

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

ORDER WR 2008 - 0020 - EXEC

In the Matter of the Diversion and Use of Water by
REDWOOD TERRACE MUTUAL WATER SYSTEM

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 SWRCB) following the issuance of a notice of proposed Cease and Desist Order (CDO) to the Redwood Terrace Mutual Water System (Redwood). In accordance with the attached Settlement Agreement, the State Water Board's Division of Water Rights (Division) prosecution team (Prosecution Team) and Redwood have agreed to settle this matter in lieu of proceeding to a hearing. The issuance of a decision or order pursuant to a settlement agreement is authorized under Government Code section 11415.60. The settlement is approved.

2.0 BACKGROUND

Redwood currently serves 26 parcels within a community located near Highway 84, about five miles east of San Gregorio. The Prosecution Team has concluded that Redwood is diverting water from San Gregorio Creek during the period of November 1 to May 31 of each water year and use of that water on non-riparian parcels or on riparian parcels in excess of 1500 gallons per day is an unauthorized diversion and use of water.

The Prosecution Team provided Redwood with notice of the CDO by certified letter dated October 30, 2007. The CDO ordered Redwood to cease its unauthorized diversions by November 1, 2007, or pursue one or both of two schedules of corrective actions designed to

¹ SWRCB Resolution No. 2002 - 0104 delegates to the Executive Director the authority to issue a decision or order by settlement of the parties under Government Code section 11415.60.

bring Redwood into compliance with applicable water rights statutes and regulations. Redwood requested a hearing on the CDO from the State Water Board by letter dated November 15, 2007.

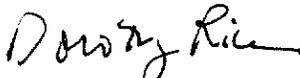
3.0 SETTLEMENT AGREEMENT

Redwood and the Prosecution Team have engaged in settlement discussions and reached an agreement on CDO language that is mutually acceptable and is contained in the revised CDO that is Exhibit A of the Settlement Agreement attached hereto (Revised CDO). The general terms of the settlement are that Redwood will, in exchange for the Prosecution Team issuing the Revised CDO: (1) revoke its request for a hearing; (2) agree not to challenge the issuance of the Revised CDO; and (3) comply with the terms of the revised CDO.

ORDER

IT IS HEREBY ORDERED THAT the attached Settlement Agreement between the Division's Prosecution Team and Redwood is approved and is incorporated by reference into this Order.

Dated: **APR - 8 2008**


Dorothy Rice
Executive Director

Attachment

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between the State Water Resources Control Board (State Water Board or SWRCB), Division of Water Rights prosecution team (Prosecution Team) through James W. Kassel, Assistant Deputy Director for Water Rights and Redwood Terrace Mutual Water Systems (Redwood) through its authorized representative, Ms. Dana O'Neill (collectively, the "Parties"). The Parties enter into this Settlement Agreement because it is their collective desire to settle the issues related to the unauthorized diversion of water from San Gregorio Creek, as described in the proposed Cease and Desist Order (CDO) noticed on October 30, 2007, without a hearing. This Settlement Agreement will be submitted to the Executive Director of the State Water Board for approval and adoption pursuant to Government Code section 11415.60 as a decision by settlement.

THE UNDERSIGNED PARTIES EXECUTE THIS SETTLEMENT AGREEMENT WITH REFERENCE TO AND IN CONTEMPLATION OF THE FOLLOWING FACTS:

1. The State Water Board is authorized under Water Code section 1831, subdivision (a), to issue a cease and desist order when it determines that any person is violating, or threatening to violate, the statutory prohibition against the unauthorized diversion or use of water, a permit term or condition, or a decision or order of the State Water Board. (Wat. Code, § 1831, subs. (a), (d).)
2. Redwood currently serves 26 parcels within a community located near Highway 84, about five miles east of San Gregorio. The Prosecution Team had concluded that Redwood is diverting water from San Gregorio Creek during the period of November 1 to May 31 of each water year and use of that water on non-riparian parcels or on riparian parcels in excess of 1500 gallons per day is an unauthorized diversion and use of water.
3. The Prosecution Team provided Redwood with notice of the CDO by certified letter dated October 30, 2007. The CDO orders Redwood to cease its unauthorized diversions by November 1, 2007, or pursue one or both of two schedules of corrective actions designed to bring Redwood into compliance with applicable water rights statutes and regulations.
4. Redwood requested a hearing on the CDO from the State Water Board by letter dated November 15, 2007.
5. The Parties, through their respective representatives, subsequently engaged in settlement discussions and reached an agreement on CDO language that is mutually acceptable and is contained in the revised CDO attached hereto as Exhibit A (Revised CDO).
6. The general terms of the settlement are that Redwood will, in exchange for the Prosecution Team issuing the Revised CDO: (1) revoke its request for a hearing; (2) agree not to challenge the Revised CDO; and (3) comply with the terms of the Revised CDO.

SETTLEMENT AGREEMENT
Redwood Terrace Mutual Water System

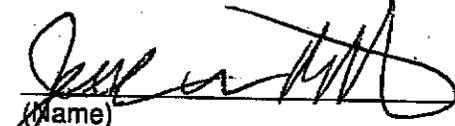
NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Redwood covenants and agrees that its request for hearing will be deemed withdrawn on the effective date of this Settlement Agreement. Redwood also agrees that receipt of this settlement offer serves as notice in accordance with Water Code section 1832 that the Revised CDO is being proposed by the Prosecution Team in accordance with the terms of this Settlement Agreement and Redwood waives any rights it may have to a hearing on the Revised CDO, including the 20-day period to request a hearing afforded under Water Code section 1834.
2. The Parties agree that they will not contest or otherwise challenge this Settlement Agreement or the Revised CDO, issued with this Settlement Agreement, before the State Water Board or any court.
3. The Parties agree that the Revised CDO is adopted by the State Water Board in accordance with Water Code section 1831 et seq, once the Executive Director issues an order approving this Settlement Agreement.
4. The State Water Board, in its discretion, reserves the right to initiate enforcement proceedings for any violation of the terms of this Settlement Agreement, the Revised CDO, or as otherwise permitted by law.
5. Miscellaneous:
 - A. *Independent Judgment.* Each party represents and declares that in executing this Settlement Agreement it relies solely on its own judgment, belief, and knowledge concerning the nature, extent, and duration of its rights and claims, and that it has not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations or statements regarding any matters made by the other parties hereto or by any person representing them.
 - B. *Additional Documents.* Each party agrees that it will cooperate fully in executing any additional and further documents necessary to give full effect to this Settlement Agreement.
 - C. *Entire Agreement.* This Settlement Agreement contains the entire agreement between the parties and supersedes and replaces 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. This Settlement Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Settlement Agreement. All material modifications must be in writing and signed by the Parties.

SETTLEMENT AGREEMENT
Redwood Terrace Mutual Water System

- D. *Mutual Agreement.* The Parties have agreed to the particular language in this Settlement Agreement, and this Settlement Agreement shall not be construed against the party that drafted this Settlement Agreement or any portion of this Settlement Agreement.
- E. *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.
- F. *Reasonableness of Settlement.* The Parties represent and warrant that this Settlement Agreement is made in good faith and in full recognition of the implications of such agreement.
- G. *Section Headings.* The Parties intend that the section headings of this Settlement Agreement be used solely for convenience of reference and that they shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of this Settlement Agreement.
- H. *Effective Date.* This Settlement Agreement and the Revised CDO shall become effective immediately on adoption of the State Water Board Executive Director's order approving the Settlement Agreement.
- I. *Choice of Law.* This Settlement Agreement shall be interpreted and governed by the laws of the State of California and of the United States.
- J. *Authorization.* Each party warrants that the individual executing this Settlement Agreement on behalf of such party is duly authorized to do so.

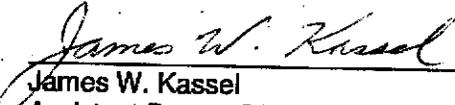
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.



(Name)
Attorney

(Title)
Redwood Terrace Mutual Water System

Date: 4-1-08



James W. Kassel
Assistant Deputy Director for Water Rights
Division of Water Rights Prosecution Team
State Water Resources Control Board

Date: 4/2/08

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

DIVISION OF WATER RIGHTS

In the Matter of Unauthorized Diversion by
Redwood Terrace Mutual Water System
Revised Cease and Desist Order

SOURCE: San Gregorio Creek thence Pacific Ocean

COUNTY: San Mateo County

The State Water Resources Control Board (State Water Board or SWRCB) is authorized under California Water Code section 1831 to issue a cease and desist order (CDO) 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 diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.¹
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the State Water Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, 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 October 30, 2007, 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 Redwood Terrace Mutual Water System (Redwood) for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. By letter dated November 15, 2007, Redwood requested a hearing on the CDO. In lieu of a hearing, Redwood and the Division agreed to settlement based on this revised CDO.

FACTS AND INFORMATION

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

1. Redwood currently serves 26 parcels within a community located near Highway 84, about five miles east of San Gregorio (Redwood Terrace Community).
2. Records of the San Mateo County Assessor's Office show that Redwood is the current owner of Assessor's Parcel Number 082-040-030 (Property). Two wells installed near the bank of San Gregorio Creek are located on the Property, one of which is abandoned.
3. The State Water Board adopted the Order of Determination for the San Gregorio Creek Stream System in April of 1989 (WR 89- 29) (Order). The Order requires that unpermitted applications

¹ Water Code section 1052, subdivision (a), states that "The diversion or use of water subject to this division other than as authorized in this division is a trespass."

presently before the State Water Board and applications for future appropriative rights from San Gregorio Creek must meet recommended minimum bypass flows, unless those applicants can show that the proposed diversion will not adversely affect fisheries, wildlife, and other instream and public trust uses in the San Gregorio Creek Stream System.

4. During the San Gregorio Creek Adjudication (decree dated January 29, 1993) (Decree), the San Mateo County Superior Court made the formal finding that 37 parcels at the Redwood Terrace Community had no reserved riparian rights. The Court also made the determination that the well water being extracted by Redwood is subject to the permitting authority of the State Water Board.
5. The Decree gave Redwood until September 30, 1994 to obtain additional water rights to divert and use water from San Gregorio Creek or secure an alternative water source. Under the Decree, if Redwood was unable to secure water through a water right transfer, then it was required to complete specific tasks before September 30, 1994, to identify and develop an alternative water source, and construct the works necessary to supply water from that source to the Redwood Terrace Community. Alternatively, the Decree gives Redwood the option of applying to the Court to receive a time extension to allow Redwood to continue to serve its customers from the existing point of diversion on San Gregorio Creek for such period as may be reasonably required upon a showing of good cause by Redwood. Redwood has not been successful in obtaining a year-round water transfer or developing an alternative water source, nor has it applied to the Court for a time extension.
6. Redwood currently diverts water under a transfer agreement that allows it to use adjudicated entitlements from other water right holders within the San Gregorio Creek watershed during the period from June 1 to October 31 of each year (Transfer Agreement). On April 5, 1993, Redwood also filed Application 30241 with the Division seeking to divert 13,000 gallons of water per day from November 1 to May 31 of the following year for domestic use.
7. On October 24, 2001, and again on December 5, 2006, Division staff conducted field visits to the Property and determined that water diversion and use was occurring from one of the two wells located on the Property.
8. Redwood failed to respond to numerous requests from the Division to provide information that the Division considered essential to processing Application 30241. Specifically, Redwood failed to provide sufficient information to demonstrate that the proposed diversion will not adversely affect fisheries, wildlife, other instream and public trust use, and to demonstrate compliance with Fish and Game Code requirements and the federal Endangered Species Act. Accordingly, on January 19, 2007, Application 30241 was cancelled for failure to diligently pursue processing of the application to divert water from San Gregorio Creek.
9. On January 30, 2007, Division staff completed and released a compliance report that concluded that 23 of the parcels within the Redwood Terrace Community have no basis of right for diversions of water that occur from November 1 to May 31 of each water year. Redwood claims to exercise Decreed riparian rights totaling 1500 gallons per day on behalf of property owners within the Redwood Terrace Community. The water diverted by Redwood from San Gregorio Creek during this period and used on non-riparian parcels or on riparian parcels in excess of 1500 gallons per day is subject to the State Water Board's permitting authority.
10. Based on the findings in the report, Redwood requested a meeting on April 26, 2007 to discuss plans to achieve compliance. During the meeting, Redwood informed the Division that it had recently reached an impasse in negotiations to purchase water from an adjudicated water right holder for the period of November 1 to May 31. Redwood was relying on this potential water sale to meet its water needs during that period so that it would not have to pursue a water right from the State Water Board for its current diversions. Redwood has subsequently reinitiated efforts to

explore and develop groundwater as an alternate source to the current unauthorized San Gregorio Creek diversions.

11. On October 30, 2007, the Division provided notice of the CDO against Redwood for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.
12. By letter dated November 15, 2007, Redwood requested a hearing on the proposed CDO. In lieu of an evidentiary hearing, Redwood and the Division's Prosecution Team agreed to settlement consistent with this revised CDO.
13. In accordance with the terms of the revised CDO, as discussed in the settlement, by letter dated February 20, 2008, Redwood identified the alternate source(s) of domestic water supply it will develop to prevent future unauthorized diversions of water.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that Redwood shall cease the unauthorized diversion of water from San Gregorio Creek by May 31, 2008, and shall develop a long term alternative domestic water supply sufficient to serve the existing Redwood Terrace Community residences for the period from November 1 of each year to May 31 of the succeeding year as follows:

1. By letter dated March 14, 2008, Redwood submitted to the Division for approval a schedule for the development of its alternative drinking water source(s). The Assistant Deputy Director for Water Rights (Assistant Deputy Director) found the schedule deficient because: (a) the schedule does not identify time frames for applying for and receiving all necessary approvals from other county or state agencies; (b) the schedule does not identify the firm or agency that will test the water quality from the alternate source(s) and approve the source(s) as acceptable drinking water supplies; (c) the schedule only provides for one flow measurement per source to determine the flow rate reliability for that source; (d) the schedule does not identify dates for installation of flow meters on all sources of water; and (e) the schedule does not identify when the alternate sources will be connected to serve the Redwood Terrace Community. Redwood shall revise its schedule to address these deficiencies and submit a revised schedule to the Assistant Deputy Director by **April 1, 2008**.
2. Redwood shall submit quarterly progress reports to the Division, with the first progress report being due by **April 1, 2008**, and continuing until the Division instructs otherwise. The progress reports shall identify the individual sources of water used to serve the Redwood Terrace Community, the amount of water diverted from each of the identified sources, the population and number of residences served, and the status of development of each alternate source, including a summary of accomplishments made each quarter.
3. Redwood shall conduct a hydro-geologic assessment and source development study, including aquifer and water quality tests, and other appropriate assessments, to demonstrate that the alternate source(s) can supply a sufficient quantity of domestic water to satisfy the full water demand of the Redwood Terrace Community from at least November 1 of each year to May 31 of the succeeding year. A technical report, including a map of the developable areas, and presenting the results of the hydro-geologic assessment and source development study, shall be submitted to the Division by **April 30, 2008**. The report is subject to approval by the Assistant Deputy Director in regard to its completeness. The hydro-geologic assessment must be certified by a registered civil engineer or other qualified hydrologist.
4. If Redwood maintains the existing well(s) in San Gregorio Creek for the purpose of diverting water during the period from November 1 to May 31 of subsequent water years, Redwood shall by **June 1, 2008**, provide the Deputy Director for Water Rights (Deputy Director) with copies of the agreements allowing Redwood to divert water under those right(s) on behalf of the legitimate right holder(s). Redwood shall also submit, by the same date, a plan for weekly metering and

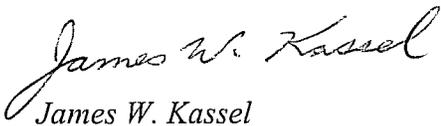
quarterly reporting of water diverted from each such well and of the amounts delivered to each property owner. If pumping from the wells is to make use of Decreed riparian rights, then the monitoring plan shall have sufficient safeguards to prevent the weekly total diversion of water from the San Gregorio Creek well(s) from exceeding the weekly amounts delivered to the property owners having Decreed water rights to San Gregorio Creek.

5. Redwood shall enter a contract for construction of the collection, storage, treatment, and delivery system of the alternative source and provide the Division with a copy of that contract by **June 1, 2008**. System startup and troubleshooting shall be completed by **November 1, 2008**, unless a written request for an extension is granted prior to **November 1, 2008** by the Deputy Director. A request for extension shall only be granted upon such conditions as the Deputy Director determines to be in the public interest and upon a showing that Redwood has exercised due diligence.
6. On or before **November 1, 2008**, Redwood shall provide water from the alternate source(s) to the Redwood Terrace Community during the period from November 1 to May 31 of each year, unless a request for extension is granted in accordance with paragraph 5.
7. Six months prior to the last day for renewal of or the expiration of the Transfer Agreement, Redwood shall submit evidence of a valid basis of right for continued diversion of water from San Gregorio Creek during the period from June 1 to October 31 of each year. If Redwood is unable to provide such evidence, then Redwood shall submit by the same date plans for approval by the Deputy Director proposing: a) how it will continue to meet the domestic needs of the Redwood Terrace Community during the period June 1 to October 31 of each year; and b) how it will decommission any wells in the creek from which Redwood does not have a valid right to divert.

In the event that Redwood fails to comply with the requirements of the above requirements and time schedules, Redwood shall be in violation of this revised CDO and subject to monetary penalties and further enforcement actions as described below:

FAILURE OF ANY PERSON TO COMPLY WITH A CDO ISSUED BY THE STATE WATER BOARD PURSUANT TO THIS CHAPTER MAY SUBJECT THAT PERSON TO FURTHER ENFORCEMENT ACTION, INCLUDING ASSESSMENT OF CIVIL LIABILITY OF UP TO ONE THOUSAND DOLLARS A DAY AND REFERRAL TO THE ATTORNEY GENERAL FOR THE ISSUANCE OF PROHIBITORY OR MANDATORY INJUNCTIVE RELIEF AS APPROPRIATE, INCLUDING A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, OR PERMANENT INJUNCTION. (WAT. CODE, § 1845, SUBD. (A).)

STATE WATER RESOURCES CONTROL BOARD



James W. Kassel
Assistant Deputy Director for Water Rights

Dated: **APR - 2 2008**