

**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

IN RE: City of Jasper
200 Burnt Mountain Road
Jasper, GA 30143
Pickens County Name

ORDER NO. EPD-WP-9150

Respondent.

CONSENT ORDER

Authority

WHEREAS, the City of Jasper (hereinafter the “Respondent”) withdraws and treats surface water from Long Swamp Creek and groundwater from the Crystalline Rock Aquifer through two wells located in Pickens County, Georgia in the Coosa River Basin; and

WHEREAS, the Director (the “Director”) of the Environmental Protection Division of the Georgia Department of Natural Resources (“EPD”) administers and enforces the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 *et seq.* (the “Georgia Water Quality Control Act”);

WHEREAS, EPD administers and enforces the Rules for Water Quality Control, GA. COMP. R. AND REGS. 391-3-6, as amended, (the “Water Quality Rules”), which were promulgated and are in effect pursuant to the Water Quality Act; and

WHEREAS, the Water Quality Rules include rules governing the withdrawal of water from surface waters of the state at GA. COMP. R. AND REGS 391-3-6-.07(1) through 391-3-6-.07(18); and

WHEREAS, the Director of EPD administers and enforces the Ground-water Use Act of 1972, O.C.G.A. § 12-5-90 *et seq.* (the “Ground-water Use Act”); and

WHEREAS, EPD administers and enforces the Rules for Groundwater Use, GA. COMP. R. AND REGS. 391-3-2, as amended, (the “Groundwater Rules”), which were promulgated and are in effect pursuant to the Ground-water Use Act; and

WHEREAS, the Groundwater Rules include rules governing applications for the withdrawal of water from ground waters of the state at GA. COMP. R. AND REGS 391-3-2-.04; and

WHEREAS, the Georgia Water Quality Control Act and the Water Quality Rules make it unlawful to withdraw, impound, or divert greater than 100,000 gallons of surface water per day on a monthly average without a permit; and

WHEREAS, the Ground-water Use Act and Groundwater Rules make it unlawful to withdraw, obtain, or utilize greater than 100,000 gallons of groundwater per day without a permit; and

Civil Penalty

WHEREAS, O.C.G.A. § 12-5-52 provides that any person violating any provision of the Georgia Water Quality Control Act or any permit condition or limitation issued or established pursuant to the Georgia Water Quality Control Act or Water Quality Rules, or negligently or willfully failing or refusing to comply with any final order of the Director shall be liable for a civil penalty not to exceed \$50,000.00 per day for each day during which such violation continues provided, however, that a separate and later incident creating a violation within a 12 month period shall be liable for a civil penalty not to exceed \$100,000.00 per day for each day during which such violation continues; and

Background

WHEREAS, Permit To Withdraw, Divert or Impound Surface Water Number 112-1417-02 (hereinafter the “Surface Water Permit”) was issued to the Respondent by the Director for withdrawals from Long Swamp Creek, approximately 200 feet north of the Cove Road Bridge, with withdrawal limits of 1.0 MGD maximum 24 hour and 1.0 MGD monthly average for the purpose of municipal water supply in accordance with the provisions of the Georgia Water Quality Control Act and Water Quality Rules; and

WHEREAS, Permit To Withdraw, Obtain or Utilize Groundwater Number 112-0002 (hereinafter the “Groundwater Permit”), was issued to the Respondent by the Director for withdrawals from 2 wells from the Crystalline Rock Aquifer, near Cove Road just east of Long Swamp Creek, with withdrawal limits of 1.330 MGD monthly average and 1.330 MGD annual average for the purpose of municipal water supply in accordance with the provisions of the Ground-water Use Act and Groundwater Rules; and

WHEREAS, during a site visit on September 16, 2021 EPD observed that the groundwater contained in the Crystalline Aquifer identified as the source on the Groundwater Permit may include surface water; and

WHEREAS, the Respondent submitted a permit application dated March 5, 2020 to EPD requesting the addition of a groundwater well and an increase in its Groundwater Permit withdrawal limits to 1.500 MGD monthly average and 1.500 MGD annual average; and

WHEREAS, on May 15, 2020, Respondent verbally self-reported to EPD, confirmed in a written communication dated May 29, 2020 that the Respondent had been diverting surface water from Long Swamp Creek through an unpermitted intake located upstream of the intake permitted under its Surface Water Permit to the Crystalline Aquifer identified as the source on the Groundwater Permit; and

WHEREAS, the Respondent also informed EPD that the surface water withdrawn from its unpermitted intake is discharged to an abandoned underground mine for storage, and that in addition to withdrawing groundwater the Respondent also has been extracting water stored in the abandoned underground mine through the wells permitted under its Groundwater Permit; and **WHEREAS**, Respondent alleges that the impermissible diversion of surface water to the abandoned marble mines began sometime in the 2000s; and

WHEREAS, Respondent in its May 29, 2020 correspondence alleged that flow monitoring data for the Respondent’s permitted intake demonstrated that the unpermitted diversion did not impact the minimum flow requirements below the impoundment (7Q10) of Long Swamp Creek; and

WHEREAS, on May 13, 2020 Respondent ceased withdrawing surface water from its unpermitted intake and verbally self-reported the same to EPD on May 15, 2020; and

WHEREAS, the Respondent was issued letters by EPD dated March 22, 2021 and September 29, 2021 granting an extension of a previously issued temporary increase in Surface Water Permit withdrawal limits at the Respondent’s existing intake located on Long Swamp Creek, from 1.0 MGD maximum 24 hour and 1.0 MGD monthly average to 1.33 MGD maximum 24 hour and 1.33 MGD monthly average with a starting date April 17, 2021 and ending date of October 17, 2021 and a starting date October 17, 2021 and an ending date April 17, 2022, respectively; and

WHEREAS, on June 4, 2021 the Respondent further documented the existence of the unpermitted surface water intake and diversion of surface water into the Crystalline Aquifer identified as the source on the Groundwater Permit in a letter to EPD requesting an additional temporary increase in the limits of its Surface Water Permit from 1.33 MGD maximum 24 hour and 1.33 MGD monthly average to withdrawal limits of 1.83 MGD maximum 24 hour and 1.83 MGD monthly average and seeking EPD authorization to allow diversion of surface water from Long Swamp Creek to be stored in the abandoned underground mine historically used for water storage purposes and then be extracted using the wells described in the Respondent’s Groundwater Permit; and

Alleged Violations

WHEREAS, from sometime in the 2000s until May 13, 2020, the Respondent withdrew greater than 100,000 gallons of surface water on one or more days from Long Swamp Creek through an intake without a permit in violation of Rule 391-3-6-.07(3) of the Water Quality Control Rules.” and

Conditions

WHEREAS, the Director has determined that an amicable disposition of the alleged violations set forth herein is in the best interest of the citizens of the State of Georgia.

NOW THEREFORE, before the taking of any testimony and without adjudicating the merits of the parties’ positions, the parties hereby resolve the allegations in this matter upon order of the Director and consent of Respondent as follows:

1. Within one hundred and five (105) days of the date of execution of this Order by the Director, the Respondent shall submit to EPD additional information to enable EPD to determine whether and what additional regulations, statutes, or permit requirements apply to the Respondent’s unpermitted water withdrawal and water storage and to any future planned actions by Respondent related to water withdrawal and water storage. Note that required information that must be submitted by Respondent includes all of the following items. If historical information requested below is not available, the Respondent must clearly communicate that status to EPD and document the efforts made by Respondent to obtain that information:
 - a. Justification of need for the additional water requested, including any assumptions used to calculate water needs during dry conditions; and
 - b. Historical amounts of water diverted and associated timeline during which water was diverted without a permit from the Long Swamp Creek to the underground mine; and
 - c. Historical water level measurements of the pool within the abandoned underground mine during a drought period (2007-2008 or 2011-2012), if possible correlated with diversions from Long Swamp Creek to the mine; and
 - d. A relationship between water levels in the underground mine and the amount of water stored in it; and
 - e. A diagram of the storage aquifer formation which includes the approximate dimensions and storage capacity; and
 - f. A description of the conveyance structure used for the emplacement by human action of surface water into the aquifer, but which does not include the natural surface water flow into the mine; and
 - g. A schematic, including the depth, diameter, and construction details, of the conveyance structure used for emplacement of surface water into the storage aquifer; and
 - h. A schematic of all groundwater wells used to withdraw water from the storage aquifer. This should include the conveyance structure used for the emplacement of surface water if water may also be withdrawn from this location; and
 - i. A potentiometric map of the storage aquifer and surrounding area.
2. Within six (6) months of the date of execution of this Order by the Director, Respondent shall submit to EPD a surface water withdrawal permit application to reflect the proposed long-term system configuration. This may consist of a permit application for a new surface water diversion location or for a permit modification reflecting the need for additional water requested. The application must include all information outlined in Rule 391-3-6-.07. Note that any project configuration involving the use of the abandoned underground mine will also be subject to review by the EPD Wastewater Regulatory Program.

3. Respondent shall not withdraw surface water from its unpermitted intake until: a) Respondent has received a permit issued in response to its application described in Condition No. 2; or b) the Respondent has submitted written documentation to EPD demonstrating a need to withdraw water from that intake and safety measures that will be imposed to protect the surface water body and requesting permission to do so and has received that written permission from EPD.
4. Within sixty (60) days of the date of execution of this Consent Order by the Director, the Respondent shall pay to EPD a civil penalty in the amount of \$4,007.50 (four thousand and seven dollars and fifty cents).

Deadlines

Time is of the essence in this Consent Order. Compliance with any deadline that falls on a Saturday, Sunday or state-recognized holiday shall be by the next business day.

Addresses

All notices, correspondence, etc., from the Director and EPD to Respondent relating to this Consent Order shall be sent to:

Honorable Steve Lawrence, Mayor
City of Jasper
200 Burnt Mountain Road
Jasper, Georgia 30143

Respondent shall submit address changes to EPD in written notice sent by certified mail; such notice shall include this Order number.

All correspondence from Respondent to EPD relating to this Consent Order shall be sent to:

Georgia Environmental Protection Division
Watershed Protection Branch
Floyd Towers East, Suite 1152
Atlanta, GA 30334
Attn: Wei Zeng, Water Supply Program Manager

Public Notice

This Consent Order may be subject to public notice and comment.

Required Submissions

Upon the submission of any reports, plans, schedules or other information required by any Condition(s) of this Consent Order, EPD shall review the submission to determine its completeness. If EPD determines that the submission is complete, EPD shall notify Respondent in writing that the submission is approved.

If EPD determines that the submission is incomplete, it shall provide Respondent with written notice of the deficiencies. Respondent shall have fifteen (15) days from issuance of EPD's notice of deficiency to submit a corrected submission.

All submissions required by this Consent Order are, upon approval by EPD, incorporated by reference into, and made part of, this Consent Order. Any noncompliance with an approved submission shall be deemed noncompliance with this Consent Order.

Approval by EPD of any submission required by this Consent Order is not an agency determination that compliance with any state laws, regulations and/or permits, licenses, etc., will thereby

be achieved, but is strictly limited to the completeness of the technical aspects of the submission with regards to the requirements of this Consent Order.

Force Majeure

Failure of Respondent to complete the requirement(s) of any Condition(s), other than payment obligations, by the deadline(s) specified therein may be excused by EPD if 1) Respondent's failure was caused by a force majeure event, and 2) Respondent complies with all notification requirements in this section. Respondent shall have the burden of proving to EPD that it was rendered unable, in whole or part, by the force majeure event to meet the deadline(s).

The term "force majeure event" as used herein shall be limited to the following: an act of war (whether declared or not), including an invasion, act of foreign enemies, or terrorism; a strike, lockout, or other labor or industrial blockade or embargo which is not attributable to any unreasonable action or inaction on the part of Respondent; public riot; specific incidents of exceptional adverse weather conditions or natural disasters such as a hurricane, flood, or earthquake; a fire or explosion affecting the Respondent's operations; failure to secure timely and necessary federal, state, or local approvals or permits, provided approvals or permits have been timely and diligently sought; and any other occurrence caused by unforeseeable circumstances beyond the reasonable control of Respondent, as determined by EPD in its sole discretion.

Within two (2) business days of learning of any force majeure event that may reasonably be expected to cause a deadline to be missed, Respondent shall notify EPD verbally or in writing. Within seven (7) business days of learning of any force majeure event that may reasonably be expected to cause a deadline to be missed, Respondent shall submit written notice to EPD of the force majeure event, the possible effects and the anticipated length (if known) of any delay. EPD shall review the submission and negotiate with Respondent regarding the length of the proposed extension of deadlines, if any. The Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

Effect of Order

Respondent consents and the Director executes this Consent Order solely for the purpose of addressing the alleged violations set forth herein. This Consent Order does not relieve Respondent of any obligations or requirements of any statute, rules, permit, or other matter administered by EPD except as specifically authorized herein, which authorization shall be strictly construed. This Consent Order is not a finding, determination, or adjudication of a violation of any state laws, rules, standards and/or requirements, nor does Respondent by consenting to this Consent Order make any admission with respect to any factual allegation contained in this Consent Order or to any liability to any third party.

Unless modified or terminated by a subsequent order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

Further Enforcement

Failure by Respondent to comply with any provision of this Consent Order may result in further enforcement action. Issuance of this Consent Order does not waive the Director's right to use the violation(s) alleged herein, upon sufficient evidence, to show past violations in any subsequent enforcement proceeding.

Finality

For the purpose of enforcement, this Consent Order constitutes a final order of the Director in accordance with applicable Georgia law. By agreement of the parties, this Consent Order shall be final and effective immediately upon execution by the Director, shall not be appealable, and Respondent does

hereby waive all administrative proceedings and judicial hearings on the terms and conditions of this Consent Order.

Electronic Signatures

The parties agree that any electronic signatures on this Consent Order constitute original, valid signatures pursuant to the Uniform Electronic Transactions Act, O.C.G.A. § 10-12-1 *et seq.*

It is so ORDERED and CONSENTED TO on the following date ~~October~~ November 1, 2021

For the Georgia Environmental Protection Division:



By: _____
Richard E. Dunn, Director

The City of Jasper, Georgia

By: _____


Printed
Name: Steve Lawrence

Title: Mayor