

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

DIVISION OF WATER RIGHTS

ORDER WR 2020–0035-DWR

CEASE AND DESIST ORDER

**In the Matter of Unauthorized
Diversion by**

WEST WATER COMPANY

SOURCE: Underflow of the Russian River

COUNTY: Sonoma

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code (Water Code) section 1831, to issue a Cease and Desist Order (CDO), requiring West Water Company (West Water Co.), to cease and/or abate an ongoing, or a threatened, violation of Water Code section 1052.

Water Code section 1831, subdivision (d), states in part that the State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate the prohibition set forth in section 1052 against the unauthorized diversion or use of water, subject to Division 2 of the Water Code.

On March 2, 2020, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (Division), provided notice of the CDO against the West Water Co. for the violation and/or threatened violation of the prohibition against unauthorized diversion and 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 CDO in accordance with Water Code section 1831, et seq. State Water Board Resolution 2012-0029 authorizes re-delegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights (Assistant Deputy Director). This authority has been re-delegated.

BACKGROUND INFORMATION

1. West Water Co. is a community public water system serving a population of approximately 40 people through 13 service connections. Based on information West Water Co. provided in its Annual Reports to the Drinking Water Program, its connections serve residential houses and there are no connections for Multi-family Residential, Commercial/Institutional, Industrial, Landscape Irrigation, or Agricultural Irrigation. The system is located north of the city of Cloverdale, California.
2. West Water Co. is the owner of License 6779, which allows for the diversion of water for domestic and recreational purposes. The source of water for Licensee 6779 is underflow from the Russian River. License 6779 is limited to 6,500 gallons per day to be diverted from January 1 to December 31 of each year. This amounts to a maximum annual diversion amount of 2,372,500 gallons, (approximately 7.28-acre feet).
3. On November 10, 1999, the California Department of Public Health, Drinking Water Division (CDPH) conducted an inspection of the West Water Co. facilities.
4. On November 19, 1999, CDPH sent a letter documenting the findings of the inspection and outlined actions that must be taken by the West Water Co. to ensure continued compliance with drinking water regulations (Attachment A). CDPH required West Water Co. to complete the following actions:
 - a. Conduct additional water quality sampling of the drinking water well, and to forward the results of the additional sampling to CDPH for review.
 - b. Conduct sampling of the treated water for bacteriological quality and for turbidity on a weekly basis during the months of January, February, and March of the following year, and provide by 10th of February, March, and April of 2000, respectively.
 - c. Come into compliance with Title 22 of the California Code of Regulations, section 64562 which requires that sufficient water shall be available from the distribution system to supply adequately the total requirements of all users under maximum demand conditions
5. On June 2, 2010, CDPH conducted an inspection of the West Water Co. facilities.
6. A June 28, 2010 inspection report noted that West Water Co. continued to violate Title 22 of the California Code of Regulations, section 64562 by failing to have sufficient storage capacity in order to adequately provide the water to all users under maximum demand conditions. The June 28, 2010 inspection report directed West Water Co. to come into compliance by increasing the amount of storage to at least 24,000 gallons.

7. On February 20, 2014, CDPH conducted an inspection of the West Water Co. facilities.
8. On April 7, 2014, CDPH issued an inspection letter, directing West Water Co. to fix the violations observed by staff during the June 2, 2010 and February 20, 2014 inspections. CDPH noted in the report that West Water Co. did not comply with the directives from the November 19, 1999 inspection report nor the June 28, 2010 inspection report.
9. On December 7, 2018, the State Water Board's Division of Drinking Water (DDW)¹ issued Compliance Order 02-18-18R-008 to address the West Water Co.'s continued lack of storage capacity, failing well facilities, and lack of metering devices on service connections (Attachment B). The compliance order directed West Water Co. to:
 - a. Replace the failing well facilities,
 - b. Install a sampling tap, and conduct source assessment monitoring,
 - c. Cease all new service connections until West Water Co has developed the storage capacity necessary comply with Section 64554, Title 22 of the California Code of Regulations (at least 25, 2000 gallons), and
 - d. Provide an inventory of all service connections without meters.

The Compliance Order also noted that while West Water Co. reports a maximum daily demand of 25,200 gallons, License 6779 only permits 6500 gallons per day. DDW confirmed West Water Co.'s licensed per day diversion with the Division and informed the Division that West Water Co. may be diverting more water than allowed under License 6779.

10. On April 5, 2019, after determining that West Water Co. had not complied with the December 7, 2018 Compliance Order, DDW issued Citation 02_18_19C_029. This Citation reiterated the directives of the December 7, 2018 Compliance Order and warned of potential monetary penalties associated with further enforcement.
11. On September 4, 2019, after DDW determined that West Water Co. continued to fail to comply with the December 7, 2018 Compliance Order, and the April 5, 2019 Citation, DDW issued Citation 02_18_19C_061. Again, the citation warned of potential monetary penalties associated with continued noncompliance.
12. On January 23, 2020, DDW issued Citation 02_18_20C_002, for West Water Co.'s

¹ The California Department of Public Health, Drinking Water Division became a Division in the State Water Board, known as the Division of Drinking Water, on July 1, 2014.

continued violation of all previous citations and Compliance Orders and assessed a penalty of \$4532.

INVESTIGATION

1. The Division of Water Rights (Division) initiated its investigation on March 22, 2019 after DDW notified the Division about Compliance Order 02-18-18R-008.
2. On October 24, 2019, the Division issued a Notice of Violation (NOV) to West Water Co. for failure to accurately report the amount of surface water diverted and for diversion in excess of the amount authorized under License 6779. Specifically, the NOV noted the following alleged violations:
 - a. The annual diversion and use reports (sometimes referred to as Reports of Licensee) filed by West Water Co. with the Division for the water years 2014 through 2018 state that no diversion of water occurred under License 6679 at all (Attachment C). The annual diversion and use reports conflict with the water use reports West Water Co. filed with DDW which claim that West Water Co diverted: 2,369,800 gallons in 2014; 302,271 gallons in 2015; 293,500 gallons in 2016; 2,048,000 gallons in 2017; and 210,670 gallons in 2018.
 - b. The water use reports submitted to DDW, if accurate, show diversion in excess of the amount permitted by the License 6779. West Water Co. reported to DDW that between 2010 and 2017, there was at least one day per year that diversion amounts exceeded 6,500 gallons. Moreover, West Water Co. reported that its annual diversion of water routinely exceeds the yearly maximum amount of water allowed under License 6779 of 2,372,500 gallons (Attachment D).
3. On November 18, 2019, Division Staff had a teleconference with Thomas Johnson, the owner and operator of West Water Co., to discuss what actions West Water Co. was taking to cease the unauthorized diversions detailed in the Division's October 24, 2019 NOV. Mr. Johnson indicated that West Water Co. would not confirm that West Water Co. would comply with the NOV by ceasing diversion of water in excess of the amount allowed under License 6779, and acknowledged that West Water Co.'s continued unauthorized diversion generated a significant profit for West Water Co.. Mr. Johnson explained that the majority of the water that is diverted in excess of the licensed amount is being sold for such uses as filling recreational swimming pools, a use that is authorized as a recreational beneficial use by License 6779, and irrigating commercial agricultural, a use that is not authorized by License 6779. Division staff reiterated to Mr. Johnson that License 6779 does not authorize the

diversion and use of water for irrigation, and that if West Water Co. continued diverting in excess of 6500 gallons per day and for purposes other than as authorized in Licensed 6779 formal enforcement action may be necessary.

4. In an email dated December 18, 2019 (Attachment E), DDW informed the Division that West Water Co. experiences a maximum daily demand of 15,000 – 25,000 gallons per day. The February 20, 2014 inspection report issued by DDW indicated that based on most 10-year annual reports, the average maximum daily demand is estimated to be 23,850 gallons per day.
5. To date, West Water Co. has not taken the corrective actions detailed in the Division's NOV. The Division's October 24, 2019 NOV informed West Water Co. that two corrective actions needed to be taken: 1) Amend the Report of Licensee for year 2014 through 2018 under License 6779 to reflect actual diversion amounts; and 2) Cease unauthorized diversions immediately. West Water Co. has not informed the Division on what actions are being taken to ensure that the unauthorized diversion in excess of its licensed amount ceases.
6. The West Water Co. has diverted and used water from the underflow of the Russian River to service a small community with water for drinking water, recreation, and irrigation, at a rate that exceeds the authorized amount under License 6779. Irrigation is not permitted under License 6779. The continued diversion in excess of the amount stated in License 6770 constitutes either a violation or a threatened violation of the prohibition against unauthorized diversion or use of water under Water Code section 1052, which states that the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 of the Water Code is a trespass.

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

1. West Water Co. shall immediately cease and desist any diversion and use of water from the Underflow of the Russian River for any beneficial use other than Domestic.
2. Within 30 days of the date of adoption of this CDO, West Water Co shall submit a draft compliance plan for review and approval by the Division that details what actions will be taken to ensure that water is only being used for domestic and recreational purposes.
3. Within 60 days of the final compliance plan approval date, the Diverter must implement the compliance plan.

Consequences of Non-Compliance

Failure to comply with the requirements of this Order is a violation of this CDO and West Water Co. may be subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO may be referred to the Attorney General to take further injunctive enforcement actions as described in Water Code section 1845, subdivision (a):

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon 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.

Failure to comply with this Order may subject West Water Co. to the imposition of an administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(B), in the amount not to exceed \$1,000 for each day in which the violations occur during a non-drought year. In a period for which the Governor has issued a proclamation of state of emergency based on drought conditions, West Water Co. is subject to the imposition of administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(A), in the amount not to exceed \$10,000 for each day in which the violations occurs.

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 the West Water Co for unauthorized diversion or use of water in violation of Water Code section 1052.

Regulatory Changes

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

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse West Water Co. from meeting any additional regulatory requirement that may be imposed by other local, state or federal regulatory entities for corrective actions taken by West Water Co. to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD

*Julé Rizzardo, Assistant Deputy Director
Division of Water Rights*