



Winston H. Hickox
Secretary for
Environmental
Protection

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State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5363
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.waterrights.ca.gov>



Gray Davis
Governor

NOTICE OF PUBLIC WATER RIGHT HEARING AND PRE-HEARING FIELD ORIENTATION TOUR

IN THE MATTER OF PERMIT 14853 (APPLICATION 21883) OF NORTH GUALALA WATER COMPANY **REGARDING LEGAL CLASSIFICATION OF GROUNDWATER APPROPRIATED UNDER THIS WATER RIGHT PERMIT**

The State Water Resources Control Board (SWRCB) will hold a hearing regarding the legal classification of groundwater extracted from the North Gualala Water Company's Wells 4 and 5 under Permit 14853

Pre-Hearing Field Orientation Tour

Monday April 8, 2002 at 1:00 p.m.,
to convene at
North Gualala Water Company located at
38958 Cypress Way
Gualala, California

A pre-hearing field orientation tour has been scheduled to familiarize the State Water Resources Control Board Hearing Officer and staff with the physical setting of the area in which the wells are located and to discern the relationship of the wells to the local hydrogeologic conditions. This tour is for orientation purposes only. All parties may be present during the tour but may not present testimony, evidence or arguments related to the issues to be considered at the hearing. If you wish to be present during the tour, you must arrange for your own transportation.

Public Hearing

Non-evidentiary policy statements¹
may be made beginning at
9:00 a.m., on
Tuesday June 4, 2002 at
Joe Serna Jr./Cal/EPA Headquarters Building
1001 I Street, Sacramento, CA

Sierra Hearing Room
Presentation of evidence
will commence immediately following the
policy statements, on Tuesday June 4, 2002,
in the Sierra Hearing Room and will
continue, if necessary, on June 5, 2002 at
9:00 a.m. in the Coastal Hearing Room.

¹ Policy statements are explained in item #5 of the attached "Information Concerning Participation".

SUBJECT OF HEARING

The SWRCB is holding this hearing at the request of North Gualala Water Company (North Gualala). The purpose of this hearing is to receive evidence that will assist the SWRCB in determining (1) whether North Gualala is extracting groundwater from a subterranean stream through its Wells 4 and 5, and (2) whether water in a subterranean stream would be pumped by any other wells that North Gualala might develop in the future on its property in the Elk Prairie area. The basic inquiry for this hearing is whether North Gualala needs a water right permit to extract groundwater from its Wells 4 and 5 or from new wells on its property. If the SWRCB determines that North Gualala does not need a water right permit, North Gualala likely will request cancellation of Water Right Permit 14853, which has Wells 4 and 5 as the points of diversion. Permit 14853 contains terms and conditions that regulate the diversion and use of water extracted from Wells 4 and 5.

BACKGROUND

North Gualala holds four water right permits. Permit 14853 was issued to North Gualala on September 3, 1965. Permit 14853 authorizes diversion of up to 2.0 cubic feet per second (cfs) for municipal use from the North Gualala River. Originally, the point of diversion under this permit was a surface infiltration gallery at the confluence of the North Fork Gualala River and the Little North Fork Gualala River. Commencing in 1989, North Gualala constructed its Wells 4 and 5 upstream of the infiltration gallery in an area called Elk Prairie, adjacent to the North Fork Gualala River. A purpose of constructing the wells was to improve the quality of the water and reduce treatment costs.

In 1992, a neighboring company investigated the geology of the Elk Prairie area and concluded that the groundwater in the alluvial aquifer of the Gualala River system is flowing in a subterranean stream and is, therefore, subject to the water right permitting authority of the SWRCB for appropriative rights. In December 1992, based on the hydrogeology report produced by the neighboring company, the SWRCB's Division of Water Rights (Division) recommended to North Gualala that it obtain a water right permit for Wells 4 and 5. In 1998, North Gualala submitted a report to the Division concluding that the groundwater pumped by North Gualala's Wells 4 and 5 does not flow in a subterranean stream, and therefore is percolating groundwater that can be extracted without a water right permit. After the Division indicated that it was not satisfied that the groundwater is percolating, North Gualala filed a petition for change of point of diversion under Permit 14853, seeking to delete the infiltration gallery as a point of diversion and add Wells 4 and 5 as points of diversion. In Order WR-99-09-DWR, the Chief of the Division of Water Rights approved the petition, subject to terms and conditions. In Order WR 99-011, the SWRCB affirmed Order WR-99-09-DWR in response to a petition for reconsideration. North Gualala reserved its right to ask the SWRCB for a hearing on the classification of the groundwater.

On June 21, 2001, in Order WR 2001-14, the SWRCB affirmed an order of the Chief of the Division of Water Rights disapproving a surface flow measurement plan and a water supply contingency plan submitted by North Gualala pursuant to Permit 14853. In response, North Gualala filed a petition for writ of mandate seeking to have the superior court determine, among other matters, whether Permit 14853 is required for North Gualala to extract groundwater from Wells 4 and 5. During a conference in the court's chambers on December 14, 2001, the judge recommended that North Gualala formally request that the SWRCB conduct a hearing on the

classification of the groundwater before raising the issue of groundwater classification to the court for a determination.

On January 11, 2001, the attorney for North Gualala sent the SWRCB a letter formally requesting a hearing on the legal classification of groundwater for North Gualala's Wells 4 and 5 and future wells that might be installed on its property in the Elk Prairie area.

ABOUT THIS HEARING

In this hearing, the Division of Water Rights will be represented by a permitting team who will be a party in the hearing. The permitting team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding. The staff members of the hearing team will assist the hearing officer and the other members of the SWRCB in the hearing.

KEY ISSUES

- 1. Are North Gualala Wells 4 and 5 extracting groundwater that is subject to the laws governing surface water rights, including the requirement of a permit or license to appropriate the water?**
- 2. Would North Gualala extract groundwater that is subject to the laws governing surface water rights if it installs and pumps groundwater from new wells on its property in the Elk Prairie area?**

If the SWRCB determines that the groundwater considered in this hearing is subject to the laws governing surface water rights, North Gualala must have and must comply with a water right permit in order to extract the groundwater. If the groundwater is not subject to the laws governing surface water rights, North Gualala will not need a water right permit to extract the groundwater. The participants will be given an opportunity both to explain their positions regarding the applicable law governing permitting requirements for groundwater and to provide relevant evidence. Evidence presented should include evidence that supports any tests a participant advocates the SWRCB using to determine the classification of the groundwater in question.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING you should carefully read the enclosure entitled "[Information Concerning Appearance at Water Right Hearings](#)". As stated in that enclosure, parties intending to present evidence at the hearing must submit a [Notice of Intent to Appear](#), which must be received by the SWRCB on or before April 19, 2002.

To facilitate exchange of testimony, exhibits and witness qualifications, on April 26, 2002, the SWRCB will mail out a list of those parties who have indicated an intention to participate in the hearing.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be served upon and received by the SWRCB and each of the parties who have indicated their intent to appear **no later than May 3, 2002.**

PARKING AND ACCESSIBILITY

The [enclosed map](#) shows the locations of the Cal/EPA building and public parking sites in Sacramento. The Cal/EPA building second floor hearing room is accessible to persons with disabilities.

IF YOU HAVE ANY QUESTIONS

SWRCB Chairman Arthur G. Baggett, Jr. and Vice Chairman Peter Silva will be the hearing officers presiding over this proceeding. SWRCB hearing team members will be Barbara Leidigh, Senior Staff Counsel, and Paul Murphey, Associate Engineering Geologist. Questions regarding procedural matters should be directed to Barbara Leidigh, who may be reached at (916) 341-5190.

ORIGINAL SIGNED BY

Maureen Marché
Clerk to the Board

Enclosure

Date: March 5, 2002

PGM:llv 2/11/02
u:\herdrv\pgm\Gualala Hearing Notice 1

Enclosure 1

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARING REGARDING WATER RIGHT OF NORTH GUALALA WATER COMPANY

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

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 648-649.6 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 Resources Control Board (SWRCB) is available upon request or may be viewed at the SWRCB's web site: http://www.swrcb.ca.gov/water_laws/.

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 the procedural requirements specified in this notice shall be filed in writing. 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 Division of Water Rights, the North Gualala Water Company, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity who appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file a Notice of Intent to Appear and 2 copies thereof which must be received by the SWRCB no later than **4:00 p.m. on April 19, 2002**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant; the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will take to present a brief oral summary of the witness's 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 who may 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 SWRCB 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 SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB 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 SWRCB will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **Friday, May 3, 2002**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list along with a statement of service that indicates the manner of 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.² 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 SWRCB either: 5 paper copies of each of its exhibits or 3 paper copies and one electronic copy of each of its exhibits. 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.

With its exhibits, each participant must submit to the SWRCB and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the SWRCB 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 SWRCB by **4:00 p.m. on May 3, 2002** and served on the other participants on or before that date.

² 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 SWRCB 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 SWRCB 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 SWRCB 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 SWRCB'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 SWRCB in electronic form, using a file format readable by Microsoft Office 97 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB 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 SWRCB 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 must be in a version supported by Microsoft Excel 97 (preferred) or Word 97. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterrights.swrcb.ca.gov with a subset of "North Gualala Hearing". Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, but should be submitted to the other participants by mail on CD

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the SWRCB. 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 SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

6. **ORDER OF PROCEEDING:** The SWRCB 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.
- a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after the 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 prehearing 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 SWRCB 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.³ Each participant will be allowed up to two hours total to present all of its direct testimony.⁴
 - 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, the hearing officer will decide whether the participant's witnesses will be cross examined as a panel. Cross examiners

³ 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.

⁴ 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.

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 the 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 the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB 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, 6 copies of each brief shall be submitted to the SWRCB, 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.
 - e. **Large Format Exhibits:** 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.
7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)
 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.

9. **SUBMITTALS TO THE SWRCB:** Notices of Intent to Appear, written testimony and other exhibits submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Paul Murphey_____

Phone: (916) 341-5435
Fax: (916) 341-5400
Email: WrHearing@waterrights.swrcb.ca.gov
With Subject of “North Gualala Hearing”

NOTICE OF INTENT TO APPEAR

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

THE LEGAL CLASSIFICATION OF GROUNDWATER APPROPRIATED UNDER WATER
RIGHT PERMIT 14853 (APPLICATION 21883) OF
NORTH GUALALA WATER COMPANY
MENDOCINO COUNTY, CALIFORNIA

Scheduled for
_____ June 4, 2002 _____

_____ I/we intend to present a policy statement only:

_____ I/we plan to call the following witnesses to testify at the hearing:

_____ I/we agree to accept electronic service of exhibits.

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 Address: _____

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice