

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

ORDER WR 2020-0104-EXEC

In the matter of Violation of Order WR 2012-0036-DWR by
GARBERVILLE SANITARY DISTRICT

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

This matter comes before the Executive Director of the State Water Resources Control Board (State Water Board or Board) following the settlement negotiations regarding alleged violations of Order WR 2012-0036-DWR (Cease and Desist Order or CDO). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights Prosecution Team (Division Prosecution Team) and Garberville Sanitary District (GSD) have agreed to settle this matter in lieu of proceeding to a hearing. The Division Prosecution Team and GSD are collectively referred to as the Settling Parties. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60.

2.0 BACKGROUND

GSD holds License 3404 (Application A009686) and Permit 20789 (Application A029981) to appropriate water from the South Fork Eel River for the purpose of Municipal use. The place of use for License 3404 and Permit 20789 is within Sections 13, 23, 24, 25 and 35, T4S, R3E, HB&M; and Sections 18, 19, and 20, T4S, R4E, HB&M.

¹ State Water Board Resolution No. 2012-0061 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

On December 27, 2012, the State Water Board adopted the CDO, ordering GSD to:

- 1) cease and desist the bulk sale and delivery of water under License 3404 and Permit 20789 to areas outside the authorized place of use, unless it is demonstrated to the satisfaction of the State Water Board that the water is needed for emergency domestic water supply (Provision 1); and
- 2) if bulk water sales continue, keep accurate records of each sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler purchasing the water, and the final place of use, which shall be made available to the Division upon request (Provision 2).

On September 4, 2018, the Division received a complaint alleging that GSD violated Provision 1 of the CDO through the bulk sale and delivery of water outside of the authorized place of use described under License 3404 and Permit 20789.

On November 20, 2018, Division staff issued a Notice of Violation placing GSD on notice that Division staff had determined that GSD had violated both Provision 1 and Provision 2 of the CDO by selling bulk water for use outside of the authorized place of use, and failing to keep accurate records of each sale of bulk water.

On November 30, 2018, GSD responded to the Notice of Violation by informing the Division that GSD ceased bulk water sales in October 2018.

GSD is alleged to have violated both Provision 1 and Provision 2 of the CDO through the bulk sale and delivery of water outside of the authorized place of use under License 3404 and Permit 20789 for uses other than emergency domestic water supply, and failing to keep accurate records of each sale of bulk water. The alleged violations are described in a Draft Administrative Civil Liability Complaint (ACLC) attached to the Settlement Agreement.

The Settling Parties have engaged in settlement negotiations and mutually agreed to settle the alleged violations. The Settlement Agreement represents a compromise of disputed claims. Nothing contained in the Settlement Agreement shall be construed as an admission of fault or liability on the part of GSD.

3.0 SETTLEMENT AGREEMENT

The Settling Parties executed the Settlement Agreement attached hereto. The general terms of the settlement are that the Division Prosecution Team will deem the Draft ACLC satisfied and will not pursue further enforcement of any of the violations alleged in the Draft ACLC if GSD (1) waives the right to reconsideration of this Order; (2) agrees to the terms as described in the Settlement Agreement and incorporated herein; (3) specifically implements the compliance actions described in Paragraphs 7.a and 7.b of the Settlement Agreement to ensure compliance with the CDO; and (4) pays an administrative civil liability penalty of \$40,000.00 within 30 days following the issuance of this Order.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division Prosecution Team and GSD is approved. GSD must:

1. Implement the compliance actions described in Paragraphs 7.a and 7.b of the Settlement Agreement; and
2. Pay a total of \$40,000.00 by cashier's check or money order to the "*State Water Board Water Rights Fund*" no later than 30 days from issuance of this Order. The payment must include a note or other reference to "*Order WR 2020-0104-EXEC*" and must be mailed to the following address:

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

The compliance actions described in ordering paragraph 1 of this Order (Paragraphs 7.a and 7.b of the Settlement Agreement) are necessary for GSD to come into compliance with the CDO. Failure to implement these compliance actions will be subject to enforcement under section 1845, subdivision (b), of the Water Code, at the discretion of

the State Water Board. In adopting this order, the State Water Board has considered all relevant circumstances, including those identified in the Settlement Agreement. GSD's failure to timely pay the amount required in ordering paragraph 2 of this Order will be deemed a failure to satisfy the administrative civil liability under this Order, and will be subject to enforcement and recovery by the State Water Board under section 1055.4 of the Water Code.

August 26, 2020

Date



Eileen Sobeck
Executive Director

SETTLEMENT AGREEMENT

This Settlement Agreement is made this 11th day of May, 2020, by and between Garberville Sanitary District (GSD) and the Prosecution Team of the State Water Resources Control Board ("State Water Board") Division of Water Rights ("Division"). GSD, and the Prosecution Team are collectively referred to as the Settling Parties.

RECITALS

1. GSD holds License 3404 (A009686) and Permit 20789 (A029981) to appropriate water from the South Fork Eel River for the purpose of Municipal use. The place of use for Permit 20789 and License 3403 is within Sections 13, 23, 24, 25 and 35, T4S, R3E, HB&M; and Sections 18, 19, 20, T4S, R4E, HB&M.
2. On September 6, 2012, the Division received a complaint alleging that GSD was violating the terms and conditions of License 3404 and Permit 20789 by providing service connections to residential homes and properties outside of GSD's licensed and permitted place of use.
3. On November 20, 2012, the Division served GSD with a draft Cease and Desist Order (CDO).
4. On December 27, 2012 the State Water Board adopted Cease and Desist Order 2012-0036-DWR, ordering GSD to: 1) cease and desist the bulk sale and delivery of water under License 3404 and Permit 20789 to areas outside the authorized place of use unless, it is demonstrated to the satisfaction of the State Water Board that the water is needed for emergency domestic water supply (Provision 1), and 2) if bulk water sales continue, to keep accurate records of each sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler purchasing the water, and the final place of use, which shall be made available to the Division upon request (Provision 2).
5. On September 4, 2018, the Division received a complaint alleging that GSD violated Provision 1 of the Final CDO through the bulk sale and delivery of water outside of the authorized place of use described under License 3404 and Permit 20789.
6. On November 20, 2018, Division staff issued a Notice of Violation placing GSD on notice that Division staff had determined that GSD had violated both Provision 1 and Provision 2 of the Final CDO by the selling bulk water for use outside of the authorized place of use, and failing to keep accurate records of each sale of bulk water.

GSD Settlement Agreement

7. On November 30, 2018, GSD responded to the Notice of Violation by informing the Division that GSD ceased bulk water sales in October 2018.
8. GSD is alleged to have violated both Provision 1 and Provision 2 of Cease and Desist Order 2012-0036-DWR through the bulk sale and delivery of water outside of the authorized place of use under License 3404 and Permit 20789 for uses other than emergency domestic water supply, and failing to keep accurate records of each sale of bulk water. California Water Code section 1845 states that a person or entity who violates a cease and desist order may be held civilly liable in an amount not to exceed one thousand dollars (\$1000) for each day in which the violation occurs. The alleged violations are described in a Draft Administrative Civil Liability Complaint (ACLC) ("Attachment A"). The Draft ACLC proposes an administrative civil liability in the amount of \$50,000 based on the relevant circumstances alleged therein.
9. This Settlement Agreement is a compromise of disputed claims. Nothing contained in this Settlement Agreement shall be construed to be an admission of fault or liability on the part of GSD.
10. The Settling Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Settlement Agreement and a proposed order to the State Water Board for adoption as an order by settlement, pursuant to Government Code section 11415.60. This Settlement Agreement will become effective when the State Water Board's Executive Director issues an order approving the settlement, provided that the Settling Parties concur in any substantive changes to the approving order proposed by the Executive Director.

NOW, THEREFORE, in consideration of these Recitals and in consideration of the mutual covenants set forth in this Settlement Agreement, the Settling Parties do hereby agree to settle the violations alleged as follows:

1. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
2. **Settlement Conditionally Confidential.** Unless and until the State Water Board's Executive Director issues an order approving this Settlement Agreement, this Settlement Agreement is a confidential settlement document subject to all of the limitations on admissibility set forth in California Evidence Code sections 1152 and 1154. Furthermore, pursuant to Government Code section 11415.60, this Settlement Agreement is not admissible in an adjudicative proceeding or civil action for any purpose.
3. **Payment Amount.** GSD shall pay a total of \$40,000.00 as directed herein to resolve all violations alleged in the ACLC.

GSD Settlement Agreement

4. **Consideration of Relevant Circumstances.** The Prosecution Team has determined for purposes of Water Code section 1055.3 that the Payment Amount in Paragraph 3 is an appropriate resolution to the violations alleged in the Draft ACLC based on consideration of the relevant circumstances, including: GSD's alleged knowledge that the sale of bulk water was in direct violation of the Cease and Desist Order, the economic benefit realized by GSD through the sale of bulk water, the commitments set forth in Paragraph 7 below, and the settlement purpose of this agreement.
5. **Administrative Civil Liability Payment Due Date.** The Payment Amount set forth in Paragraph 3 is due within 30 days following the State Water Board Executive Director's approval of this Settlement Agreement. The State Water Board will deposit said funds in the Water Rights Fund pursuant to Water code sections 1054, et seq.
6. **Satisfaction of Administrative Civil Liability Complaint.** GSD's full payment of the Payment Amount will be a complete and final satisfaction of the administrative civil liability described in the draft ACLC, and the State Water Board will not bring any further administrative civil liability or other enforcement action regarding any of the alleged violations described in the draft ACLC.
7. **Compliance Actions.** The Settling Parties agree that GSD will take the following actions to come into compliance with Cease and Desist Order 2012-0036-DWR:
 - a. GSD shall, in compliance with the terms of Provision 1 of Cease and Desist Order 2012-0036-DWR, prohibit metered customers who are located within the authorized place of use described under License 3404 and Permit 20789 from purchasing bulk water and transporting it outside the place of use. Where GSD has knowledge of a violation of this prohibition, it will take reasonable and necessary actions to halt the activity.
 - b. In the event any future requests are received by GSD for the purchase of bulk water and transport outside the place of use that is not needed for emergency domestic water supply or any other use allowed by Cease and Desist Order 2012-0036-DWR pursuant to its current or amended text (if later amended), GSD will deny the request unless the customer has a temporary urgency change petition approved by the State Water Board in accordance with California Water Code section 1435.
8. **Enforcement of this Settlement Agreement.** The compliance actions described in Paragraph 7 are necessary for GSD to come into compliance with the CDO. Failure to implement these

GSD Settlement Agreement

compliance actions will be subject to enforcement under Water Code section 1845 at the discretion of the State Water Resources Control Board. A failure to pay the amount required in Paragraph 3 will be deemed failure to pay an ACL, recoverable as provided in Water Code section 1055.4.

9. **Request for Executive Director Approval.** Upon execution of this Settlement Agreement by each of the Settling Parties, the Settling Parties shall submit this Settlement Agreement and a proposed order approving this Settlement Agreement to the Executive Director for consideration and approval.
10. **Waiver of Reconsideration.** GSD waives the right to request reconsideration of the State Water Board Executive Director's order approving this Settlement Agreement, provided no material modifications to this Settlement Agreement or additional requirements beyond the requirements of this Settlement Agreement are included in that order.
11. **Successors.** This Settlement Agreement is binding on any successors or assigns of GSD, and the State Water Board.
12. **Independent Judgment.** Each party represents and declares that in executing this Settlement Agreement it is relying solely on its own judgment, knowledge and belief concerning the nature, extent and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in the execution of this Settlement Agreement by any representations or statements regarding any matters made by other parties hereto or by any person representing them.
13. **No Precedent.** This Settlement Agreement involves unique facts and legal issues and shall not be used as a precedent decision of the State Water Board.
14. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to this Settlement Agreement.
15. **Entire Agreement.** This Settlement Agreement reflects and represents the entire agreement between and among the parties and supersedes any and all prior understandings, representations, and agreements whether written or unwritten. Each party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in this Settlement Agreement.
16. **Mutual Agreement.** The parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be

GSD Settlement Agreement

construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.

- 17. Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
- 18. Disputed Claim and Reasonableness of Settlement.** This Settlement Agreement is a compromise of disputed claims. Nothing contained in this Settlement Agreement shall be construed to be an admission of fault or liability on the part of GSD. Without limitation on the foregoing, the parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
- 19. Section Headings.** The parties intend that the paragraph headings of this Settlement Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Settlement Agreement.
- 20. Effective Date.** This Settlement Agreement shall become effective immediately upon the State Water Board Executive Director's Order Approving Settlement Agreement.
- 21. Choice of Law.** This Settlement Agreement shall be interpreted and governed by the laws of the State of California.
- 22. Authorization.** Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.
- 23. State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by GSD, or their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by GSD's directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.
- 24. No Waiver of Other Requirements.** Nothing in this Settlement Agreement or any implementing Order shall excuse GSD from applicable legislation, regulation, order or any other requirements or restrictions imposed by the State Water Board or pursuant to its delegated authority.

GSD Settlement Agreement

Dated: May 7 2020

 Digitally signed by Julie Rizzardo
Date: 2020.05.07 09:02:25


Julé Rizzardo
Assistant Deputy Director
State Water Board, Division of Water Rights
Prosecution Team

Dated: May 11 2020


Linda Brodersen
Board Chair
Garberville Sanitary District Board of Directors

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Violation of Cease and Desist Order 2012-0036-DWR

Garberville Sanitary District

SOURCE: South Fork Eel River tributary to Eel River

COUNTY: Humboldt

YOU ARE HEREBY GIVEN NOTICE THAT:

1. On December 27, 2012 the State Water Resources Control Board (State Water Board or Board) adopted Cease and Desist Order WR 2012-0036-DWR, ordering Garberville Sanitary District (GSD) to 1) cease and desist the bulk sale and delivery of water under License 3404 and Permit 20789 to areas outside the authorized place of use unless, it is demonstrated to the satisfaction of the State Water Board that the water is needed for emergency domestic water supply (Provision 1), and 2) if bulk water sales continue, to keep accurate records of each sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler purchasing the water, and the final place of use, which shall be made available to the Division upon request (Provision 2).
2. Garberville Sanitary District is alleged to have violated both Provision 1 and Provision 2 of Cease and Desist Order 2012-0036-DWR through the bulk sale and delivery of water outside of the authorized place of use under License 3404 and Permit 20789 for uses other than emergency domestic water supply, and failing to keep accurate records of each sale of bulk water.
3. California Water Code section 1845 states that a person or entity who violates a cease and desist order may be held civilly liable in an amount not to exceed one thousand dollars (\$1000) for each day in which the violation occurs. Liability may be imposed by the State Water Board pursuant to California Water Code section 1055.
4. California 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. The Executive Director has delegated this authority to the Deputy Director for the Division of

Water Rights (Deputy Director), who has redelegated this authority to the Assistant Deputy Director for the Division of Water Rights (Assistant Deputy Director). State Water Board Resolution 2012-0029 authorizes the Deputy Director to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director has redelegated this authority to the Assistant Deputy Director.

HISTORY

5. GSD holds License 3404 (A009686) and Permit 20789 (A029981) to appropriate water from the South Fork Eel River for the purpose of Municipal use. The place of use for Permit 20789 and License 3403 is within Sections 13, 23, 24, 25 and 35, T4S, R3E, HB&M; and Sections 18, 19, 20, T4S, R4E, HB&M. A summary of the water rights is listed below:

	A009686	A029981
Type	License 3403	Permit 20789
Source	South Fork Eel River	South Fork Eel River
Priority Year	1939	1991
Purpose of Use	Municipal	Municipal
Season of Diversion	1/1 – 12/31	1/1 – 12/31
Rate (cfs)	0.155	0.595
Max Rate (cfs)	0.75	0.75
Max Amount (acre-ft)	112.2	430

6. On August 6, 2012 the Division of Water Rights (Division) received a complaint from Mr. Ed Voice alleging that GSD was violating the terms and conditions of License 3404 and Permit 20789 by selling bulk water to commercial water delivery companies that re-sell the water to customers outside of GSD's licensed and permitted place of use.
7. On September 6, 2012, the Division received a complaint alleging that GSD was violating the terms and conditions of License 3404 and Permit 20789 by providing service connections to residential homes and properties outside of GSD's licensed and permitted place of use.
8. On November 12, 2012, GSD submitted a petition to expand the place of use to extend treated water from the GSD's system to the Kimtu Meadows subdivision for municipal purposes. Permit 20789 and License 3404 were amended to reflect the petitioned place of use on October 11, 2013.
9. On November 20, 2012, the Division served GSD with a draft Cease and Desist Order (CDO).
10. On November 27, 2012, Division staff spoke to a GSD employee, Jennie Short, over the phone. Ms. Short informed the Division that GSD was contemplating

ceasing all bulk water sales in response to the draft CDO. Division staff informed Ms. Short that Provision 1 of the draft CDO does not require the complete cessation of bulk water sales, only those sales for water delivery outside of GSD's place of use. Division staff explained that Provision 1 of the draft CDO includes an Emergency Domestic Use exception to this requirement and provided an example of when that exception would apply.

11. On December 3, 2012, Division staff sent Ms. Short an email further explaining that the exception allowing for bulk water sales for Emergency Domestic Use is a limited and narrow exception available "only in temporary circumstances where such deliveries are required for essential health and safety." Moreover, Division staff articulated that it would be GSD's responsibility to comply with this requirement by reviewing each request for water by bulk water haulers outside GSD's authorized place of use to confirm that a legitimate alternate water supply was not available, the quantity of water requested was reasonable for the emergency domestic needs, and that a plan exists to remedy and correct the emergency need for water.
12. On December 3, 2012, Ms. Short presented the draft CDO to the GSD Board in open session at a special board meeting. The transcript of that meeting indicates that Ms. Short relayed the Division's explanation of the Emergency Domestic Use exception in the draft CDO. Following discussion of the terms of the draft CDO, the GSD Board members voted to waive their right to a hearing on the draft CDO.
13. On December 27, 2012, the Assistant Deputy Director issued Cease and Desist Order WR 2012-0036-DWR (Final CDO) pursuant to authority delegated by State Water Board Resolution 2012-0029, requiring GSD to cease and desist the bulk sale and delivery of water outside of the authorized place of use described under License 3404 and Permit 20789. The Final CDO is attached hereto as **Attachment A**.
14. On a January 11, 2013 conference call Division staff and a representative of GSD, Ms. Tina Stillwell, discussed the terms of the Final CDO, and responded to Ms. Stillwell's questions regarding the Emergency Domestic Use exception. Division staff explained that GSD does not need the Division's approval when authorizing sales to commercial water haulers and it is GSD's responsibility to only approve sales based on the guidelines of the CDO. Division staff recommended that GSD submit a completed Emergency Domestic Use application to the Division, where the application can be reviewed, and GSD can receive feedback on the approved applications. Ms. Stillwell also asked Division staff their opinion on a Garberville resident requesting a water delivery. Division staff explained that under the scenario provided, GSD should not deny the resident water for Emergency Domestic Use, but that a corrective action plan must be put in place.

INVESTIGATION

15. On September 4, 2018, the Division received a complaint by Mr. Ed Voice alleging that GSD violated Provision 1 of the Final CDO through the bulk sale and delivery of water outside of the authorized place of use described under License 3404 and Permit 20789.
16. On October 16, 2018, Division staff emailed GSD and requested all records of bulk water sales between 2015-2017, which GSD must keep pursuant to Provision 2 of the Final CDO.
17. On October 16, 2018, GSD responded to Division staff's request for records of bulk water sales by forwarding the Progress Report by Permittee for Permit 20789 and a Report of Licensee for Licensee 3404 for the 2017 water year that had been previously filed on August 10, 2018 via the electronic Water Rights Information Management System (eWRIMS). Both reports detail the amount of bulk water sold. GSD indicated that they sold water to supply CalFire for firefighting operations and to various construction companies for road construction projects outside of the authorized place of use.
18. On October 16, 2018, GSD sent an email to Division staff stating that no bulk water sales occurred prior to 2017.
19. On October 22, 2018, GSD informed the Division that, in addition to the eWRIMS reports, GSD kept records of its bulk water sales, but did not record or report water sales to CalFire for use in firefighting activities. Division staff notified Ms. Short that due to the immediacy of CalFire's needs for water during a firefighting crisis, the Division would not consider GSD's failure to keep accurate records of those sales a violation of the Final CDO.
20. On October 23, 2018, Division staff contacted GSD via email requesting copies of the bulk water sales records kept by GSD in accordance with Provision 2 of the Final CDO stating, "The 2012 CDO requires that Garberville Sanitary District maintain records of each sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler, and the final place of use."
21. On October 24, 2018, the Division received a complaint by Mr. Jessie Jeffries alleging that GSD violated Provision 1 of the Final CDO through the bulk sale and delivery of water outside of the authorized place of use described under License 3404 and Permit 20789.
22. On November 6, 2018, GSD provided the Division with some records of its bulk sale of water for delivery. The records contained weekly logs with the water hauler's name, some meter readings, some payment receipts, and some invoices. The records provided by GSD were neither accurate nor complete records of each sale and did not contain either the volume of water sold, or the final place of use as required by Provision 2 of the Final CDO.

23. The information in the records provided by GSD labeled “Fire Hydrant Use Application” included only a California Department of Transportation (CalTrans) project number and vague descriptions of the project location such as “various locations” and “multiple locations” along Highway 101. The records did not provide a destination of each individual truck load that would allow for verification of whether the delivery was within the authorized place of use. The records associated with the sale of bulk water for construction occurring at the Garberville Airport were the only sales records that were sufficiently detailed to meet the requirements of Provision 2 of the Final CDO.
24. On November 20, 2018, Division staff issued a Notice of Violation placing GSD on notice that Division staff had determined that GSD had violated both Provision 1 and Provision 2 of the Final CDO by the selling bulk water for use outside of the authorized place of use, and failing to keep accurate records of each sale of bulk water.
25. On November 30, 2018, GSD’s General Manager, Mr. Ralph Emerson, responded to the Notice of Violation and informed the Division that GSD has cease bulk water sales since October 2018. The response letter also stated that if GSD receives any future emergency water requests, that the Division will be contacted prior to water sales. Mr. Emerson also attached the notice posted on October 25, 2018 notifying the public that all bulk water services to public agencies for emergency services including public road repairs have ceased until the State Water Board issues a response.
26. On January 9, 2019, GSD provided more records of GSD’s bulk water sales. GSD Provided a summary of the sales records, which, after cross referencing with the actual sales records, proved to be inaccurate. Despite that the Final CDO requires GSD to keep accurate records of each sale including the volume of water sold, the date of the sale, and the place of use, the records GSD provided lacked much of that information. Division staff was able to determine that GSD sold bulk water, but in many instances was unable to immediately determine the purpose of use, for example if it was for emergency domestic water supply, and whether the final place of use of that water was outside of the GSD’s place of use. Many of the records contained only project numbers that correspond to specific CalTrans project sites, rather than a description of what the water was used for, or where it was delivered. The records relating to GSD’s sale of bulk water to Mendocino Construction Company indicate that the water was used for construction purposes, but the records do not provide sufficient information to determine if the water was used outside of the authorized place of use. Each time GSD sold bulk water but failed keep accurate records of that sale it violated Provision 2 of the CDO.
27. On December 27, 2018, Division staff contacted the CalTrans Public Information Officer, Cori Reed, to obtain information pertaining to the provided project numbers and the location of the projects identified in GSD’s records. CalTrans staff confirmed that the projects 01-0G6504, 01-0H1004 and 01-0A4604 were all

located partially or completely outside of the Permit and License place of use. CalTrans staff, Dan Bornman, Area Construction Engineer, provided exact Post Mile locations for each project. These Post Mile locations include all locations of the project provided in the CalTrans contract under the project descriptions. Although 01-0H1004 had some Post Mile locations within the place of use, the records provided by GSD lacked the specific 'final place of use' information as required by the terms of the CDO.

28. On January 18, 2019, CalTrans staff, Dan Bornman, provided more documentation of GSD's sales of bulk water for use outside of the authorized place of use. These documents were omitted from the records provided by GSD on January 9, 2019. After review of the documents, Division staff determined that GSD sold bulk water to Mendocino Construction Company for use on a construction project located outside of the authorized place of use defined by GSDs water rights, in violation of Provision 1.
29. On November 6, 2019, the Division received a complaint by Mr. Jessie Jeffries alleging that GSD violated Provision 1 of the Final CDO through the bulk sale and delivery of water outside of the authorized place of use described under License 3404 and Permit 20789 for road repair.
30. On November 7, 2019, Division staff contacted Humboldt County's (County) Road Division Manager, Steve Finch, who confirmed that the County purchases water from GSD and was currently using water for a road construction project on Old Briceland Road. Mr. Finch provided the Road Closure notice.
31. On November 8, 2019, Ms. Short, on behalf of GSD, emailed the Division and confirmed that GSD sold bulk water to the County through a commercial meter for use on road construction projects outside of the authorized POU.
32. Using the documents provided by GSD, Caltrans, and the County, Division staff created a map of GSD's place of use and plotted the locations of the final place of use for each project. Division staff have determined that all the CalTrans projects with the exception of only one were completely outside of GSD's place of use based on the Post Mile locations listed in the CalTrans Contracts. In many instances the water was used outside of the Eel River watershed. Division staff determined that the County's construction project on Old Briceland Road is completely outside of GSD's authorized place of use described under License 3404 and Permit 20789. Each day GSD sold water for use outside of the authorized place of use, for purposes other than emergency domestic use, it violated Provision 1 of the CDO. The map Division staff created is attached to this complaint as **Attachment B**.

The table below summarizes each project that GSD sold bulk water to:

<u>Water Hauler</u>	<u>Project Name</u>	<u>Project Dates</u>	<u>Water used for Emergency Domestic Use?</u>	<u>Outside POU?</u>
Mendocino Construction Company (MCS)	CalTrans 01-0G6504 (A)	12/11/2016-Ongoing	<u>No:</u> Repair of road effected by Piercy landslide	Yes
Mendocino Construction Company	CalTrans 01-0H1005 (B)	03/27/2017-Ongoing	<u>No:</u> Repair of failed road culverts	Partially
Serafix Engineering (SE)	CalTrans 01-0A4604 (C)	08/21/2017-12/05/2017	<u>No:</u> Scour Mitigation project at multiple locations	Yes
Mendocino Construction Company	CalTrans 01-0J1704 (D)	8/24/2018-On Hold	<u>No:</u> Wall construction project (Contractor is Golden State Bridge)	Yes
Mercer Fraser Company (MF)	Job #1933 (E)	03/26/2018-04/17/2018	<u>UNKNOWN:</u> Records did not indicate	Yes
Mercer Fraser Company and Cox & Cox (C&C)	Garberville Airport (F)	07/28/2017-7/31/2018	<u>No:</u> Airport reconstruction project	Yes
CalFire	Buck Fire (Not Mapped)	07/30/2015-08/19/2015	N/A	N/A
Hat Creek Construction	Locust Street	09/24/2018-11/15/2018	N/A	No
Humboldt County (HumCo)	Old Briceland Rd	11/4/2019 – 11/11/2019	<u>No:</u> Road Maintenance	Yes

33. The sales records provided by GSD covering bulk water sales for 2018 included bulk water sales to Hat Creek Construction for construction purposes on Locust Street, in Garberville. Using Attachment B, Division staff determined that the Locust Street construction project is within the place of use of Permit 20789 and License 4304, therefore, the Division does not consider this a violation of the Final CDO.
34. The records provided by GSD were incomplete and not all records included the final place of use. GSD provided CalTrans project numbers 01-0G6504, 01-0H1004, and 01-0A4604, however, Division staff was unable to determine the exact Post Mile locations from the information provided by GSD where water was being used to for these projects. Division staff reached out to CalTrans staff to help determine the place of use for each CalTrans project number provided. GSD

records were missing two additional CalTrans project numbers, 01-0J1704 and an unknown project number, which were later provided by CalTrans staff. Division staff used the information provided by CalTrans determined that all the CalTrans contracts were construction projects. Projects 01-0G6504, 01-0A4604, 01-0J1704 were mapped by using the Post Mile locations and it was determined that these projects were completely outside GSD's place of use. The records provided by GSD were detailed enough to determine the place of use for CalTrans project 01-0H1004.

35. Not all records have meter readings on the record logs. Many of the records showed estimated values for volume of water sold. There were five meter reading logs which included a total of 251 truckloads, however, the amount of water in each load was not stated. Therefore, Division staff was unable to include the 251 truckloads in the total. The records in the summary page provided by GSD indicated a total of 1,842,799 gallons of water sold in 2017 and 936,508 gallons of water was sold in 2018. GSD's summary pages for 2017 and 2018 added up to be 2,779,307 gallons of water.
36. Information provided by the County also stated that, as of the date of this complaint, GSD has sold at least 45 truckloads of bulk water in 2019, totaling about 135,000 gallons.

ALLEGATIONS

37. Violation 1: violation of the prohibition of bulk water sales outside of the authorized place of use as required by Provision 1 of the Final CDO.
 - a. Provision 1 of CDO 2012-0036-DWR orders GSD to cease and desist "the bulk sale and delivery of water under License 3404 and Permit 20789 to areas outside the authorized place of use unless, it is demonstrated to the satisfaction of the State Water Board that the water is needed for emergency domestic water supply." Division staff reviewed the documents provided by GSD regarding the sale of bulk water and determined that none of the water was used for emergency domestic supply use but was instead used for various construction related activities occurring outside of GSD's authorized place of use. Each day that GSD sold bulk water outside of the authorized place of use for purposes other than emergency domestic supply constitutes a day of violation of Provision 1 of the Final CDO.
 - b. Each day that GSD sold bulk water for use outside of the authorized place of use for purposes other than emergency domestic supply constitutes a day of violation of Provision 1 of the Final CDO. Days of violation of the Final CDO were calculated by reviewing the documents provided by both Caltrans, GSD, and the County to determine when GSD sold bulk water, for what purpose, and where the water was used. The number of days of violation calculated by the Prosecution Team for Provision 1 violations is a

conservative calculation due to the incomplete and inaccurate records provided by GSD. Between April 20, 2017 and the date of this Complaint GSD violated Provision 1 of the Final CDO on a total of 99 days.

38. Violation 2: failing to keep accurate and complete records of bulk water sales as required by Provision 2 of the Final CDO.

- a. Provision 2 of CDO 2012-0036-DWR states that if bulk water sales continue, GSD must “keep accurate records of each sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler purchasing the water, and the final place of use, which shall be made available to the Division upon request.” Following the issuance of the Final CDO, GSD continued to sell bulk water without keeping accurate and complete records of each sale. Over half of the sales records that GSD provided to the Division lacked the requisite information. Significantly, the ultimate place of use of the bulk water was not identified in many of the records, making it difficult for Division staff to determine compliance.
- b. Each day that GSD sold bulk water but failed to keep accurate records constitutes a day of violation of Provision 2 of the Final CDO. Days of violation of the Final CDO were calculated by reviewing the documents provided by both Caltrans and GSD to determine when GSD sold bulk water, for what purpose, and where the water was used. Between April 20, 2017 to October 26, 2018 GSD violated Provision 2 of the Final CDO on a total of 106 days.

39. GSD accrued a total of 205 days of violation between 2017, 2018, and 2019:

	Violation of Provision 1	Violation of Provision 2
2017	52	45
2018	39	61
2019	8	N/A
<i>Total Days in Violation</i>	99	106

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

40. Violation 1: violation of the prohibition of bulk water sales outside of the authorized place of use as required by Provision 1 of the Final CDO.

- a. Water Code section 1845 states that a person or entity who violates a cease and desist order may be held civilly liable in an amount not to exceed one thousand dollars (\$1000) for each day in which the violations occurs.

- b. The terms of the Final CDO prohibited the sale of bulk water outside of the place of use for purposes other than emergency domestic supply. Division staff have determined that GSD sold bulk water to construction contractors for use on construction projects outside of the place of use on at least 99 days over the course of three years.
 - c. The State Water Board may consider a maximum penalty for Violation 1 of \$99,000 (\$1000 per day x 99 days of violation).
41. Violation 2: failing to keep accurate and complete records of bulk water sales as required by Provision 2 of the Final CDO.
- a. Water Code section 1845 states that a person or entity who violates a cease and desist order may be held civilly liable in an amount not to exceed one thousand dollars (\$1000) for each day in which the violations occurs.
 - b. The terms of the Final CDO required GSD to maintain records of all bulk water sales that includes the volume of water sold, the date of the sale, the name of the commercial water hauler, and the final place of use. Division staff have determined that GSD sold bulk water on 106 individual days over the course of two years but failed to keep accurate records of those sales.
 - c. The State Water Board may consider a maximum penalty for Violation 2 of \$106,000 (\$1000 per day x 106 days).
42. The State Water Board may consider a maximum penalty of **\$205,000.00**. This amount represents 99 days of violation of Provision 1 of the CDO at \$1000 per day, plus 106 days of violation of Provision 2 of the CDO at \$1000 per day.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

43. Under Water Code section 1055.3, in determining the amount of civil liability, the State Water Board shall take into consideration 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 the corrective action, if any, taken by the violator.
44. Consideration of relevant circumstances pursuant to Water Code section 1055.3 for Violation 1:
- a. **Extent of harm caused by the violation:**
 - i. Permit 20789 and License 4304 allow for GSD to divert water from the South Fork Eel River. A total of 43 water rights or claim of rights are located downstream of the point of diversion on the South Fork Eel River and Eel River. The South Fork Eel River is fully

appropriated year-round, pursuant to State Water Board Order WR 98-08. To the extent that downstream water right holders rely on any return flows within the Eel River watershed, water sold by GSD for use outside of the watershed necessarily results in less water available for those downstream water rights.

- ii. Cease and Desist Order WR 2012-0036-DWR was adopted by the Board for the purpose of ensuring that GSD adhere to the terms and conditions of License 3404 and Permit 20789 and maintain accurate records about each bulk water sale. These terms provide certainty regarding the amount of water being diverted, and where it is being used, which may help GSD, the Board, and the water user community make informed water management decisions. Non-compliance with State Water Board orders negatively impacts the integrity of the Board's ability to regulate the water rights system and, if left unchecked may encourage similarly situated diverters in the regulated community to disregard other Board orders.

b. Nature and persistence of the violation:

- i. Division of Water Rights staff provided GSD with detailed explanations of the prohibition on bulk water sales in the Final CDO, and the limitation of the Emergency Domestic Use allowance. GSD had notice of this requirement prior to engaging in the sale of bulk water, and had sufficient knowledge, skill, or capacity to understand that requirement. Notwithstanding GSD's claim that the water sales were for emergency construction use, it is reasonable to assume from the facts available to the Division that GSD knowingly, or intentionally violated the prohibition on the sale of bulk water outside of the place of use for purposes other than emergency domestic supply by selling bulk water for use at construction sites outside GSD's place of use.
- ii. Prior to the issuance of the NOV, GSD demonstrated knowledge that bulk water sales to public agencies requiring water for emergency services for public roads is also prohibited by the Division without prior approval. GSD also sent a response letter to the Division addressing that they understood the Division's requirements and that they would not commence any future bulk water sales without the Division's approval. Following the issuance of the NOV GSD continued to sell bulk water for use outside GSD's place of use.
- iii. In the 2017 and 2018 summary pages provided by GSD, there was a total of 324 truckloads of water hauled in a total of 91 days. From the record logs provided by GSD, division staff calculated 329 truckloads in a total of 91 days.

- iv. In the 2017 and 2018 summary pages provided by GSD, there was a total of 1,106,157 gallons of water hauled. From the Meter Reading logs provided by GSD, division staff calculated 1,117,076 gallons of water hauled.
- v. In 2019 GSD sold at least 45 truckloads of bulk water, representing about 135,000 gallons of water for use outside of the authorized place of use.

c. Length of time over which the violation has occurred:

- i. The violations of Provision 1 of the Cease and Desist Order 2012-0036-DWR began occurring on April 20, 2017 and continue to occur through the date of the issuance of this Complaint.

d. The corrective action, if any, taken by the violator:

- i. On November 30, 2018, Mr. Ralph Emerson responded to the Notice of Violation on behalf of GSD, outlining the corrective action for the violation of the Final CDO. Mr. Emerson stated that as of October 2018, all water sales for emergency construction activities outside of the place of use ceased, and a notice was posted to the public. On November 6, 2019, Division staff were informed that GSD continued to sell bulk water for construction uses outside of the place of use despite Mr. Emerson stating otherwise.

e. Economic Benefit:

- i. GSD received an economic benefit from its noncompliance with the Final CDO, specifically through the sale of bulk water for use outside of the place of use of License 3404 and Permit 20789 in violation of the Final CDO. By selling bulk water outside of the place of use for uses other than emergency domestic use, GSD avoided the costs of compliance with the Final CDO. The costs of providing the water to the various bulk water haulers is negligible: the infrastructure required to provide this water preexisted the Final CDO, and the operation of fill stations requires no supervision. Thus, the economic benefit derived from the sale of water outside of the place of use can be adequately captured by the invoices provided by GSD and records provided by Humboldt County's Road Division.
- ii. Due to the inaccuracy of the records provided by GSD, an accurate estimate of economic benefit cannot be determined. If GSD would have separated CalTrans Projects 01-0G6504 and 01-0H1004 in their records, the economic benefit under this provision would be significantly higher because 01-0G6504 is

completely outside of GSD's place of use. Further, if the exact place of use for each truckload for project 01-0H1004 would have been recorded, it is likely that additional economic benefit under this provision would have been included as well.

- iii. Because this information was lacking in GSD's records, Division staff was only able to determine that GSD derived at least \$16,069.61 in avoided compliance costs, from violating Provision 1 of the CDO.
45. Having taken into consideration the factors described above, and the need for deterrence, the Assistant Deputy Director for Water Rights recommends an Administrative Civil Liability in the amount of **\$30,000 for Violation 1**.
 46. Consideration of relevant circumstances pursuant to Water Code section 1055.3 for Violation 2:
 - a. **Extent of harm caused by the violation:**
 - i. Cease and Desist Order WR 2012-0036-DWR was adopted by the Board for the purpose of ensuring that GSD adhere to the terms and conditions of License 3404 and Permit 20789 and maintain accurate records about each bulk water sale. These terms provide certainty regarding the amount of water being diverted, and where it is being used, which may help GSD, the Board, and the water user community make informed water management decisions. Non-compliance with Board orders negatively impacts the integrity of the Board's ability to regulate the water rights system and, if left unchecked may encourage similarly situated diverters in the regulated community to disregard other Board orders and notices of violation.
 - b. **Nature and persistence of the violation:**
 - i. GSDs failure to keep accurate records of each sale of bulk water in violation of Provision 2 of the Final CDO occurred after Division of Water Rights staff provided GSD with detailed explanations of the requirement. Provision 2 enumerates specific and straightforward details to be included in the records of sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler purchasing the water, and the final place of use. GSD provided over 170 pages of records.
 - ii. Many of the records provided by GSD did not contain the required information. For instance, three of the five "Fire Hydrant Use Application Contracts" provided by GSD indicated that the water GSD sold would be used at "various" or "multiple" locations, while the checks and invoices of bulk water sales provided by GSD were

broken down by month, rather than day, so staff was unable to use these documents to differentiate the payments for one project rather than another, and many of the meter readings provided by GSD were duplicated in different documents. Moreover, Division staff was unable to account for the amount of water hauled for 251 truckloads due to the fact that five of the meter reading logs lacked the actual meter readings.

c. Length of time over which the violation has occurred:

- i. The violations of Provision 2 of the Cease and Desist Order 2012-0036-DWR began occurring on April 20, 2017 and continue to occur through the date of the issuance of this document.

d. The corrective action, if any, taken by the violator:

- i. On January 9, 2019, GSD provided the sales records in their possession, along with a summary of the data contained therein in an apparent attempt correct the violation and to facilitate the Division's review of the records. However, the summary was neither accurate nor complete in its description of the sales records. Consequently, Division staff spent hours reviewing each and every page of the sales records, compiling the available data to determine compliance with the Final CDO.

e. Economic Benefit:

- i. GSD received an economic benefit from the noncompliance with the Final CDO, specifically the cost savings derived from failing to keep accurate records as required. GSD is required to maintain records accurate enough to allow for Division staff to determine compliance with the Final CDO. GSD could have complied with Provision 2 of the Final CDO with a relatively small increase in staff time needed to ensure that all requisite information was included and organized appropriately. The avoided cost of compliance that GSD realized from the failure to keep accurate records resulted in a *de minimis* economic benefit.

47. Having taken into consideration the factors described above, and the need for deterrence, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of **\$20,000 for Violation 2.**
48. Staff Costs for Enforcement. The Division conservatively estimates that its staff cost to investigate this matter and develop the enforcement documents for the violations alleged in this complaint to be **\$8,430.**

49. Minimum Liability: The Division recommends that the State Water Board should assess a minimum liability at a level equal to the sum of staff costs and economic benefits, if any, associated with the acts that constitute the violation. The Division conservatively estimates that its staff cost to investigate and develop the enforcement documents for the violations alleged in this complaint to be \$8430.00. The total economic benefit of the violations alleged in this complaint is \$16,069.00. Therefore, the minimum ACL equal to the sum of staff costs and the economic benefit of noncompliance for the violations alleged in this complaint would be **\$24,499**.
50. Total Proposed Penalty: Having taken into consideration the factors described above, and the need for deterrence, the Assistant Deputy Director for Water Rights recommends a total ACL in the amount of **\$50,000.00**. Should the matter proceed to hearing, the State Water Board may accept, reject, or modify the proposed liability up to the maximum amount provided by the Water Code.

RIGHT TO A HEARING

51. Garberville Sanitary District may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (Water Code, §1055, subd. (b)).
52. If Garberville Sanitary District requests a hearing, Garberville Sanitary District 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, a separate notice setting the time and place for the hearing will be mailed no later than 10 days before the hearing date.
53. If Garberville Sanitary District 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 Water Code sections 100, 275, and 1050 *et seq.* and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall be final and effective upon issuance.
54. If Garberville Sanitary District does not wish to request a hearing within 20 days of the date of receipt of this complaint, Garberville Sanitary District shall waive its rights to a hearing and reconsideration of this matter, and remit a cashier's check or money order for the ACL amount set forth in Paragraph 49 above, to:

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

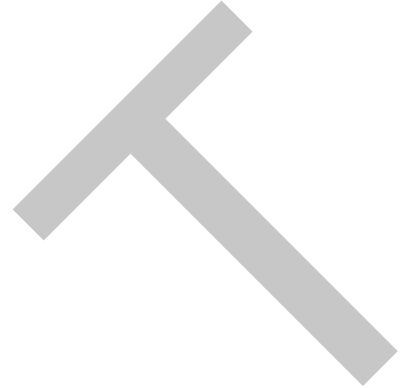
55. If Garberville Sanitary District does not request a hearing and does not remit the ACL amount, the State Water Board will issue a final ACL Order and seek recovery of the full amount of the ACL as authorized by Water Code, §1055.4

STATE WATER RESOURCES CONTROL BOARD

Julé Rizzardo, Assistant Deputy Director

Division of Water Rights

DR



Attachment A



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

DECEMBER 27 2012

In Reply Refer to:
KB:262.0(12-18-04),
A009686, A029981

CERTIFIED MAIL NO. 7004-2510-0003-9146-5724
Return Receipt Requested

Mr. Mark Bryant, General Manager
Garberville Sanitary District
P.O. Box 211
Garberville, CA 95542

Dear Mr. Bryant:

ORDER ADOPTING CEASE AND DESIST ORDER FOR LICENSE 3404
(APPLICATION 9686) AND PERMIT 20789 (APPLICATION 29981)

Enclosed is a copy of Order WR 2012-0036-DWR, signed by the Assistant Deputy Director of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on December 27, 2012. This Order adopts the draft Cease and Desist Order (CDO), transmitted to you by certified letter dated November 20, 2012.

The November 20, 2012 draft CDO required Garberville Sanitary District (GSD) to: (1) cease and desist the bulk sale and delivery of water under its permit and license to areas outside the authorized place of use, unless the water is needed for emergency domestic water supply; (2) diligently pursue the processing of its petitions for change in place of use under its permit and license filed with the Division; and (3) submit required annual use reports for your Permit and License. The Division allowed 20 days from your receipt of the draft CDO for you to request a hearing to contest the findings and requirements of the CDO as written.

GSD did not submit a request for hearing. In accordance with California Water Code section 1834, the Division is adopting the draft CDO as written. The Division appreciates Garberville's ongoing cooperation in meeting the requirements of the draft CDO. To date, GSD informed the

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov



Division that it has taken appropriate measures to come into compliance with the directives of the draft CDO, as follows:

On December 3, 2012, the GSD Board of Directors held a special meeting to review the draft CDO. The GSD Board of Directors took action to cease the sale of bulk water, effective January 2, 2013, unless the water is needed for emergency domestic use. Future delivery of bulk water for emergency domestic use must be approved by GSD and the Division and is limited to the quantity of water necessary to sustain human and animal life, including sanitary use.

- GSD submitted petitions for change in place of use for their permit and license and, as of the date of this letter, are working with Division staff in the processing of the petitions.
- The 2010 and 2011 annual use reports for License 3404 and Permit 20789 were submitted by GSD to the Division within the 20 days allowed in the notice of the draft CDO.

Your failure to comply with the terms or requirements of a CDO may subject you to civil liability in a sum up to \$1,000 for each day in which the violation occurs in accordance with California Water Code section 1845.

Division staff has reviewed the 2010 and 2011 annual use reports for License 3404 and Permit 20789, submitted by GSD on December 2, 2012 and has determined that GSD has satisfied the third directive of the CDO. In order to avoid future potential liability, GSD must remain in compliance with the remaining directives of the CDO regarding bulk water sales and the petition for change in place of use.

If you have any questions, please contact me, the Division's Enforcement Section Manager, at (916) 341-5368; or Ms. Ellen Howard, Staff Counsel, Office of Enforcement, at (916) 341-5677 or via e-mail at:

Ellen.Howard@waterboards.ca.gov. If you wish to write a letter, please send a written response to:

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

Sincerely,

ORIGINAL SIGNED BY:
BRIAN COATS FOR

John O'Hagan, Manager
Enforcement Section
Division of Water Rights

Enclosure: Cease and Desist Order

cc: Mr. Ed Voice
P.O. Box 580
Garberville, CA 95542

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

DIVISION OF WATER RIGHTS

ORDER WR 2012-0036-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion and Violation of Terms and Conditions
for License 3404 (Application 9686) and Permit 20789 (Application 29981) by

Garberville Sanitary District

SOURCE: South Fork Eel River

COUNTY: Humboldt County

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Garberville Sanitary District (referred to herein as GSD) to cease and/or abate a threatened or ongoing violation of one or more conditions of License 3404 (Application 9686) and Permit 20789 (Application 29981).

GSD is alleged to have violated or is threatening to violate California Water Code (Water Code) section 1052 and/or license terms issued in accordance with Water Code Division 2. Water Code section 1831 et seq. authorizes the State Water Board to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.*
- (2) Any term or condition of a permit, license, certification, or registration issued under this division.*
- (3) Any decision or order of the board issued under (part 2 of Division 2 of the Water Code [commencing with Section 1200]), Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, 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 November 20, 2012, 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 CDO against GSD for the violation of the terms and conditions of its license and permit and/or Chapter 2, Article 20, sections 847, 925, and 929 of the California Code of Regulations and the unauthorized diversion or use of water. Pursuant to State Water Board Resolution 2012-0029,

the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a Cease and Desist Order (CDO) in accordance with California Water Code section 1831 et seq. State Water Board Resolution 2012-0029 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

FACTUAL BASIS FOR ISSUING THE CDO

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

1. The Division issued License 3404 (Application 9686) to Garberville Water Company (GWC) on February 29, 1952. License 3404 authorizes the diversion of 0.155 cubic foot per second (cfs) from the South Fork of the Eel River at North 26° East, 190' from the south quarter corner of Section 24, T 4 S, R 3 E, H.B.M. The licensed place of use is "Town of Garberville as bounded by Garberville Sanitary District," and the licensed purpose of use is "municipal use."
2. On April 2, 1990, Division staff conducted an inspection of GWC and noted that water was being diverted in excess of license limits and being delivered outside the licensed place of use. Division staff noted in the inspection report that GWC was delivering water to areas outside of the Place of Use depicted on the map submitted with Application 9686 (Exhibit A). On July 22, 1990 GWC submitted Application 29981 to appropriate water by permit, expanding the place of use to the GWC service boundaries. A map of the town of Garberville, depicting the proposed place of use under permit Application 29981 was submitted on April 19, 1990 as part of the application package (Exhibit B). Application 29981 indicates that 366 residences, equal to 1400 people, would be served domestic water under the water right. The application also indicates that zero acres per year will be irrigated under the water right.
3. On May 15, 1995, the Division issued Permit 20789 (Application 29981) to GWC, which authorizes the diversion of 0.595 cfs and a maximum of 430 acre-feet per year from the same point of diversion as License 3404. The permitted place of use is "within the boundaries of the town of Garberville," as shown on the map submitted with the application, and the permitted purpose of use is "municipal." GSD purchased GWC in November 2004 and notified the Division of the change of name and ownership on October 23, 2007. The Division's records indicate the ownership for License 3404 and Permit 20789 were changed on October 23, 2007.
4. In 2012 the Division received two complaints alleging that GSD was violating terms and conditions of License 3404 and Permit 20789. The first complaint, filed on August 6, 2012 by Mr. Ed Voice, alleged that GSD was selling bulk water to commercial water delivery companies that re-sell the water to customers outside of the GSD's licensed and permitted place of use. The second complaint, filed on September 6, 2012, alleged that GSD was providing service connections to residential homes and properties outside of the authorized place of use. As part of its

investigations for the complaints, Division staff reviewed GSD's record, including its required reports of water diversion and use under its permit and license. The Division notified GSD of the first complaint by letter dated August 23, 2012 and of the second complaint by e-mail dated September 13, 2012. GSD responded to the complaints by letter dated September 18, 2012.

Bulk Water Sales and Place of Use

5. The August 6, 2012 complaint and September 18, 2012 response indicate that GSD sells water to commercial water haulers through an unmetered fire hydrant on Redwood Drive. The third-party commercial water haulers provide GSD with self-reported information about the quantity of water purchased, but GSD does not maintain records about the purpose and location of the use of this water. GSD summarized the annual bulk water sales reported by the haulers for 2010/2011 and 2011/2012 as 877,720 gallons (2.69 acre-feet) and 1,734,200 gallons (5.32 acre-feet), respectively.
6. The September 18, 2012 response from GSD included a statement from Heather Kornberg of Pura Vida Water Delivery, a commercial water hauler that obtains water from GSD. The letter indicates that most of Pura Vida's water deliveries are to "rural homesteads" in the Eel River watershed. It does not indicate if Pura Vida keeps records on the purpose of use of trucked water. It also does not indicate if these residences are inside or outside of the town of Garberville. During a telephone conversation with Division staff on September 25, 2012, Mr. Ed Voice indicated that he has observed commercial water haulers deliver water obtained from GSD to customers outside of the GSD's place of use.
7. In its September 18 response, GSD indicated that it may use groundwater from its Tobin well to provide water to commercial water haulers. According to GSD, Tobin well is a shallow well located in downtown Garberville with a limited capacity of 40 to 70 gallons per minute (gpm), a rate which appears to be sufficient to provide water equivalent to the annual volume of bulk water sales. GSD ordered and installed a water meter to quantify the water produced from the well as a result of the complaint. The direct sale of pumped groundwater from Tobin well may not require or involve a water right, provided that the well does not draw from a subterranean stream within the jurisdiction of the State Water Board. The existence of a subterranean stream is determined through a hydrogeologic analysis, in consultation with the Division.
8. Based on the information provided to the Division, continued bulk water sales would pose a threat of unauthorized diversion and use of water outside the authorized place of use covered by GSD's permit and license.

Residential Property Service Connections Outside of Place of Use

9. In the September 18 response, GSD confirmed that they are currently providing water service to 35 parcels that are outside of the licensed and permitted place of use. Twenty of the thirty-five parcels are within the Kimtu Meadows Subdivision project, which connected to GSD's water system in July 2012. GSD states that the remaining fifteen parcels have been receiving water prior to November 2004, when GSD purchased the water system from the Garberville Water Company.
10. On April 5, 2012, Division staff notified GSD that a Petition for Change and a Petition for Extension of Time must be filed with the Division to expand the place of use and to come into compliance with the terms and conditions of License 3404 and Permit 20789. According to the September 18 response, GSD is working with the Division to submit the necessary documents to petition to expand the place of use under License 3404 and Permit 20789 to include the 35 parcels. The GSD jurisdictional boundary, sphere of influence, and types of provided services are regulated by the Humboldt County Local Agency Formation Commission (HLAFCo). GSD has contracted with SHN Engineers and Geologists to conduct the CEQA review to support the change in their jurisdictional boundaries required by HLAFCo.
11. GSD intends to submit the appropriate documents to the Division within two months of the September 18 response. However, the unauthorized service outside of the GSD place of use will continue until the State Water Board approves the Petition for Change and Petition for Extension of Time, if ever. Continued delivery of water to parcels outside of the authorized place of use covered by GSD's permit and license constitutes an unauthorized diversion and use of water.

Failure to File Water Use Reports

12. Senate Bill X7-8, which was signed into law in 2009, authorized the State Water Board to adopt regulations requiring online reporting of water diversions. Consistent with the Senate Bill, the State Water Board has adopted regulations requiring annual reporting of water diversion and use under permits and licenses, and developed a new online Report Management System (RMS) as a component of the enhanced Water Right Information Management System (eWRIMS). The regulation specifying annual permittee and licensee reporting requirements is codified in Title 23, Chapter 2.7, Article 2, sections 925 and 929 of the California Code of Regulations.
13. In February 2011 the Division mailed out initial notices to GSD, notifying GSD of the annual use reporting requirements and instructions on how to access the RMS system to submit, at a minimum, the 2010 use reports online. GSD was also notified that if there were any questions on the new reporting process, GSD could contact the Division by telephone or e-mail. The deadline to submit the 2010 use reports online was July 1, 2011.

14. In September 2011 the Division mailed out delinquency letters, which also included a copy of the February 2011 letter, to all the permittees and licensees who had not submitted their 2010 use report by July 1, 2011. The delinquency letter provided notice that failure to submit the annual use report was a violation of the terms and conditions of the applicable permit and/or Chapter 2, Article 20, section 847 of the California Code of Regulations, and that continued failure to submit the annual use report may result in enforcement action by the State Water Board.
15. As of November 16, 2012, the Division has not received GSD's 2010 annual use reports for License 3404 and Permit 20789.
16. On March 5, 2012, the Division mailed out notices to GSD, notifying GSD of the annual use reporting requirements and instructions on how to access the RMS system to submit the 2011 use reports online. GSD was also notified that if there were any questions on the reporting process, GSD could contact the Division by telephone or e-mail. The deadline to submit the 2011 use reports online was June 30, 2012.
17. As of November 16, 2012, the Division has not received GSD's 2011 annual use report for License 3404 or Permit 20789.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Within 30 days of the date of this order, GSD must: (1) cease and desist the bulk sale and delivery of water under License 3404 and/or Permit 20789 to areas outside the authorized place of use, unless it is demonstrated to the satisfaction of the State Water Board that the water is needed for emergency domestic water supply; and (2) if bulk water sales continue, then GSD shall keep accurate records of each sale, including the volume of water sold, the date of the sale, the name of the commercial water hauler purchasing the water, and the final place of use. Records of any bulk sales of water, including place of use of water, shall be made available to the Division upon request
2. By letter dated November 14, 2012, GSD filed petitions for change in place of use under License 3404 and Permit 20789 to include areas served by GSD with water diverted under these water rights. GSD shall diligently pursue the processing of these petitions by submitting all necessary fees, environmental documents, and other information required by the State Water Board within the time schedules specified. If and until the State Water Board approves the change petitions, GSD shall maintain monthly records of the amount of water served to areas outside the authorized places of use and report the monthly amounts separately from the amounts reported on its annual permit and license reports. The monthly records of amounts served outside the places of use shall be submitted as an attachment to the annual permit and license reports.
3. GSD shall immediately come into compliance with the terms of License 3404 and Permit 20789 by submitting its reports of 2010 and 2011 annual

use by accessing the Report Management System at www.waterboards.ca.gov/RMS using the User ID and Passwords shown on the User Information Sheet accompanying this CDO. For these two years, GSD shall estimate an annual amount for the water served by bulk water sellers outside the place of use and separate these amounts from the monthly amount beneficially diverted and used under the permit and license. The bulk water sales should be reported in the Remarks section of the online reports. Please note the User ID is a seven-digit alphanumeric string that begins with the letter "A" and followed by six numbers corresponding to your original application number. If you have any problems accessing the reporting system, please contact Division staff noted on the letter accompanying this CDO.

Consequences of Non-Compliance

In the event GSD fails to comply with the requirements of this Order, GSD shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability, pursuant to California Water Code section 1845 (b)(1), of up to \$1,000 for each day in which the violation occurs or referral to the Attorney General to take further enforcement action as described in California Water Code section 1845(a):

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, 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.

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against GSD for unauthorized diversion of water in accordance with California Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse GSD from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations, or water right license requirements.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel, Assistant Deputy Director
Division of Water Rights*

Exhibit A

ORDER WR 2012-0036-DWR

Application 9686 FORM 17-A
Permit SWR7
License 5499

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

Applicant Garberville Water Works Sec. 24 Township 4 S. Range 3 S. Meridian
Mapped by Garberville Water Works County Butte

NOTE—Maps are to be drawn on this plat only when total amount of water to be diverted does not exceed three cubic feet per second for direct diversion or two hundred acre-feet per annum for storage. For amounts less than those above stated the average applicant can prepare a very satisfactory map without the aid of a surveyor by observing instructions on the reverse side of this plat.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

*Diversion Point is N. 20° E. 190± ft. from
Sec. Cor. Between Sec. 24 & 25 - T. 4 S. R. 3 E. N. 1/4.
For 2012-0036-DWR.*

Legend: * is intake well. ** is Storage Tank. Piper Line from well to tank is 4"
Continuous black line shows 8" water main from storage tank.
Dotted line is the territory to be served, which is Garberville Sanitary District.

*Location - Point of Diversion is to be located on So. Fork of Eel River 40± S. 36° W. 95± Point 17.5 chains S
of Sec. 24*

Attachment B

CalTrans Projects

Hydrants/Fill Stations



Project 01-0H1004

- HUM 101

Project 01-0G6504

- MEN 271, MEN 101

Project 01-0J1704

- HUM 36

Project 01-0A604

- LAK 29, MEN 128, MEN 101, HUM 254

Old Brideland Rd

GSD Place of Use



GSD Place of Use

