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JAMES M. BOYD, JR., Of Counsel

May 1, 2003

Mr. Arthur G. Baggett, Jr., Chairman  
State Water Resources Control Board  
P. O. Box 100  
Sacramento, California 95812-0100

Re: April 24 Draft Order Denying Petition For Reconsideration Of Order  
WRO 2003-0004

Dear Mr. Baggett:

This letter, submitted on behalf of the North Gualala Water Company ("North Gualala"), comments on the April 24 draft order regarding North Gualala's petition for reconsideration of Order WRO 2003-0004.

Two draft orders, dated November 27, 2002 and February 3, 2003, were circulated before the State Board adopted Order WRO 2003-0004 on February 19. By completely re-writing sections 4.3, 4.3.1 and 4.3.2 of the November 27 draft order, the February 3 draft addressed many of the technical comments in the December 24, 2002 letter from Joseph Scalmanini.

Unfortunately, the April 24 draft order now re-introduces some of the same defects that were in the November 27 draft order. Specifically, page 6 of the April 24 draft order refers to the "general downstream flow of the subterranean stream" and page 7 states that "water is in fact flowing generally downstream within the channel under Elk Prairie." For the reasons discussed in Mr. Scalmanini hearing testimony, his December 24 letter and his March 21 declaration, these statements regarding the purported general direction of groundwater flow are not supported by competent evidence. While Mr. Custis made some statements during the hearing about general groundwater flow directions, his statements were just opinions that were not supported by competent evidence. Because the statements in the April 24 draft order about the "general downstream flow of the subterranean stream" are not supported by competent evidence, they should be deleted from the draft order.

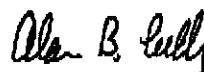
Also, the April 24 draft order (at page 5) states that "North Gualala in effect argues that to be flowing 'through' a known and definite channel, groundwater must be flowing constantly, and without deviation, parallel to the sides of the channel." In contrast, North Gualala's closing brief (at page 17) states that one of the requirements of the Garrapata test is that "the groundwater actually is flowing through, that is generally parallel to, the channel." Because the statement in the April 24 draft order regarding North Gualala's position on groundwater flow direction does not accurately describe North Gualala's position, it should be corrected.

Mr. Arthur G. Baggett, Jr.  
May 1, 2003  
Page 2

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Because these inaccuracies in the April 24 draft order concern some of the fundamental issues regarding the legal classification of the groundwater involved in this proceeding, the State Board should, after correcting these inaccuracies, reconsider Order WRO 2003-0004 and amend it so that it contains accurate findings and correct conclusions regarding the legal classification of this groundwater.<sup>1</sup>

Very truly yours,



ALAN B. LILLY

ABL:

cc: Peter S. Silva  
Richard Katz  
Gary Carlton  
Paul Murphey  
Attached Service List

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<sup>1</sup>North Gualala's prior comments described several other problems with Order WRO 2003-0004. Those comments are not repeated here. Instead, they, and the comments in North Gualala's petition for reconsideration of Order WRO 2003-0004, are just incorporated here by reference.