

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF LICENSE 2033 (APPLICATION 1699)  
PETITION FOR TEMPORARY CHANGE  
INVOLVING THE TRANSFER OF UP TO 7,500 ACRE-FEET OF WATER  
FROM GARDEN HIGHWAY MUTUAL WATER COMPANY TO  
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**ORDER DENYING TEMPORARY CHANGE IN POINTS OF DIVERSION,  
PLACE OF USE, AND PURPOSE OF USE**

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SOURCES: Feather River

COUNTIES: Sutter

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BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 SUBSTANCE OF PETITION**

On May 2, 2014, Garden Highway Mutual Water Company (Garden Highway) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change under Water Code Section 1725, et seq. Garden Highway has requested to transfer up to 7,500 acre-feet (af) of water to the San Luis & Delta-Mendota Water Authority (SLDMWA). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year from the date of approval.

Garden Highway proposes to transfer up to 7,500 af of water under License 2033 (Application 1699) to SLDMWA via groundwater substitution. License 2033 authorizes the direct diversion of up to 39 cubic feet per second (cfs) from the Feather River between April 15 and October 31 of each year for irrigation purpose. The authorized point of diversion for License 2033 is located on the Feather River within the SW¼ of SE¼ of Section 24, T13N, R3E, MDB&M. The authorized place of use consists of a net of 3,708.45 acres within a gross area of 3,765.45 acres.

To facilitate this transfer, Garden Highway is requesting the following changes to its license: (1) the temporary addition of the State Water Project's (SWP) Harvey O. Banks Pumping Plant (Banks Pumping Plant) and the Central Valley Project's (CVP) CW "Bill" Jones Pumping Plant (Jones Pumping Plant) as points of diversion; (2) the temporary addition of the San Luis Reservoir as a point of rediversion; (3) the temporary addition of the service areas of the CVP as an additional place of use; and (4) the temporary addition of municipal, industrial, and domestic uses as additional purposes of use.

Garden Highway proposes to make surface water available for transfer via groundwater substitution. The groundwater substitution will involve the use of groundwater pumped to produce crops within Garden Highway in exchange for a like amount of surface water that will remain instream for diversion at the proposed additional points of diversion. The petition states that absent the proposed temporary transfer Garden Highway would divert the entire quantity of surface water proposed for transfer from the Feather River pursuant to its water right.

### **1.1 Notice of Petition**

On May 9, 2014, public notice of the petition for temporary change was provided by posting on the Division's website and via the State Water Board's LYRIS email notification system. In addition, on May 14, 2014, the Petitioner noticed the project via publication in the Appeal-Democrat newspaper and mailed the notice via first class mail to interested parties. The State Water Board received one timely comment regarding the proposed temporary change from Richard Morat.

## **2.0 REQUIRED FINDINGS OF FACT**

**2.1 Availability of Water for Transfer.** Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Section 1011. (Wat. Code, §§ 1725, § 1726.). On May 27, 2014, the State Water Board mailed a *Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water in the Sacramento and San Joaquin River Watersheds with a Post-1914 Appropriative Right* to Garden Highway for License 2033. It states that the right holder needs to immediately stop diverting under their post-1914 water right. Since water diversion under License 2033 has been curtailed, there is no water to transfer under this basis of right.

In light of the above, I find in accordance with Water Code section 1726, subdivision (e) that the water proposed for transfer pursuant to this order would not be consumptively used in the absence of the proposed temporary change.

### **2.2 Alternative Mechanism to Provide Water to Transfer Water Recipients**

Garden Highway has a water right settlement agreement with the Department of Water Resources (DWR). In accordance with the settlement agreement, when Garden Highway is required to cease diverting under its water right, it receives water made available to it under DWR's water rights. To facilitate the transfer, DWR intends to release water stored in Lake Oroville to Garden Highway, and subsequently convey the transfer water to SLDMWA. Release of previously stored water, and redirection and use of released stored water, is not subject to the State Water Board's curtailment order.

DWR requires transfer approval from the State Water Board for transfer of the water released from its facilities whenever the water will be used outside the SWP's authorized place of use. On May 27, 2014, DWR filed a temporary transfer petition to facilitate transfer of 6,600 af from Garden Highway to SLDMWA, using DWR's Permit 16479 (Application 14443). The transfer will proceed (after evaluation and determination whether the transfer findings have been met) under Permit 16479. The State Water Board will expedite processing of the transfer, in accordance with the Governor's 2014 Drought Proclamation.

## **3.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY**

On September 18, 2007, the State Water Board adopted Resolution 2007-0057, granting the authority to act on petitions for temporary change to the Deputy Director for Water Rights, except where the State Water Board holds a hearing. The State Water Board did not conduct a hearing on the petition subject to this order, and this order is adopted pursuant to the delegation of authority in Resolution 2007-0057.

#### **4.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727; and therefore I conclude that, based on the available evidence: The proposed transfer does not involve water that would have been consumptively used, stored, or conserved pursuant to Water Code section 1011, in the absence of the temporary change.

#### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petition submitted by Garden Highway under License 2033 for temporary changes in the place of use, purpose of use, and point of diversion to authorize the transfer of up to a total of 7,500 af of water to SLDMWA is denied.

This order does not change any of the existing terms and conditions of License 2033.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director  
Division of Water Rights*

Dated: JUN 10 2014