that the groundwater pumped from Well 4 was percolating groundwater and not subject to the permitting authority of the State Water Board. By letter dated May 4, 1998, the Chief of the Division of Water Rights<sup>2</sup> (Division Chief) notified NGWC that the Division disagreed with Luhdorff and Scalmanini's findings.
9. Division staff conducted a field investigation on October 7, 1998 to gather information necessary to resolve the protests to NGWC's change petition. Staff concluded that the petition should be approved and that additional conditions be added to the permit. On August 27, 1999, the Division Chief signed State Water Board Order WR 99-09-DWR, which included the following amendments to P14853:
  - Delete the original point of diversion and add Wells 4 and 5 as points of diversion, and
  - Replace Term 10 with terms requiring NGWC to measure the flow of the North Fork Gualala River per a schedule provided for in the order and a method to be approved by the Division Chief.
10. NGWC did not challenge Order WR 99-09-DWR, but two other parties filed petitions for reconsideration by the State Water Board. In response to these petitions, the State Water Board adopted State Water Board Order WR 99-011, which dismissed the petitions for reconsiderations and added a requirement for a water supply contingency plan to address how NGCW will meet municipal water demands when the flows in the North Fork Gualala River fall below the minimum bypass requirements of Term 9.
11. NGWC submitted to the Division Chief a Surface Flow Measurement Plan (Measurement Plan) on October 26, 1999, and a Water Supply Contingency Plan (Contingency Plan) on May 18, 2000. The Division Chief found both plans to be inadequate. Several attempts were made by both parties to reach an agreement on the plans. Finally, by letter dated April 2, 2001, the Division Chief advised NGWC that it could file a petition for reconsideration with the State Water Board if it disagreed with the Division's action disapproving the plans. NGWC filed a petition on May 1, 2001, requesting the State Water Board to hold a hearing not only on the adequacy of the plans, but also on the legal classification of the water pumped by Wells 4 and 5 and the correct interpretation of Term 9 (whether bypass flows must be met so long as operation of the wells do not affect surface flow). The State Water Board held a hearing on the petition, and on June 21, 2001 adopted State Water Board Order WR 2001-14 denying reconsideration, affirming the decision of the Division, and amending the requirements of the Contingency Plan including authorization for the Division Chief to approve a variance in the bypass flow requirements for the purpose of studying the effects of pumping from Wells 4 and 5 on surface flows.
12. On July 19, 2001, NGWC filed a lawsuit against the State Water Board in the Mendocino County Superior Court to seek a judicial determination on the legal classification of the groundwater pumped by Wells 4 and 5. In consultation with the presiding judge, NGWC and the State Water Board agreed that if NGWC made a proper request for hearing on the issue the State Water Board would follow through and issue a decision or order by the end of 2002. On January 11, 2002,

<sup>2</sup> Currently Deputy Director for Water Rights.



NGWC made such a request of the Board. The State Water Board held a hearing on the request, and on February 19, 2003 adopted State Water Board Order WR 2003-0004, which determined that the groundwater pumped by NGWC's Wells 4 and 5 (along with the proposed Wells 6 and 7) is extracted from a subterranean stream and is therefore under the permitting authority of the State Water Board. NGWC's petition for reconsideration of the order was denied by the State Water Board on May 6, 2003.

13. NGWC pursued its lawsuit against the State Water Board. In 2004, the Mendocino County Superior Court upheld the State Water Board's determination, ruling that NGWC's wells fell under the permitting authority of the State Water Board. NGWC appealed the case, and in 2006 the Appellate Court upheld the ruling of the Superior Court. In August 2006, the California Supreme Court denied review of the litigation.
14. As of this date, NGWC does not have an approved Contingency Plan or Measurement Plan. In a December 14, 2006 letter to Division staff, NGWC stated that they have received an estimate from an engineering firm of \$700,000 to prepare a report that will contain all the information required by Orders WR 99-011 and WR 2001-14. Because NGWC did not have the funds to cover this expense, it sought authorization with the California Public Utilities Commission (PUC) for a rate increase to cover the costs of the report. NGWC estimates that, if the rate increase is approved, the report will be completed by the end of 2008. On March 13, 2008, the PUC approved Resolution W-4678, giving NGWC the authority to borrow \$100,000 from the Departments of Public Health (DPH) and Water Resources (DWR) for the purpose of financing a planning study on NGWC's water system. This loan amount appears to be inadequate to fund the cost of the report so additional loans from DPH, DWR, or other sources will be necessary.

DPH issued Compliance Order No. 02-03-08CO-002 on September 9, 2008. This order contains a finding that NGWC does not have sufficient water rights to provide a reliable and adequate supply of pure, wholesome, healthful and potable water in accordance with California Health and Safety Code section 116555, subdivision (a) (3), and cannot provide source capacity to meet maximum daily demand requirements in accordance with California Code of Regulations, title 22, section 64554. This order is based on the following:

- The maximum daily demand in 2003 and 2004 was 299 gallons per minute (gpm) and the maximum daily demand with the current 1,033 service connections is 313 gpm.
- The maximum available supply from all surface sources is 100 gpm.
- The maximum reliable supply from Wells 4 and 5 is zero (0) gpm as diversions from these wells must be terminated when the bypass flows cannot be met.

The order further requires NGWC to submit a Source Capacity Planning Study by October 1, 2009 that includes information concerning NGWC's ability to reliably and adequately serve the existing service connections in compliance with all applicable laws and regulations and a discussion of NGWC's water rights. The order also requires NGWC to submit a plan of action by March 1, 2010, to address or resolve source capacity deficiencies including, but not limited to, increased water conservation, acquisition of additional source capacity and water rights, and/or restrictions on new service connections.

15. Regardless of whether NGWC is in compliance with the term requiring approved Contingency and Measurement Plans, P14853 is explicit in its requirement to cease diversion when minimum bypass flows are not available. To ensure that adequate flows are available, P14853 requires NGWC to take flow measurements of the North Fork Gualala River by a prescribed schedule and to report the measured results to the Division. Between June 1 and December 15, the schedule requires a minimum of weekly measurements, and daily measurements if the flow falls below the bypass minimum.

16. Based on reports of measurements taken from 2004 through 2007, there were at least 11 days in which the flows measured by NGWC were below the required minimum bypass flows. In addition, there was one day in which Division staff measured a flow that was below the required minimum bypass. NGWC has admitted that diversions from Well 4 have continued daily throughout the years 2004 through 2007.
17. Based on rainfall data recorded at the nearby Yorkville station, Division staff determined that an additional 46 days of diversion almost certainly occurred during 2004 through 2007 when, flows in the North Fork Gualala River were less than the required minimum<sup>3</sup>.
18. The potential for additional violations is very high as the NGWC has almost no additional sources of acceptable quality water on which to rely when the bypasses cannot be met.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, NGWC shall cease and desist from violating the terms and conditions of permit 14853 and comply with the following corrective actions pursuant to the schedules specified:

1. NGWC shall submit a revised version of the water supply contingency plan that was submitted to the Division by cover letter of May 18, 2000 within 120 days from the effective date of this order. The revised plan shall correct the deficiencies to the original plan as specified in the August 23, 2000 letter from the Division, and shall address how municipal water demands will be met when flows in the North Fork Gualala River fall below the bypass flow requirements specified in P14853. The plan shall include the following elements:
  - Information on present and anticipated municipal water demand on a monthly basis, and anticipated peak daily demand and peak demand averaged over 30 day period;
  - Identification of the minimum amount of water needed to maintain the health and safety of those served by the NGWC;
  - Availability of water from the North Fork Gualala River to meet municipal demand while complying with applicable bypass flow requirements;
  - Availability of water from other sources to meet municipal water demand when flows in the North Fork Gualala River fall below the minimum bypass flow;
  - Evaluation of alternative water supply projects if needed to meet current and/or anticipated municipal water demand; and
  - A conservation plan to be implemented if curtailment of diversions is needed in order to comply with bypass flow requirements and other water right permit conditions. The plan should include a description and analysis of current and proposed measures to limit or reduce water demand. The analysis shall include contingency plans to limit new service connections if other measures are insufficient to reduce anticipated demand to the level of reliable water supplies available to NGWC.
2. Until such time as a contingency plan is submitted by NGWC and approved by the Deputy Director for Water Rights<sup>4</sup> (Deputy Director), NGWC shall not make any new service connections to its existing water supply system, unless such connections were the subject of an intent to serve letter dated prior to *{the date that this draft Cease & Desist Order is received by the NGWC}*. NGWC shall provide the Deputy Director with a 30-day written notification prior to making any service connection pursuant to an intent to serve letter dated prior to *{the date that this draft Cease & Desist Order is received by the NGWC}*.

<sup>3</sup> Days in which insignificant rainfall followed days of measured violations.

<sup>4</sup> Formerly Chief of the Division of Water Rights.

3. NGWC shall submit a revised version of the surface streamflow measurement plan that was submitted to the Division by cover letter of October 31, 2000 within 15 days from the effective date of this order. The plan will correct the deficiencies to the original plan as specified in the April 2, 2001 letter from the Division, and will describe the proposed method to measure the surface flow of the North Fork Gualala River. The plan shall include the following elements:
- The dates and frequency of measurements, including but not limited to the minimum dates specified in Term 3 of Order WR 99-09-DWR;
  - The location below the influence of NGWC's diversion point where measurements shall be taken;
  - The method by which measurements shall be taken;
  - The method by which the DFG and other interested parties shall be notified of proposed measurements;
  - The method by which staff or consultants will be trained in the particular measurement method proposed; and
  - The method by which measurement records will be made and the results reported to the Division.

Upon the failure of any person or entity to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).) Section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
*Assistant Deputy Director for Water Rights*

Dated:

## INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations).

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the North Gualala Water Company and the Prosecution Team for the State Water Board. Other persons or entities wishing to participate as parties may do so only if authorized by the hearing officer. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

The Notice of Intent to Appear must state: (1) the name and address of the participant; (2) the name of each witness who will testify on the participant's behalf; (3) a brief description of each witness' proposed testimony; and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>2</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the hearing notice.** Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.**

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<sup>2</sup> The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
  - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
  - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
  - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements; written policy statements; written testimony; exhibits; and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 11 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: [wrhearing@waterboards.ca.gov](mailto:wrhearing@waterboards.ca.gov) with a subject of "North Gualala Water Company ACL and CDO Hearing." Electronic submittals to the State Water Board of documents greater than 11 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media.



Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants to the e-mail address provided on the Notice of Intent. Participants who agree to electronic service may request that specific documents be provided to them in paper copy, or by mail on CD. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at: <http://www.waterrights.ca.gov/Hearings/ngwc.html>.

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at his discretion, as a result of the pre-hearing conference.
  - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
    - i. Policy statements are not subject to the pre-hearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
    - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
  - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
    - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.<sup>3</sup> Each participant will be allowed up to two hours total to present all of its direct testimony.<sup>4</sup>
- iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross-examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

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<sup>3</sup> The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

<sup>4</sup> The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and supervisors, and any of the other participants, including the members of the prosecution team and their supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at:  
[http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf).
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

**NOTICE OF INTENT TO APPEAR**

\_\_\_\_\_ plans to participate in the water right hearing regarding  
(name of party or participant)

**Cease and Desist Order and  
Proposed Administrative Civil Liability**

**North Gualala Water Company  
North Gualala River tributary to Gualala River then Pacific Ocean  
in Mendocino County**

**scheduled to commence  
May 27, 2009**

**Check all that apply:**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_

E-mail: \_\_\_\_\_

