

WATER/RSK/PTL/CCG/jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch**

**RESOLUTION NO. W-4844
October 28, 2010**

RESOLUTION

(RES. W-4844), NORTH GUALALA WATER COMPANY (NORTH GUALALA). ORDER AUTHORIZING REVISION OF SERVICE TARIFFS TO REFLECT A MORATORIUM ON NEW SERVICE CONNECTIONS ORDERED BY THE STATE WATER RESOURCES CONTROL BOARD (SWRCB) AND IMMEDIATE CORRECTION OF SUPPLY DEFICIENCIES.

SUMMARY

This resolution grants North Gualala the authority requested in Advice Letter (AL) 70-W, filed on February 1, 2010, and supplemented by AL 70-W-A filed on February 11, 2010 to revise its tariff Schedule 1, General Metered Service, to reflect a new service connection moratorium (moratorium) imposed by the State Water Resources Control Board (SWRCB) through Order WR 2009-0036-EXEC, issued on June 9, 2009. The revised tariff schedule, as authorized herein, shall remain in place until the new service connection moratorium is rescinded by the SWRCB.

This resolution also orders North Gualala to diligently pursue a reasonable and cost-effective solution that will resolve its water supply deficiency so as to satisfy the SWRCB's concerns, in a manner that will not place unnecessary or unreasonable hardship on its customers, so that the SWRCB will rescind the moratorium. North Gualala must work with the SWRCB in a proactive manner and avoid taking unnecessary actions that would delay the SWRCB's decision to lift the moratorium. North Gualala should also provide the Commission with periodic progress updates demonstrating its diligence in resolving this matter.

BACKGROUND

North Gualala is a class C water utility serving approximately 1,041 metered customers in Gualala and vicinity, located approximately 15 miles south of Point Arena, Mendocino County. North Gualala's service area encompasses about 12.4 square miles and includes the Town of Gualala to the south, the community of Anchor Bay to the north, rural areas around and between these communities along State Highway 1, and rural areas along the coastal ridge near Old Stage Road.

North Gualala supplies its customer base with water pumped from two production wells, Wells 4 and 5, located about 200 feet from the North Fork Gualala River in an area known as Elk Prairie on the North Fork Gualala River. Wells 4 and 5 were constructed in 1989 and 1996, respectively, with a pumping capacity of about 250 gpm each. Water pumped from the wells is conveyed by a 6-inch diameter pipeline approximately 1,200 feet westerly to a booster pump station located immediately west of the North Fork/Little North Fork confluence. The booster station pumps water through an 8-inch diameter pipeline uphill to North Gualala's Top of Pacific Woods (TOPW) tank facility, where the water is chlorinated for disinfection. Tank capacity at TOPW is about 525,000 gallons. From this location, water is distributed by gravity or by pressurization to North Gualala's service area.

North Gualala's service area is divided into 10 pressure zones. Most of the zones have tank storage, and total system-wide storage tank capacity is about 1.38 million gallons. Total length of main line within North Gualala's distribution system is about 29.4 miles. Distribution mains range in size from 4 to 12 inches in diameter.

North Gualala currently holds water-right Permit 14853, which, among other water rights, authorizes the year round direct diversion of up to 2 cubic feet per second (cfs) from the North Fork for municipal purposes. The permitted points of diversion, as set forth in a SWRCB Order dated August 27, 1999, are Wells 4 and 5 at Elk Prairie. For the "protection of fish and wildlife" Term 9 of Permit 14853 requires North Gualala to bypass the following flows before diversions are allowed:

Season	Required Bypass (cfs)
November 15 to February 29	40
March 1 to May 31	20
June 1 to November 14	4

On October 28, 2008, the SWRCB issued a draft Cease and Desist Order (CDO) and Administrative Civil Liability (ACL) against North Gualala for unauthorized diversions of water from the North Fork Gualala River which occurred on at least 58 days from 2004 to 2007 during times when the flows in the river were less than the minimum bypass flows required under Term 9 of Permit 14853. The draft CDO and ACL also cites the Department of Public Health's (DPH's) Compliance Order No. 02-03-08CO-002 issued to North Gualala on September 9, 2008, stating that the DPH compliance order:

contains a finding that North Gualala does not have sufficient water rights to provide 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 was 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 [contained under Term 9 of the SWRCB's Permit 14853] cannot be met.

On June 9, 2009, the SWRCB issued Order WR 2009-0036-EXEC approving a settlement agreement between the SWRCB's Division of Water Rights Prosecution team and North Gualala on the matters contained in the draft CDO and ACL issued to North Gualala. One of the terms imposed by this Order states that:

Until such time as a contingency plan is submitted by North Gualala and approved by the Deputy Director for Water Rights (Deputy Director), North Gualala shall not make any new service connections to its existing water system unless such connections were the subject of an intent-to-serve letter dated prior to October 28, 2008. North Gualala 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 October 28, 2008.

Through AL 70-W-A North Gualala seeks Commission authorization to revise its tariffs and reflect the SWRCB's new connection moratorium mandate described above.

DISCUSSION

North Gualala is requesting that the Commission take the ministerial action of incorporating into North Gualala's tariffs the service connection moratorium already imposed by another state agency.

Section 2708 of the Public Utilities (PU) Code authorizes the Commission to impose on any water corporation a moratorium on new or additional service connections "[w]henever the Commission, after a hearing had upon its own motion or complaint, finds that . . . no further consumers of water can be supplied from the system of such utility without injuriously withdrawing the supply wholly or in part from those who have theretofore been supplied by the corporation" . . .

For North Gualala's request, however, the Commission is neither making the finding

that the water system cannot serve additional customers without injuriously withdrawing the supply from existing customers nor is it imposing a service connection moratorium upon its own motion or complaint. The finding and imposition were made by other state agencies.

North Gualala should be authorized to revise its tariffs to reflect the service connection moratorium ordered by the SWRCB under Ordering Paragraph 2 of Order WR 2009-0036-EXEC which applies to all new service connections “unless such connections were the subject of an intent-to-serve letter dated prior to October 28, 2008”. To effectuate the SWRCB’s order that no additional service connections be allowed unless they are the subject of an intent-to-serve letter dated prior to October 28, 2008, we will give the revised tariff sheets an effective date of October 28, 2008. The SWRCB’s order also explains that this moratorium should be in place “until such time as a contingency plan is submitted by North Gualala and approved by the (SWRCB’s) Deputy Director for Water Rights”. In that Order, the SWRCB directed North Gualala to submit that supply contingency plan within 120 days from the effective date of the Order to address how municipal water demands will be met when flows in the North Fork Gualala River fall below the bypass flow requirements specified in Permit 14853.

Since the issuance of Order WR 2009-0036, North Gualala has submitted two versions of the water supply contingency plan to the SWRCB. The latest one was submitted on March 2, 2010, followed by SWRCB’s comments issued on March 16, 2010. According to North Gualala the SWRCB still requires further information on: 1) the time schedule for activation and use of all available alternative sources to limit future violations; and 2) a means to reduce diversions from the North Fork of the Gualala River to avoid bypass flow violations. North Gualala reports that it is currently discussing with its consultants means for addressing the remaining concerns, and will contact the SWRCB to discuss this matter further after further work is conducted.

The Settlement Agreement between the SWRCB and North Gualala includes a provision that, as long as North Gualala is complying with the provisions of Order WR 2009-0036 and with the revised water supply contingency plan required by the order, the SWRCB’s prosecution team will not issue any new ACL complaint or any violation of the bypass term of water-right Permit 14853, unless evidence of harm to fish caused by any such violation is received.

Although North Gualala states that the SWRCB did not formally request that it submit anything beyond the March 2, 2010 contingency plan, the SWRCB has not, to date, approved such a plan. North Gualala should proactively work with SWRCB so as to avoid unnecessarily delaying that agency’s approval of the contingency plan. North Gualala must also diligently pursue, in a manner that will not place unnecessary or unreasonable hardship on its customers, a reasonable and cost-effective solution to its

water supply deficiency, to resolve the SWRCB's concerns so that the SWRCB will rescind the moratorium. North Gualala shall provide the Division with periodic progress updates, at least every four months, demonstrating its diligence in resolving the matter. Immediately upon receiving SWRCB's permission to lift the service connection moratorium, North Gualala must inform the Division, by filing a Tier 1 Advice Letter to remove the tariff language reflecting the SWRCB moratorium authorized by this Resolution.

In response to the supply deficiency North Gualala is implementing water conservation measures that include voluntary and mandatory rationing, as required by both the SWRCB and DPH. The Commission has long recognized that the water supply requirements set forth in General Order 103 (G.O. 103) and Standard Practice U-22-W: "Water Supply Requirements of Water Systems" may at times be temporarily affected, so as part of OII 89-03-005 it allowed all classes of water utilities to file a water conservation and rationing plan consisting of two distinct parts: Rule 14.1 (a "voluntary conservation" program) and Schedule 14.1 (the mandatory rationing and penalty part). Rule 14.1, Water Conservation and Rationing Plan, allows the utility, at its own discretion, to implement voluntary conservation. The mechanism for implementing mandatory conservation rationing is through Schedule 14.1, Mandatory Conservation and Rationing. Schedule 14.1 sets forth mandatory water use restrictions, water use violation fines, charges for removal of flow restrictors, and the period during which mandatory conservation rationing measures will be in effect. It is only during the time that Schedule 14.1 is in effect that the utility may impose mandatory conservation and rationing. At all other times, the utility may only utilize voluntary measures. North Gualala's tariffs do not currently contain Rule 14.1 or Schedule 14.1, so if it intends to continue implementing voluntary and mandatory conservation measures, it must file an Advice Letter, pursuant to the Division's Standard Practice U-40-W, requesting to establish Rule 14.1 and Schedule 14.1.

NOTICE AND PROTESTS

North Gualala notified all affected customers, including current and potential future customers, of the tariff changes requested in AL 70-W via individual mailings on February 12, 2010.

The Division received a protest from a potential customer stating that the utility did not properly notice this filing, by asserting that no notice of the moratorium in question was received. However, this potential customer's protest was in response to the customer notice that potential customer did receive and through which North Gualala informed its customers of the requested tariff change to reflect the new service connection moratorium imposed by the SWRCB. North Gualala's individual mailing of this notice satisfied this Commission's notice requirements, which are specified in G.O. 96-B,

General Rule 4.2, and Industry Rule 3.

The Division also received several inquiries from customers seeking more information on North Gualala's filing, prompting the Division's suggestion that North Gualala hold a public meeting to further inform its customers of the request. North Gualala informed the Division that it held the suggested public meeting on April 29, 2010 and discussed the requested tariff change with the three customers in attendance.

COMMENTS

PU Code Section 311(g) (1) provides that resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft Resolution was mailed to the potential customer who filed a protest and made available for public comment on September 14, 2010. No comments were received.

FINDINGS AND CONCLUSIONS

1. North Gualala currently holds water-right Permit 14853 which authorizes year round direct diversion of up to 2 cfs from the North Fork of the Gualala River.
2. Term 9 of Water-Right Permit 14853 requires that North Gualala bypass a certain amount of flow from the North Fork of the Gualala River before any diversions are allowed.
3. On October 28, 2008, the SWRCB issued a draft CDO and ACL against North Gualala for unauthorized diversions of water in violation of Term 9.
4. The draft CDO and ACL cites a compliance order issued by DPH to North Gualala stating that North Gualala does not have sufficient water rights to provide reliable and adequate supply of pure, wholesome, healthful and potable water and cannot provide source capacity to meet maximum daily demand requirements.
5. On June 9, 2009 the SWRCB issued Order WR 2009-0036-EXEC approving a settlement agreement between the SWRCB and North Gualala.
6. Order WR 2009-0036-EXEC imposed on North Gualala a service connection moratorium for any new service connections that were not the subject of an intent-to-serve letter dated prior to October 28, 2008.
7. Per Order WR 2009-0036-EXEC the new service connection moratorium is to remain in place until such time as a "contingency plan" is submitted by North Gualala and approved by the Deputy Director for Water Rights.

8. North Gualala is currently requesting authority from the Commission to revise its Tariff Schedule No. 1, General Metered Service, in order to reflect the new service connection moratorium imposed by the SWRCB.
9. North Gualala should be authorized to revise its tariffs as requested.
10. The SWRCB will not issue any new administrative civil liability complaint or any violation of the bypass flow requirement as long as North Gualala is complying with the provisions of Order WR 2009-0036 and with the revised water supply contingency plan that is required by the order, unless evidence of harm to fish caused by any such violation is received.
11. North Gualala should proactively work with SWRCB and avoid unnecessarily delaying that agency's approval of the contingency plan.
12. North Gualala must, in a manner that will not place unnecessary or unreasonable hardship on its customers, diligently pursue a reasonable and cost-effective solution to its water supply deficiency that will resolve the SWRCB's concerns so that the SWRCB will rescind the moratorium.
13. North Gualala should provide the Division with periodic progress updates, no less than every four months, demonstrating its diligence in resolving the matter.
14. Immediately upon receiving SWRCB's permission to lift the service connection moratorium, North Gualala must inform the Division by filing a Tier 1 Advice Letter to remove the tariff language, authorized by this Resolution, reflecting the SWRCB moratorium
15. In response to its supply deficiencies, North Gualala is implementing water conservation measures that include voluntary and mandatory rationing, as required by both the SWRCB and DPH.
16. Tariff Rule 14.1 and Schedule 14.1 provide the mechanism by which a utility can implement voluntary and mandatory rationing, none of which are contained in North Gualala's tariffs.
17. If it intends to continue implementing voluntary and mandatory conservation measures, North Gualala must file an advice letter, pursuant to the Division's Standard Practice U-40-W, requesting to establish Rule 14.1 and Schedule 14.1.
18. North Gualala notified all affected customers, including current and potential future

customers, of the tariff changes requested in AL 70-W via individual mailings on February 12, 2010.

19. At the suggestion of the Division, North Gualala held a public meeting on April 29, 2010, and explained the requested tariff change to the three customers in attendance.

IT IS ORDERED THAT:

1. North Gualala Water Company is authorized to revise its tariffs to reflect a new service connection moratorium imposed by the State Water Resources Control Board in Order WR 2009-0036-EXEC, as requested in Advice Letter 70-W-A.
2. North Gualala Water Company shall add the following language under the "Applicability" section of its tariff Schedule No. 1, General Metered Service:

"Moratorium

Until further notice, pursuant to the terms of the Settlement Agreement adopted by Order 2009-0036-EXEC issued by the State Water Resources Control Board (SWRCB) on June 9, 2009, no new service connections can be made by the utility that were not the subject of an intent-to-serve letter dated prior to October 28, 2008. New service connections that were subject of an intent-to-serve letter dated prior to October 28, 2008 can be made only after a 30-day written notification has been provided by the utility to the deputy Director of Water Rights"

3. Within 5 days of the date of this resolution, North Gualala Water Company shall file a revised Schedule No. 1, General Metered Service, to incorporate the language described in Ordering Paragraph No. 2, and concurrently cancels its presently effective Schedule 1, General Metered Service. This language shall be effective as of October 28, 2008.
4. North Gualala Water Company shall provide the Division of Water and Audits with periodic progress updates, no less than every four months, demonstrating its diligence in pursuing a lift of the new service connection moratorium.
5. Immediately upon receiving State Water Resources Control Board's permission to lift the service connection moratorium, North Gualala Water Company must inform the Division by filing a Tier 1 Advice Letter to remove the tariff language, authorized by this Resolution, reflecting the State Water Resources Control Board's moratorium.
6. Pursuant to the Division of Water and Audits' Standard Practice U-40-W, North

Gualala Water Company must file an Advice Letter requesting to establish Rule 14.1, Mandatory Water Conservation and Rationing Plan, and Schedule 14.1, Mandatory Water Conservation and Rationing Plan, if it intends to continue implementing voluntary and mandatory conservation measures.

7. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 28, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
President

JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.