



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights



Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

Garrapata Water Company, Inc.

Garrapata Creek Thence Pacific Ocean in Monterey County

The State Water Resources Control Board will hold a
Public Hearing to Determine Whether to Adopt a
Cease and Desist Order
and Impose an
Administrative Civil Liability Complaint
Against
Garrapata Water Company, Inc.

The **Public Hearing**
will commence on
Monday, February 22, 2010
at **9:00 a.m.**

in the
Coastal Hearing Room
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor
Sacramento, CA

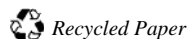
PURPOSE OF HEARING

The State Water Resources Control Board (State Water Board or Board) will hold this hearing to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO) and an Administrative Civil Liability Complaint (ACL Complaint) issued on June 10, 2008 against Garrapata Water Company, Inc. (GWC).

BACKGROUND

When the State Water Board determines that any person is violating, or threatening to violate certain water-right-related requirements, the Board may issue an order to that person to cease and desist from that violation. (Water Code § 1831, subdivisions. (a), (d).) The State Water Board may issue such a cease and desist order only after notice and an opportunity for hearing. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing.

California Environmental Protection Agency



Water Code section 1052, subdivision (b), provides that the State Water Board may administratively impose civil liability in an amount not to exceed \$500 for each day of an unauthorized diversion or use of water as defined in Water Code section 1052, subdivision (a). Water Code section 1055, subdivision (a), authorizes the Executive Director of the State Water Board to issue a complaint to any person on whom administrative civil liability may be imposed under section 1052.¹ If the recipients do not timely request a hearing, the Deputy Director for Water Rights may issue an order.

On June 10, 2008, the Deputy Director for Water Rights issued the ACL Complaint and draft CDO against GWC for the alleged violation of Water Code section 1052. The basis of the ACL Complaint and draft CDO is GWC's alleged unauthorized diversion and use of water from the Garrapata Creek tributary to the Pacific Ocean in Monterey County, between 2000 and 2006, in violation of the terms and conditions of Permit 21010 (Application 29664). The ACL Complaint proposes imposition of liability in the amount of \$14,400. The draft CDO requires GWC to comply with the terms and conditions of Permit 21010 and with the corrective actions and time schedules specified in the draft CDO.

A copy of the ACL Complaint and the draft CDO are enclosed with this notice and can be viewed on the Division of Water Rights' website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/garrapata/ .

By letter dated June 19, 2008, GWC requested a hearing on the ACL Complaint and draft CDO.

KEY ISSUES

1. Should the State Water Board adopt the draft CDO issued on June 10, 2008? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order, and what would be the basis for such modifications?
2. Should the State Water Board order liability in response to the June 10, 2008 ACL Complaint issued against Garrapata Water Company, Inc? If the State Water Board orders liability, should the amount be increased or decreased, and if so, on what basis?

HEARING OFFICER AND HEARING TEAM

State Water Board Members Arthur G. Baggett, Jr., and Frances Spivy-Weber will preside as co-hearing officers over this proceeding. State Water Board staff hearing team members will include Nathan Jacobsen, Staff Counsel; Ernest Mona, Water Resource Control Engineer; and Jane Farwell, Environmental Scientist. The hearing team will assist the hearing officer and other members of the State Water Board throughout this proceeding.

SEPARATION OF FUNCTIONS

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include David Rose, Staff Counsel; and Mark Stretars, Senior Water Resource Control Engineer.

¹ By memorandum dated May 17, 1999, the Executive Director of the State Water Board delegated this authority to the Chief of the Division (Deputy Director). This authority may be and has been redelegated to the Assistant Deputy Director for Water Rights.

The prosecution team is separated from the hearing team and is prohibited from having *ex parte* communications with the hearing officer, other members of the State Water Board, and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. **If GWC fails to submit a Notice of Intent to Appear by the deadline specified in this notice, GWC will have waived its opportunity for a hearing on this matter and the State Water Board will cancel the hearing.**

Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, qualifications, and statement of service** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

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|--|---|
| 12 Noon, Wednesday, January 6, 2010 | Deadline for receipt of Notice of Intent to Appear. |
| 12 Noon, Thursday, February 4, 2010 | Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, qualifications, and statement of service. |

SUBMITTALS TO THE WATER BOARD

Notices of Intent to Appear, written testimony, and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention: Ernest Mona
P.O. Box 2000
Sacramento, CA 95812-2000
Phone: (916) 341-5359
Fax: (916) 341-5400
Email: wrhearing@waterboards.ca.gov

With Subject of "**Garrapata Water Company ACL/CDO Hearing**"

IF YOU HAVE ANY QUESTIONS

During the pendency of this proceeding, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Nathan Jacobsen at (916) 341-5181, or by email to njacobsen@waterboards.ca.gov; or Ernest Mona at (916) 341-5359, or by email to emona@waterboards.ca.gov.

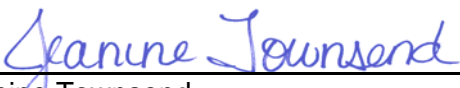
PARKING, ACCESSIBILITY AND SECURITY

A map to the Joe Serna Jr./Cal-EPA Building and parking information are available at <http://www.calepa.ca.gov/EPABldg/location.htm> . The Joe Serna Jr./Cal-EPA Building is accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

December 15, 2009

Date



Jeanine Townsend
Clerk to the Board

Enclosures

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

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Unauthorized Diversion by the

GARRAPATA WATER COMPANY

SOURCE: Garrapata Creek thence Pacific Ocean

COUNTY: Monterey County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Garrapata Water Company (GWC) is alleged to have violated Water Code section 1052, subdivision (a), which states:

"The diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass."
2. Water Code section 1052, subdivision (b), provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. 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. On May 17, 1999, the Executive Director delegated to the Deputy Director for Water Rights the authority to issue a complaint to impose an ACL under Water Code section 1055, subdivision (a). Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized 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. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director of Water Rights. This authority has been redelegated.

ALLEGATIONS

4. The following facts provide the basis for the alleged trespass:
 - a) On February 21, 1990, GWC filed Application 29664 with the Division of Water Rights (Division). GWC sought to divert water at a rate of 0.11 cubic foot per second (cfs) totaling 81 acre-feet per annum (AFA) from the underflow of Garrapata Creek by means of direct diversion. The water would be used for municipal and irrigation purposes.
 - b) The Division distributed a notice of the application to interested parties on January 3, 1992, and the application was protested by three parties. The protests related to riparian property rights, riparian habitat, and steelhead and other fishery concerns all dependent upon adequate year-round flows.
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- c) A hearing was requested by GWC's owner, Donald Layne, dated July 14, 1997. The hearing was to determine: 1) whether the water in the alluvium of the valley of Garrapata Creek is part of a subterranean stream flowing through a known and definite channel therefore within the State Water Board's permitting authority; 2) whether the project is exempt from the California Environmental Quality Act (CEQA); and 3) whether Application 29664 should be approved and what conditions should apply.
- d) During the hearing, the Department of Fish and Game (DFG) was concerned with the possible significant impact to steelhead trout from GWC's diversion of water. At that time, steelhead trout were listed as threatened pursuant to the federal Endangered Species Act and were a State Species of Special Concern. The evidence in the Division's record indicates that steelhead trout reside in Garrapata Creek. (DFG Exhibit 6, p. 2; DFG Exhibit 7, P.1; DFG Exhibit 8; DFG Exhibit 9, p.4; T1, 164: 17-21; T11, 343: 1-S.) Relatively minor changes in the environment that would be considered insignificant elsewhere may constitute significant impacts where they would adversely affect an endangered species. Southern Steelhead are still listed as a State Species of Special Concern and a threatened species pursuant to the federal Endangered Species Act.
- e) Decision 1639, issued June 17, 1999, concluded that GWC was diverting water from the subterranean stream of Garrapata Creek within the State Water Board's permitting authority, and Application 29664 was not categorically exempt from CEQA unless GWC modified its project to limit the amount of water in its application to existing use of 35 AFA. By letter dated June 18, 1999, GWC requested that its application be reduced from 81 AFA to 35 AFA.
- f) Division Decision 99-01, issued on September 24, 1999, approved issuance of a permit pursuant to GWC's Application 29664 subject to the constraints of the CEQA exemption. The Decision authorized GWC to divert up to 35 AFA from the Garrapata Creek subterranean stream from January 1 to December 31 of each year. The maximum rate of diversion cannot exceed 0.11 cfs. To further ensure this diversion did not have an adverse effect on steelhead, the riparian habitat and other public trust resources within the lower portion of Garrapata Creek, the permit requires GWC to cease diversions if visible flow does not exist downstream of its point of diversion but does exist within 100 yards upstream.
- g) On October 13, 1999, GWC accepted Permit 21010. GWC is required to record meter readings on or about the first of each month and supply these readings to the State Water Board with its annual Progress Report by Permittee.
- h) Progress Reports by Permittee for Permit 21010 have been submitted to the Division annually reporting the amount diverted from 1999 to 2007. GWC failed to record meter readings for: July 2001, August and September 2002, March 2003, May and July through October 2004, February through May 2005, and November 2006. Additionally, except for year 2002, the annual diversion amounts reported by GWC have consistently exceeded the 35 AFA amount authorized by Permit 21010. GWC diversions in excess of 35 AFA are unauthorized diversions.
- i) GWC has been aware of these excess diversions and has failed to take any corrective actions to secure additional water rights, or to reduce unauthorized diversions. By letter dated February 9, 2008, Donald and Barbara Layne, owners of GWC, wrote to their fellow property owners and stated that, "Except for one year, we (GWC) have always exceeded the 35 acre foot limitation. In 2007 we (GWC) used 40 acre feet of water." The letter states that there is no way to ensure compliance short of making all of the property owner's lives miserable with water rationing. The letter identifies that GWC's use of water in excess of the 35 AFA is known to the State Water Board and GWC has never received a letter from the State Water Board about the overuse. The Layne's state that, "Each of the property owners should continue to have the freedom to use the amount of water that we reasonably need without a penalty being imposed." Similarly, in the Garrapata Mutual Water Company Minutes dated August 27, 2006, Mr. Layne

interjected that these violations were of no concern to anyone; that these rules are never enforced; and the State Water Board does not care.

- j) GWC's continuing unauthorized diversion and use of water, repeated violation of its monthly record-keeping permit term, and lack of corrective action to prevent such violations support issuance of an ACL complaint in conformance with Water Code section 1052.

PROPOSED CIVIL LIABILITY

5. The basis of this complaint is GWC's unauthorized diversion and consumptive use of water from Garrapata Creek since the year 2000 in excess of the amount authorized by Permit 21010. This unauthorized diversion and use of water constitutes a trespass within the meaning of Water Code section 1052, subdivision (a).
6. The maximum civil liability that can be imposed by the State Water Board in this matter is \$500 for each day in which the trespass occurred. Between 2000 and 2006, GWC has made unauthorized diversions on at least 69 days, therefore, a maximum civil liability of \$34,500 could be considered (\$500 per day x 69 days) for the trespass.
7. In determining the amount of civil liability, Water Code section 1055.3 requires that the State Water Board consider 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 any corrective action taken by the violator. In this case, GWC directly diverted from Garrapata Creek in an excess of the 35 AF of water over the course of the last 6 out of 7 years and subsequently used that water for municipal purposes. GWC's continued unauthorized diversions have reduced the amount of water available for the southern steelhead trout fishery and other riparian habitat. While adverse impacts of unauthorized water diversions on the steelhead trout fishery have not been quantified for this case, unauthorized diversions of water have been shown to contribute to the cumulative impact of reducing habitat for steelhead trout. The State of California lists the southern steelhead as a species of special concern and the National Marine Fisheries Service, on August 18, 1997, listed the steelhead trout as threatened under the Federal Endangered Species Act. As of the date of this Complaint, Permittee has failed to take corrective actions.
8. GWC received an economic advantage over other legitimate water diverters in the area by foregoing the costs of buying the additional water or pumping groundwater from a well, foregoing the cost of filing for a water right, and foregoing the cost of annual water right fees assessed other water right permit holders. The Division estimates the avoided cost for obtaining 1 to 7 AF of water in the local area to be about \$1,400 annually and GWC would have had to divert an average of an additional 11.4 days each year at the authorized diversion rate to secure these amounts. Additionally, the Division estimates that its staff cost to review the existing project and develop the enforcement documents to be \$6,000. The water right filing fee for 7 acre-feet would be \$1,000 and the annual water right fee for the last 3 years would be \$303.
9. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of \$14,400. This liability amount is the minimum liability recommended by the Division, although the State Water Board may consider a different liability if this matter goes to hearing.

RIGHT TO HEARING

10. GWC may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this notice is received. (Water Code, § 1055, subd. (b).)

11. If GWC requests a hearing, it 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, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
12. If GWC 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 sections 100, 275, and 1050 et seq. of the Water Code and its responsibilities under the public trust doctrine. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
13. If GWC does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth in paragraph 9 above, to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000
14. If GWC does not request a hearing and does not remit the ACL, the State Water Board may seek recovery of the ACL as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD

**ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:**

*Victoria A. Whitney, Deputy Director
Division of Water Rights*

Dated JUN 10 2008

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

DIVISION OF WATER RIGHTS

In the Matter of Unauthorized Diversion by the
Garrapata Water Company
Cease and Desist Order WR 2008-00XX-DWR

SOURCE: Garrapata Creek thence Pacific Ocean

COUNTY: Monterey County

YOU ARE HEREBY GIVEN NOTICE THAT:

Garrapata Water Company (GWC) is alleged to have violated or is threatening to violate Water Code section 1831, which states:

The State Water Resources Control Board (State Water Board) is authorized 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.
- (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 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 CDO will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

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 GWC for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2007-0057, 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 in accordance with Water Code section 1831 et seq. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director of Water Rights. This authority has been redelegated.

FACTS AND INFORMATION

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

- 1) On February 21, 1990, GWC filed Application 29664 with the Division. GWC sought to divert water at a rate of 0.11 cubic foot per second (cfs) totaling 81 acre-feet per annum (AFA) from the underflow of Garrapata Creek by means of direct diversion. The water would be used for municipal and irrigation purposes.

- 2) The Division distributed a notice of the application to interested parties on January 3, 1992, and the application was protested by three parties. The protests related to riparian property rights, riparian habitat, and steelhead and other fishery concerns all dependent upon adequate year-round flows.
- 3) A hearing was requested by GWC's owner, Donald Layne, dated July 14, 1997. The hearing was to determine: 1) whether the water in the alluvium of the valley of Garrapata Creek is part of a subterranean stream flowing through a known and definite channel therefore within the State Water Board's permitting authority; 2) whether the project is exempt from California Environmental Quality Act (CEQA); and 3) whether Application 29664 should be approved and what conditions should apply.
- 4) During the hearing, the Department of Fish and Game (DFG) was concerned with the possible significant impact to steelhead trout from GWC's diversion of water. At that time, steelhead trout were listed as threatened pursuant to the federal Endangered Species Act and were a State Species of Special Concern. The evidence in the Division's record indicates that steelhead trout reside in Garrapata Creek. (DFG Exhibit 6, p. 2; DFG Exhibit 7, P. 1; DFG Exhibit 8; DFG Exhibit 9, p.4; T1, 164: 17-21; T11, 343: 1-S.) Relatively minor changes in the environment that would be considered insignificant elsewhere may constitute significant impacts where they would adversely affect an endangered species. Southern Steelhead are still listed as a State Species of Special Concern and a threatened species pursuant to the federal Endangered Species Act.
- 5) Decision 1639, issued June 17, 1999, concluded that GWC was diverting water from the subterranean stream of Garrapata Creek within the State Water Board's permitting authority; and Application 29664 was not categorically exempt from CEQA unless GWC modified its project to limit the amount of water in its application to existing use of 35 AFA. By letter dated June 18, 1999, GWC requested that its application be reduced from 81 AFA to 35 AFA.
- 6) Division Decision 99-01, issued on September 24, 1999, approved issuance of a permit pursuant to GWC's Application 29664 subject to the constraints of the CEQA exemption. The Decision authorized GWC to divert up to 35 AFA from the Garrapata Creek subterranean stream from January 1 to December 31 of each year. The maximum rate of diversion cannot exceed 0.11 cfs. To further ensure this diversion did not have an adverse effect on steelhead, the riparian habitat and other public trust resources within the lower portion of Garrapata Creek, the permit requires GWC to cease diversions if visible flow does not exist downstream of its point of diversion but does exist within 100 yards upstream.
- 7) On October 13, 1999, GWC accepted Permit 21010. GWC is required to record meter readings on or about the first of each month and supply these readings to the State Water Board with its annual Progress Report by Permittee.
- 8) Progress Reports by Permittee for Permit 21010 have been submitted to the Division annually reporting the amount diverted from 1999 to 2007. GWC failed to record meter readings for: July 2001, August and September 2002, March 2003, May and July through October 2004, February through May 2005, and November 2006. Additionally, except for year 2002, the annual diversion amounts reported by GWC have consistently exceeded the 35 AFA amount authorized by Permit 21010. GWC diversions in excess of 35 AFA are unauthorized diversions.
- 9) GWC has been aware of these excess diversions and has failed to take any corrective actions to secure additional water rights, or to reduce unauthorized diversions. By letter dated February 9, 2008, Donald and Barbara Layne, owners of GWC, wrote to fellow property owners and stated that, "Except for one year, we (GWC) have always exceeded the 35 acre foot limitation. In 2007 we (GWC) used

40 acre feet of water." The letter states that there is no way to ensure compliance short of making all of the property owner's lives miserable with water rationing. The letter identifies that GWC's use of water in excess of the 35 AFA is known to the State Water Board and GWC has never received a letter from the State Water Board about the overuse. The Layne's state that, "Each of us (the property owners) should continue to have the freedom to use the amount of water that we reasonably need without a penalty being imposed." Similarly, in the Garrapata Mutual Water Company Minutes dated August 27, 2006, Mr. Layne interjected that these violations were of no concern to anyone; that these rules are never enforced; and the State Water Board does not care.

- 10) GWC's continuing unauthorized diversion and use of water, repeated violation of its monthly record-keeping permit term, and lack of corrective action to prevent such violations support issuance of a CDO in conformance with Water Code section 1831.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that GWC shall take the following corrective actions and satisfy the time schedules outlined herein:

1. GWC shall immediately cease diverting any water in excess of the amounts prescribed in Permit 21010 until such time the State Water Board issues, or recognizes in writing, water rights sufficient to cover GWC's additional unauthorized diversions.
2. GWC shall within 60 days of the date of this order, provide a Compliance Plan for approval by the Assistant Deputy Director for Water Rights. The Plan shall include copies of all written records maintained in compliance with Term 9 of Permit 21010. The Plan shall describe the corrective actions GWC will take to ensure that average monthly diversion rates do not exceed 0.11 cfs, and annual amounts do not exceed 35 AFA. The Plan shall also identify how GWC will comply with all other terms and conditions of the permit. The Plan should identify any water conservation measures that are necessary and the time schedule for implementation of these conservation measures.
3. GWC shall submit monthly, beginning at the end of the month in which this order is adopted, a record of its weekly diversion amounts and observations of the upstream and downstream flow in the channel of Garrapata Creek made under the conditions of Permit 21010 and any measures it has taken to conserve water within its service area during the month. The records shall be submitted to the Assistant Deputy Director for Water Rights until directed otherwise.
4. If it is determined that additional water rights are required to meet GWC's existing demands, even with conservation measures, GWC shall file an application for additional water rights and diligently pursue processing of the application by satisfying all Division requests for information, environmental documents, maps, and fees within the designated time frames, or any extension of time granted by the Division.
5. GWC shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding modifications to monitoring of diversions or changes to plans submitted in compliance with this order and submit the changes within the time frame specified.

In the event that GWC fails to comply with the requirements, GWC shall be in violation of this 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
Division of Water Rights*

Dated:

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/laws_regulations.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to procedural requirements shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are Garrapata Water Company, Inc. and the Prosecution Team for the State Water Board. Other persons or entities wishing to participate as parties may do so only if authorized by the hearing officer. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file either an electronic copy or a paper copy of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear. Any faxed or emailed Notices of Intent to Appear must be followed by a mailed or delivered hard copy with an original signature.

The Notice of Intent to Appear must state: (1) the name and address of the participant; (2) the name of each witness who will testify on the participant's behalf; (3) a brief description of each witness' proposed testimony; and (4) an estimate of the time that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements,

written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. **All electronic and paper copies must be received by the State Water Board no later than the deadline stated in the hearing notice.** Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see section 5 for details regarding electronic submissions.

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received by the State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.**

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements; written policy statements; written testimony; exhibits; and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe Portable Document Format (PDF), except for Exhibit Identification Indexes, which may be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 12 megabytes in total size (incoming mail server attachment limitation) may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "Garrapata Water Company ACL/CDO Hearing." Electronic submittals to the State Water Board of

documents greater than 12 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD) media. Each electronically submitted exhibit must be saved as a separate PDF file with the file name in lower case lettering!

Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants to the e-mail address provided on the Notice of Intent. Participants who agree to electronic service may request that specific documents be provided to them in paper copy, or by mail on CD. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/garrapata/

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the hearing officer, at his discretion.
 - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the pre-hearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed. Each participant will be allowed up to one hour total to present its opening statement and all of its direct testimony.²

² The hearing officer may, for good cause, approve a party's request for additional time to present direct testimony during the party's case-in-chief. In addition, the hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

- i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
 - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed to summarize or emphasize their written testimony on direct examination.
 - iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross-examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
 - d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and supervisors, and any of the other participants, including the members of the prosecution team and their supervisors, regarding substantive or controversial procedural issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to staff on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A document regarding *ex parte* communications entitled "Ex Parte Questions and Answers" is available upon request or from our website at: http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding
(name of party or participant)

**Garrapata Water Company, Inc
ACL/CDO Hearing**

**scheduled to commence
February 22, 2010**

Check all that apply:

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative:

Signature: _____ Dated: _____

Name (Print): _____

Mailing
Address: _____

Phone Number: () _____ . Fax Number: () _____

E-mail: _____

