

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

DIVISION OF WATER RIGHTS

ORDER WR 2013-0XXX-DWR

CEASE AND DESIST ORDER

In the Matter of Violation of Annual Use Reporting Requirements by

City of San Jose
(License 1789, Application 5156)

SOURCE: North Fork Penitencia Creek

COUNTY: Santa Clara

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring City of San Jose (referred to herein as Licensee) to cease and/or abate a threatened or ongoing violation of the terms and conditions of your License.

Licensee is alleged to have violated or is threatening to violate California Water Code section 1052 and/or License terms for which section 1831 (d) provides, in part:

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 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.*

On {DATE}, 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 Licensee for the violation of the terms and conditions of your License and/or Chapter 2, Article 20, section 847 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 CDO in accordance with 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. 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 Licensee reporting requirements is codified at Title 23, Chapter 2.7, Article 2, sections 925 and 929 of the California Code of Regulations.

2. On January 30, 2013, the Division mailed out a notice to the Licensee notifying of: the annual use reporting requirements, instructions on how to access the RMS system and submit their 2012 annual use report online. The Licensee was also notified that if they had any questions on the reporting process, they could contact the Division by phone or email. The deadline to submit their 2012 use report online was June 30, 2013.
3. As of August 22, 2013, the Division has not received the Licensee's 2012 annual use report.

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

1. Licensee shall immediately come into compliance with the terms of the License by submitting their 2012 annual use report by accessing the Report Management System at www.waterboards.ca.gov/RMS using the User ID and Password shown on the User Information Sheet accompanying this CDO.

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 the Division staff noted on the letter accompanying this CDO.

Consequences of Non-Compliance

In the event Licensee fails to comply with the requirements of this Order, Licensee shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability pursuant to 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 Licensee for unauthorized diversion of water in accordance with Water Code section 1052.

Regulatory Changes

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

STATE WATER RESOURCES CONTROL BOARD

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

Dated: **AUGUST 22, 2013**