

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2003-0012-DWR

IN THE MATTER OF PETITION FOR TEMPORARY CHANGE INVOLVING THE
TRANSFER OF UP TO 3,000 ACRE-FEET OF WATER UNDER LICENSES 2033 AND 4659
(APPLICATIONS 1699 AND 14415)

ORDER AUTHORIZING TEMPORARY CHANGE IN PLACE OF USE,
PURPOSE OF USE, AND POINTS OF DIVERSION AND REDIVERSION
BY THE CHIEF OF THE DIVISION OF WATER RIGHTS:

1.0 SUBSTANCE OF PETITION

On April 4, 2003,

Garden Highway Mutual Water Company
c/o Ramon G. Navarro
102 Washington Avenue
Point Richmond, CA 94801

completed the filing with the State Water Resources Control Board (SWRCB) of a Petition for Temporary Change under Water Code section 1725, et seq. Garden Highway Mutual Water Company's (GHMWC) petition requests temporary changes to allow the transfer of up to 3,000 acre-feet (af) of water to potential users within the Central Valley Project (CVP) and/or State Water Project (SWP) service areas under Licenses 2033 (Application 1699) and 4659 (Application 14415). Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year.

1.1 Description of the Transfer: GHMWC proposes to transfer up to 3,000 af of surface water under Licenses 2033 and 4659 to willing purchasers within the CVP and the SWP service areas between April 15th and October 31st of this year.

GHMWC does not propose to fallow or change cropping patterns, but instead proposes a groundwater substitution program to supply water to meet the local irrigation demand in order to make surface water available for transfer. Under this scenario GHMWC, in coordination with the transfer water purchasers, will forgo pumping irrigation water from the Feather River under its surface diversion water rights and will instead pump like quantities of irrigation water from GHMWC groundwater wells. To ensure the increased groundwater draw will not have an adverse effect on surface streams, GHMWC intends to use two groundwater wells located within its

service area that meet the criteria in the Department of Water Resources' (DWR) guidelines for groundwater wells used in transfers and one other well that closely meets these guidelines. GHMWC will provide monthly monitoring reports of groundwater levels before, during, and after the transfer, until the basin levels stabilize.

Since diversion of water at the pumping facilities in the Delta can be periodically limited by environmental and capacity considerations, GHMWC may enter into an agreement with DWR for temporary storage capacity within Lake Oroville. Thus, if direct diversion of water at the Delta facilities is not possible, the transfer water may instead be diverted to storage within Lake Oroville for later delivery or use. Any temporary storage of water in Lake Oroville must be diverted at the same rate as the reduction in consumptive use and in the same quantities associated with groundwater substitution activities to ensure that no other legal users of water are injured by the proposed transfer. In order to insure that DWR's water rights are not injured by the temporary storage of transferred water in Lake Oroville, transferred water should only be diverted to storage for regulatory purposes and should not be stored on a seasonal basis. In the event that Lake Oroville spills while the transferred water is being stored, the temporary transfer must be conditioned such that the water transferred spills prior to water diverted to storage by DWR under its rights in order to avoid potential injury.

2.0 BACKGROUND

2.1 Substance of GHMWC's Licenses: License 2033 authorizes the direct diversion of 39 cubic feet per second (cfs) of water per year from the Feather River between April 15th and October 31st. License 4659 authorizes the direct diversion of up to 23 cfs from the Feather River between May 1st and November 1st. The authorized point of diversion under Licenses 2033 and 4659 is located on the Feather River within the SW1/4 of SE1/4 of section 24, T13N, R3E, MDB&M. The authorized purpose of use under both licenses is irrigation.

2.2 Place of Use and Purposes of Use under the Proposed Transfer: The service areas of the CVP (as shown on map 214-208-12581 on file with Application 5626) and the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) would be temporarily added to the authorized place of use. The Contra Costa Water District (CCWD) is also listed in the Petition as a potential place of use for the transferred water. CCWD is located entirely within the CVP place of use. Domestic, incidental power, municipal, industrial, salinity control, fish and wildlife enhancement, water quality control, and stock watering (as needed) would be temporarily added to the authorized purposes of use.

2.3 Points of Diversion/Rediversion under the Proposed Transfer: The proposed temporary change would add a point of diversion at Oroville Dam and points of diversion/rediversion at the North Bay Aqueduct, CCWD pumping plants at Rock Slough and Old River, the SWP Harvey O. Banks Pumping Plant and CVP Tracy Pumping Plant.

3.0 AVAILABILITY OF WATER FOR TRANSFER

The water proposed for temporary transfer is currently diverted under Licenses 2033 and 4659. In the absence of this temporary transfer, up to 3,000 af of the subject water would remain available

for direct diversion use by GHMWC and up to 3,000 af of groundwater would remain in the Sacramento Groundwater Basin. The maximum amount of water authorized for temporary transfer under this order is 3,000 af. This order includes terms and conditions to ensure that no legal users of water are injured by the proposed temporary change due to the following factors:

- a. Potential lowering of water levels in southern Delta channels associated with the addition of the Clifton Court Forebay and the Tracy Pumping Plant as points of diversion/rediversion to GHMWC's licenses;
- b. Impacts resulting from increased groundwater pumping due to the temporary change.
- c. Potential impacts to other legal users of water associated with the temporary authorization for diversion and regulatory storage in Oroville Dam under GHMWC's licenses.

In light of the above, I find in accordance with Water Code section 1727(b)(1) that the proposed change would not injure any legal user of water and that the proposed transfer involves only the amount of water that would have been consumptively used in the absence of the temporary change. I also find that the transfer of surface water that is replaced with groundwater pursuant to this order meets the requirement of Water Code section 1745.10(b). That section requires that the groundwater use has been approved by the water supplier from whose service area the water is to be transferred and the water supplier has determined that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

4.0 ENVIRONMENTAL CONSIDERATIONS

In accordance with Water Code section 1729, temporary changes involving the transfer of water are exempt from the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000, et seq.). However, the SWRCB must consider potential impacts on fish, wildlife and other instream beneficial uses in accordance with Water Code section 1727(b)(2).

The proposed temporary change in place of use, purpose of use, and point of diversion and rediversion involves an amount of water that would have been consumptively used in the absence of the transfer. Under the temporary transfer, the water will remain in the Feather River until it is diverted downstream in the Delta. Consequently, the proposed transfer will result in slightly increased flows in the Feather River downstream of GHMWC's point of diversion and should have no adverse environmental impacts on the Feather River.

The transfer may result in increased pumping at DWR's or the U.S. Bureau of Reclamation's (USBR) points of diversion in the Delta. To avoid impacts resulting from potential increased pumping in the Delta, this order specifies that water may only be transferred in compliance with all applicable biological opinions. The USBR and DWR are responsible, under their water right permits as amended by Revised SWRCB Decision 1641 to ensure the implementation of the water quality objectives set forth in SWRCB Revised Decision 1641, Tables 1, 2, and 3. (See pages 181 to 187.) This will ensure that no unreasonable effects on fish, wildlife or other instream beneficial uses are caused by the addition of the Clifton Court Forebay and the Tracy Pumping plant as

points of diversion/rediversion.

In light of the above, I find in accordance with Water Code section 1727(b)(2) that the proposed temporary transfer will not unreasonably affect fish, wildlife or other instream beneficial uses.

5.0 COMMENTS RECEIVED ON THE PROPOSED TEMPORARY CHANGE

The SWRCB received timely comments regarding the proposed temporary change from the California Sportfishing Protection Alliance (CSPA). The SWRCB also received a written response to CSPA's comments from the Co-Petitioner (Western Water Company) on May 15, 2003. CSPA's comments and the SWRCB's responses are summarized below:

- (a.) CSPA asserts that the proposed temporary change may alter the operation of the Oroville Project which operates under a license from the Federal Energy Regulatory Commission. CSPA states that the SWRCB has no authority to make changes to the operation of this Project.

SWRCB Response: The current order does not authorize any change in the regulatory requirements for the operation of the Oroville Project. It is not expected that the temporary transfer will have any significant impacts on meeting these requirements. However, DWR remains responsible for ensuring that all regulatory requirements are met.

- (b.) CSPA claims that, because GHMWC will be utilizing groundwater in lieu of transferred surface water, the proposed transfer will not result in a reduction in consumptive use, and therefore does not meet the requirements of Water Code section 1725.

SWRCB Response: In the absence of the proposed temporary transfer GHMWC would utilize its surface water rights to meet its irrigation needs. Under the proposed transfer those needs will be met with local groundwater supplies. Consequently, the water proposed for transfer would have been consumptively used in the absence of the transfer as required by Water Code section 1725.

Water Code section 1745.10 specifies that transferred surface water may be replaced with groundwater if the use is either one the following:

- (a) *Consistent with a groundwater management plan adopted pursuant to state law for the affected area.*

or

- (b) *Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.*

The Petitioners have submitted the necessary documentation to determine that any groundwater substitution will be in compliance with condition (b) above.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Petition filed for temporary change in the place of use, purpose of use, and point of diversion and rediversion under Garden Highway Mutual Water Company's (GHMWC) Licenses 2033 (Application 1699) and 4659 (Application 14415) for the transfer of up to 3,000 acre-feet of water is approved.

All existing terms and conditions of the subject licenses (or as may be subsequently amended by further order of the State Water Resources Control Board (SWRCB)) remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continues for a period of one year.
2. The place of use of GHMWC's licenses is temporarily changed as follows:

The authorized place of use for the water approved for transfer in this Order is expanded to include the service areas of the State Water Project (SWP) (as shown on maps 1878-1, 2, 3, & 4 on file with Application 5629) and Central Valley Project (CVP) (as shown on map 214-208-12581 on file with Application 5626).

3. The Clifton Court Forebay, the Tracy Pumping Plant, the North Bay Aqueduct and the Contra Costa Water District's pumping plants at Rock Slough and Old River are temporarily added as points of diversion and rediversion to the licenses subject to this Order. Diversion or rediversion of water at the Clifton Court Forebay and the Tracy Pumping Plant pursuant to this Order is subject to implementation by the Department of Water Resources and the U.S. Bureau of Reclamation of the objectives set forth in Tables 1, 2, and 3 of Water Right Decision 1641, at pages 181 through 187 (Revised Version dated March 15, 2000), as revised by Order WRO 2001-05. Export of water pursuant to this Order is subject to compliance with the current Water Level Response Plan (as modified by SWRCB Order WR 2002-0003) or an equally protective or more protective Water Level Response Plan approved by the Chief of the Division of Water Rights.

Oroville Dam is temporarily added as a point of diversion. Diversion of water at Oroville Dam, the Clifton Court Forebay, the Tracy Pumping Plant, the North Bay Aqueduct and the Contra Costa Water District's pumping plants at Rock Slough and Old River pursuant to this Order is subject to compliance by the operators of those facilities with all applicable Department of Fish and Game, United States Fish and Wildlife Service and National Marine Fisheries Service biological opinions.

4. Domestic, power, municipal, industrial, salinity control, fish and wildlife enhancement, water quality and stock watering are temporarily added as purposes of use under the subject licenses for the water approved for transfer pursuant to this Order.
5. Prior to transfer, GHMWC shall provide a map to the Chief of the Division of Water Rights of the recent (circa spring 2003) groundwater levels in the Sacramento Groundwater Basins.

GHMWC shall develop and submit an additional map by June 1 of each year following the transfer showing the spring groundwater levels in the Sacramento Groundwater Basins until groundwater levels correspond to the pre-transfer groundwater levels.

6. GHMWC shall not cause any significant unmitigated injury to other groundwater users as a result of groundwater substitution. If, upon implementation, the SWRCB or GHMWC determine that operation of the groundwater substitution program pursuant to this temporary transfer is causing injury to other groundwater users, GHMWC shall develop and submit to the Chief of the Division of Water Rights for approval conditions to prevent injury to other groundwater users.
7. By June 1, 2004, GHMWC shall provide to the Chief of the Division of Water Rights a report describing the use of the water temporarily transferred pursuant to this Order. The report shall include the following information:
 - a. the amounts and general locations where the transferred water was used or stored;
 - b. the daily release rates of the transferred water from Lake Oroville (if applicable); and
 - c. the monthly amounts of groundwater pumped to meet the needs of users within GHMWC's service areas in excess of that which would have been pumped in the absence of this transfer.
8. To the extent that GHMWC wishes to regulate the water made available by means of groundwater substitution through temporary storage in Lake Oroville, GHMWC shall enter into an appropriate agreement with the Department of Water Resources. Any diversion to storage shall occur at the same rate as the reduction in consumptive use and shall not exceed the quantity of water made available by groundwater substitution. The seasonal storage of water transferred pursuant to this Order is not authorized. In the event that the reservoir spills while transferred water is being stored in Lake Oroville pursuant to this Order, the transferred water shall be spilled prior to water diverted to storage under the Department of Water Resources water rights.
9. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the SWRCB also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.

10. This Order does not authorize any act which results in the "taking" of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take"

will result from any act authorized under this temporary transfer, the Licensee shall obtain authorization for an incidental take prior to commencing transfer of water or water rights. The Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the temporary transfer authorized under this Order.

11. I reserve jurisdiction to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses and the public interest as future conditions may warrant.

ORIGINAL SIGNED BY

Edward C. Anton, Chief
Division of Water Rights

Dated: June 3, 2003