

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.

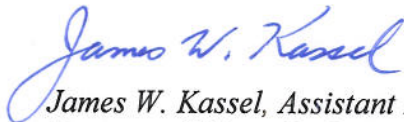
Reservation of Enforcement Authority and Discretion

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*

Dated: **DEC 27 2012**

Exhibit A

ORDER WR 2012-0036-DWR

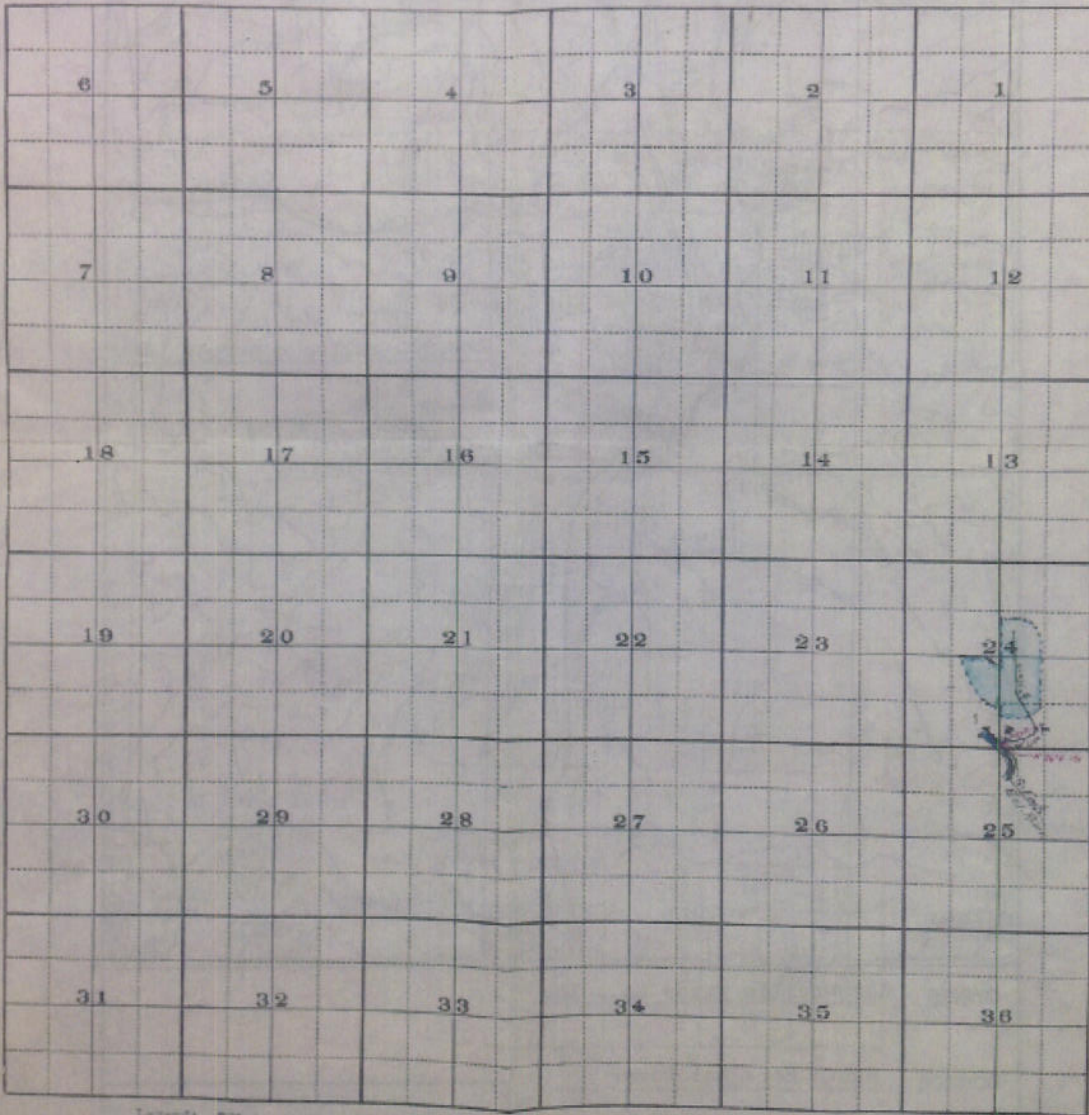
Application 9686
Permit
License

Form 17-A

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

Applicant Garberville Water Works, Sr. 24 Township 4 S., Range 3 E., T14N Meridian
Mapped by Garberville Water Works, County Humboldt

NOTE—Maps are to be drawn on this plot 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 stream for storage. For streams less than those 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 plan.



Dimension points is N 26° 22' 10" E 100' ft. From
Sec. Cor. Between Sec. 24 & 25 - T4N R3E S14W.
To 200' ft. C.E.

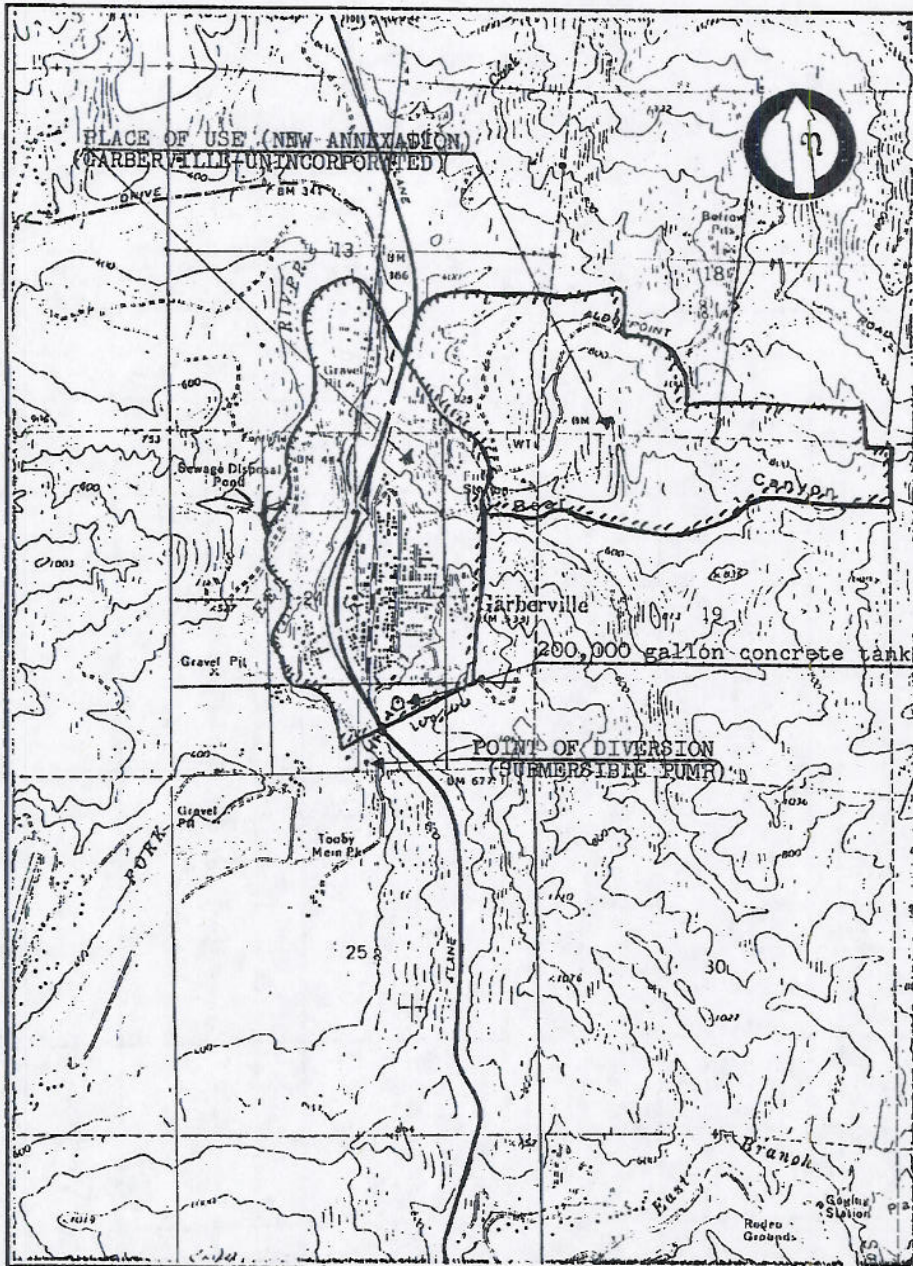
Legend: * is intake well, ** is Storage Tank. Piper Line from well to tank is 4"
Continuous black line shows 8" water main from storage tank.
Dotted line is the territory to be served, which is Garberville Sanitary District.

Location - Point of Diversion is to be located on So. Fork of Eel River 40' S. 26° W. of Point 11.5 chains S
and E. 1.61 chains from S. corner of N.E. 1/4 of Sec. 24, T4N R3E S14W. BEING WITHIN

| | | | |
|------|------|----------|----|
| DATE | TIME | APPROVED | BY |
| | | | |
| | | | |
| | | | |

Exhibit B

ORDER WR 2012-0036-DWR



OWNER Garberville Water Co., Inc.

SOURCE South Fork Eel River

POINT OF DIVERSION
 WITHIN SW SE 1/4 OF
SECTION 24, T 4S, R 3E, H B & M

COUNTY OF Humboldt

Garberville 1970 1:24,000
 U.S.G.S. QUAD DATE SCALE

STATE OF CALIFORNIA
 STATE WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

APPLICATION 9686 29981

PERMIT 5487

LICENSE 3407

DATE: 4/19/90

DRAWN BY: JTA