

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

DIVISION OF WATER RIGHTS

**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
STATE WATER CONTRACTOR AGENCIES**

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

SOURCES: Feather River

COUNTIES: Sutter

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

1.0 BACKGROUND

On March 27, 2015, 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 to water right License 2033 involving the transfer of water under Water Code Section 1725, et seq. Pursuant to the petition, Garden Highway seeks to transfer up to 7,500 acre-feet (af) of water from May 2015 through October 2015 to participating State Water Contractor Agencies (SWC Agencies). The SWC Agencies that will use the water are: Central Coast Water Authority; County of Kings, Dudley Ridge Water District; Kern County Water Agency; Metropolitan Water District of Southern California; Napa County Flood Control and Water Conservation District; Oak Flat Water District; Palmdale Water District; Santa Clara Valley Water District; and Tulare Lake Basin Water Storage District.

1.1 License 2033

License 2033, which has a priority date of March 2, 1920, authorizes the direct diversion of up to 39 cubic feet per second from the Feather River between April 15 and October 31 of each year for irrigation purposes. 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 lying within: projected Section 1, fractional Section 2, and Section 3, T12N, R3E, and projected Sections 24, 25, and 36, fractional Sections 23, 26, and 35, and Sections 22, 27, and 34, T13N, R3E, MDB&M.

1.2 2015 Petition for Temporary Change

To facilitate the transfer of 7,500 af of surface water to the SWC Agencies, Garden Highway has petitioned for the following temporary changes to its license: (1) add the State Water Project's Harvey O. Banks Pumping Plant and Barker Slough Pumping Plant as points of diversion, (2) add San Luis Reservoir as a point of rediversion, (3) add a portion of the service area of the State Water Project as an additional place of use, and (4) add municipal, industrial, and domestic purposes of use to Garden Highway's License 2033.

Garden Highway will make surface water available for transfer to the SWC Agencies via groundwater substitution. The groundwater substitution will involve the use of groundwater pumping 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 and/or rediversion. Absent the proposed temporary transfer, Garden Highway has indicated that it would divert the entire quantity of surface water proposed for transfer from the Feather River for use on Garden Highway's service area pursuant to its water right.

1.3 Public Notice of 2015 Petition

On April 6, 2015, public notice of the temporary change petition was provided both via posting on the Division's website and the State Water Board's e-mail notification system. In addition, on April 6, 2015, 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 two timely comments regarding the proposed temporary change from the California Department of Fish and Wildlife and the U.S. Bureau of Reclamation.

2.0 REQUIRED FINDINGS OF FACT

Pursuant to Water Code section 1727, approval of a temporary change involving the transfer of water requires the State Water Board to find both of the following:

- 1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows; and
- 2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

On May 1, 2015, the State Water Board mailed a *Notice of Unavailability of Water and Immediate Curtailment for Those Diverting Water under a Post-1914 Water Right in the Sacramento River Watershed* (Curtailment Notice) to Garden Highway for License 2033. The notice states that the existing water supply in the Sacramento River watershed is insufficient to meet the needs of all water right holders, and all post-1914 right holders must immediately stop diverting under their post-1914 water rights. Consequently, at this time, diversions pursuant to License 2033 could injure senior diverters in the Sacramento River watershed as there is insufficient water available.

Further, transferable water is limited to the extent of the surface water direct diversion rights of the water right holder at the time of the transfer, and diversions of water under License 2033 is not permissible at this time.

3.0 STATE WATER RESOURCES CONTROL BOARD DELEGATION OF AUTHORITY

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, granting the Deputy Director for Water Rights the authority to act on petitions for temporary change except where the State Water Board holds a hearing. By memorandum dated July 6, 2012, the Deputy Director for Water Rights re delegated this authority to the Assistant Deputy Directors for Water Rights. The State Water Board did not conduct a hearing on the petition subject to this order, and this order is adopted pursuant to delegation of authority granted by Resolution 2012-0029.

4.0 CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1727. Based on the May 1, 2015 Notice of Curtailment for the Sacramento River watershed, I conclude that water is not available for the proposed transfer as diversion and use of the water cannot be made without injury to legal users of water within the Sacramento River watershed.

ORDER

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

All existing terms and conditions of License 2033 remain in effect.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:
JOHN O'HAGAN FOR

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: MAY 07 2015