

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
DEPARTMENT OF WATER RESOURCES

AGREEMENT ON DIVERSION OF WATER  
FROM THE FEATHER RIVER

THIS AGREEMENT, made and entered into this 17<sup>th</sup> day of May, 1977, by and between the State of California, acting by and through the Department of Water Resources, hereinafter called "State"; and Garden Highway Mutual Water Company, hereinafter referred to as "Water User":

WITNESSETH, that:

WHEREAS, the State has constructed Oroville Dam and Thermalito Diversion Dam, Forebay and Afterbay, features of the State Water Project, which will modify the regimen of the Feather River; and

WHEREAS, the Water User has the right to divert water of the Feather River pursuant to the following rights which are prior in time and superior to the water rights of State; and

WHEREAS, the Water User has the right to divert water of the Feather River by Direct diversion for beneficial use on approximately one thousand fifty (1,050) acres of assumed riparian land within the Company boundaries shown on Exhibit A; and

WHEREAS, the Water User holds Applications No. 1699, 14415, 15893, 23045, Permits No. 1793, 8848, 9904, 15778, and Licenses No. 2033, 4659 and 5629, from the State Water Resources Control Board for diversion of water for beneficial use on land as shown on Exhibit A; and

WHEREAS, it is desirable to reach an agreement as to the quantities of water the Water User is entitled to divert pursuant to existing rights;

NOW, THEREFORE, it is mutually agreed as follows:

1. Definitions

When used in this Agreement, the following terms have the meanings hereinafter set forth:

(a) "Agricultural use" means any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto for domestic or stockwatering purposes.

(b) "Drought" occurs in any year in which the supply of State project water made available by the State for delivery to contractors under their water supply contracts is less than the total of the annual entitlements of all such contractors for that year and, in addition, one of the following conditions exists:

(1) The April 1 through July 31 unimpaired runoff to Lake Oroville for the current water year, as forecasted by the Department of Water Resources (for inclusion in its Bulletin No. 120, "Water Conditions in California") on February 1, and modified by subsequent monthly reports thereafter as conditions and information warrant, is equal to or less than six hundred thousand (600,000) acre-feet; or

(2) The total accumulated actual deficiencies of unimpaired runoff to Lake Oroville below two million five hundred thousand (2,500,000) acre-feet in the immediately prior water year or series of successive prior water years, each of which

had runoff of less than two million five hundred thousand (2,500,000) acre-feet, together with the predicted deficiency below two million five hundred thousand (2,500,000) acre-feet for the current water year, exceed four hundred thousand (400,000) acre-feet.

(c) "San Joaquin water supply contractors" means public agencies located in the San Joaquin Valley that are parties to water supply contracts for delivery of water for agricultural use.

(d) "Water Supply Contracts" means the long-term water supply contracts that the State heretofore has entered into with public agencies for supplying water made available by Lake Oroville and other facilities of State, such as the water supply contract entered into with The Metropolitan Water District of Southern California dated November 4, 1960.

(e) "Irrigation season" means the period April 1 through October 31 of each year.

## 2. Diversion of Water

Except as provided in Article 3, the Water User shall have the right during each irrigation season to divert eighteen thousand (18,000) acre-feet of water from the Feather River for use on lands shown on Exhibit A: Provided, that no more than six thousand three hundred (6,300) acre-feet shall be diverted during the period April 1 through May 31. The diversion of this quantity of water shall constitute a satisfaction of all existing rights of the Water User to divert water from the Feather River from April 1 through October 31. The State will operate

Oroville Dam and Lake Oroville so that the water provided for by this Agreement will be available for diversion by the Water User.

For the purposes of this Agreement, approximately one thousand fifty (1,050) acres or 28.5 percent of the Company service area as shown on Exhibit A, are considered to be riparian to the Feather River, and five thousand one hundred thirty (5,130) acre-feet of the irrigation season diversion quantity shall be considered for use on this riparian area.

### 3. Deficiencies

In any year in which a temporary shortage due to drought occurs, the quantities of water which the Water User shall be entitled to divert as set forth in Article 2 shall be reduced by a percentage, not to exceed fifty percent (50%) in any one (1) year or a total of one hundred percent (100%) in any series of seven (7) consecutive years, and further, not to exceed the percentages for the reduction in annual entitlements for water to be put to agricultural use by water supply contractors in the San Joaquin Valley, as determined by the State in accordance with Article 18 of the long-term water supply contracts that the State has previously executed.

Twenty eight and one-half percent (28-1/2%) of Water User's entitlement (being the ratio of its riparian lands to total acreage) shall not be subject to reduction under this article.

On or before February 15 of each year, State shall furnish Water User a forecast as to whether Drought will occur during that year, as to whether reductions will be imposed, and the percentage of any such reductions, and as to the predicted unimpaired acre-foot runoff into Lake Oroville during the April 1

to July 31 period of that year. An unofficial forecast based on the most recent data available shall be sent to the Water User on or before April 1. An official forecast shall be furnished to Water User on or before April 10. Such forecasts shall be periodically revised as additional data become available: Provided, That the percentage of reduction shall not exceed the percentage set forth in the April 10 forecast.

4. Responsibility for Distribution of Water and Limitation on Liability of State

The Water User shall be responsible for the distribution of the water diverted by the Water User after it passes through Water User's pumping facilities at or near Feather River Mile 13.1 Right.

Neither the State nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of water diverted under the terms of this Agreement after it passes into Water User's canal system through pumping facilities at or near Feather River Mile 13.1 Right, nor for claim of damage of any nature whatsoever, including, but not limited to, property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water; and the Water User shall indemnify and hold harmless the State and its officers, agents, and employees from any such damages or claims of damages.

State shall be solely responsible for maintaining a sufficient flow of water in the Feather River downstream from the Oroville Dam to supply water diverted by Water User and by others under rights superior to those of State or Water User.

This Agreement does not relieve State or its officers, agents, or employees from liability to Water User or third parties arising out of failure of State at any time to comply with this Agreement, or from injuries to crops or production of crops due to reduction in temperature of water available to Water User during any portion of any irrigation season, or seasons, as a result of water released from Lake Oroville being colder than water that would have been available in the Feather River for diversion by Water User if Oroville Dam had not been constructed. Nothing in this Agreement shall be construed as an admission by State that a reduction in the temperature of water available to Water User will in fact cause injury to crops or production of crops.

5. Limitation on Other Water Supplies of Water User

(1) During the term of this Agreement the Water User shall not divert any water from the Feather River during the period April 1 through October 31, except the water provided for in Article 2, unless it has obtained other or additional rights or entitlements to do so.

(2) In furtherance of the rights of the Water User under the county of origin reservation in the assignment of the State's water rights applications in accordance with Water Code Section 10505, and in furtherance of the rights of the Water User under the area of origin law (Water Code Sections 11460-11463), the Water User may obtain project water from the State under the applicable terms of the Standard Provisions for Water Supply Contract approved August 3, 1962, based on the State's prototype

water supply contract with The Metropolitan Water District of Southern California.

(3) Nothing herein shall be construed to prohibit Water User from applying for additional permits and/or licenses to appropriate additional water from the Feather River, whether pursuant to its existing Application No. 25256 (for the appropriation of 30 cfs during the irrigation season) or otherwise.

(4) Nothing herein shall limit Water User's right to divert water for beneficial uses upon the riparian lands during the period from October 31 to April 1.

(5) Nothing herein shall prohibit Water User from pumping and using water obtained from wells located within Water User's service area.

(6) Nothing herein shall prohibit the State from protesting additional permits and/or licenses to appropriate additional water from the Feather River.

6. Water User Not to Transfer Water

The Water User shall not assign or transfer the right to use any of the water to be provided under this Agreement nor deliver any such water to any person or entity located outside the "service area" shown on Exhibit A without the prior permission of the State, but the State shall not administer this provision in an arbitrary or unreasonable manner. The State shall not protest Water User's pending petition to the State Water Resources Control Board to include 57 acres near Wilson School in Section 23, within the place of use of Water User's existing appropriative water rights.

#### 7. Measurement of Diversions

The State shall measure all water diverted by the Water User and shall keep and maintain accurate and complete records of such measurements. For this purpose, the State at its option and expense may install or cause to be installed measuring equipment. The State shall operate and maintain such measuring equipment in a manner satisfactory and acceptable to both parties.

The Water User hereby grants the State the right of ingress to or egress from his lands for the purposes of installation, maintenance and operation of the measuring equipment. Such measuring equipment shall be examined, tested, and serviced regularly to insure its accuracy. Water User or his authorized representative shall have the right to inspect and/or test such measuring equipment and obtain the measurements and records relating to it.

In the event the Water User replaces the diversion facility, containing any measuring equipment installed by the State, measuring equipment shall be installed at the Water User's expense in the replaced facility at the time replacement is made. The Water User shall have the option of requesting the State to install such measuring equipment as required at the Water User's expense: Provided, That the Water User shall deposit with the State prior to the acquisition and installation an amount of money estimated by the State to be sufficient to cover such costs.

#### 8. Term of Agreement

This Agreement shall remain in full force and effect until terminated by the mutual consent of the parties.

9. Water Rights

(a) The Water User does not surrender, modify, or terminate any of his rights to store or divert water, or change the priority of his rights. The Water User will protect and defend his established rights to divert water from the Feather River, including the protesting of applications to appropriate water that are adverse to the rights of the Water User, the prosecution of such protests before the State Water Resources Control Board and other administrative agencies, and the defense of such water rights in the courts: Provided, That the failure of the Water User to protest an application or otherwise defend his water rights shall not be a default under this Agreement, unless the Water User fails to protest an application or otherwise defend his water rights after having been specifically requested to do so by the State in time for protests to be filed.

(b) Water diverted by Water User under this Agreement shall be deemed diverted under Water User's water rights.

(c) All parties agree to join in resisting any attack upon this Agreement, or any of its provisions by judicial, administrative, or any other bodies. If this Agreement, or any part thereof, is decreed unenforceable, or directly or indirectly modified in any respect other than by mutual agreement, the party whose interests are adversely affected shall have the option of terminating this Agreement, in which event all rights and privileges prevailing prior to the execution of this Agreement, shall be restored, and State shall supply the yield of the rights of Water User to the same extent as if Lake Oroville were not in existence, and this Agreement had not been entered into.

Nothing in this Agreement shall be construed as an admission or consent by Water User that this Agreement, or any part thereof, is unenforceable or may be modified either directly or indirectly by judicial, administrative, legislative or other action except by mutual agreement of the parties.

10. Inspection of Records

The proper officers or agents of either party shall have full and free access at all reasonable times to the official records of the other party insofar as the same pertains to the matters and things provided for in this Agreement with the right at any time during office hours to make copies of such records.

Records of monthly diversions of the Water User and a summary of water use during the year shall be furnished by the State to the Water User by the fifteenth (15th) day of each month.

11. Successors and Assigns Bound

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

12. Waivers

Any waiver at any time by any party to this Agreement of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

13. Notices

All notices that are required either expressly or by implication to be given by one party to the other under this contract shall be signed for the State by its contracting officer and for the Water User by such officer or agent as he may, from time

to time, authorize in writing to so act. All such notices shall be deemed to have been given at the time of delivery if delivered personally or twenty-four (24) hours after deposit in the mail, if enclosed in a properly addressed envelope and deposited in a U. S. Post Office for delivery with postage prepaid. Unless and until formally notified otherwise, all notices shall be addressed to the State and the Water User at their addresses as shown on the signature page of this contract.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

Approved as to legal form and sufficiency:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES  
P. O. Box 388  
Sacramento, CA 95802

For V.L. Cline  
Chief Counsel  
Department of Water Resources

By Robert B. Mize  
Director

GARDEN HIGHWAY MUTUAL WATER COMPANY  
P. O. Box 389  
Yuba City, CA 95991

By [Signature]  
President

STATE OF CALIFORNIA,  
Sacramento

County of \_\_\_\_\_ } ss.

On this 28th day of April in the year one thousand nine hundred and seventy seven,

before me, Daniel F. Gallery, a Notary Public,

State of California, duly commissioned and sworn, personally appeared Alfred G. Montna and Richard E. Woods

known to me to be the President and Secretary respectively

of the corporation described in and that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of Sacramento the day and year in this certificate

first above written.

Daniel F. Gallery  
Notary Public, State of California.



DANIEL F. GALLERY  
NOTARY PUBLIC - CALIFORNIA  
PRINCIPAL OFFICE IN  
SACRAMENTO COUNTY

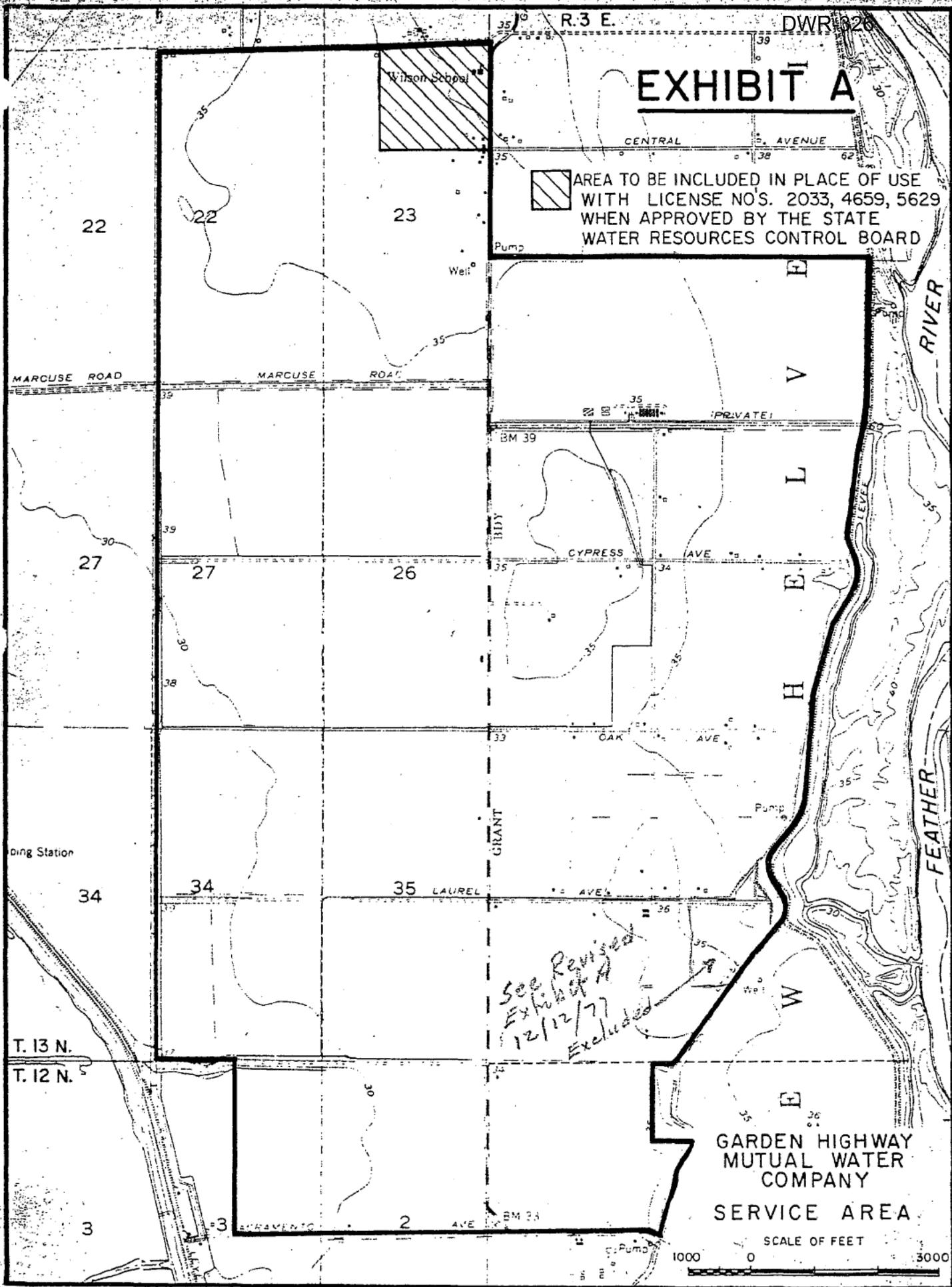
My Commission Expires February 22, 1979

R.3 E.

DWR 328

# EXHIBIT A

 AREA TO BE INCLUDED IN PLACE OF USE WITH LICENSE NO'S. 2033, 4659, 5629 WHEN APPROVED BY THE STATE WATER RESOURCES CONTROL BOARD



*See Revised Exhibit A 12/12/77 Excluded*

GARDEN HIGHWAY MUTUAL WATER COMPANY SERVICE AREA

SCALE OF FEET

