

**GARBERVILLE SANITARY DISTRICT
BOARD OF DIRECTORS MEETING
AGENDA**

**There will be a regular meeting held by the Garberville Sanitary District Board of Directors at the
GSD District Office
919 Redwood DR. Garberville, CA**

Date of Meeting: Tuesday, September 22, 2020

5:00 p.m. – Open Public Session

Safety Note: Masks are advised and social distancing will be practiced

Any writings or documents that are public records and are provided to a majority of the governing board regarding an open session item on this agenda will be made available for public inspection in the District Office located at 919 Redwood Dr. during normal business hours.

I. REGULAR MEETING CALLED TO ORDER

II. ESTABLISHMENT OF QUORUM

Rio Anderson___, Linda Brodersen___, Doug Bryan___, Julie Lyon____, Dan Thomas_____

III. APPROVAL OF AGENDA - Action to add or delete items from any portion of the agenda or to discuss any consent agenda items must be taken prior to adoption of the agenda.

Motion: Second: Vote:

IV. THE BOARD WILL ENTER CLOSED SESSION AT END OF MEETING IF NEEDED

V. OPEN SESSION

VI. COMMENTS AND QUESTIONS FROM THE AUDIENCE

Up to fifteen minutes of this portion of the meeting are reserved for members of the public to address the Board on items not listed on the agenda and within the jurisdiction of the GSD Board. Speakers are limited to 3 minutes. The GSD Board is prohibited by law from taking action on matters discussed that are not on the Agenda, and no adverse conclusions should be drawn if the GSD Board does not respond to public comment at this time.

General Public / Community Groups

VII. ANNOUNCEMENTS AND COMMUNICATIONS

REPORTS AND PRESENTATIONS – Routine report of activities, operations, meetings / conferences held and/or attended by Board members, Staff, and General Manager

Operations Staff-

Office Staff-

Board Members-

Correspondence-

General Manager—Ralph Emerson Pg. 4

Government Code Section 54954.3 provides that the public will have an opportunity to address the Board on any item described on a regular or special meeting either before or during the consideration of that item. The Board reserves the right to limit the time of presentation by individuals and groups

C. POLICY – ORDINANCE REVISION / ADOPTION

C.1 Personnel Policy 5.3.7—7.9 **Pg. 79-87**
(discussion-no action) 1st reading

C.2 Sec. 14.5 Drought Contingency Plan **Pg. 88**
(discussion-no action) 1st reading

IX. CLOSED SESSION

No Closed Session

X. RETURN TO OPEN SESSION

Report of any actions taken in Closed Session

XI. ITEMS FOR NEXT BOARD MEETING

1. Update on Customer Water Demand
2. Personnel Policy 5.3.7—7.9 2nd reading
3. Drought Contingency Ordinance Sec. 14.5
- 4.
- 5.

XII. ADJOURNMENT

Posting of Notice at the District Office no later than Date: Saturday, September 19, 2020. Agenda is emailed to the local newspapers and those who have requested an agenda in writing or e-mail.

In accordance with the Americans with Disabilities Act, if you need a special accommodation to participate, please contact the Garberville Sanitary District Office at (707)923-9566 at least 48 hours in advance.

Garberville Sanitary District

PO Box 211

Garberville, CA. 95542

(707)923-9566

remerson@garbervillesd.org

GENERAL MANAGER REPORT

Date: September 22, 2020

Regardless of what obstacle placed before us, we have been able to continue providing safe drinking water while meeting the demands of our customers. This has been exceptionally challenging because of new service charges in August, fires, smoke, COVID-19, low river levels and power outages.

We have customers concerned about fires and inquiring about installing their own fire suppression systems with larger service line pipes that will supply the water required to meet the fire suppression demands. We are researching options for meeting the necessary water requirements while trying to avoid installing an additional water meter that would only be used in case of fire or testing. This will most likely require an ordinance change which we will bring back to you at a future meeting.

We continue working on projects that will be addressed in the agenda, while completing our winterization projects and doing maintenance on equipment and wastewater ponds. As regulations from the State increase during this difficult time, we are updating our operating procedures and policies.

Respectfully Submitted:

Ralph Emerson



GARBERVILLE SANITARY DISTRICT

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BOARD OF DIRECTORS MEETING MEMORANDUM - Consent Item

Meeting Date: September 22, 2020
To: Garberville Sanitary District Board of Directors
From: Jennie Short, Consultant Project Manager
Subject: Financial Statements

GENERAL OVERVIEW

During a normal fiscal year, we begin the audit process in September with a final audit presented to the Board in December. The final report is normally due to be uploaded to the State Controller's Office by January 31st. With the delays due to COVID this year, the State Controller's Office has postponed the deadline from January 31, 2021 to September 30, 2021.

Once the audit is finalized, that fiscal year's books are closed and final financial statements for the period ending June 30th are produced for the Board. Between September and December we normally present "PRELIMINARY" financial statements for the periods ending July 31, Aug 31, and Sept 30th, one for each month.

With our need to either find a new auditor this year or obtain a waiver from the State Controller's Office, our timeline for completion of the audit will definitely be slower than in previous years.

We do not currently have preliminary financial statements for July 31, 2020 ready for Board review. We anticipate having both July and August ready to come before the Board at the October meeting.

RECOMMENDED BOARD ACTIONS

None

ATTACHMENTS

None

**GARBERVILLE SANITARY DISTRICT
BOARD OF DIRECTORS MEETING
MINUTES**

Date of Meeting: August 18th, 2020

5:00 p.m. – Open Public Session

**GARBERVILLE SANITARY DISTRICT WILL BE MEETING AT THE OFFICE BUT WE WILL BE
COMPLYING WITH COVID-19, DISTANCING REQUIREMENTS.
ALL PARTICIPANTS WILL BE REQUIRED TO WEAR MASKS AND USE HAND SANITIZER
WHICH WILL BE PROVIDED AS YOU ENTER THE OFFICE.**

I. REGULAR MEETING CALLED TO ORDER

@ 5:00 p.m.

II. ESTABLISHMENT OF QUORUM

**Rio Anderson-Present
Linda Brodersen-Present
Doug Bryan- Present
Julie Lyon- Present
Dan Thomas- Present**

III. APPROVAL OF AGENDA

Motion: Dan Thomas Second: Julie Lyon Vote: 5-0

IV. THE BOARD WILL ENTER CLOSED SESSION AT END OF MEETING IF NEEDED

V. OPEN SESSION

VI. COMMENTS AND QUESTIONS FROM THE AUDIENCE

Kristin Vogal attended the meeting in person.

VII. ANNOUNCEMENTS AND COMMUNICATIONS

REPORTS AND PRESENTATIONS

Operations Staff- 0

Office Staff- 0

Board Members- 0

Correspondence- 0

General Manager—Ralph Emerson

Board Member open position. No applications have been received. Appointments only for Rio and Dan's position. The District is starting to allow customers in the office with masks being a requirement. The staff is following COVID-19 safety procedures.

VIII. REGULAR AGENDA ITEMS

A. CONSENT AGENDA

Notice to the Public

- A.1 Approve Financials Date—No Financials
 - A.2 Approve Date: July 28th, 2020 Regular Meeting Minutes – pg. 5-7
 - A.3 Operations Safety Report- Office Ergonomics pg. 8-9
- Motion: Rio Anderson Second: Dan Thomas Vote: 5-0**

B. GENERAL BUSINESS – *Action items*

- B.1 Fiscal Year 2019-2020 Annual Audit
(Discussion—possible action) presentation--Jennie Short
- Motion: Doug Bryan Second: Julie Lyon Vote: 5-0**

The board instructed Jennie to seek out other Auditing firms and apply for the waiver. January 31st is the deadline.

- B.2 Staff and Board Recognition
(Information only)
- B.3 Eel River Conditions—Water Availability pg. 11
(Discussion-possible action)
The Drought flyers will be hand delivered to all the customers. More research needs to be done concerning possible fines for non-compliance.
- B.4 COVID-19 Impact on Finances Update
(discussion-possible action) information at meeting
The District has seen an increase in past due customer accounts.
- B.5 Robertson Water Tank Monitoring and Replacement Plan pg. 12
(Discussion-possible action)
The District is working on grant applications for funds to replace Robertson water tank.
- B.6 Online Banking Options and Price pg. 13-36
(Discussion possible action) Presentation by Mary
Motion: Doug Bryan Second: Julie Lyon Vote: 5-0

The board approved the JUS quote for Online Payments, a one year contract with PSN, and the second option on the fees associated with PSN.
- B.7 Projects Update
(Discussion possible action)—Verbal Report
- B.8 Update on Drought Plan and Flyer for Customers pg. 37-38
(Information Only)
The board members made a few more changes to the flyer. The drought requirement phases will be switched around. New flyers will be created and handed out to the customers.

C. POLICY REVISION / ADOPTION

C.1 Personnel Policy Sec 6.0—12.0
(Discussion-no action) 1st reading

pg. 39-47

Bring back

IX. CLOSED SESSION

No Closed Session Items

X. RETURN TO OPEN SESSION

Nothing to Report

XI. ITEMS FOR NEXT BOARD MEETING

1. Covid-19 Compliance Requirements
2. Drought Conditions
3. Personnel Policy Sec 6.0—12.0 2nd reading
4. Update on Grant Funding
- 5.

XII. ADJOURNMENT

@ 6:45 p.m.

AUG 31 2020



ATTENDANCE ROSTER

Safety Meeting

Date of Meeting: 9/18/20 Leader Name: Mary Nieto

Instructions:

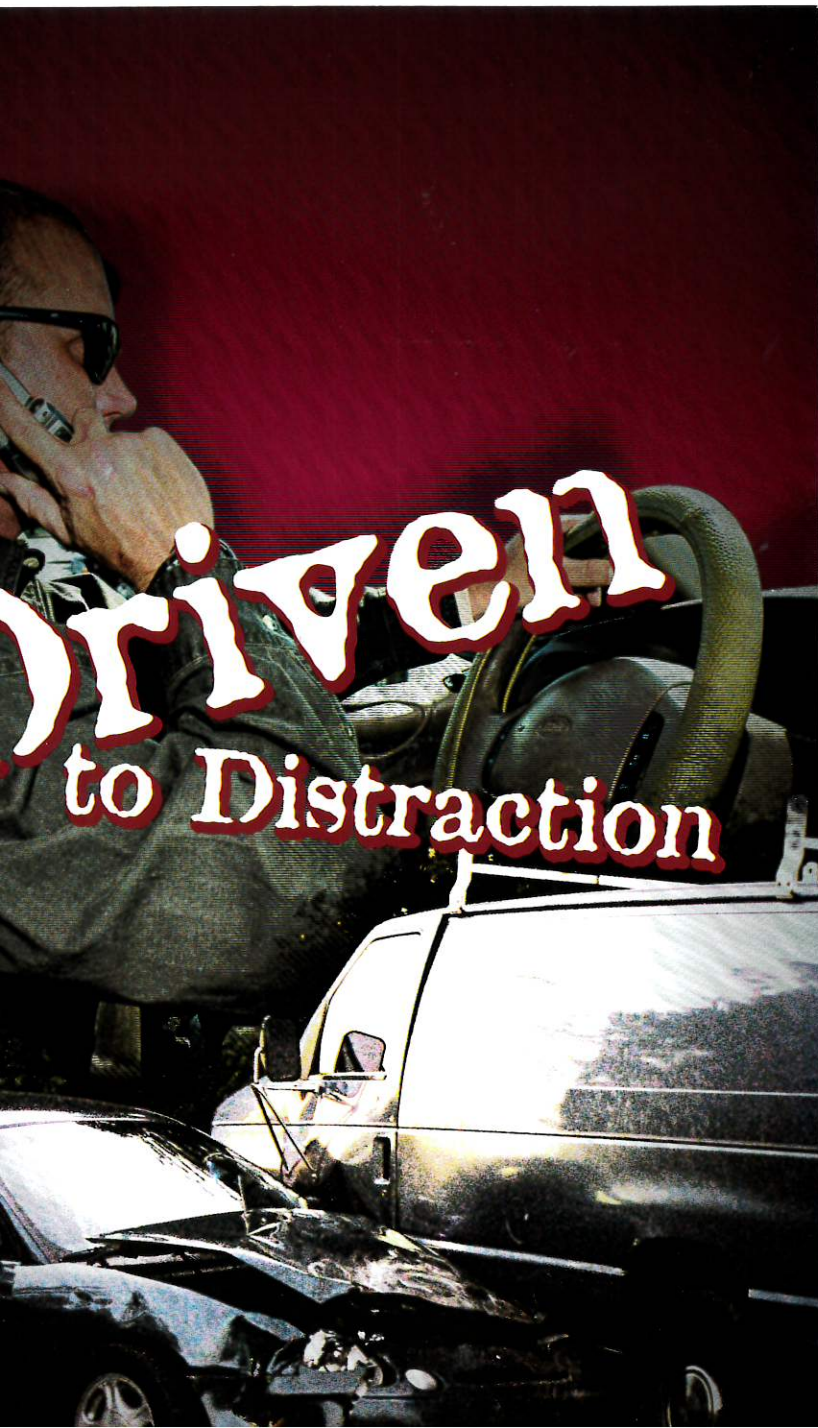
- a. Fill in the date of the meeting and the name of the safety meeting leader.
b. Have all safety meeting participants sign this roster.
c. File this roster and the associated documents as outlined in the Leader Discussion Guide.

Name (print)

Name (signature)

Table with 2 columns: Name (print) and Name (signature). Rows 1-4 contain handwritten entries: 1. Mary Nieto, 2. Dan Asseguint, 3. Brian Miller, 4. Ralph Emerson. Row 4 signature is 'by phone'.

Attachments: 1. Leader Discussion Guide 2. Safety Meeting Booklet



Driven to Distraction



GARBERVILLE SANITARY DISTRICT

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BOARD OF DIRECTORS MEETING MEMORANDUM

Meeting Date: September 22, 2020
 To: Board of Directors
 From: Jennie Short, Consultant Project Manager
 Subject: 2020 Water and Sewer Rate Implementation

GENERAL OVERVIEW

At the June 23, 2020 Board meeting, Resolution 20-007 was adopted for the updated water and sewer rates. The effective date for the new rates was August 1, 2020. The rates as adopted are:

Table 1. Amended Residential Water Rates

Description	RATE PER MONTH STARTING				
	June 2020	July 2021	July 2022	July 2023	July 2024
Base Rate - all meter sizes (\$/mo.)	65.00	70.00	75.00	79.00	79.00
Upper Zone Surcharge -Meadows (\$/mo.)	8.00	9.50	11.00	12.00	12.00
Consumption Charges:					
Residential Tier 1: 0-8 units (\$/hcf)	1.00	1.75	2.50	3.00	3.00
Residential Tier 2: 9-20 units (\$/hcf)	3.00	3.75	4.50	5.00	5.00
Residential Tier 3: 21 + units (\$/hcf)	11.00	11.50	12.00	13.00	13.00
Upper Zone Variable Surcharge (\$/hcf)	1.00	1.00	1.00	1.00	1.00

Table 2. Amended Commercial and Multifamily Water Rates

Description	RATE PER MONTH STARTING				
	June 2020	July 2021	July 2022	July 2023	July 2024
Base Rate (\$/mo.)					
Tier 1 - 0-8 units annual average	65.00	70.00	75.00	79.00	79.00
Tier 2 - 9-40 units annual average	120.00	130.00	140.00	150.00	150.00
Tier 3 - 41 + units annual average	240.00	260.00	280.00	300.00	300.00
Upper Zone Surcharge -Meadows (\$/mo.)	8.00	9.50	11.00	12.00	12.00
Consumption Charges					
Commercial Tier 1: 0-40 units (\$/hcf)	3.00	3.75	4.50	5.00	5.00
Commercial Tier 2: 41 + units (\$/hcf)	2.75	3.25	3.75	4.25	4.25
Upper Zone Variable Surcharge (\$/hcf)	1.00	1.00	1.00	1.00	1.00

Table 3. Amended Residential and Commercial Sewer Rates

Description	RATE PER MONTH STARTING				
	June 2020	July 2021	July 2022	July 2023	July 2024
Base Rate - per ERU (\$/mo.)	42.00	45.00	48.00	51.00	53.00
Residential and Commercial Consumption (\$/hcf) X consumption strength multiplier SFR CSM = 1.0	2.50	3.00	4.00	5.00	5.50

During the month of August we coordinated with JUS programming staff to revise the rate calculation methodology and input the new rates into the system. We also updated every account to have the necessary type code (residential or commercial), water tier, ERU, and CSM so that the new rates could be calculated for the service bills prepared on Sept 1st.

Over the next few months, the General Manager will likely have to make some minor adjustments to the ERUs and CSM as customers review their new bills and ask questions. This is most likely for the customers that are multifamily or mixed use. We have received a number of inquiries and several customers asking for relief from the new multifamily rates. More detail will be presented during the board meeting.

FINANCIAL IMPLICATIONS

The District has seen a decrease of revenue between 10 and 15 percent in the past 6 months due to businesses being impacted by the COVID regulations. In addition, we have seen an increase in accounts receivable balances due to customers not paying their monthly charges on time.

To follow are the sales numbers for the past 12 months.

Month	Other	Water Sales	Sewer Sales	Total Sales
Sept '19	1,735.00	47,477.25	31,692.16	80,904.41
Oct '19	1,800.00	43,183.07	31,457.90	76,440.97
Nov '19	1,480.00	40,810.34	29,900.79	72,191.13
Dec '19	1,390.00	38,786.49	29,445.16	69,621.65
Jan '20	1,590.00	39,195.26	30,215.10	71,000.36
Feb '20	1,275.00	38,377.28	30,226.76	69,879.04
Mar '20	-	41,847.77	29,546.90	71,394.67
Apr '20	80.00	37,498.72	28,112.45	65,691.17
May '20	-	44,392.79	28,359.40	72,752.19
June '20	-	44,134.16	29,414.29	73,548.45
July '20	-	47,492.40	30,053.99	77,546.39
Aug '20	(30.00)	59,461.40	39,875.90	99,307.30

Note the increase between July and August for both water and sewer sales. A significant portion of this increase in water sales is due to the 935 unit billed at the new Tier 3 residential rates equating to over \$10,000 in revenue for these units.

When the Board adopted in FY 2020-21 budget, some assumptions were included as to the timing and effect that the change in rate calculation methodology and amounts would have on the annual revenue projections. We included 9 months at the higher rate and projected \$64,400 in additional water revenue and \$64,100 in additional sewer revenue. Since August is one of the largest sales months each year, it would appear that the amount of estimated additional annual revenue included in the budget will be realized this year.

RECOMMENDATIONS

None

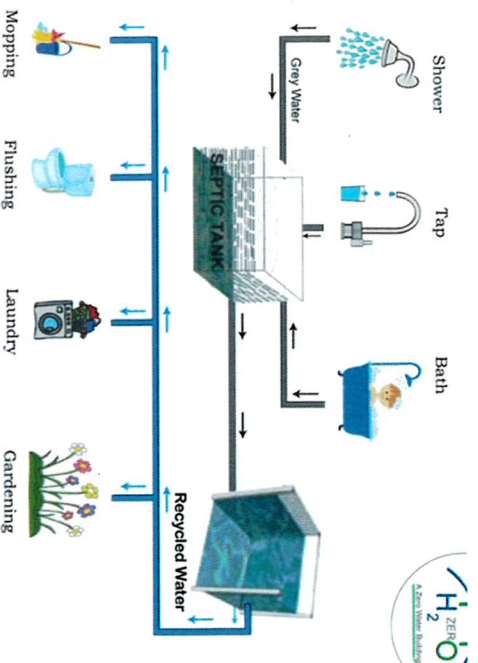
DROUGHT

REQUIREMENTS

Your water usage

today will determine
your water availability
tomorrow.

**CONSERVE WATER
NOW**



- (1st phase)---All customers voluntarily reduce water consumption. Reduce outdoor watering. Takes effect when S. Fork Eel River reaches 10cfs
- (2nd phase)--- Stop all outdoor watering except for animals, vegetables or fruit. Commercial AG customers use alternative water source. Takes effect when S. Fork Eel River reaches 8cfs
- (3rd phase)--- Water use on specific days, designated by GSD. Takes effect when S. Fork Eel River reaches 7cfs.
- (4th phase)---Water for personal health and safety only with no allowance for outside watering. Takes effect when S. Fork Eel River reaches 5cfs

This plan will be implemented and enforced by Garberville Sanitary District and the public will be made aware of this plan through customer outreach by the media, phone call, letter and the GSD website.

Customers will be required to conserve water including but not limited to gallons per day water usage and if they don't comply, may be fined for gallons of water used above the maximum allowed.

**NON-COMPLIANCE MAY
RESULT IN WATER**

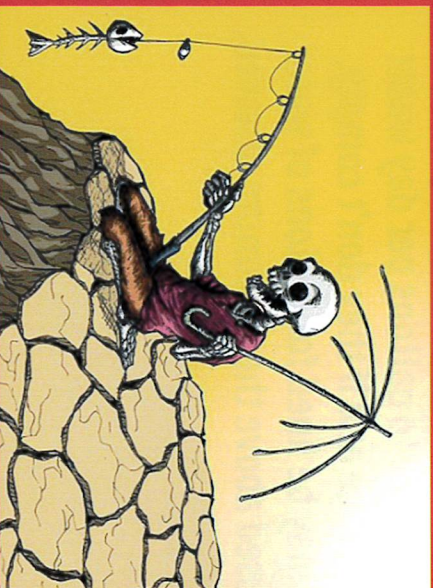
DISCONTINUANCE WITH A

\$100 RECONNECTION FEE

Eel River flow and CFS are found at:
[https://waterdata.usgs.gov/ca/nwis/uv?](https://waterdata.usgs.gov/ca/nwis/uv?site_no=11476500)
site_no=11476500



**WE ARE IN A
DROUGHT**



**Please Conserve
Water**



**Think before using
water because
waste is life
threatening**

**Please Check Our
Website For Ways To
Conserve Water**

<https://garbervillesd.specialdistrict.org/>

Garberville Sanitary District
919 Redwood Drive
Garberville Sanitary District
(707)923-9566
admin@garbervillesd.org

**Drips lead to gallons of water waste
and higher bills**





GARBERVILLE SANITARY DISTRICT

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BOARD OF DIRECTORS MEETING MEMORANDUM

Meeting Date: September 22, 2020
To: Garberville Sanitary District Board of Directors
From: Jennie Short, Consultant Project Manager
Subject: SHCP Water Service Update

GENERAL OVERVIEW

The District obtained Local Agency Formation Commission approval to extend water service to the specified areas within the Southern Humboldt Community Park. The District then applied to the SWRCB-DWR to change the Place of Use for the District's License and Permit to divert raw water from the SF Eel River to serve those same areas. SWRCB noticed the project and protests were received, which began a one-hundred and eighty day protest resolution process. Four protests were received, which the District responded to. Protest resolution conditions were received, and the District did not accept any of these conditions. The SWRCB required a response letter to the SWRCB by June 2nd summarizing our efforts to resolve the protests and whether we are accepting any of the protest resolution conditions provided by the Protestants. A response letter was supplied to the SWRCB.

The next step is for the SWRCB to review the protests received, the responses provided to the protestant, the efforts made to satisfy the Protestants, and determine if unresolved protest conditions should be dismissed. The SWRCB's Hearings Unit prepared an internal transfer memo regarding the transfer of the action to the Administrative Hearings Office instead of the Water Board. So far no action has been taken either way on this decision. We are coordinating with the SWRCB to encourage them to move forward on this project in a timely fashion.

FINANCIAL CONSIDERATIONS

Financial Amounts as of 06/30/2020

Description	Amount
Expenditures	\$ 15,820.98
SHCP Outstanding Balance	\$ 5,208.63
SHCP Payments made so far	\$ 5,612.35
Current Amount Due	\$ 578.74

SHCP made payment in the amount of \$578.74 on Aug. 07, 2020. Two years, or eight quarterly payments remain on the term of the loan made to SHCP. No significant expenditures are anticipated in the near future on this project until the SWRCB takes the next step in dismissing the protest conditions.

RECOMMENDED BOARD ACTIONS

No action by the Board is recommended at this time.

ATTACHMENTS

None



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BOARD OF DIRECTORS MEETING MEMORANDUM

Meeting Date: September 22, 2020
To: Board of Directors
From: Jennie Short, Consultant Project Manager
Subject: Robertson Water Tank &
Compliance Order Petition for Reconsideration

GENERAL OVERVIEW

The District infrastructure is inspected by the State Water Board Klamath District Office on a biannual schedule. Various staff persons have performed the inspections over the years. When the GSD purchased the Garberville Water Company in 2004, they had LACO perform a system valuation which included a long list of items that needed repair or replacement. The LACO report identified the Robertson Tank as deficient and in need of replacement. Very soon after the purchase, LACO submitted preliminary applications for the various projects contained in the valuation report including the Robertson Tank.

The District has been working towards replacing the Robertson Tank for the past 15 years, but several other projects were prioritized higher and have since been completed. Some of the larger projects were:

- Replacing the entire surface water treatment plant
- Replacing the raw water intake pumping system
- Replacing the Alderpoint Road tank
- Installing backup generators at all major sites
- Installing SCADA/telemetry system for the water system

In the fall of 2019 the District submitted a complete SRFDW Planning Project application for funding the replacement of the Robertson and Wallan tanks. It has been reviewed for general and environmental clearance, but still needs technical and financial review completed by Water Board staff. We are hopeful to have an executed funding agreement for the planning phase of this project by March 2021.

During the July 2020 inspection of the Robertson Tank, Water Board staff observed the remains of a lizard and sediment in the bottom of the tank. A remediation plan was agreed to between Barry Sutter and Ralph Emerson, and the District began completing those items.

A Compliance Order was issued on August 28, 2020. The following Directives are included in the Order:

- “1. **By November 1, 2020**, remove all sediment from bottom of the Robertson Tank.
2. **By December 31, 2020**, submit a design proposal for replacement of the Robertson Tank with either another tank or with the installation of a pressure reducing valve that complies with California Waterworks Standards.
3. **By June 30, 2021**, construct a replacement tank or install a pressure reducing valve in accordance with the design proposal in Directive 1 above, and take the Robertson Tank offline permanently.
4. Maintain all vegetation and grass to less than six inches of height within five feet of the tank.
5. Inspect the exterior of the tank and access hatch for openings at least once per week. Seal all openings that are greater than 3/16" Dia. Look into the tank weekly via the access hatch and note any signs of animal intrusion or other signs of contamination. Records of the date and findings of each weekly inspection must be kept until the tank is replaced.
6. If Garberville Sanitary District is unable to perform the tasks specified in this Order for any reason, whether within or beyond its control, and if Garberville Sanitary District notifies the Division in writing no less than thirty days in advance of the due date, the Division may extend the time for performance if Garberville Sanitary District demonstrates that it has made its best efforts to comply with the schedule and other requirements of this Order.”

Before the Compliance Order was even drafted we had removed all lizard remains and sealed any identifiable gaps between the various parts of the tank and the access hatch. The removal of what turned out to be very minor amounts of sediment, as required in Directive #1, is already complete. Liquivision Technology Inc. was onsite August 25, 2020 to evaluate the condition of the Robertson Tank and to remove all sediment and debris from the tank.

Directives #2 and #3 contain deadlines for completion of the design and construction of a replacement tank that cannot be met.

Directives #4 and 5 are things that are and will continue to be completed by Operations Staff.

Any person who is aggrieved by the order may file a petition with the State Water Board for reconsideration of the order. Therefore, a Petition for Reconsideration of the deadlines in Directives #2 and #3 has been prepared for your review and approval. I have checked with the Water Board Division of Financial Assistance to determine if the compliance order meets the requirements to move our project into an emergency funding category. With the lack of an imminent public health problem, their determination is that it does not.

An option we would like the Board to consider is to authorize expenditure of up to \$30,000 for the preparation of the Request for Proposals for Professional Engineering Services and preparation of a 30 percent design package including surveying and modelling the water system on the north side of bear gulch. This level of investment would provide sufficient information to determine whether the Robertson Tank needs to be replaced to maintain sufficient storage capacity for the District's maximum day demand, or whether it can be removed and a Pressure Reducing Valve (PRV) constructed in its place.

If a PRV is the preferred project, then the construction of that infrastructure would be financially feasible for the District. If it is a tank replacement, then we will need to continue our pursuit of the planning grant funds.

FINANCIAL IMPLICATIONS

The Compliance Order includes a reimbursement payment that will be requested from the District within the next year. It is estimated to be \$540.

Authorization for preparation of a 30% design would cost around \$30,000. These expenditures would not be reimbursable even if a planning grant funding agreement was eventually executed. The budget adopted by the Board had a negative cash flow of \$111,116, so these funds would need to come from the District's reserves.

RECOMMENDATIONS

- Review and Approve the attached Letter of Petition to Reconsider Compliance Order
- Authorize the Chair of the Board to sign the Letter on behalf of the District Board of Directors
- Authorize the preparation of a Request for Proposals for 30 percent design package for the Robertson Tank with funds coming from the reserve account

ATTACHMENTS

Petition to Reconsider Compliance Order No. 01_01_20(R)_004
Including Compliance Order



GARBERVILLE SANITARY DISTRICT

P.O. BOX 211 • GARBERVILLE, CA 95542 • (707) 923-9566

September 22, 2020

State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812-0100

Attention: Pamela Downing, Legal Secretary

SUBJECT: Petition to Reconsider Compliance Order No. 01_01_20(R)_004
Violation of the California Waterworks Standards
Garberville Sanitary District, Public Water System #1210008

The District is in receipt of the subject Compliance Order. The District is hereby petitioning for the Water Board to modify the order to postpone the deadlines recited in directives 2 and 3 for the following reasons.

Restrictions Caused by Legal Timelines

The District is seeking an extension of Directive #2 and #3 deadlines due to the fact that it is impossible to comply with the requirements for bidding public works projects within the deadlines stipulated in the Compliance Order Directives #2 and #3.

As a public agency we are required to comply with public contracting law for retaining professional service consultants and for competitive bidding of public works projects. We also must comply with the California Environmental Quality Act. These legal requirements create scheduling timelines that cannot be ignored and can result in unanticipated delays. Issuance of a Request for Proposals for the Engineering services and one for environmental consultant services will each take at least 60 days to complete and review potential qualified firms.

Engineering plan and specifications completion timeline is difficult to estimate prior to preliminary design, but once the design process is complete the District must advertise and evaluate bids for a public works project and that process often takes at least 90-120 days to complete (assuming no bid protests or extended pre-bid inquiries relating to engineering plans and specifications) and then (after the bidding), the time for award, execution of contracts, collection of bonds and insurance certifications, and actual construction of the improvements during the dry months of the year will be another 60-120 days from the Notice to Proceed, assuming no interruptions. It is entirely impossible to comply with all of these obligations and have construction completed within 9 months from the date of issue for the Compliance Order or a competent design completed within 120 days! The attached schedule outlines some of these timelines in a Gantt chart format for your review.

GSD is a Small Severely Disadvantaged Community with Financial Limitations

The District is anxious to complete the Robertson Tank Replacement Project. In the fall of 2019 the District submitted a complete SRFDW Planning Project application for funding the replacement of the Robertson and Wallan tanks. We are a small severely disadvantaged community with a median annual household income of \$28,265, according to the US Census Bureau. The average residential customer pays \$900 annually for water service, or 3.2% of income. In addition, we are already making loan payments on the Drinking Water Improvement Project and the Alderpoint Road Tank Replacement Project. These loan payments translate into the District being unable to move forward with the Robertson Tank Replacement Project until we receive the funding agreement. Having the design and construction costs reimbursed as a full grant is critical for keeping the water rates at a level that the poor and disadvantaged in our community can afford.

We have faithfully pursued the allocation of these funds by responding swiftly to the multiple and necessary questions of the Division of Financial Assistance (DFA) in an attempt to eliminate delay throughout each of the stages of the funding process. In working with Ms. Alejandra Nunez, the project coordination staff at DFA for the Robertson Tank Project, the attached schedule was reviewed. Ms. Nunez concurs that the schedule is realistic and that the best case scenario for execution of a planning funding agreement is March 2021. The draft schedule contemplates that biddable engineering plans and specifications (with CEQA/NEPA compliance) may be complete on or about January 31, 2022 (directive #2). Assuming no unforeseen consequences or delays, this could result in construction during the summer of 2022, with a potential construction completion date of September 30, 2022 (Directive #3).

When the Robertson Tank was constructed (records indicate pre 1936), it was well within the water standards for tanks. Due to the age of the tank and the topography surrounding it, the tank has cracked and leaks. Replacement of this tank has been on the District's list of capital improvement projects since the District purchased the seventy-plus year old privately owned Garberville Water Company (GWC) in 2004. There were dozens of significant infrastructure elements that needed immediate replacement at the time of the purchase of the water system. In the past 15 years the District has replaced:

- The entire surface water treatment plant
- The raw water intake pumping system
- The Alderpoint Road tank
- Installed backup generators at all major sites
- And installed SCADA/telemetry system for the water system

As a small severely disadvantaged community, we have limited financial resources and debt capacity. We have aggressively undertaken replacements and upgrades within our financial capacity. We have prioritized the projects ensuring the greatest benefit to the largest number of customers while eliminating the highest risk of public health effects. We just can't afford to fix everything all at once.

Public Health

There are relevant public health facts that make it tenable to extend the Directive #2 and #3 deadlines.

1. The District has never had a failing water sample BacT test for the water stored in and distributed from the Robertson Tank
2. The District has always delivered water compliant with safe drinking water standards.
3. There exists no imminent public health risk that necessitates the limited timeline contained in the Compliance Order as presented.
4. Ms. Nunez of the DFA, having reviewed the Compliance Order, found that due to a lack of an imminent public health risk associated with the existing facilities, the project could not qualify for an emergency funding category.
5. The District has been very proactive about performing the tasks on the remediation plan set up between Barry Sutter and Ralph Emerson. Before the Compliance Order was even drafted the District had removed all lizard remains and sealed any identifiable gaps between the various parts of the tank and the access hatch.
6. The removal of all sediment as required in Directive #1 is already complete. Liquivision Technology Inc. was onsite August 25, 2020 to evaluate the condition of the Robertson Tank and to remove all sediment and debris. See attached Liquivision Technology invoice # 6509.

The bottom line is that the selection of dates for the completion deadline for the design and construction of a replacement tank are not feasible for a project of this scope, and unnecessary considering the lack of an actual public health hazard. This tank has been in this same condition for the past two decades while the District has addressed many priority infrastructure needs for the community, and allowing the District to have two years to complete the project and comply with other aspects of California law is a necessary modification to the Compliance Order.

We are therefore petitioning the Water Board to modify the Compliance Order deadline dates in Directive #2 to January 31, 2022 and #3 to September 30, 2022 and to acknowledge that the speed at which the funding agency processes the various reviews and approvals are beyond our control and we will not be penalized for delays caused by delayed Water Board approvals. We are also requesting that Directive #2 and #3's deadlines and associated penalties be stayed until such time as the hearing is held and a decision has been made on this petition.

The District Board of Directors appreciates your thoughtful consideration of our petition for this minor modification of the Compliance Order. The District looks forward to the Board's review of this correspondence and assistance in facilitating the District's compliance with a workable Board Order. Our goal is to complete this project as quickly as possible within the other applicable laws and the funding process. We are eager to move forward once we have the Planning Project funding agreement is in place. Any assistance you may be able to provide to expedite this process would be greatly appreciated!

If you have any questions regarding this petition, please contact Jennie Short by email at jmshort@garbervillesd.org or by phone at (707)223-4567.

Respectfully,

Linda Broderson, Chair
Board of Directors

JMS

Cc via email:

Ralph Emerson, District General Manager
Russ Gans, District Counsel
Jennie Short, District Consultant Project Manager
Kim Hanagan, SWRCB-DDW Chief Northern California Section Chief
Barry Sutter, SWRCB-DDW Klamath District Engineer
Scott Gilbreath, SWRCB-DDW Water Engineer
Alejandra Nunez, SWRCB-DFA Water Engineer
DrinkingWaterPetitions@waterboards.ca.gov

Enclosures:

1. Compliance Order
2. Robertson Tank Draft Project Schedule
3. Liquivision Invoice



State Water Resources Control Board
Division of Drinking Water

August 28, 2020

Certified Mail No. 7017 0190 0000 6413 0898

Garberville Sanitary District
P.O.Box 211
Garberville, Ca 95542

Attention: Ralph Emerson, General Manager

Subject: Compliance Order No. 01_01_20(R)_004
Violation of the California Waterworks Standards
Garberville Sanitary District, Public Water System #1210008

Enclosed is Compliance Order No. 01_01_20(R)_004 (hereinafter "Order"), issued to the Garberville Sanitary District public water system. Please note that there are legally enforceable deadlines associated with this Order.

California Health and Safety Code (hereinafter "CHSC") Section 116577 provides that a public water system must reimburse the State Water Board for actual costs incurred by the State Water Board for specified enforcement actions, including preparing, issuing and monitoring compliance with an order. The Garberville Sanitary District will be billed at the State Water Resources Control Board's (hereinafter "State Water Board") hourly rate of approximately \$180 per hour for the time spent on issuing this Order. A bill will be sent by the State Water Board to Garberville Sanitary District in August of the next fiscal year. At this time, the State Water Board has spent approximately three hours on enforcement activities associated with the Order.

Any person who is aggrieved by a citation, order or decision issued under authority delegated to an officer or employee of the State Water Board under Article 8 (commencing with CHSC, Section 116625) or Article 9 (commencing with CHSC, Section 116650), of the Safe Drinking Water Act (CHSC, Division 104, Part 12, Chapter 4), may file a petition with the State Water Board for reconsideration of the citation, order or decision.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

364 Knollcrest Drive, Suite 101, Redding, CA 96002 | www.waterboards.ca.gov

Petitions must be received by the State Water Board within 30 days of the issuance of the citation, order or decision by the officer or employee of the State Water Board. The date of issuance is the date when the Division of Drinking Water mails a copy of the citation, order or decision. If the 30th day falls on a Saturday, Sunday, or state holiday, the petition is due the following business day by 5:00 p.m.

Information regarding filing petitions may be found at:

http://www.waterboards.ca.gov/drinking_water/programs/petitions/index.shtml

If you have any questions regarding this matter, please contact Scott Gilbreath at (530) 224-4876 or me at (530) 224-4875.

Sincerely,



Barry Sutter, P.E., Klamath District Engineer
Division of Drinking Water
STATE WATER RESOURCES CONTROL BOARD

Enclosures

cc: Kim Hanagan, P.E., Chief, DDW, Northern California Section

1 with Section 116270), or any regulation, standard, permit, or order issued or adopted
2 thereunder.

3
4 The State Water Board, acting by and through its Division of Drinking Water (hereinafter
5 “Division”), and the Deputy Director for the Division, pursuant to Section 116655 of the
6 CHSC, hereby issues Compliance Order No. 01_01_20(R)_004 (hereinafter “Order”) to
7 the Garberville Sanitary District for violations of California Code of Regulations (CCR),
8 California Waterworks Standards, Section 64585, Design and Construction of
9 Distribution Reservoirs.

10 11 **APPLICABLE AUTHORITIES**

12 CCR, Section 64551.10 defines a Distribution Reservoir as:

13 “Distribution reservoir” means any tank or other structure located within or connected to
14 the distribution system and used to store treated/finished drinking water.

15 CCR, Section 64585 (Design and Construction of Distribution Reservoirs) states in
16 relevant part:

17 (a) Each distribution reservoir shall meet the following:

18 (2) Vents and other openings shall be constructed and designed to prevent the entry of
19 rainwater or runoff, and birds, insects, rodents, or other animals;

20 (4) A reservoir shall not be designed, constructed, or used for any activity that creates a
21 contamination hazard.

22 23 **STATEMENT OF FACTS**

24 The Garberville Sanitary District is classified as a Community public water system
25 serving approximately 442 connections and 1500 people. The Garberville Sanitary
26 District water system consists of a surface water diversion, one well, a surface water
27

1 filtration and chlorination plant, the water distribution system, and four treated drinking
2 water storage tanks including the Robertson Tank.

3
4 The Robertson Tank is an aging circular in-ground concrete tank with a wood roof and a
5 storage capacity of approximately 50,000 gallons. The tank serves approximately 20
6 homes. It was constructed over 70 years ago and is in generally poor condition. It is
7 also vulnerable to damage by wildfire based on the location and use of wood as a
8 construction material.

9
10 Little consideration in the original design was given to convenient maintenance of the
11 Robertson Tank as evidenced by the reported lack of a dedicated drainage line and lack
12 of valving to allow for bypassing the tank. Without a dedicated drain and bypass, it is
13 difficult for Garberville Sanitary District staff to perform routine maintenance and interior
14 tank cleaning without draining the tank and consequently depressurizing the 20 homes
15 served by the tank. Reportedly, the tank has not been cleaned for many years and
16 sediment has accumulated on the bottom of the tank.

17
18 In 2019 and in 2020, while conducting routine sanitary surveys, Division staff identified
19 sanitary defects in the Robertson Tank including cracked concrete, tank leakage, a
20 poorly fitted access hatch, and small openings between the wood roof structure and the
21 top of the concrete tank. The remains of two lizards were identified at the bottom of the
22 tank during the 2020 inspection, suggesting they entered the tank by way of a small
23 opening somewhere in the tank structure.

24
25 As of the date of this Order, Garberville Sanitary District staff have removed the lizard
26 remains from the tank and sealed the identifiable openings. However, as the degradation
27

1 of the Robertson Tank continues the risk of animal intrusion and/or other contamination
2 will also continue.

3
4 **DETERMINATION**

5 The Division has determined the following:

- 6
- 7 1. The Robertson Tank suffers from fundamental design flaws leaving it
8 susceptible to animal intrusion and does not meet current standards outlined in
9 the California Waterworks Standards, Sections 64585(a)(2) and 64585(a)(4).
10
 - 11 2. The Robertson Tank is difficult to clean and maintain because it does not have a
12 dedicated drain line for cleaning purposes and there is no practical means to
13 bypass the Robertson Tank during maintenance.
14
 - 15 3. The above ground portion of the Robertson Tank is constructed of wood which is
16 combustible and is therefore highly vulnerable to damage by wildfire.
17

18 **DIRECTIVES**

19 Garberville Sanitary District is hereby directed to take the following actions:

- 20
- 21 1. **By November 1, 2020**, remove all sediment from bottom of the Robertson Tank.
22
 - 23 2. **By December 31, 2020**, submit a design proposal for replacement of the Robertson
24 Tank with either another tank or with the installation of a pressure reducing valve
25 that complies with California Waterworks Standards.
26
27

- 1 3. **By June 30, 2021**, construct a replacement tank or install a pressure reducing valve
2 in accordance with the design proposal in Directive 1 above, and take the Robertson
3 Tank offline permanently.
4
- 5 4. Maintain all vegetation and grass to less than six inches of height within five feet of
6 the tank.
7
- 8 5. Inspect the exterior of the tank and access hatch for openings at least once per
9 week. Seal all openings that are greater than 3/16" Dia. Look into the tank weekly
10 via the access hatch and note any signs of animal intrusion or other signs of
11 contamination. Records of the date and findings of each weekly inspection must be
12 kept until the tank is replaced.
13
- 14 6. If Garberville Sanitary District is unable to perform the tasks specified in this Order
15 for any reason, whether within or beyond its control, and if Garberville Sanitary
16 District notifies the Division in writing no less than thirty days in advance of the due
17 date, the Division may extend the time for performance if Garberville Sanitary District
18 demonstrates that it has made its best efforts to comply with the schedule and other
19 requirements of this Order.
20

21 If Garberville Sanitary District fails to perform any of the tasks specified in this Order by
22 the time described herein or by the time as subsequently extended pursuant to Directive
23 6 above, Garberville Sanitary District shall be deemed to have failed to comply with the
24 obligations of this Order and may be subject to additional enforcement action, including
25 civil penalties specified in the CHSC, Section 116650
26
27

1 All submittals required by this Order, unless otherwise specified in the directives above,
2 must be electronically submitted to the State Water Board at the following address. The
3 subject line for all electronic submittals corresponding to this Order must include the
4 following information: Water System name and number, compliance order number and
5 title of the document being submitted.

6
7 Barry Sutter, P.E., Klamath District Engineer
8 Barry.sutter@waterboards.ca.gov
9

10 The Division reserves the right to make such modifications to this Compliance Order as it
11 may deem necessary to protect public health and safety. Such modifications may be
12 issued as amendments to this Compliance Order and shall be effective upon issuance.

13
14 Nothing in this Compliance Order relieves Garberville Sanitary District of its obligation to
15 meet the requirements of the California Safe Drinking Water Act (CHSC, Division 104,
16 Part 12, Chapter 4, commencing with Section 116270), or any regulation, standard,
17 permit or order issued thereunder.

18 19 **PARTIES BOUND**

20 This Compliance Order shall apply to and be binding upon Garberville Sanitary District,
21 its owners, shareholders, officers, directors, agents, employees, contractors, successors,
22 and assignees.

23 24 **SEVERABILITY**

25 The Directives of this Compliance Order are severable, and Garberville Sanitary District
26 shall comply with each and every provision thereof notwithstanding the effectiveness of
27 any provision.

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FURTHER ENFORCEMENT ACTION

The California SDWA authorizes the Division to issue a citation or compliance order with assessment of administrative penalties to a public water system for violation or continued violation of the requirements of the California SDWA or any permit, regulation, permit or order issued or adopted thereunder including, but not limited to, failure to correct a violation identified in a citation or compliance order. The California SDWA also authorizes the Division to take action to suspend or revoke a permit that has been issued to a public water system if the system has violated applicable law or regulations or has failed to comply with an order of the Division; and to petition the superior court to take various enforcement measures against a public water system that has failed to comply with an order of the Division. The Division does not waive any further enforcement action by issuance of this citation or compliance order.

Kim Hanagan

Kim Hanagan, P.E., Chief, Northern California Section
Division of Drinking Water
STATE WATER RESOURCES CONTROL BOARD

8/28/2020

Date

Certified Mail No. 7017 0190 0000 6413 0898



Robertson & Wallan Tank Replacement Project

DAY: 1 8 15 22 29 36 43 50 57 64 71 78 85 92 99 106 113 120 127 134 141 148 155 162 169 176 183 190 197 204 211

FUNDING PHASE		PLANNING PHASE																																																							
Planning Proj App Submitted	Funding Agreement Executed								Consulting Agreement Executed								30% PSE Delivered								95% PSE Delivered								100% Biddable Docs Delivered																								
Oct '18	<----->								<----->								<----->								<----->								<----->																								
	General Review								RFP Issued & Proposals Received								Pre-Design/Alts								Preliminary Engr Report & TMF																																
	<----->								<----->								<----->								<----->																																
	Environmental Review								<----->								Surveying								<----->								<----->																								
	<----->								<----->								<----->								<----->								<----->																								
	Technical Review								<----->								Geotech								<----->								<----->																								
	<----->								<----->								<----->								<----->								<----->																								
	Financial Review								<----->								<----->								CEQA/NEPA Cross Cutters								<----->																								
									Unknown Start Date								<----->								<----->								<----->																								
																									<----->								Preferred Project Approval from Dist.								<----->								SHPO, USFW, ACOE, W&S CONSULTS								
																																	<----->								<----->								Environmental Review								
NOTE:	Red text denotes items that are completed by SWRCB DDW or DFA GSD has no control over the period of time taken for these items' completion If completion time is longer than shown, then subsequent tasks will need to be extended accordingly.																																																								

Robertson & Wallan Tank Replacement Project

218 225 232 239 246 253 260 267 274 281 288 295 302 309 316 323 330 337 344 351 358 365 372 379 386 393 400 407 414 421 428 435 442 449 456 463 470 477

CONSTRUCTION PHASE											
Project Bid for Construction	Construction Funding Agreement Executed	Project Awarded by GSD	Construction Contract Executed w/ Contractor	Notice to Proceed	Final Walkthrough	Const. Contract Closed Out	Final Claim for Construction FA				
<-----> Ad -----> Open					<-----> Contractor Completes Construction			<-----> Project Closeout			
<-----> Technical Approval of Bid Docs											
<-----> Financial Review for Construction											

Liquivision Technology Inc.
711 Market Street
Klamath Falls, OR 97601
(800) 229-6959 or (541) 883-6473

Invoice

DATE	INVOICE #
8/25/2020	6509

BILL TO
Garberville Sanitary District P.O. Box 211 919 Redwood Drive Garberville, CA 95542

SHIP TO

P.O. NO.	TERMS	TEAM	PROJECT
	Net 30	T1	CA126720r1T1

ITEM	QTY	DESCRIPTION	RATE	SERVICED	AMOUNT
Mobilization		Mobilization Fee	495.00	8/25/2020	495.00
Clean & Inspect		Clean & Inspect - Robertson	2,850.00	8/25/2020	2,850.00
Leak Det	0.5	Leak Detection	430.00	8/25/2020	215.00
Repairs	0.5	Repairs - float switch	430.00	8/25/2020	215.00

<i>Thank you for your prompt attention!</i>	Subtotal	\$3,775.00
	Sales Tax (7.75%)	\$0.00
	Payments	\$0.00
	Balance Due	\$3,775.00



Garberville Sanitary District
PO Box 211
919 Redwood Dr.
Garberville, CA. 95542
Office(707)923-9566 Fax(707)923-3130

FIRES AND EMERGENCY PROTECTION PLAN

The recent fires and power outages have provided an opportunity to re-evaluate where we are vulnerable with regard to operational abilities and human safety. We have been analyzing what can be done to ensure safe operation and ability to meet water demands during fires or other emergencies. We have also had customers contact us about installing their own fire suppression systems, which we are researching to see how they can receive the quantity of water required to operate some of the possible suppression systems.

Cal-Fire is located within GSD boundaries and during these fire events, a staging area has been set up to plan for fighting the fires and multiple requests for water came to us from Cal-Fire, Humboldt County Road Department and customers. We notified those requesting water that we are unable to provide “Bulk Water” for any use outside of our boundaries.

What we have learned from denying water for fire suppression and emergencies is that the “Bulk Water” cease and desist order is potentially harmful to the health and safety of Southern Humboldt County and to our customers, which is why the Cease and Desist Order should be amended to allow for GSD discretion on providing water (if available) for emergencies.

The current cease and desist order which was cited in the “bulk water” settlement references potable water but does not address water for other types of emergencies. Since Cal-Fire, Cal-Trans, Humboldt Road Department and the local fire department are all within GSD boundaries and all of them work on emergencies throughout the year, I recommend pursuing an amendment to the Cease and Desist order.

In light of the fires ravaging California now and in the past, it is incomprehensible and irresponsible for GSD not to be able to provide water for fighting a fire that is threatening our community or to provide water for other emergencies which threaten our health and safety.



GARBERVILLE SANITARY DISTRICT

P.O. BOX 211 • GARBERVILLE, CA 95542 • (707) 923-9566

BOARD OF DIRECTORS MEETING MEMORANDUM

Meeting Date: September 22, 2020
To: Board of Directors
From: Jennie Short, Consultant Project Manager
Subject: SWRCB Settlement Agreement for Bulk Water Sales

GENERAL OVERVIEW

Over the past year the District has been involved in confidential negotiations with the State Water Resources Control Board regarding a draft Administrative Civil Liability Complaint regarding the sale of bulk water to various state and county agencies for emergency projects as a violation of Cease and Desist Order WR 2012-0036-DWR . District Counsel headed the negotiations team, which eventually agreed to terms that are captured in the settlement agreement. ORDERS WR 2020-0104-EXEC approving the settlement agreement was signed on August 26, 2020. This Order finalized the process and made the matter public. As the 2020 order states,

"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."

The Settlement Agreement entered by the Garberville Sanitary District constitutes a resolution of disputed claims, not an admission of fault or liability on the part of GSD. Related to the Settlement:

1. The Bulk Water Sales which occurred after 2012, as alleged in the Water Board Settlement Documents and Draft Administrative Complaint, relate to assertions that GSD's sale of water to public entities/agencies constituted a violation of a restriction included in the 2012 Cease and Desist Order restricting bulk water sales only for "emergency domestic water supply".
2. GSD made several water sales to public agencies, including: (1) water supply to the California Department of Forestry to assist in firefighting efforts; (2) Contractors working for Caltrans on a slide on Highway 101, south of Garberville, to re-open the Highway in response to a Governor declared emergency; (3) water sales to the County of Humboldt through their existing commercial water meter that they used for the emergency repair of a failed culvert within Whitmore Grove on Briceland Road at PM 11.20 in accordance with the Local Emergency Proclamation for Briceland Thorn Road adopted by the Humboldt County Board of Supervisors in cooperation with California State Parks.
3. All of the bulk water sales were authorized by GSD based on the urgent and public safety needs identified with the sales. As alleged in the public Settlement Documents, the Water Board asserted that there was not "domestic use" component of the sales, and a violation was asserted.

4. Although the practice of all bulk water sales to government agencies to respond to health and safety related events has now stopped, GSD is petitioning the Water Board and seeking its assistance to expand the definition of "emergency use" in the 2012 CDO so it can make bulk water sales where necessary to respond to substantial public health events and/or imminent threats to public health and/or safety exist.

The date of the most recent bulk water sale was October 26, 2018. In January 2020, the District informed Humboldt County Public Works Department that even though they are a commercial water customer in GSD's Place of Use, they cannot fill water trucks from the standpipe at their Garberville Road Maintenance Yard and take the water outside of the GSD Place of Use. They were reminded again of the limitations on Sept 3, 2020.

FINANCIAL IMPLICATIONS

The fine levied in the settlement agreement is \$40,000. Funds have been moved from the County Treasury Account into the Operations account at Umpqua Bank and a cashier's check has been drawn and sent to the State Water Board. The \$40,000 was in the budget as reviewed and approved by the Board in May 2020.

RECOMMENDATIONS

None

ATTACHMENTS

ORDER WR 2020-0104-EXEC
SETTLEMENT AGREEMENT
DRAFT ADMINISTRATIVE CIVIL LIABILITY COMPLAINT WITH ATTACHMENTS

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 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.

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 re delegated 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 re delegated 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 GSDs 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

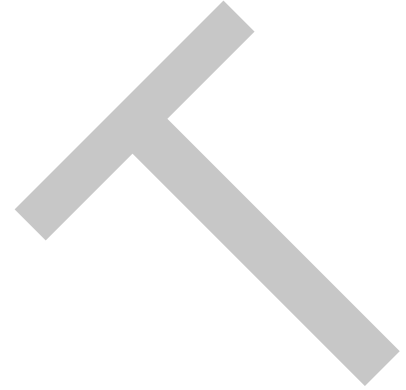
51. Garberville Sanitary District may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (Water Code, §1055, subd. (b)).
52. If Garberville Sanitary District requests 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



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 5487
 License 5486

STATE OF CALIFORNIA
 DEPARTMENT OF PUBLIC WORKS
 DIVISION OF WATER RESOURCES

Applicant Garberville Water Works Sec. 24 Township 4 S. Range 3 N. 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

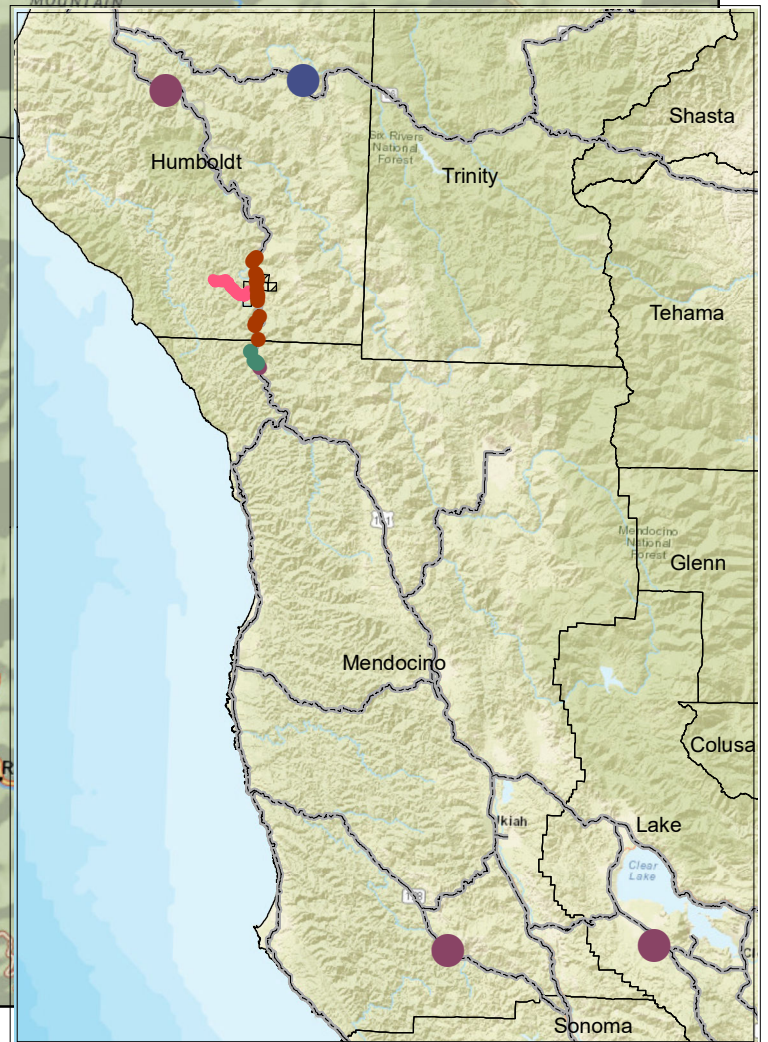
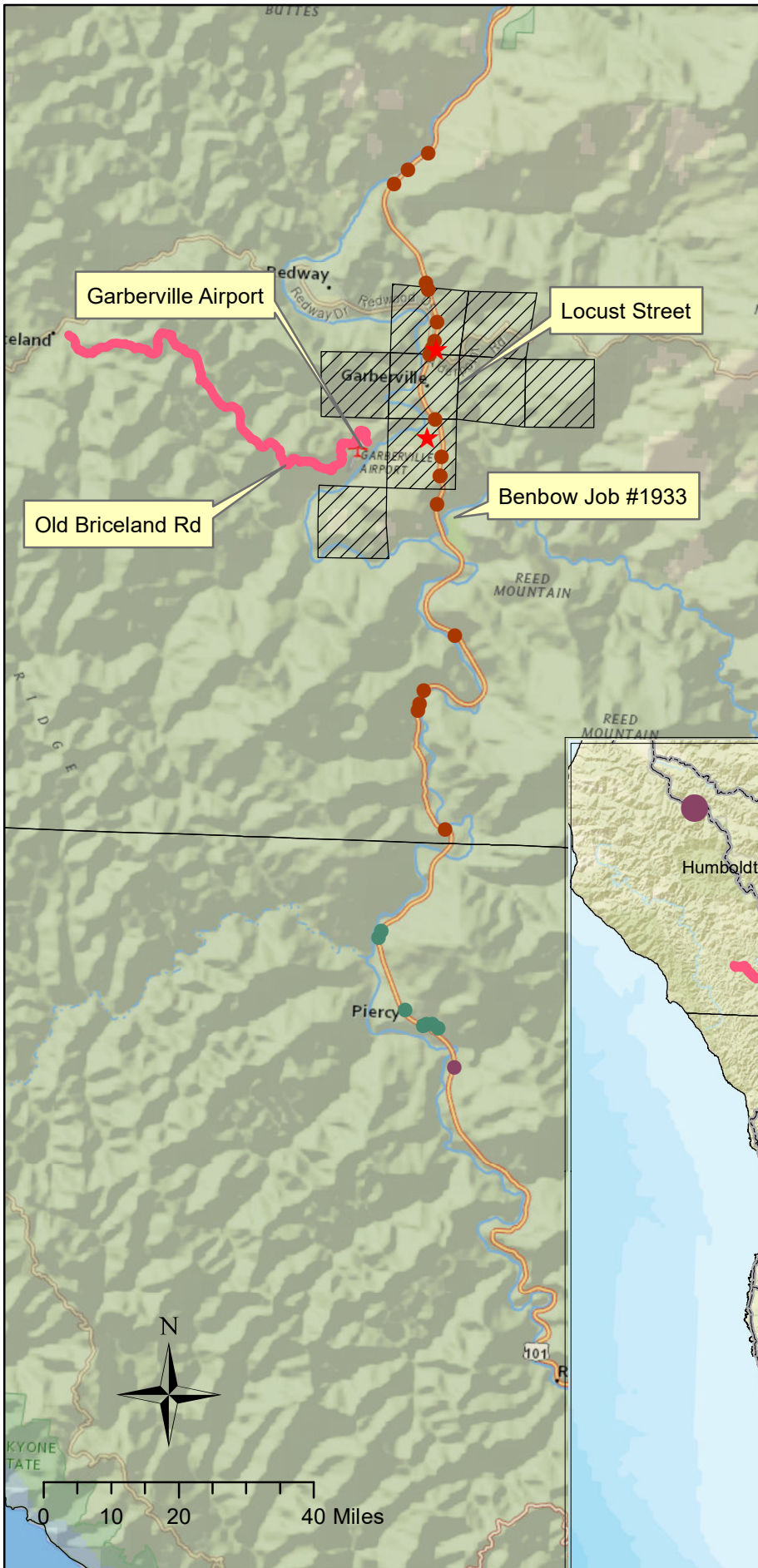
Project 01-0A604

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

— Old Brideland Rd

GSD Place of Use

GSD Place of Use



5.3.7 Jury Duty

Full-time employees who are summoned for jury duty will be paid the difference between their normal rate of pay and the jury duty pay for a period of up to 10 working days per year. Employees must provide the District with a copy of the payment records from the court in order to be compensated. Should the employee have to serve more than 10 days, the employee may **use accrued vacation time or** take unpaid time off.

The employee should make arrangements with **their supervisor the General Manager or designee** as soon as they receive the summons. **In fairness to the District,** Employees are expected to return to their job if they are excused from jury duty during their regular working hours.

5.3.8 Time off for Voting

If an employee does not have sufficient time outside of working hours to vote in an official state sanctioned election, the employee may take off enough working time to vote. **Such time shall be taken at the beginning or the end of the regular working shift, whichever allows for more free time, and the time taken off shall be combined with the voting time available outside of working hours to a maximum of two hours combined. Under these circumstances, an employee will be allowed a maximum of two hours of time off during an election day without loss of pay. When possible, an employee requesting time off to vote shall give their supervisor at least two days notice. Time off to vote must be approved by the General Manager or designee.**

5.3.9 Leave of Absence

Under special circumstances, an employee with three months of employment A full time employee may be granted a leave of absence without pay **with approval from the General Manager or designee. The granting of this type of leave is normally for compelling reasons and is dependent upon the written approval of the General Manager.**

- a. Leave of absence for any purpose other than those listed above will be granted at the discretion of the General Manager **or designee.**
- b. The employee must use all paid vacation and personal days off (but not sick leave) before taking an unpaid leave of absence.
- c. The employee must pay premiums on all insurance, and may elect to make retirement contributions while on leave of absence. The District will resume paying its contribution when the employee returns to work.
- d. If the employee does not return to work at the end of the leave, it will be considered a voluntary termination. The employee will then be entitled to COBRA and any other benefits of voluntary termination.
- e. Employees will not accrue any paid time off while on personal leave.

5.4 Benefits

GSD provides medical insurance and a retirement plan for eligible employees and their dependents on the first day of the month following the completion of the introductory period. Eligible employees may participate in the District's benefits. Information and enrollment forms may be obtained from the office.

5.4.1 Health Insurance

- a. Full-time employees, after 30 days of employment, may participate in the insurance benefits currently provided by the District. Coverage starts on the first day of the month following enrollment. To assist you with the cost of this insurance, the District will pay for the employee portion of a single contract chosen by the Board of Directors. (If the employee chooses a plan that is above the Board's budgeted amount, the employee is responsible for paying the difference.) The employee will be responsible for paying the entire cost of the dependent coverage. In the event of an increase in medical insurance premium rates, all employees may be required to contribute to the cost of increased premiums to retain coverage.
- b. Permanent part-time employees may participate in the health insurance plan at their own expense, after 6 months of employment.

5.4.2 Retirement Benefits

The District provides eligible employees with an **Board approved** investment and savings plan **for retirement**. This plan is designed to be used in combination with the employee's Social Security benefits and personal resources to provide the employee with **retirement income**. **an assured income at retirement age**.

Eligibility for this plan **is begins** the month following **the** completion of the introductory period. **Full Time or Permanent Part Time** Employees who earned at least \$5,000 per calendar year **during any two preceding years** and **who** are expected to earn at least \$5,000 in the current year are eligible to participate in the plan.

GSD will contribute a dollar-for-dollar match up to 3% of each eligible employee's compensation. The employer match contribution is based on current IRS laws. Employee will be responsible for the start-up and maintenance fees of their retirement plan. The cost is \$10.00 per year for each employee to establish and maintain the plan. This is paid directly to the administration responsible for the plan.

The retirement program may be reviewed yearly for modifications.

5.4.3 Workers Compensation

On-the-job injuries are covered by the District's Worker's Compensation Insurance Policy provided at no cost to the employee.

- a. All District employees are covered by workers' compensation through SDWCA if they are injured on the job.
- b. Employees must report on-the-job injuries to their **supervisors General Manager or designee immediately**. SDWCA forms must be filled out within 24 hours of any injury requiring treatment. Forms and information are available at the GSD business office.

5.4.4 State Disability

- a. All District employees are eligible for a disability leave of absence due to illness, injury or pregnancy-related disabilities.
- b. Please provide the District written notice of disability, including a doctor's certificate stating the nature of the disability and the expected date of return to work.
- c. The employee is responsible for filing their claim and other forms promptly and accurately with the Employment Development Department (EDD). A claim may be obtained by calling EDD.
- d. The cost of this insurance is fully paid by the employee.
- e. The district will continue to provide medical insurance coverage for employees on authorized leave of absence due to physical disability for the first month of disability. When the above period expires, the employee may continue medical insurance coverage by making arrangements with the office to pay the appropriate monthly premium in advance each month.
- f. An employee's continued absence from work beyond their disability, as determined by their physician, will be deemed a voluntary termination of their employment.

5.4.5 Social Security

Social Security is more than a paycheck deduction. It offers financial security for the employee and their dependents. Although this is a federally established program, it is the employee's contributions, and the District's, that pay for this benefit.

Both the employee and the District contribute to provide the employee with monthly checks and medical coverage once the employee reach retirement age. These funds are then forwarded to the federal government to support the Social Security Program.

5.4.6 Water Service Discount

Full-time and permanent part-time employees residing in the District are entitled to water service at a discount equal to the base water rate during their employment with GSD.

6.0 PERSONNEL RECORDS

The employee has a right to inspect certain documents in their personnel file, as provided by law, in the presence of GSD representative at a mutually convenient time. No copies of documents in their file may be made, with the exception of documents that they have previously signed. The employee may add their comments to any disputed item in the file. GSD will restrict disclosure of their personnel file to authorized individuals with GSD. Any request for information contained in personnel files must be directed to the **District**

Administrator General Manager or designee. Only the General Manager **or designee** is authorized to release information about current or former employees. Disclosure of personnel information **to outside sourced** will be limited **by law and GSD Policy**. However, GSD will cooperate with requests from authorized law enforcement, or local, state, or federal agencies conducting official investigations and as otherwise legally required.

6.1 Names and Addresses

GSD is required by law to keep current all employees' name and addresses. Employees are responsible for notifying the District in the event of a name or address change.

6.1.2 Employee References

All requests for references must be directed to the General Manager **or designee**. No other person is authorized to release references for current or former employees. By policy, the District discloses the dates of employment, the title of the last position held, general description of last job duties, **reason for termination, and any incidents of violence of former employees.** If the employee authorizes the disclosure in writing, the District also will inform prospective employers of the amount of salary or wage they last earned.

7.0 POLICIES REGARDING EMPLOYEE CONDUCT

7.1 Safety Policy

The District recognizes its responsibility for providing the safest possible conditions for its employees and customers. This responsibility is met by means of a safety program that is applied through the development of safety awareness among employees, the use of up to date safety equipment, and the continual inspection of conditions and practices by all levels of supervision. It is the responsibility of every employee to develop safe working habits. The development of proper attitudes toward safety is the only method to improve safe working habits. Therefore, training sessions play a large part in the safety program. The District wants to protect all employees and the public from injury and accidents. To accomplish this goal, the safety program involves all employees, and requires the active participation and cooperation of all to make it operate effectively.

Safety training sessions are conducted for all District employees, and employees are expected to perform in a safe manner. Negligent or unsafe conduct by an employee will result in disciplinary action. All employees must follow the safety procedures established by management. **The safety meeting, attendance and topics will be reported monthly at the regular Board meeting. The Chief Operator will report to the Board on annual completion of Safety training programs which he or she personally completes as well as certification of successful completion of the training program by all employees pursuant to the Chief Operator's job description set out in Appendix "B."**

7.1(a) Hazardous Work Conditions

Despite a collective and diligent effort to ensure safe working conditions for all District employees, there are hazards that cannot be foreseen or avoided.

Employees are expected to be aware of their surrounding at all times and to act safely and responsibly in the work place. Employees who are unsure, uncomfortable or hesitant should immediately notify the General Manager **or designee** before engaging in the potentially hazardous work.

Employees are NOT required to perform any task they consider to be dangerous or hazardous.

All incidents MUST be documented regardless of what the hazard or incident.

The following is a **non-exhaustive** list of certain hazardous conditions that may arise and responsive actions.

a. Animals biting or attacking---As a general rule, employees should keep a safe distance from stray or domestic animals. If an animal displays any tendencies perceived to be dangerous, do not come into contact with the animal, **ready carry** deterrent spray, contact the owner to control the animal, and call for assistance. If an employee is attacked, seek immediate medical attention and report the attack to **a supervisor the General Manager or designee** and law enforcement **if needed**.

b. Angry and threatening people---Employees are likely to encounter combative people during their employment. In such circumstances, employees should remain calm, professional, and respectful. Employees should remove themselves from the situation by leaving the area and should not, under any circumstances, respond aggressively. Employees should immediately report the incident to the General Manager or designee and law enforcement if needed.

c. Needles and dangerous paraphernalia—Employees who encounter needles or drug paraphernalia should immediately notify law enforcement and the General Manager or designee. Employees should not attempt to remove the item, unless appropriate safety precautions are taken, including avoiding contact with bare skin by wearing protective gloves and ensuring proper disposal. If an employee is injured by any object, go directly to the emergency room and notify General Manager or designee.

c. Being asked to do work for Customers—If a customer asked you to assist them, employees must first notify the General Manager or designee for prior approval. Employees should not provide assistance to customers if it involves going in private residences or on private property to perform work. **Under no circumstances may an employee accept payment for work performed for a customer if during work hours for the District.**

d. Working alone---If conditions are dangerous, employees should stop, call for assistance, and notify General Manager or designee.

e. Working in confined spaces or with chemicals---Employees should always notify a co-worker and the General Manager or designee in advance of performing the work in confined spaces or with any chemicals. Only employees who have obtained the proper training and certifications should perform any work with chemicals. If an employee is unsure, ask the General Manager or designee first. Employees should comply with any and all required precautions, such as the mandatory use of protective equipment.

7.2 Smoking Policy

GSD is committed to providing a safe and healthy environment for employees and visitors. Therefore, smoking is not permitted in the workplace.

7.3 Alcohol and Drug Use Policy

In accordance with our general personnel policies, whose overriding concern is a regard for the employee as an individual as well as a worker, GSD has adopted the following policy:

- a. We believe alcoholism and drug dependencies are illnesses and should be treated as such.
- b. We believe the majority of employees who develop these dependencies can be helped to recover, and the District shall offer or facilitate appropriate assistance for the employee.
- c. We believe the decision to seek diagnosis and accept treatment for any suspected illness is the responsibility of the employee. However, continued refusal of an employee to seek treatment when it appears that substandard performance may be caused by any illness is not tolerated.
- d. We believe it is in the best interest of employees and the District that when alcoholism or drug dependency is present, it should be diagnosed and treated at the earliest possible stage. The District requires all new employees to pass a drug screening, and may, at its discretion, require further drug screening.
- e. Confidential handling of the diagnosis and treatment of alcoholism or drug dependency will be the responsibility of the appropriate manager and the General Manager.
- f. The objective of this policy is to retain employees who may develop alcohol or drug dependency by helping them to arrest its further advance before the condition renders them unemployable.
- g. All employees should be aware that the use of alcohol or any drugs interfering with safe and efficient functioning on the job is a matter of District concern and will be dealt with in an appropriate manner.
- h. Employees are prohibited from drinking alcoholic beverages on company time or on company premises, reporting to work or driving a District vehicle while under the influence of alcohol or drugs. Employees are prohibited from working, driving a District vehicle or appearing on Garberville Sanitary District premises under the influence of or in the possession of alcohol, illegal drugs, controlled substances, prescription drugs, or over-the-counter remedies that may impair the employee's ability to function, or that may endanger the safety of others.
- i. Substantial evidence of illegal actions on the job, including the use of illegal drugs, when such actions can be traced to specific employees, will be reported to the appropriate authority and will result in disciplinary action by the District.
- j. Employees convicted of illegal drug traffic charges will be immediately terminated. Employees found to be involved in such traffic on company premises or during working hours will be terminated and reported to the appropriate authorities.
- k. All employees must pass a drug and alcohol screen prior to beginning their duties. (See section 3.3.) The District reserves the right to screen employees for drug use as permitted by law including random drug screening of all employees, including managers, as well as drug and alcohol testing of individuals for cause.

7.4 Non-Harassment Policy

GSD is committed to providing a work environment free of unlawful harassment. GSD's policies prohibit sexual harassment, and harassment based on pregnancy, childbirth or related medical conditions, race, religious creed, color, national origin or ancestry, physical or mental disability, medical condition, marital status, age, sexual orientation or harassment or any other basis protected by federal, state or local law, ordinance or regulation. GSD's anti-harassment policies apply to all persons involved in the operation of the organization and prohibit unlawful harassment by any employee, including supervisors and co-workers.

By way of example, prohibited unlawful harassment may include, but is not limited to, the following behavior:

- a. Verbal conduct such as epithets, derogatory jokes or comments, slurs or unwanted sexual advances, invitations or comments.
- b. Visual conduct such as derogatory and/or sexually oriented posters, photography, cartoons, drawings or gestures.
- c. Physical conduct such as assault, unwanted touching (including unwanted hugging), or blocking normal movement or interfering with work for reasons motivated by sex, race or any other protected status.
- d. Threats and demands to submit to sexual requests as a condition of continued employment, or to avoid some other loss, and offers of employment benefits in return for sexual favors.
- e. Retaliation for having reported or threatened to report harassment. If you believe that you have been unlawfully harassed, provide a written complaint to your own or any other GSD Management personnel or Chairperson or Member of the Board of Directors. To the extent permitted by law, due process, and fairness, written or oral complaints shall remain confidential. In the event a written complaint can not be prepared, it shall be made orally and then reduced to writing and signed by the complainant. A complaint should be specific and for each occurrence should include the date(s), time(s), location(s), names of the individuals involved and the names of any witnesses. An immediate, thorough and objective investigation of the harassment allegations shall be initiated by the appropriate manager or by the Chairperson of the Board of Directors.
- f. If GSD determines that unlawful harassment has occurred; effective remedial action will be taken in accordance with the circumstances involved. Any employee determined by GSD to be responsible for unlawful harassment will be subject to appropriate disciplinary action, up to and including termination. A GSD representative will advise all parties concerned of the results of the investigation. GSD will not retaliate against anyone for filing a complaint and will not knowingly tolerate or permit retaliation by management, employees or co-workers. GSD encourages all employees to report any incidents of harassment immediately so that complaints can be quickly and fairly resolved.

7.5 Standards of Conduct

Following is a list of standards that GSD expects of its employees while on the job. Violation of these standards could lead to disciplinary action, including possible termination. Note: Both employee and the employer have the right to terminate the employment relationship at any time with or without cause. The standards are as follows:

- a. Courteous treatment of the public and fellow employees.
- b. Following all lawful and reasonable regulations and orders given by the supervisor. C. Attention to duty.
- d. Careful use of District property.
- e. Honesty.
- f. Promptness and consistent attendance.
- g. Appropriate use of sick leave.
- h. Professionalism.
- i. Compliance with the Alcohol and Drug Use Policy stated above.

7.6 General Office and Field Policies

- a. Only Board Members, District employees, or authorized visitors are permitted in the office area behind the counter or on District property.
- b. Unauthorized or excessive personal use of telephones, Internet, and other office equipment, or District property, is not allowed.
- c. District Vehicle Usage: During working hours, trips for personal purposes will be avoided. Occasionally, stopping at a store in route to a business destination, or going to a restaurant (within close proximity of your work location) for lunch is permitted. **While going to or from work, occasionally stopping to buy groceries, pick up laundry, medication, etc., is not appropriate.**
- d. Other than the foregoing uses, District Vehicles will not be used for any personal purposes without prior written approval. **This means that weekend or after-hour trips to the store (regardless of how close to home), trips back to the office to retrieve forgotten personal items, or any other non-business usage will not be permitted.**
- e. Personal Vehicle Usage: When an employee is authorized to use his/her personal vehicle in the performance of GSD work, he/she shall be reimbursed for the cost of said use on the basis of total miles driven and at the rate specified in the Internal Revenue Service Guidelines in effect at the time of said usage.
- f. Use of personal vehicles shall not be authorized for the performance of GSD work if a suitable GSD vehicle is available and safely operational.
- g. Every attempt shall be made to coordinate work so that GSD vehicles are available and operational for the performance of said work.
- h. Proof of adequate insurance coverage for collision, personal injury, and property damage shall be required by the GSD of any employee using a personal vehicle in the performance of GSD work.
- i. Tools will be inventoried annually by field staff. Employees are expected to use all tools and equipment with care and good judgment. Damage to tools and equipment must be reported to the Chief Operator or General Manager as soon as possible.

- j. Dress will be appropriate for the work to be performed. Employees must maintain a clean, neat appearance when working with the public.
- k. GSD reserves the right to inspect all GSD property to insure compliance with its rules and regulations, with or without notice to employee and/or in the employee's absence.
- l. GSD may keep a record of all passwords or codes used for any GSD electronic or other equipment, and GSD may at any time access any and all information on such equipment.

7.7 Approval of Expenditures

- a. Total expenditures for one calendar day by an employee for any single item or group of related items, may not exceed \$200.00, without advance General Manager **or designee** approval.
Managers may set lower limits for expenditures by their staff.
- b. Exceptions to the above limits are chemical, materials and services for routine operation of water and wastewater plants and systems, and routine office supplies and expenses.
- c. Employees must follow the chain of command to obtain approval for emergency expenditures.
- d. The General Manager **or designee** shall **prepare a written submit a** report to the Board for all emergency expenditures exceeding \$2,000.00 for any single item **for at** the next Board Meeting.

7.8 Questions regarding Board Members

- a. All Questions regarding the Board of Directors, such as conflict of interest and questions about the interests or conduct of an individual Board Member should always be referred to the General Manager **or designee**. The General Manager **or designee** shall contact the Fair Political Practice Commission (FPPC) on all issues concerning conflict of interest for guidance. Staff should not **attempt to** respond to questions or comments on issues that are the sole responsibility of the General Manager **or designee**.
- b. For security reasons, inquiries regarding plant design or operational specifics may be referred to the Board at management's discretion.

7.9 News Media Contacts

Employees may be approached for interview or comments by the news media. Only the General Manager, **designee or Board Chairperson** may comment to news reporters on GSD policy or events relevant to GSD.

Sec 14.5 Drought Contingency Plan.

During drought conditions as identified by the State of California, Humboldt County or Garberville Sanitary District, the Drought Contingency Plan will go into effect immediately.

This plan will be implemented by Garberville Sanitary District and the public will be made aware of this plan through the media and customer outreach.

Customers will be required to conserve water including but not limited to gallons per day water usage and **non-compliance may result in water discontinuance with a \$100 reconnection fee.** **if they don't comply, may be fined for gallons of water used above the maximum allowed.**

1. **1st phase—All customers voluntarily reduce water consumption. Reduce outdoor watering. Takes effect when the S. Fork Eel River reaches 10cfs.**
2. **2nd phase---Stop all outdoor watering except for animals, vegetables or fruit. Commercial Agriculture Customers use alternative water source. Takes effect when S. Fork Eel River reaches 8cfs.**
3. **3rd phase---Water use on specific days, designated by GSD. Takes effect when the S. Fork Eel River reaches 7cfs.**
4. **4th phase---Water for personal health and safety only with no allowance for outside watering. Takes effect when the S. Fork Eel River reaches 5cfs**
5. Continual updates to customers will educate and inform of conditions
6. Ongoing: develop alternative water sources including, wells, springs, shared water with neighboring water districts including water hauling.
7. Ongoing: gray water education for irrigation
8. Ongoing: educate customers on personal water storage opportunities and conservation measures
9. Ongoing: leak monitoring and repairs
10. Ongoing: build additional water storage tanks or ponds
11. Identify all diversions from the river or GSD distribution system and report to law enforcement.

Ongoing: Participate in all drought planning forums to share ideas and planning strategies while developing partnerships on collaborative water projects and funding opportunities