
State Water Resources Control Board

MEMORANDUM

TO: Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
(via e-mail, Jeanine.Townsend@waterboards.ca.gov)

FROM: Alan B. Lilly, Presiding Hearing Officer
Administrative Hearings Office

DATE: March 28, 2022

SUBJECT: Proposed order on pending petitions of Garberville Sanitary District to change water-right License 3404 (Application A009686) and water-right Permit 20789 (Application A029981)

Enclosed with this memorandum is the proposed order for this matter. The Administrative Hearings Office (“AHO”) prepared this proposed order pursuant to Water Code section 1114, subdivision (c)(1). The AHO is transmitting this proposed order to the Board for action under Water Code section 1114, subdivision (c)(2).

The administrative record for this matter may be accessed at the following FTP site: <https://ftp.waterboards.ca.gov/#/> and then clicking on the icon for the folder for Water-Right Permitting, and then icon for the folder for the Garberville SD matter. Anyone may obtain the password to access this FTP site by sending an e-mail request to aho@waterboards.ca.gov.

Encl.

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

ORDER WR 2022-____

In the matter of the pending petitions of

Garberville Sanitary District

to change water-right License 3404 (Application A009686)
and water-right Permit 20789 (Application A029981),
which authorize diversions of water from the South Fork Eel River
in Humboldt County.

SOURCE: South Fork Eel River

COUNTY: Humboldt

ORDER ON CHANGE PETITIONS

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

ORDER WR 2021-____

In the matter of the pending petitions of

Garberville Sanitary District

to change water-right License 3404 (Application A009686)
and water-right Permit 20789 (Application A029981),
which authorize diversions of water from the South Fork Eel River
in Humboldt County.

SOURCE: South Fork Eel River

COUNTY: Humboldt

ORDER ON CHANGE PETITIONS

BY THE BOARD:

1.0 INTRODUCTION

This matter came to the State Water Resources Control Board (State Water Board or Board) as a proposed order prepared by the Presiding Hearing Officer of the Board's Administrative Hearings Office (AHO), pursuant to Water Code section 1114, subdivision (c)(1). Pursuant to Water Code section 1114, subdivision (c)(2)(A), the Board adopts the AHO's proposed order in its entirety.

As discussed in this order, we grant the petitions of Garberville Sanitary District (Garberville SD) to change water-right License 3404 (Application A009686) and water-right Permit 20789 (Application A029981) to add 18 acres of the Southern Humboldt

Community Park to the authorized place of use, and we direct the Board's Deputy Director for Water Rights to issue the attached amended license and amended permit.

2.0 BACKGROUND

Application A009686, License 3404

On July 31, 1939, Garberville Water Works filed water-right Application A009686 (A009686) with the Department of Public Works, Division of Water Resources, a predecessor of the State Water Board. (1939-07-31 A009686 Application.)¹

In 1940, the Division of Water Resources issued water-right Permit 5487 to Garberville Water Company, Inc. (Garberville Water Company).² The permit authorized direct diversions of water from the South Fork Eel River at rates up to 100,000 gallons per day (gpd), which equals 0.155 cubic-foot per second (cfs), for municipal purposes of use. (1940-01-19 Terms for Water-Right Permit 5487.) The authorized diversion season was from January 1 and December 31 of each year. (*Id.*) Permit 5487 did not contain any annual limit on diversions. (*Id.*)

Following a field visit in 1951 (1951-08-06 Field Visit Memo), the Division of Water Resources issued water-right License 3404 (License 3404) to Garberville Water Company in 1952. (1952-02-29 License 3404.) This license, which superseded Permit 5487, authorized the water company to directly divert water at rates up to 0.155 cfs from the South Fork Eel River between January 1 and December 31 of each year, for municipal uses within the Town of Garberville. (*Id.*)

¹Copies of some of the documents in the Board's Division of Water Rights Records Unit paper files for Applications A009686 and A029981 are in the administrative record for this matter. These documents are in files with filenames that contain the dates of the documents, followed by brief descriptions. Some of the files in this folder also may be in the parties' exhibits. The parties' exhibits are in subfolders within the administrative record's "Hearing Documents" folder. The AHO has posted this administrative record in the AHO folder on the State Water Board's FTP site. Unless otherwise noted, references to page numbers in documents, including parties' exhibits, refer to the page numbers at the top of the screen reading software used to view the pdf files of these documents.

² Water-right Permit 5487 is not in the Water Right Records Unit paper files for Application A009686, so the AHO could not add it to the administrative record. The administrative record contains a copy of the permit terms for this permit. (1940-01-19 Terms for Water-Right Permit 5487.)

2.2 Application A029981, Permit 20789

In 1990, State Water Board, Division of Water Rights (Division) staff inspected Garberville Water Company's facilities. (1990-04-19 Report of Inspection.³) The 1990 Report of Inspection noted that the water company's diversions were at rates greater than the maximum rate authorized by License 3404 and that the water company therefore needed to file an application for a new water-right permit. (*Id.*, p. 1.) Following this inspection, Garberville Water Company filed water-right Application A029981 with the Division in 1991. (1991-06-22 A029981 application.)

In 1995, the Division issued water-right Permit 20789 (Permit 20789) to Garberville Water Company. (1995-05-15 Permit 20789.) This permit authorized the water company to directly divert water from the South Fork Eel River at the same point of diversion as that specified in License 3404, at rates up to 0.595 cfs between January 1 and December 31 of each year, with total annual diversions under the permit not to exceed 430 acre-feet per year (af/yr), for municipal uses within the Town of Garberville. Term 7 of this permit required that construction work be completed by December 31, 1996. Term 8 of this permit required that complete application of the water to the authorized use be made by December 31, 1999.

2.3 Order WR 2012-0036-DWR

In 2012, the Division issued Order WR 2012-0036-DWR. (2012-12-27 Order WR 2012-0036-DWR.) This order noted that Garberville SD had purchased Garberville Water Company in 2004 and had notified the Division of the changes of name and ownership in 2007. (*Id.*, p. 2, ¶ 3.)

The order discussed two complaints that had been filed against Garberville SD in 2012: (a) a complaint alleging that Garberville SD was selling bulk water to commercial water delivery companies that were re-selling the water to customers outside of the authorized place of use in License 3404 and Permit 20789; and (b) a complaint alleging that Garberville SD was providing water through service connections to residential homes

³ This document is in the folder for "Background Documents" and the subfolder for Application A009686.

and properties outside this authorized place of use. (*Id.*, p. 2, ¶ 4.) The order also noted that Garberville SD had not filed the required annual reports of water diversions and use for License 3404 and Permit 20789. (*Id.*, pp. 3-4, ¶¶ 12-17.)

This order directed Garberville SD: (a) to cease and desist the bulk sales and deliveries of water under License 3404 or Permit 20789 to areas outside the authorized place of use; (b) to diligently pursue processing the petitions to change License 3404 and Permit 20789 that are described in the next section of this order; and (c) to immediately submit annual licensee and permittee progress reports for 2010 and 2011. (*Id.*, p. 4.)

2.4 Garberville SD 2012 Petitions to Change License 3404 and Permit 20789; Amended License 3404 and Amended Permit 20789; Annual Licensee and Permittee Progress Reports for 2010-2011; Petition for Extension of Time for Permit 20789

In 2012, Garberville SD filed petitions to change License 3404 and Permit 20789. (2012-11-20 Petition to Change A009686; 2012-11-20 Petition to Change A029881.) These petitions asked the Board to expand the authorized places of use in the license and the permit to include all parcels that were receiving water service from Garberville SD at that time. (*Id.*)

In 2013, the Division issued amended License 3404 and amended Permit 20789. (2013-10-11 Amended License 3404; 2013-10-11 Amended Permit 20789.) This amended license and this amended permit refer to and include new maps of the authorized place of use. They have the same maximum authorized instantaneous diversion rates and the same authorized diversion seasons as those in the original License 3404 and the original Permit 20789. (*Id.*) Amended License 3404 contains a new annual diversion limit of 112.2 af/yr. (2013-10-11 Amended License 3404, p. 2, ¶ 5.) Both the amended license and the amended permit contain a new overall annual limit on total diversions under the license and the permit of 542.2 af/yr. (*Id.*, p. 2, ¶ 6; 2013-10-11 Amended Permit 20789, p. 2, ¶ 6.)

Garberville SD submitted annual licensee reports for 2010-2011 for License 3404, and annual permittee progress reports for these years for Permit 20789, on December 2, 2012. (Reports of Licensee, 2010-2011, p. 1; Reports of Permittee, 2010-2011, p. 1.)

In 2012, Garberville SD filed a petition for extension of time for Permit 20789. (2012-11 Petition for Extension of Time.) This petition requested 15-year extensions of the December 31, 1996 and December 31, 1999 deadlines in this permit to complete construction work and to apply water to beneficial use. (*Id.*)

In a letter dated March 28, 2013, which was filed with the Division on April 24, 2013, Garberville SD asked to withdraw its petition for extension of time. (2013-04-24 ltr. from Garberville SD to SWRCB.) In this letter, Garberville SD stated that the maximum total amount of water diverted under License 3404 and Permit 20789 during any year between 1995 and 1999 was 80 million gallons in 1999, that this amount was representative of the maximum amount the district would divert in future years, and that the district therefore requested licensing of the permit, with the understandings that the Board would issue a water-right license to replace Permit 20789 and the maximum total amount that could be authorized for diversion under License 3404 and the new license would be 80 million gallons per year. (*Id.*)

2.5 Order WR 2020-0104-EXEC

In 2018, the Division received a complaint alleging that Garberville SD had violated the provision of Order 2012-0036-DWR that prohibited bulk water deliveries outside the License 3404 and Permit 20789 authorized place of use. (Order WR 2020-0104-EXEC, p. 2.) Later in 2018, the Division issued a Notice of Violation and a draft Administrative Civil Liability Complaint (ACL Complaint) to Garberville SD. (*Id.*)

In 2020, representatives of Garberville SD and the Division's Prosecution Team signed a settlement agreement regarding this draft ACL Complaint. (*Id.*, pp. 5-10.) The settlement agreement provided that Garberville SD would pay the State Water Board \$40,000 to resolve the violations alleged in the draft ACL Complaint and would prohibit its metered customers from purchasing bulk water and transporting it outside the authorized place of use. (*Id.*, p. 6, ¶ 3; p. 7, ¶ 7.)

On August 26, 2020, the Board's Executive Director signed Order WR 2020-0104-EXEC, which approved the settlement agreement and directed Garberville SD to make

the payment and take the compliance actions described in the settlement agreement. (*Id.*, pp. 3-4.)

2.6 Garberville SD 2019 Petitions to Change License 3404 and Permit 20789 to Add Southern Humboldt Community Park to Authorized Place of Use

On October 7, 2019, Garberville SD filed a petition to change the authorized place of use in License 3404 and Permit 20789 to add 18 acres within the Southern Humboldt Community Park (Southern Humboldt CP or SHCP), to allow Garberville SD to supply potable water to two residences, existing out-buildings, and public drinking fountains within this area. (2019-09-30 Petition to Change License 3404 and Permit 20789 - with attachments.) Garberville SD's Resolution No. 19-02, a copy of which was included with the petition, contained the following condition of approval:

- E. The usage for the connection is limited to 2,000 cubic feet per month (20 units). The usage will be monitored monthly in connection with the reading of the meters. The SHCP will be notified each time the usage reading is in excess of the 2,000 cubic feet per month limit. The meter will be shut off if the usage is more than 1.5 times (3,000 cubic feet per month) the allowable quantity for any 2 months in a 12 month period. If the meter is shut off, the SHCP will have to petition the Board for reinstatement of service and obtain approval from LAFCo if necessary.

(GSD-10⁴, p. 3, ¶ 1.E.)

The attached Figure 1 is a general location map for Garberville SD's water-right change petitions. The attached Figure 2 shows the existing authorized place of use for License 3404 and Permit 20789 in blue and labeled "PLACE OF USE," and the areas that Garberville SD's petitions ask to be added to this authorized place of use in red and labeled "TO BE ADDED TO PLACE OF USE."

On November 11, 2019, the Division issued its public notice of the petitions. The Division received 27 letters from interested parties supporting the petitions (2019-12-05 Comment Letters to Notice of Petitions), and letters from four parties protesting the

⁴ Exhibits are identified by party name—here "GSD" stands for "Garberville Sanitary District"—and an exhibit number. These documents are in the "Hearing Documents" folder in the administrative record, in subfolders for the various parties.

petitions.⁵ The protest letters were filed by Redway Community Services District (Redway CSD), Linda Sutton, Kristin Vogel, and Edward Voice. (2019-11-25 Protest to Petition – Redway; 2019-11-27 Protest to Petition – Sutton; 2019-11-30 Protest to Petition – Vogel; 2019-12-02 Protest to Petition – Voice.) These four parties are jointly referred to in this order as the “Protestants.”

On February 10, 2020, Garberville SD sent response letters to each of the Protestants. (2020-02-10 Garberville SD Responses to Protests - Redway CSD, Vogel, Sutton and Voice.) In April 2020, the Protestants filed protest-dismissal conditions. (2020-04-14 Protest Dismissal Conditions - Voice; 2020-04-15 Protest Dismissal Conditions – Redway CSD; 2020-04-17 Protest Dismissal Conditions - Vogel and Sutton.) Garberville SD and the Protestants filed additional letters and comments in June 2020, but Garberville SD and the Protestants did not resolve any of the protests.

2.7 California Environmental Quality Act Documents

Garberville SD filed hearing exhibits regarding the following three California Environmental Quality Act (CEQA) documents.⁶

2013 Garberville Sanitary District Annexation Project Initial Study/Mitigated Negative Declaration for Change in Jurisdictional Boundary & Place of Use

In September 2013, Garberville SD completed and circulated its Final Recirculated Initial Study/Mitigated Negative Declaration (IS/MND) for Garberville SD’s District Annexation Project: Change in Jurisdictional Boundary and Place of Use. (CEQA-3.) The proposed project analyzed in this Initial Study was to modify Garberville SD’s jurisdictional boundary and the authorized place of use in License 3404 and Permit 20789 to add the areas that were being served by the district’s water system at that time but were not within the district’s jurisdictional boundary or the license and permit authorized place of use. (CEQA-3, pp. 9-15.) This proposed project included

⁵ Documents related to the protests are saved on the FTP site in the “Background Documents” folder and the “2019 Petitions to Change Petitions” subfolder.

⁶ Garberville SD filed these documents with exhibit names that begin with “CEQA.” They are filed in the Hearing Documents folder of the administrative record in a separate folder titled “CEQA.”

Garberville SD's 2012 petitions to change License 3404 and Permit 20789. (*Id.*, p. 15; see section 2.4.)⁷

This proposed project did not include any proposed deliveries of water from Garberville SD to Southern Humboldt CP. (*Id.*, pp. 29-32.) The Initial Study stated that these proposed deliveries and related land use changes were being analyzed in an Environmental Impact Report (EIR) that was being prepared by Humboldt County. (*Id.*, p. 31.)

On September 27, 2013, Garberville SD filed a Notice of Determination as the CEQA lead agency for this Negative Declaration with State Office of Planning and Research. (CEQA-6.) On October 14, 2013, the Division filed a Notice of Determination as a CEQA responsible agency. (CEQA-7.) On July 21, 2014, the Humboldt Local Agency Formation Commission (Humboldt LAFCo) filed a Notice of Determination as a CEQA responsible agency. (CEQA-8.)⁸

2016 Humboldt County Environmental Impact Report – Southern Humboldt Community Park

In April 2016, the Humboldt County Planning Department circulated a Draft EIR for the Southern Humboldt Community Park project. (CEQA-9.) The proposed project described in this Draft EIR included various new land and facility uses and types of events. (*Id.*, pp. 46-84.) The Draft EIR described the park's existing water system and the proposed system improvements that were part of the proposed project. (*Id.*, pp. 76-79.) The proposed project did not include any proposed water service from Garberville SD. (*Id.*)

⁷ Unless the context indicates otherwise, "section" refers to sections of this order.

⁸ The CEQA lead agency is the public agency that has the principal responsibility for carrying out or approving the proposed project and decides whether to prepare an environmental impact report (EIR) or a negative declaration for the project, and then prepares the document. (Cal. Code Regs, tit. 14 (CEQA Guidelines), § 15367.) CEQA responsible agencies are the public agencies that propose to carry out or approve a project for which the CEQA lead agency has prepared an EIR or negative declaration. (CEQA Guidelines, § 15381.)

The Humboldt County Planning Department completed the Final EIR for this project in November 2016. (CEQA-12.) The Humboldt County Board of Supervisors certified this EIR (CEQA-14), and the Planning Department sent a CEQA Notice of Determination to the State Office of Planning and Research on April 25, 2017 (CEQA-13).

2019 Humboldt LAFCo Addendum to 2013 Initial Study/Mitigated Negative Declaration

In September 2019, Humboldt LAFCo completed an addendum to Garberville SD's 2013 IS/MND (2019 CEQA Addendum). (CEQA-18.) The proposed project described in this addendum was the connection of a ¾" meter to Garberville SD's Tooby Ranch Road 8" waterline to supply potable water to various facilities within 18 acres of Southern Humboldt CP. (*Id.*, p. 6.)

The addendum's project description refers to Garberville SD's Resolution No. 19-02 and quotes several of the conditions of approval in that resolution, including Condition E (quoted above in section 2.6). Condition E states that the usage for this new connection will be limited to 2,000 cubic feet per month and that the meter will be shut off if the usage is more than 3,000 cubic feet per month during any two months in a 12-month period. (*Id.*, pp. 6-7.)

The 2019 CEQA Addendum discusses the various resource topics analyzed in 2013 IS/MND. (*Id.*, pp. 8-19.) In the discussion of Utilities and Service Systems, the addendum states: "The proposed service extension would provide up to 2,000 cubic feet of water per month to the existing residences and new drinking water fountains at SHCP." (*Id.*, p. 18.) The addendum repeats this limitation at the beginning of its summary of findings and then concludes: "As evidenced in this addendum to the 2013 IS/MND, any impacts associated with the proposed service extension are not anticipated to be more significant than those discussed in the previously prepared environmental document." (*Id.*, p. 19.)

On September 18, 2019, Humboldt LAFCo adopted Resolution No. 19-04, in which it certified that it had independently reviewed and considered the 2019 CEQA Addendum and found that it was adequate to support Garberville SD's proposal for potable-water service to Southern Humboldt CP. (CEQA-20.) Humboldt LAFCo also adopted

Resolution No. 19-05, which authorized Garberville SD to provide potable-water service outside its jurisdictional boundary to Southern Humboldt CP. (CEQA-21; see Gov. Code, § 56133.)

On September 23, 2019, Humboldt LAFCo filed a CEQA Notice of Determination for the 2019 CEQA Addendum with the Humboldt County Clerk-Recorder. (CEQA-22.) During the AHO hearing (see section 2.9), Collette Metz Santsche, Humboldt LAFCo's Executive Director, testified that no one had filed a legal challenge to Resolution No. 19-04, and that any such challenge now would be barred by the applicable statute of limitation. (2021-06-15 AHO Hearing Recording – Morning (audio+video), 03:06:44 - 03:06:49).⁹

2.8 AHO Proceedings

On September 30, 2020, Erik Ekdahl, Deputy Director for the Division, transmitted a memorandum to Eileen Sobeck, the State Water Board's Executive Director, which recommended that the Board assign to the AHO for further proceedings Garberville SD's petitions to change the authorized place of use in License 3404 and Permit 20789. (2020-09-30 Memo Recommending Transfer to AHO.) On September 30, 2020, Ms. Sobeck transmitted a memorandum to Alan Lilly, the AHO's Presiding Hearing Officer, which assigned the petitions to the AHO. (2020-09-30 Memo Assigning Petitions to AHO.)

On March 30, 2021, the AHO issued a Notice of Public Hearing and Pre-Hearing Conference. (2021-03-30 Notice of Pre-Hearing Conference and Hearing.) The notice specified the following hearing issues:

⁹ The files of the audio+video recording of the 2021-06-15 AHO hearing are in the administrative record in the "Hearing Documents" folder. There is one file for the morning session and one file for the afternoon session. These are the official records of the AHO hearing. This order refers to them as "Hearing Recording - Morning" and "Hearing Recording - Afternoon."

There also are files of the Zoom-generated transcripts of these hearing sessions. These files are included in case parties want to use them to locate certain testimony or statements in the audio+video Hearing Recording files. The Zoom-generated transcripts are not official records of the AHO hearing.

- 1) Should the State Water Board approve Garberville SD's petitions to change the authorized place of use for License 3404 and Permit 20789?
 - a) Would the State Water Board's approval of these petitions result in injury to any other legal user of water?
 - b) Would the State Water Board's approval of these petitions unreasonably affect any fish, wildlife or other instream beneficial use?
 - c) Would the State Water Board's approval of these petitions be in the public interest?
 - d) Would the State Water Board's approval of these petitions cause the initiation of any new water right?
 - e) What is the status of Garberville SD's actions to comply with the California Environmental Quality Act (CEQA) for these petitions?
- 2) If the State Water Board grants these petitions, what new terms or conditions, if any, should be added to this license and this permit when the petitions are granted?
 - a) Should the AHO hearing officer include the attached Draft Amended License 3404 and Draft Amended Permit 20789 in the draft proposed order the hearing officer will transmit to the Board?
 - b) If so, should the AHO hearing officer make any changes to these drafts before including them in the hearing officer's proposed order?

(*Id.*, pp. 5-6.) The notice stated that the AHO had prepared the draft amended water-right License 3404 and draft amended water-right Permit 20789 that were referred to in hearing issue 2) a), and that copies of these drafts were attached to the notice. (*Id.*, p. 5.)

On May 11, 2021 the AHO held a Pre-Hearing Conference with the parties via Zoom teleconference. On May 17, 2021 the AHO issued a Pre-Hearing Conference Order. It added the following hearing issue:

- 3) Does part 2 of section 3 of Attachment A of the State Water Board's *Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* apply to Garberville SD?

(2021-05-17 Pre-Hearing Conference Order (Garberville SD), p. 4.)

2.9 AHO Hearing

On June 15, 2021 the AHO held its hearing on Garberville SD's water-right change petitions by Zoom teleconference.

Garberville SD called two witnesses, Jennie Short and Ms. Santsche. Ms. Short, a consultant to the district, testified about the history of the Garberville Water Company and Garberville SD, the district's historical water service to Southern Humboldt CP and the district's proposal for new water service to the park. (GSD-12, pp. 1-4.) Her testimony also addressed each of the hearing issues. (*Id.*, pp. 5-16.) Ms. Santsche testified about Humboldt LAFCo's process for preparing and approving the 2019 CEQA Addendum, adopting Resolution Nos. 19-04 and 19-05, and filing the CEQA Notice of Determination. (GSD-13.)

Southern Humboldt CP called one witness, Laura Cochrane, the park's executive director. She testified about the park and the benefits it provides to the people and communities of the area (SHCP-1) and about several pictures of the park (SHCP-24). Southern Humboldt CP also submitted 22 letters of support for Garberville SD's petitions (SHCP-2 through SHCP-23), and a petition of support signed by 132 people (SHCP-25).

Redway CSD called one witness, Cody Cox, the district's general manager. He testified that Redway CSD diverts water from the South Fork Eel River at a point downstream of Garberville SD's diversion, and that Redway CSD historically has faced operational issues during summer months due to low river flows, which cause slower recharge to the district's infiltration gallery and hinder the district's ability to keep up with general demand. (Redway CSD-1; Hearing Recording - Afternoon 00:53:48). He testified that the South Fork Eel River is an impaired waterbody for sedimentation and temperature. (Hearing Recording - Afternoon 00:54:14.) He testified that the district believes that the Southern Humboldt CP project will directly add to the overdraft concerns of the South Fork Eel River. (Hearing Recording - Afternoon 00:54:49.)

Mr. Voice testified about his experience living in the Garberville area since 1961 and his love for the South Fork Eel River. (EV-28, p. 1.) He testified about the various exhibits he submitted for the hearing. (*Id.*, pp. 2-8.) He requested that the various resolutions, agreements and CEQA documents regarding Garberville SD's change petitions "be sent

back to GSD and LAFCo to be re-written and amended to contain all same language and restrictions, following all CEQA guidelines.” (*Id.*, p. 8.)

Ms. Vogel submitted a policy statement (KV-3) and some documents regarding Garberville SD’s petitions (KV-1, KV-2, KV-4). Ms. Vogel said approving the petitions would not be in the public interest and asked the Board to deny the petitions. (Hearing Recording - Afternoon 02:15:19-02:18:13.)

Ms. Sutton submitted a policy statement (LS-7) and some documents regarding Garberville SD’s petitions (LS-1 through LS-6). Ms. Sutton said the South Fork Eel River was an impaired waterbody and the water is a finite resource. (Hearing Recording - Afternoon 02:44:20 – 02:44:42.)

Jesse Hill made an oral policy statement during the AHO hearing. Mr. Hill stated his support for Garberville SD’s providing drinking water to the Southern Humboldt CP. (Hearing Recording - Morning 32:35-34:56.)

On June 16, 2021, the AHO issued a Post-Hearing Order. The order repeated the hearing issues, directed the parties to organize their closing briefs to address these issues, and specified a July 2, 2021 filing deadline. At the request of Mr. Voice, the AHO later extended the filing deadline to July 9, 2021. Garberville SD, Southern Humboldt CP, Redway CSD, Mr. Voice and Ms. Sutton filed closing briefs.

On September 27, 2021, the AHO issued a notice extending its October 7, 2021 deadline for transmitting its proposed order to the State Water Board to November 6, 2021. (See Water Code, § 1114, subd. (c)(1).)

On November 1, 2021, the AHO issued a Notice of Draft Proposed Order and circulated its draft proposed order. The AHO’s notice directed parties to submit comments by December 1, vacated the prior submission of this matter to the AHO, and stated that the matter would be deemed re-submitted on December 1, 2021. Garberville SD, Redway CSD, Ms. Sutton, Mr. Voice and Ms. Vogel submitted comments on the draft proposed order. On February 25, 2022, the AHO issued a notice of extension of the AHO’s

deadline for transmitted its proposed order to the Clerk of the Board. The AHO transmitted its proposed order to the Clerk of the Board on March 28, 2022. Appendix C discusses the parties' comments on the AHO's draft proposed order and our responses.

3.0 DISCUSSION

3.1 Should the State Water Board Grant Garberville SD's Change Petitions?

Would the State Water Board's Approval of These Petitions Result in Injury to Any Other Legal User of Water?

Water Code section 1702 states that, before the Board may grant a petition to change the authorized point of diversion, place of use or purpose of use in a water-right license or permit, "the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved."

In *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358, 1369, the court discussed how changes in place of use in appropriative rights may impact other legal users of water:

Injury from a change in place of use generally occurs when use at the new location results in the appropriator using a greater amount of water than he was entitled to [citation] or when use at the new location reduces return flows to the watercourse, thus reducing the amount of water available for diversion by downstream users [citation].

(*Id.*)

If the Board grants Garberville SD's change petitions, the instantaneous and annual diversion limits in License 3404 and Permit 20789 will not change. Granting these change petitions therefore will not result in Garberville SD using a greater amount of water than it currently is authorized to divert and use under this license and this permit. The proposed expansion of the authorized place of use in this license and this permit may result in Garberville SD diverting slightly more water from the South Fork Eel River. However, even these slight increases in Garberville SD's diversions probably will be offset by a corresponding slight reduction in the amounts of water Southern Humboldt CP currently diverts from the river under its riparian rights for the uses that in the future will be supplied by potable water from the district. (GSD-12, p. 12.)

During the hearing, Mr. Cox expressed concerns about the potential effects on Redway CSD's ability to divert water from the South Fork Eel River if the Board grants Garberville SD's petitions. (See section 2.9.) However, if the Board grants the district's change petitions, and if Garberville SD's diversions increase as a result, those increases will be very small, with a maximum monthly average increase of about 0.001 cfs.¹⁰ During the AHO hearing, Mr. Cox admitted that these very small potential increases in diversion rates would not have any measurable effects on Redway CSD's ability to divert water from the river. (Hearing Recording - Afternoon 1:12:52-1:13:59.)

For these reasons, it is very unlikely that there will be any measurable net changes in South Fork Eel River flows or the amounts of water available to downstream water users from the State Water Board's approval of Garberville SD's change petitions, and the Board's approval of these petitions therefore will not result in any injury to any other legal user of the water involved.

**Would the State Water Board's Approval of These Petitions
Unreasonably Affect Any Fish, Wildlife or Other Instream
Beneficial Uses?**

Although Water Code section 1702 does not explicitly refer to effects of changes to water-right permits or licenses on fish, wildlife or other beneficial instream uses, the State Water Board considers such effects when it acts on water-right change petitions. (Decision 1651, p. 17, fn. 12 [citing Order WR 2009-0033, p. 6, fn. 4].)¹¹

Garberville SD's 2013 CEQA Initial Study for its annexation project (see section 2.6 above) discusses the 0.75-cfs overall diversion limit in License 3404 and Permit 20789 (see 2013-10-11 amended License 3404, p. 2, ¶ 7; 2013-10-11 amended Permit 20789, p. 2, ¶ 7), and the term in the 2012 Lake or Streambed Alteration Agreement (LSAA or

¹⁰ An average diversion of 2,000 cubic feet per month (the maximum average monthly amount of Garberville SD's proposed new potable water deliveries to Southern Humboldt CP (see section 2.6) equates to a maximum monthly average flow rate of 0.00076 cfs. The maximum proposed new monthly delivery of 3,000 cubic feet (see section 2.6) equates to a flow rate of 0.0011 cfs.

¹¹ Unless the context indicates otherwise, references to Decisions and Orders in this order are to water-right decisions and orders of the State Water Board and its predecessors.

SAA) between the California Department of Fish and Game (now called the California Department of Fish and Wildlife (CDFW)) that prohibits Garberville SD from diverting more than 0.75 cfs or 10 percent of the streamflow measured by USGS Gauge No. 11476500 at the Miranda gauge. (CEQA-3, p. 49; see GSD-6, p. 4, ¶ 2.15.)¹² The 2013 CEQA Initial Study states that the lowest South Fork Eel River flow of record was 10 cfs on August 30, 1964, and that “[t]he restrictions specified by the [SWRCB] license and permit and the CDFW SAA on the diversion rate will ensure impacts to aquatic resources within the SF Eel River will be less than significant.” (CEQA-3, p. 49.)

Humboldt LAFCo’s 2019 CEQA Addendum discusses this analysis in the 2013 CEQA Initial Study (CEQA-18, p. 10), and concludes that the new project, with Garberville SD’s water-right change petitions, will not have any impacts that will be more significant than those analyzed in the 2013 Initial Study (*Id.*, p. 19).

Considering these CEQA documents, the fact that South Fork Eel River flows are not likely to measurably decrease if the Board grants Garberville SD’s petitions (see section 3.1.1), and the fact that no party submitted any specific evidence that the Board’s decision to grant the change petitions will cause any significant impacts to biological resources, we conclude that the State Water Board’s approval of these petitions will not unreasonably affect any fish, wildlife or other instream beneficial uses.

Would the State Water Board’s Approval of These Petitions Be in the Public Interest?

Although Water Code section 1702 does not explicitly refer to the public interest, the State Water Board considers the public interest when it acts on water-right change petitions. (Decision 1651, p. 17, fn. 12.)

¹² This USGS gauge is located on the South Fork Eel River, 10.8 miles downstream of the authorized point of diversion in License 3404 and Permit 20789. (See attached Figure 1.) Although the 2012 LSAA does not state when the 0.75-cfs limit applies and when the 10-percent limit applies, we assume that the 10-percent limit applies when river flows are less than 7.5 cfs, when it would limit authorized diversions to rates less than 0.75 cfs.

During the hearing, Ms. Short testified that the public “is extremely supportive of the SHCP overall and for them being allowed to have potable water.” (GSD-12, p. 6.) To support this statement, her testimony refers to “the over 400 signatures of support and almost 600 letters of support in the County’s processing of the SHCP EIR, General Plan Amendment, and Rezone project.” (*Id.*, referring to CEQA-11, support letters, parts 1 through 6.) She also referred to the letters of support Southern Humboldt CP submitted as hearing exhibits. (GSD-12, p. 6; see SHCP-2 through SHCP-23.)¹³

Ms. Cochrane testified that the Southern Humboldt CP “is a beloved community asset that the community toiled tirelessly for nearly 2 decades to create” and that “[p]roviding drinking water to Park residents and patrons is a necessity.” (SHCP-1, pp. 1-2.)

Mr. Cox noted that the South Fork of the Eel River “is an already impaired Water Shed [sic] for Water Quality, Sedimentation, as well as temperature” and that the Southern Humboldt CP project “would directly add overdraft concerns of the South Fork Eel River.” (Redway CSD-1.)

Ms. Sutton’s policy statement contended that the South Fork Eel River is impaired, the local water usage already is having significant impacts, and that all uses contribute to cumulative impacts. (LS-4, p. 2.) She contends that SHCP’s plans for the Park are controversial for the small rural community. (LS-7.)

Ms. Vogel’s policy statement stated that Garberville SD’s petitions are not in the public interest and should not be approved because the service agreement between Garberville SD and Southern Humboldt CP “lacks an environmental analysis of impacts specific to the introduction of public water into the SHCP property.” (KV-3, p. 1.) She stated that, if the change petition “were done under the auspices of a normal annexation process,” she would not protest it, but she was concerned that, with the present agreement, “it’s only a matter of time before GSD and the Park will be back asking for more water.” (*Id.*, pp. 2-3.)

¹³ In response to the Division’s November 11, 2019 Notice of Petitions, 27 people filed letters supporting the petitions. (See section 2.6.)

This testimony and these policy statements indicate that an overwhelming majority of the people interested in Garberville SD's water-right change petitions support them, so Southern Humboldt CP can obtain a reliable potable water supply. Although some people stated their oppositions to these petitions, we conclude that the State Water Board's approval of these petitions is in the public interest.¹⁴

Would the State Water Board's Approval of These Petitions Cause the Initiation of a New Water Right?

"A fundamental principle of water right law . . . is that a right cannot be so changed that it in essence constitutes a new right." (Order WR 2009-0061, p. 5, citing Cal. Code Regs., tit. 23, § 791, subd. (a).) Changes that may constitute a new right include expansions of the right "to appropriate a greater amount of water, to increase the season of diversion, or to use a different source of water." (Order WR 2009-0061, pp. 5-6.) "The common feature among the changes that have been found to constitute the creation of a new right, as opposed to a change in an existing right, is that the changes that initiate a new right increase the amount of water taken from a water source at a given time." (*Id.*, p. 6.)

Garberville SD's petitions do not ask the State Water Board to increase any of the instantaneous or annual diversion limits in License 3404 or Permit 20789, to change the authorized season of diversion, or to change authorized point of diversion or the source of the water. The Board's approval of these petitions therefore will not cause the initiation of any new water right.

What Is the Status of Garberville SD's Actions to Comply with CEQA for These Petitions?

As discussed in section 2.7, in 2013 Garberville SD prepared and certified a CEQA Initial Study/Mitigated Negative Declaration for its Annexation Project: Change in Jurisdictional Boundary and Place of Use. In 2019, Humboldt LAFCo prepared and

¹⁴ None of the findings in this order are based on policy statements, which are not evidentiary. (See Cal. Code Regs., tit. 23, § 648.1, subd. (d).) This order just refers to these policy statements to support the general conclusion that the Board's approval of Garberville SD's petitions is in the public interest.

certified a CEQA Addendum for Garberville SD's Change in Jurisdictional Boundary and Place of Use. The project analyzed in this CEQA Addendum was the extension of Garberville SD's potable water service to the parts of Southern Humboldt CP that the district now asks the Board to add to the authorized place of use in License 3404 and Permit 20789. Humboldt LAFCo's actions regarding this CEQA Addendum complied with CEQA Guidelines section 15164 and no one filed a legal challenge to these actions. (Hearing Recording - Morning 03:06:45 – 03:06:49.)

For purposes of considering whether to approve Garberville SD's petitions, the State Water Board is a responsible agency under CEQA. (See Pub. Resources Code, § 21069.) In deciding whether and how to approve a project, a CEQA responsible agency must consider the environmental effects of the project as disclosed in the environmental documentation prepared by the lead agency. (CEQA Guidelines, § 15096, subd. (f).) Except under limited circumstances when a responsible agency may assume lead agency status or prepare subsequent CEQA documentation, a CEQA responsible agency must presume that the conclusions reached by the CEQA lead agency in its CEQA documentation regarding the environmental effects of the proposed project are adequate, or challenge the lead agency in court. (*Id.*, subds. (e) & (f).)

As required by CEQA Guidelines section 15096, subdivisions (a) and (f), we have considered Garberville SD's 2013 CEQA Initial Study and Humboldt LAFCo's 2019 CEQA Addendum and the environmental effects described in those documents. Exercising our independent judgment, we conclude that these CEQA documents are adequate for our actions in this order. Considering those documents and the other evidence described in this order, we have decided to take the actions described in this order.¹⁵

¹⁵ Although section 2.6 discusses the 2016 Humboldt County EIR for the Southern Humboldt CP project, the proposed project described and analyzed in that EIR did not include proposed extensions of Garberville SD water service to Southern Humboldt CP, and the 2019 Humboldt LAFCo CEQA Addendum was not an addendum to that EIR. We therefore do not rely on the 2016 EIR for the Board's CEQA compliance for this order.

For the reasons discussed in sections 3.1.1 through 3.1.5, we conclude we should grant Garberville SD's change petitions.

3.2 If the State Water Board Grants These Change Petitions, What New Terms or Conditions, If Any, Should Be Added to License 3404 and Permit 20789 when the Petitions Are Granted?

Water Code section 1704, subdivision (a), authorizes the Board, after a hearing, to “approve with conditions” a petition to change a water-right license.

The AHO's May 30, 2021 Notice of Pre-Hearing Conference and Hearing included drafts of amended water-right License 3404 and amended water-right Permit 20789 as attachments. As discussed in section 2.8, the hearing issues specified in the notice included the following: (i) what new terms or conditions, if any, should be added to this license and this permit? (ii) should the AHO hearing officer include the Draft Amended License 3404 and Draft Amended Permit 20789 that were attached to the hearing notice in the proposed order the hearing officer will transmit to the Board? and (iii) if so, should the AHO hearing officer make any changes to these drafts before including them in the hearing officer's proposed order?

Garberville SD argues that several amendments should be made to these drafts of amended License 3404 and amended Permit 20789.

First, Garberville SD argues that the July 31, 2019 draft place-of-use map in Figure 2 should be replaced with a final map, with the entire authorized place of use shown in blue and with an updated acreage label. (GSD-12, p. 13; Garberville SD Closing Brief, p. 3.) The AHO has addressed this argument by including the final maps submitted by Garberville SD (2021-06-30 Garberville POU map – License 3404; 2021-06-30 Garberville POU map – Permit 20789)¹⁶ in the amended License 3404 and amended Permit 20789 that are attached to this order.

Second, Garberville SD argues that term 11 of draft amended License 3404 and term 12 of draft amended Permit 20789, which would limit Garberville SD's deliveries to

¹⁶ These two maps are in the “Hearing Documents” folder in the subfolder for Garberville GSD.

Southern Humboldt CP to 3,000 cubic feet during a maximum of two months during any 12-month period, and to 2,000 cubic feet per month during the other months of each such period, should be deleted. (GSD-12, pp. 13-14; Garberville SD Closing Brief, pp. 3-4.)

During the hearing, Ms. Short argued that, because Humboldt LAFCo already has adopted conditions regarding the limits on Garberville SD's water service to Southern Humboldt CP, the State Water Board should focus only on the overall diversion limits in the license and the permit, and not on the amounts of water delivered to any single customer during any month. (GSD-12, p. 14.) She stated that, if some version of this term remains in the amended license and amended permit, then it should be modified to match the conditions in the district's water service agreement with the park. (*Id.*) She stated that, if the Board includes this term in the new amended license and new amended permit, then the Board should describe the process the district will need to follow to amend this condition in the future. (*Id.*)

Garberville SD's closing brief argues that "there is no need to add a condition to limit the amount of water supplied to SHCP in the GSD water rights documents" and that "GSD's choice to limit the quantity of water for service to [Southern Humboldt CP] should not become a condition in GSD's permit or license." (Garberville SD closing brief, p. 4; see CEQA-18, p. 19.)

We disagree. The State Water Board, as a CEQA responsible agency, must consider the environmental effects described in Garberville SD's 2013 IS/MND and Humboldt LAFCo's 2019 CEQA Addendum before reaching a decision on the district's petitions. (CEQA Guidelines, § 15096, subd. (f).) The project description in Humboldt LAFCo's 2019 CEQA Addendum included the limitation on Garberville SD's potable water deliveries to Southern Humboldt CP to 2,000 cubic feet per month and the provision that the meter for these deliveries will be shut off if usage exceeds 3,000 cubic feet during any two months in any 12-month period. (CEQA-18, pp. 6-7, ¶ e.) If these limits are in place, then the district's deliveries to the park will be limited to a maximum of 26,000 cubic feet during any 12-month period (2,000 cubic feet per month x 10 months + 3,000

cubic feet per month x 2 months = 26,000 cubic feet per 12 months). This amount equals 194,494 gallons.

Without these limits, the district's 12-month deliveries to the park could be as high as 679,828 gallons, the park's total estimated annual demand stated in the 2019 CEQA Addendum. (*Id.*, pp. 18-19.)¹⁷ Annual deliveries of water to the park that exceed 194,494 gallons and might be as high as 679,828 gallons could result in environmental impacts that were not analyzed in the 2013 IS/MND or the 2019 CEQA Addendum.

Ms. Santsche testified that Humboldt LAFCo has no regulatory authority to enforce the 2,000 cubic feet per month limit and no ability to impose any fines or penalties if this limit is exceeded. (Hearing Recording - Morning 02:42:51 – 02:44:36.) There is no evidence in the administrative record that, absent this water-right license and permit term, Garberville SD would be required to limit its monthly deliveries of potable water to Southern Humboldt CP to the monthly maximum amounts in the 2019 CEQA Addendum's project description. Moreover, Ms. Short's testimony and Garberville SD's closing brief indicate that, if we do not include a term with monthly delivery limits on the district's potable-water deliveries to Southern Humboldt CP in amended License 3404 and amended Permit 20789, then the district will take the position that its potable-water deliveries to the park are not subject to any monthly delivery limits. (GSD-12, pp. 13-14; Garberville SD Closing Brief, p. 4.)

It would not be appropriate under CEQA for the State Water Board to issue an order that would allow the district's potable-water deliveries to the park to exceed these monthly limits. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 190, 192-193, 199-200 [water purveyor violated CEQA when it approved groundwater-pumping project with significantly higher pumping rates than those in EIR's project description]; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149

¹⁷ The 679,828-gallon estimate in the 2019 CEQA Addendum is based on the table of estimated post-project water demands in Humboldt County's 2016 EIR. (CEQA-9, App. G, Table 9, p. 632.) This estimate is the total of the monthly water demands listed in that table for all non-irrigation uses (baseline water use and events, camps and tournaments for Areas 1-5). (Hearing Recording - Morning 03:04:40 – 03:10:46.)

Cal.App.4th 645, 655 [county violated CEQA when it issued conditional use permit for mine that would allow substantial increases in annual production while draft EIR stated that there would not be any substantial increases in production].)

We agree with Garberville SD that, consistent with the district's service agreement with Southern Humboldt CP (and the project description in the 2019 CEQA Addendum), the term in the drafts of License 3404 and Permit 20789 that were attached to the AHO's March 30, 2021 hearing notice should be amended to add a provision that monthly deliveries may be up to 3,000 cubic feet in up to two months during any 12-month period. The AHO has made the appropriate amendments. With these amendments, Term 11 of amended License 3404 states:

The total amount of water right holder's deliveries to the Southern Humboldt Community Park under this right and the right pursuant to Application 29981 shall not exceed 3,000 cubic feet per month during two months of any 12-month period and shall not exceed 2,000 cubic feet per month during the remaining months of any such period. Right holder shall attach a table to each year's annual report of licensee that lists (in cubic feet) the amount of water right holder delivered to the Southern Humboldt Community Park during each month of the year covered by the annual report.

Term 12 of amended Permit 20789 contains similar language.

If Garberville SD and Southern Humboldt CP in the future decide to amend their water service agreement to increase the monthly amounts of potable water that the district may deliver to the park above these limits, then the district may file a petition with the Board requesting amendments to License 3404 and Permit 20789 to authorize such increases.¹⁸ If Garberville SD decides to file such a petition, then the district or Humboldt LAFCo will need to determine whether a new addendum to the 2013 IS/MND and the 2019 CEQA Addendum is appropriate, or whether a new negative declaration or EIR is necessary (See CEQA Guidelines, § 15064, subd. (b)), and the district or

¹⁸ Although Water Code section 1701 refers only to an applicant, permittee, or licensee changing points of diversion, places of use and purposes of use, a Board regulation authorizes an applicant, permittee, or licensee to petition the Board for other changes in water-right license and permits. (Cal. Code Regs., tit. 23, § 791, subd. (e).)

Humboldt LAFCo then will need to complete and certify the appropriate CEQA document before the Board may act on the petition.

Garberville SD's third argument is that the overall diversion limit of 542.2 af/yr in Term 6 of amended License 3404 and amended Permit 20789 should not be reduced to 245.5 af/yr until the Board completes the work necessary to prepare a water-right license to replace Permit 20789. (Garberville SD Closing Brief, p. 5; Hearing Recording - Morning 00:53:45 - 00:54:20).

As discussed in section 2.4, Garberville SD sent a letter to the Division in 2013, which withdrew the district's petition for extension of the December 31, 1999 beneficial-use deadline in Term 8 of Permit 20789. The district's letter stated that the maximum total amount of water diverted under License 3404 and Permit 20789 during any year between 1995 and 1999 was 80 million gallons in 1999, and that this amount was representative of the maximum amount the district would divert in future years.¹⁹ This amount equals 245.5 af/yr. The district has not filed any subsequent petition for extension of time for Permit 20789, and the district did not submit any evidence during the AHO hearing that the district's diversions ever exceeded this amount during any other year, or that they are projected to exceed this amount in the future.

Considering these facts, we conclude that it is appropriate to include the 245.5 af/yr total limit in the amended License 3404 and amended Permit 20789 that we are approving in this order. Following our adoption of this order, Garberville SD may renew its request to the Division for water-right licensing of Permit 20789.

3.3 Applicability of Cannabis Cultivation Policy to Garberville SD

Term 10 of the draft amended License 3404 and Term 11 of the draft amended Permit 20789 that were attached to the AHO's March 30, 2021 hearing notice stated:

No water shall be diverted or used under this right for commercial and applicable personal medical use cannabis cultivation unless the water

¹⁹ The district's permittee progress report for 1999 for Permit 20789 stated that the district used 80 million gallons in 1999. (A029982, Annual Permittee Progress Reports, 1999 PROGRESS REPORT BY PERMITTEE.)

right holder is in compliance with all applicable conditions, including the numeric and narrative instream flow requirements, of the current version of the State Water Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*.

During the AHO's pre-hearing proceedings, Garberville SD argued that this policy is not applicable to the district. In response to this argument, the AHO added the following hearing issue:

- 3) Does part 2 of section 3 of Attachment A of the State Water Board's *Cultivation Policy – Principles and Guidelines for Cannabis Cultivation* apply to Garberville SD?

(See section 2.8.)

The State Water Board adopted its Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation (Cannabis Policy) on February 5, 2019, and the Office of Administrative Law approved this policy on April 16, 2019.²⁰ Part 2 of section 3 of Attachment A to the Cannabis Policy states:

2. **Retail Water Suppliers:** The instream flow Requirements and forbearance period listed in this section shall not apply to retail water suppliers, as defined in Section 13575 of the Water Code, whose primary beneficial use is municipal or domestic, unless any of the following circumstances are present:
 - a. the retail water supplier has 10 or fewer customers and delivers water that is used for cannabis cultivation;
 - b. the retail water supplier delivers 10 percent or more of the diverted water to one or more cannabis cultivator(s) or cannabis cultivation site(s), as established by an assessor's parcel number;
 - c. 25 percent or more of the water delivered by the retail water supplier is used for cannabis cultivation; or
 - d. a cannabis cultivator and the retail water supplier are affiliates, as defined in California Code of Regulations, title 23, section 2814.20.

(Cannabis Policy, p. 105, footnotes omitted, underlining in original.)

Water Code 13575, subdivision (b)(6) defines "retail water supplier" as "any local entity, including a public agency, city, county, or private water company, that provides retail water service." Garberville SD is a "retail water supplier" under this definition.

²⁰ A copy of this policy is in the "Administrative Record" folder, in the "Background Documents" subfolder.

Ms. Short testified that Garberville SD has 470 water customers, that nine of these customers have “cannabis ag meters,” and that 1.47 percent of the water diverted by Garberville SD during 2020 was billed to these meters. (GSD-12, p. 15.) She also testified that Garberville SD is not affiliated with any of its cannabis customers. (*Id.*)

Based on this testimony, we conclude that Garberville SD is not subject to part 2 of section 3 of Attachment A of the Cannabis Policy at this time. Thus, even though the above standard water-right license and permit term is included in the amended License 3404 and amended Permit 20789 that are attached to this order, the Cannabis Policy does not currently apply to Garberville SD.

3.4 Other Arguments

Redway CSD, Mr. Voice, Ms. Vogel and Ms. Sutton made various arguments in their closing briefs after the AHO hearing, and these parties and Garberville SD submitted comments on the AHO’s draft proposed order. Those arguments are summarized in Appendix C to this order, which also contains our responses.

4.0 CONCLUSIONS

1. We grant Garberville SD’s petitions to change water-right License 3404 and water-right Permit 20789. Appendices A and B are new amended License 3404 and new amended Permit 20789. They contain the new terms discussed in this order.
2. With the terms in new amended License 3404 and new amended Permit 20789, our granting Garberville SD’s change petitions will not operate to the injury of any other legal user of the water involved, will not unreasonably affect fish, wildlife or other instream beneficial uses or any other public trust values, will be in the public interest, and will not initiate any new water rights.

ORDER

IT IS HEREBY ORDERED THAT:

1. Garberville SD's petitions to change water-right License 3404 and water-right Permit 20789 are granted.
2. The Deputy Director for the Division of Water Rights is directed to issue new amended License 3404 and new amended Permit 20789 in the forms of Appendices A and B.
3. The Deputy Director for the Division of Water Rights is directed to prepare and file a CEQA Notice of Determination for this order.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on **[insert date]**.

AYE:

NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board

FIGURES AND APPENDICES

Figure 1 – General Location Map for Garberville SD Change Petitions

Figure 2 – Existing and Proposed Places of Use for Garberville SD Change Petitions

APPENDIX A – New Amended Water-Right License 3404

APPENDIX B – New Amended Water-Right Permit 20789

APPENDIX C – Summaries of Parties' Other Arguments and Board's Responses

Figure 1 - General Location Map for Garberville SD Change Petitions

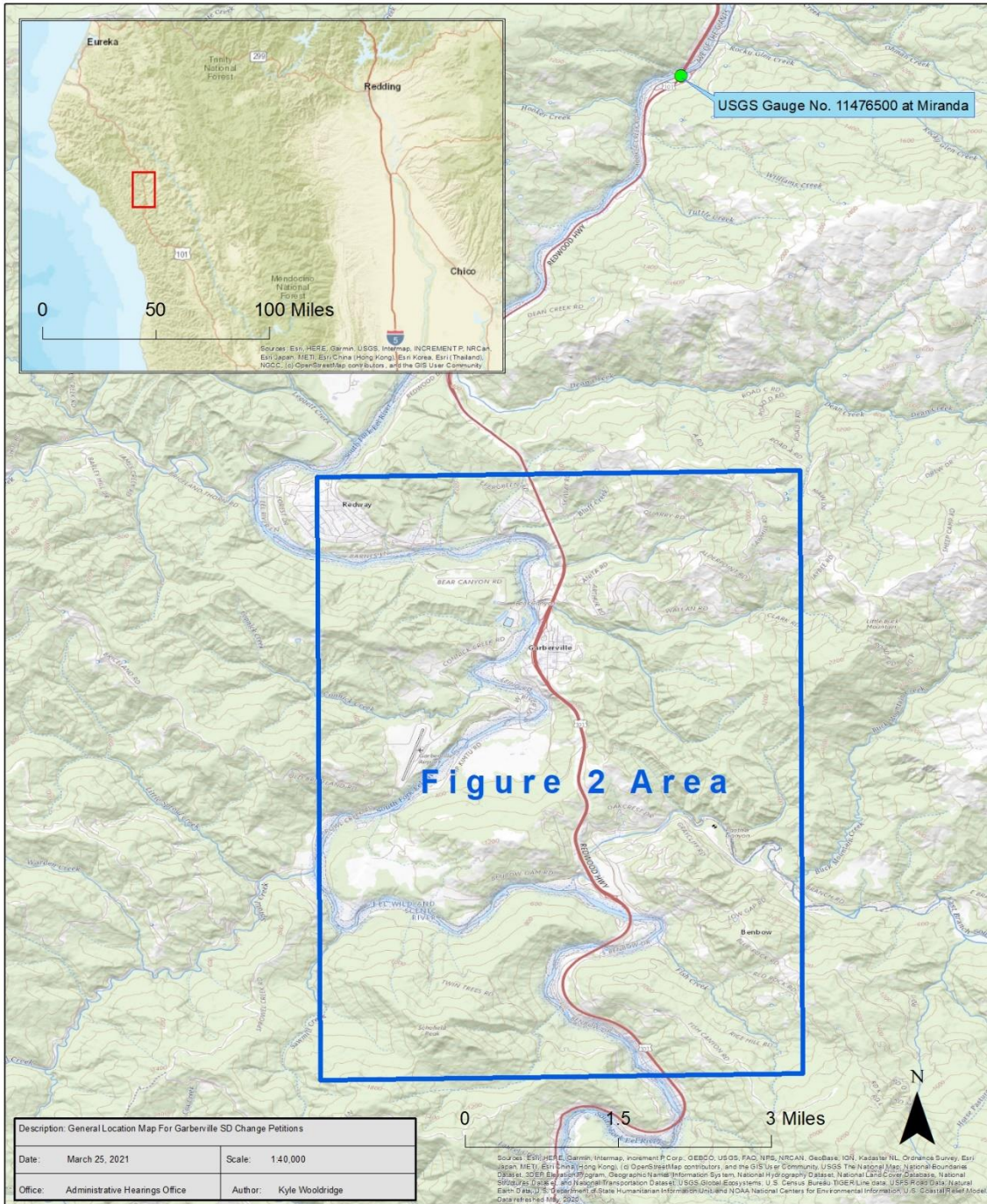
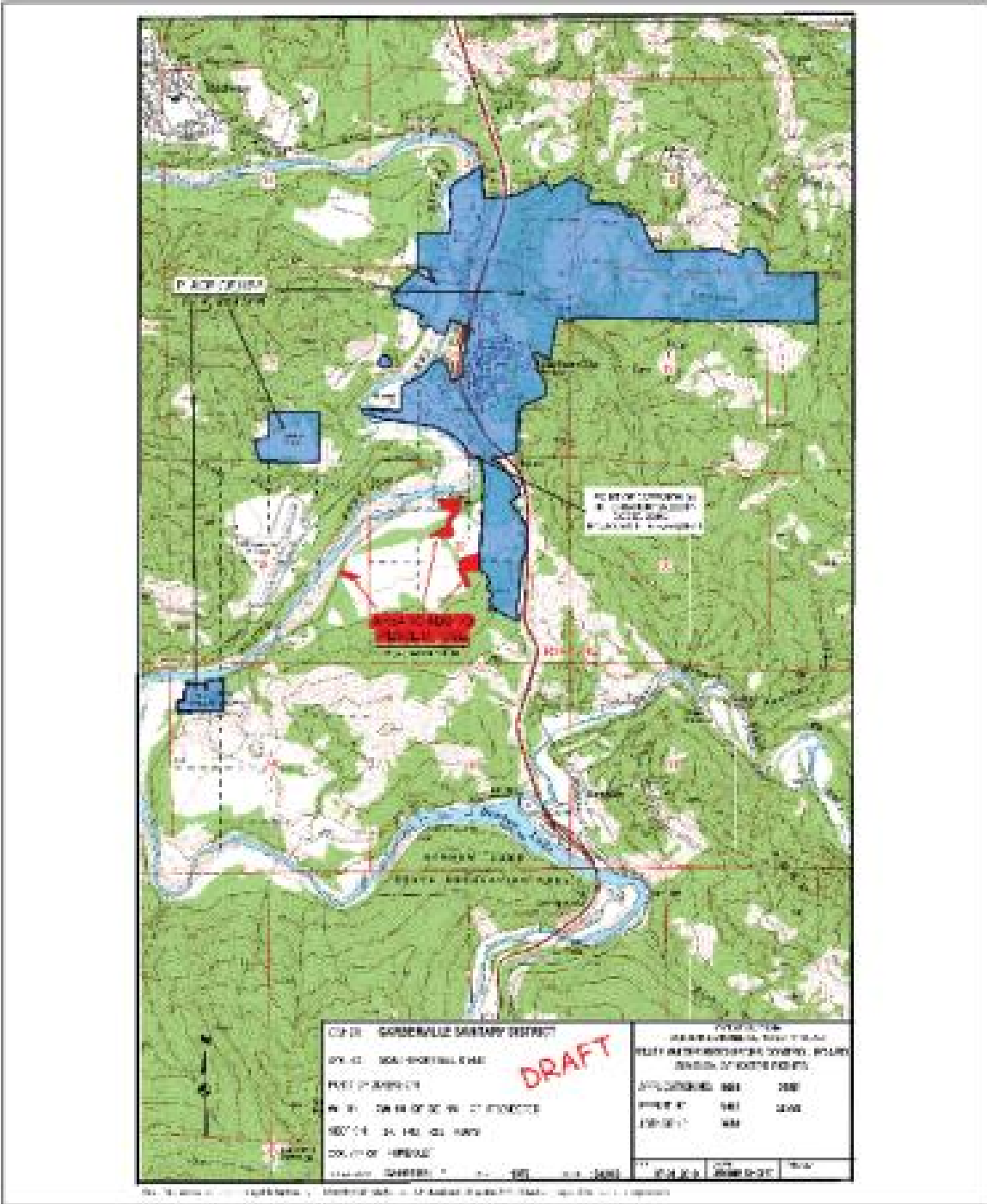


Figure 2 - Existing and Proposed Places of Use for Garberville SD Change Petitions



APPENDIX A

New Amended Water-Right License 3404



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

DIVISION OF WATER RIGHTS

**AMENDED LICENSE FOR DIVERSION
AND USE OF WATER**

APPLICATION 9686

PERMIT 5487

LICENSE 3404

Licensee: Garberville Sanitary District
P.O. Box 211
Garberville, CA 95542

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the licensee (right holder) in accordance with the limitations and conditions stated herein SUBJECT TO PRIOR RIGHTS. The priority of the right confirmed by this license dates from **July 31, 1939**.

This license (right) supersedes any previously issued permit or license on **Application 9686**.

This license confirms that right holder has an appropriative right for the diversion and use of water as follows:

1. Source of water: **South Fork Eel River**

tributary to: **Eel River thence the Pacific Ocean**

within the County of **Humboldt**.

2. Location of point of diversion:

By California Coordinate System of 1983 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 1,922,330 feet and East 6,059,360 feet	SW ¼ of SE ¼	24	4S	3E	H

This place of use is shown on the attached map dated July 31, 2019.

5. The water appropriated under this right shall be limited to the quantity that can be beneficially used and shall not exceed **0.155 cubic foot per second** by direct diversion to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this right shall not exceed **112.2 acre-feet per year**.

(0000005A)
6. The maximum amount of water diverted under this right and the right pursuant to Application 29981 shall not exceed **245.5 acre-feet per year**.

(0000005Q)
7. The maximum combined total rate of diversion under this right and the right pursuant to Application 29981 shall not exceed **0.75 cubic foot per second**.

(0000005S)
8. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time provided there is no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

(0000027)
9. Upon a judicial determination that the place of use for the right confirmed by this license or a portion thereof is entitled to the use of water by riparian right or pre-1914 appropriative right, the right so determined and the right confirmed by this license shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

(0000021C)
10. No water shall be diverted or used under this right for commercial and applicable personal medical use cannabis cultivation unless the water right holder is in compliance with all applicable conditions, including the numeric and narrative instream flow requirements, of the current version of the State Water Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*.

(0000120)

11. The total amount of water right holder's deliveries to the Southern Humboldt Community Park under this right and the right pursuant to Application 29981 shall not exceed 3,000 cubic feet per month during two months of any 12-month period and shall not exceed 2,000 cubic feet per month during the remaining months of any such period. Right holder shall attach a table to each year's annual report of licensee that lists (in cubic feet) the amount of water right holder delivered to the Southern Humboldt Community Park during each month of the year covered by the annual report.
12. Right holder shall attach to each year's annual report of licensee a diagram of the water-conveyance infrastructure that conveys water diverted under this right within the Southern Humboldt Community Park and a map of the places within the park where such water is used, sufficient to demonstrate that no water diverted under this right and delivered to Southern Humboldt Community Park is used anywhere outside the authorized place of use specified in this license.

THIS LICENSE IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.)

(0000016)

B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.) Civil liability may be imposed administratively by the State Water Board pursuant to Wat. Code, § 1055, or may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums. (Wat. Code, § 1846.)

(0000017)

C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board.

(0000018)

D. Right holder shall measure the amount of water beneficially used under this right using devices and/or methods satisfactory to the Deputy Director for Water Rights. In order to demonstrate compliance with the beneficial use monitoring requirements of this right, right holder shall provide evidence that the devices and/or methods are functioning properly, in a manner satisfactory to the Deputy Director of Water Rights, within thirty days of first use of the device and/or method, with the reports required by chapter 2.7, title 23, California Code of Regulations, and whenever requested by the Division of Water Rights.

(0000015)

E. Right holder shall comply with the reporting requirements as specified in the terms of this right or any reporting requirements by statute, order, policy, regulation, decision, judgment or probationary designation. The more stringent requirement shall control in each instance where there is conflict or inconsistency between the requirements.

Right holder shall comply with the reporting requirements of chapter 2.7, title 23, California Code of Regulations.

Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and beneficial use under this right, and documentation of compliance with the terms and conditions of this right.

(0000010)

- F. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;
 2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
 3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
 4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

- G. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

- H. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

- I. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

- J. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of, attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

- K. Urban water suppliers shall comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An “urban water supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. All Urban Retail Water Suppliers shall comply with the provisions of Division 6, Part 2.55 (commencing with Chapter 9, section 10609.20) and Part 2.6 (commencing with Chapter 3, section 10608.34) of the Water Code. An “urban retail water supplier” means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

Agricultural water users and suppliers shall comply with the provision of Division 6, Part 2.55 of the Water Code and the Agricultural Water Management Planning Act (Water Code, § 10800 et seq.). An “agricultural water supplier” means a supplier, either publicly or privately owned, providing water (excluding recycled water) to 10,000 or more irrigated acres, including a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(0000029D)

L. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board 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.

(0000012)

M. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

N. This right does not authorize any act which results in the taking of a candidate, 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 & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this right, right holder shall obtain any required authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.

(0000014)

This right is issued, and right holder is subject to the following provisions of the Water Code:

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefore shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

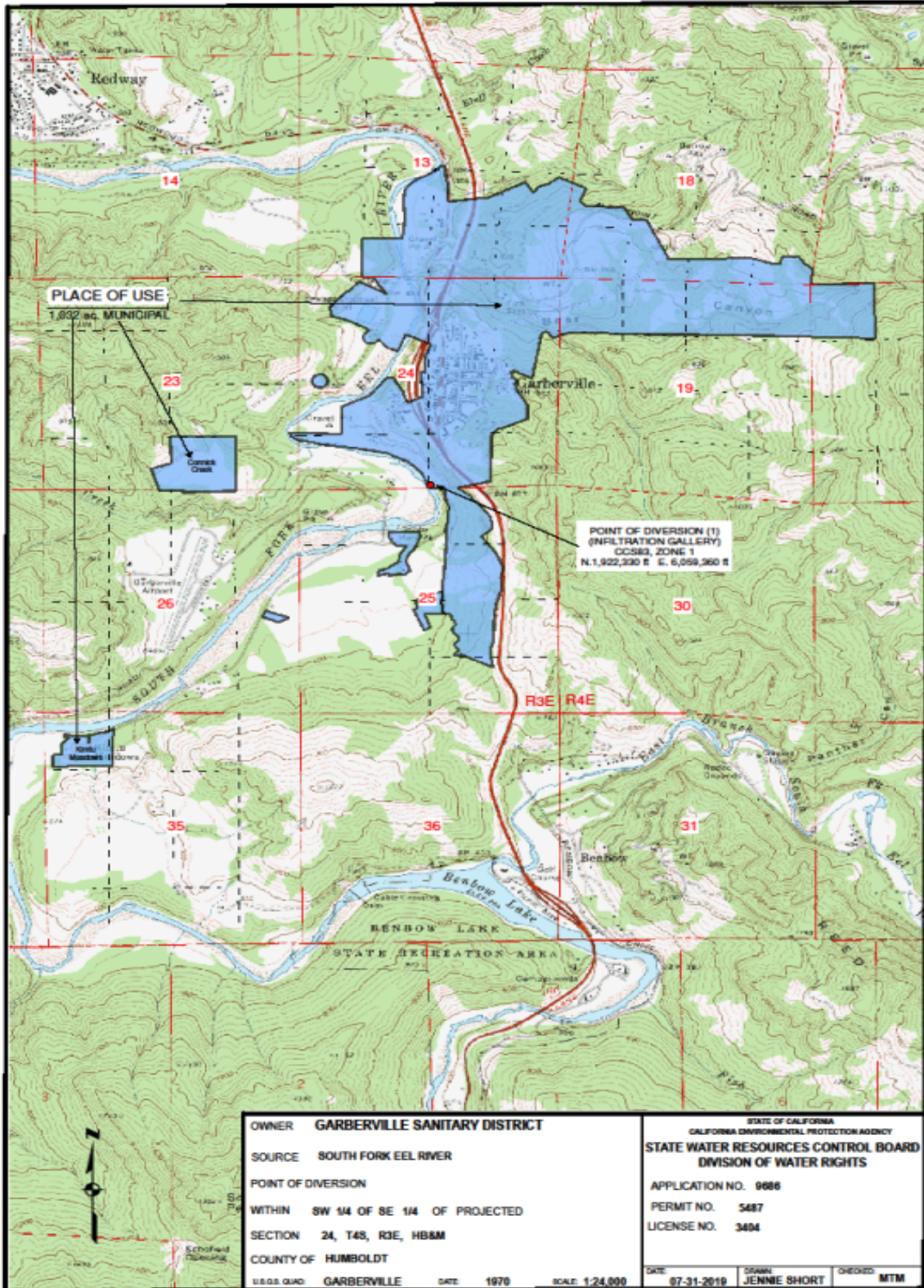
Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated:



Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8726. It has been prepared for descriptive purposes only.

APPENDIX B

New Amended Water-Right Permit 20789



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

DIVISION OF WATER RIGHTS

**AMENDED PERMIT TO
APPROPRIATE WATER**

APPLICATION 29981

PERMIT 20789

Permittee: Garberville Sanitary District
P.O. Box 211
Garberville, CA 95542

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the permittee (right holder) in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this permit (right) dates from **July 22, 1991**.

This permit supersedes any previously issued permit on **Application 29981**.

Right holder is hereby authorized to appropriate water as follows:

1. Source of water: **South Fork Eel River**
tributary to: **Eel River thence the Pacific Ocean**
within the County of **Humboldt**.

2. Location of point of diversion:

By California Coordinate System of 1983 in Zone 1	40-acre subdivision of public land survey or projection thereof	Section (Projected) *	Township	Range	Base and Meridian
North 1,922,330 feet and East 6,059,360 feet	SW ¼ of SE ¼	24	4S	3E	H

3. Purpose of use:	4. Place of use:
Municipal	Within the Garberville Sanitary District service area boundary within Sections 13, 23, 24, 25, 26 and 35, T4S, R3E, HB&M; and Sections 18, 19, and 20, T4S, R4E, HB&M; and portions of Sections 25 and 26 not within the existing Garberville Sanitary District services boundary as shown on map.

This place of use is shown on the attached map dated July 31, 2019.

5. The water appropriated under this right shall be limited to the quantity that can be beneficially used and shall not exceed **0.595 cubic foot per second** by direct diversion to be diverted from January 1 to December 31 of each year.

(0000005A)

The maximum amount of water diverted under this right and License 3404 (Application 9686) shall not exceed **245.5 acre-feet per year**.

(0000005Q)

6. The maximum simultaneous rate of diversion under this right and License 3404 (Application 9686) shall not exceed **0.75 cubic foot per second**.

(0000005S)

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time provided there is no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

(0000027)

Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 1999.

(0000009)

10. Upon a judicial determination that the place of use under this right or a portion thereof is entitled to the use of water by riparian right or pre-1914 appropriative right, the right so determined and the right acquired under this right shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

11. No water shall be diverted or used under this right for commercial and applicable personal medical use cannabis cultivation unless the water right holder is in compliance with all applicable conditions, including the numeric and narrative instream flow requirements, of the current version of the State Water Board's *Cannabis Cultivation Policy – Principles and Guidelines for Cannabis Cultivation*.

(0000120)

12. The total amount of water right holder's deliveries to the Southern Humboldt Community Park under this right and the right pursuant to Application 9686 shall not exceed 3,000 cubic feet per month during two months of any 12-month period and shall not exceed 2,000 cubic feet per month during the remaining months of any such period. Right holder shall attach a table to each year's annual permittee progress report that lists (in cubic feet) the amount of water right holder delivered to the Southern Humboldt Community Park during each month of the year covered by the annual report.

13. Right holder shall attach to each year's annual permittee progress report a diagram of the water-conveyance infrastructure that conveys water diverted under this right within the Southern Humboldt Community Park and a map of the places within the park where such water is used, sufficient to demonstrate that no water diverted under this right and delivered to Southern Humboldt Community Park is used anywhere outside the authorized place of use specified in this permit.

(0350900)

THIS RIGHT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.)

(0000016)

B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.) Civil liability may be imposed administratively by the State Water Board pursuant to Wat. Code, § 1055, or may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums. (Wat. Code, § 1846.)

(0000017)

C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board.

(0000018)

D. Once the time to develop beneficial use of water ends under this permit, right holder is not authorized to increase diversions beyond the maximum annual amount diverted or used during the authorized development schedule prior to submitting a time extension petition and obtaining approval of the State Water Board.

(0000019)

E. The amount of water for consideration when issuing a license shall be limited to only the amount of water diverted and applied to beneficial use in compliance with the terms and conditions of this right, as determined by the State Water Board. (Wat. Code, § 1610.)

(0000006)

F. Right holder shall measure the amount of water beneficially used under this right using devices and/or methods satisfactory to the Deputy Director for Water

Rights. In order to demonstrate compliance with the beneficial use monitoring requirements of this right, right holder shall provide evidence that the devices and/or methods are functioning properly, in a manner satisfactory to the Deputy Director of Water Rights, within thirty days of first use of the device and/or method, with the reports required by chapter 2.7, title 23, California Code of Regulations, and whenever requested by the Division of Water Rights.

(0000015)

- G. Right holder shall comply with the reporting requirements as specified in the terms of this right or any reporting requirements by statute, order, policy, regulation, decision, judgment or probationary designation. The more stringent requirement shall control in each instance where there is conflict or inconsistency between the requirements.

Right holder shall comply with the reporting requirements of chapter 2.7, title 23, California Code of Regulations.

Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and beneficial use under this right, and documentation of compliance with the terms and conditions of this right.

(0000010)

- H. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;
 2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
 3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
 4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

I. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

J. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

K. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

L. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of, attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

- M. Urban water suppliers shall comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An “urban water supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. All Urban Retail Water Suppliers shall also comply with the provisions in Water Code § 10609.20, §10609.22, and §10609.24. An “urban retail water supplier” means a water supplier, either publicly or privately owned, that directly provides potable municipal water to more than 3,000 end users or that supplies more than 3,000 acre-feet of potable water annually at retail for municipal purposes.

Agricultural water users and suppliers shall comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.). Agricultural water users applying for a permit from the State Water Board are required to develop and implement water conservation plans in accordance with the Act. An “agricultural water supplier” means a supplier, either publicly or privately owned, supplying more than 10,000 acre-feet of water annually for agricultural purposes. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(0000029D)

- N. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board 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 State Water Board may be exercised by imposing specific requirements over and above those contained in this right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this right and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice

to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- O. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- P. This right does not authorize any act which results in the taking of a candidate, 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 & G. Code, § 2050 et seq.)

(0000014)

This right is issued, and right holder is subject to the following provisions of the Water Code:

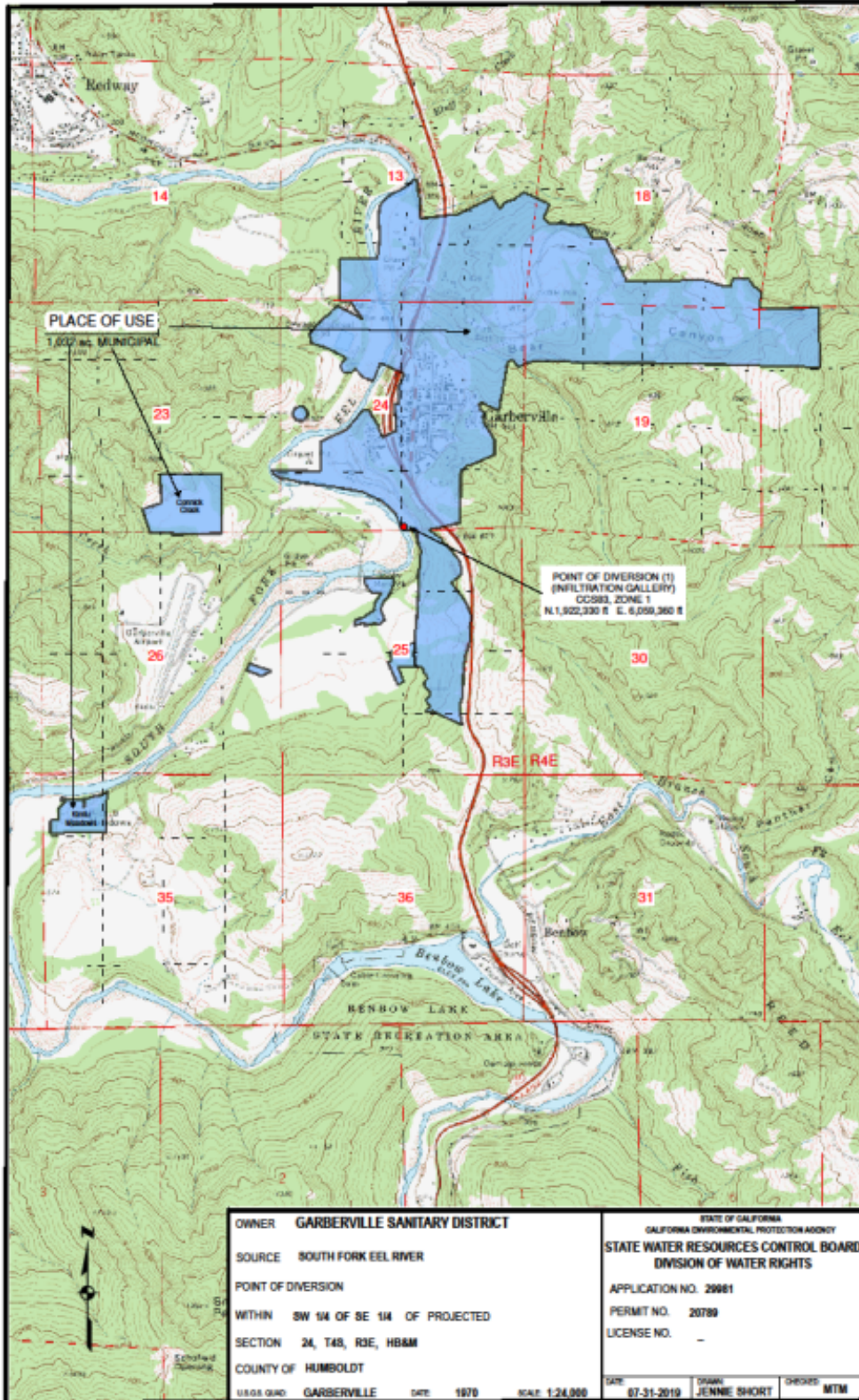
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*Erik Ekdahl, Deputy Director
Division of Water Rights*

Dated:



Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8735. It has been prepared for descriptive purposes only.

APPENDIX C

Summaries of Parties' Other Arguments and Board's Responses

The parties' closing briefs to the AHO and their comments on the AHO's draft proposed order contain various arguments that are not discussed in the body of this order. The following paragraphs contain summaries of these arguments and the Board's responses.

1. In their closing briefs to the AHO, Redway CSD, Mr. Voice and Ms. Vogel argued to the AHO that, before Garberville SD provides potable-water service to Southern Humboldt CP, the district should annex the park to the district's service area. (7021-07-09 Redway CSD Closing Brief, p. 2; 7021-07-09 E. Voice Closing Brief²¹, p. 5; KV-3, pp. 2-3.)

Response: This was an issue for Humboldt LAFCo to decide. (See Gov. Code, § 56133.) Humboldt LAFCo's decision on this issue does not affect the State Water Board's analyses under the Water Code of Garberville SD's petitions to change License 3404 and Permit 20789.

2. Mr. Voice argued to the AHO that the amounts of potable water that Garberville SD delivers to Southern Humboldt CP may exceed the 2,000 and 3,000 cubic feet per month amounts in the 2019 CEQA Addendum, and could be as high as 679,000 gallons per year, unless the State Water Board includes appropriate terms in License 3404 and Permit 20789. (E. Voice Closing Brief, pp. 5-6.)

Response: We have addressed this issue with Term 11 in amended License 3404 and Term 12 in amended Permit 20789. (See section 3.2)

3. Mr. Voice and Ms. Sutton argued to the AHO that the CEQA process for Garberville SD's petitions to change License 3404 and Permit 20789 was "piecemealed," confusing, incomplete and inadequate. (E. Voice Closing Brief, pp. 3-4; L. Sutton Closing Brief, p. 5.)

²¹ Mr. Voice submitted two documents labeled "closing brief". This order cites the version with the later date, with the filename "2021-07-09 E. Voice Final Final Closing Brief from AHO Hearing June 15, 2021".

Response: Section 2.7 discusses Garberville SD's 2013 ID/MND, Humboldt County's 2016 EIR, and Humboldt LAFCo's 2019 CEQA Addendum. While this CEQA history is complicated, Garberville SD's 2013 IS/MND and Humboldt LAFCo's 2019 CEQA Addendum together satisfy the applicable CEQA requirements for Garberville SD's petitions to change License 3404 and Permit 20789. As a CEQA Responsible Agency, the State Water Board may use these CEQA documents for the Board's CEQA compliance for this order. (See CEQA Guidelines, § 15096, subd. (e) & (f).)

4. Redway CSD, Mr. Voice and Ms. Sutton made several other arguments to the AHO in their closing briefs.

Response: These other arguments concern issues that are not relevant to the Board's order on Garberville SD's petitions to change License 3404 and Permit 20789. We do not address these other arguments this order.

5. Garberville SD's comments on the AHO's draft proposed order include a graph of the annual diversions by the district and the Garberville Water Company and note that the annual diversions in many years exceeded the 10-year average of 168.23 af/yr and the 180.19 af/yr maximum for 2010-2020 that was discussed in footnote 18 in the draft proposed order. The district argues that the lower diversion amounts during 2010-2020 are the results of tank repairs, increased water rates and water conservation efforts, and that it is "quite misleading" for the order to refer to these numbers while ignoring the higher annual diversions that occurred before 2010. (2021-11-30 Garberville SD comments, p. 2.) Garberville SD requests that the State Water Board "move forward with converting our permit to a license with a total limit of 245.5 af/year." (*Id.*)

Response: The AHO deleted footnote 18 of the draft proposed order before preparing the proposed order it transmitted to the Board. After we adopt this order, Garberville SD may renew its request to the Division to process the district's request to license Permit 20789. During the licensing process, the district may present its data and arguments regarding the amounts of its historical diversions and the amounts saved through water-conservation actions. We express no opinion in this order regarding what annual diversion limit should be specified in the new water-right license that will supersede this permit.

6. Redway CSD's comments on the AHO's draft proposed order raised concerns about "the organization structure and the transparency of the entity operating the [Southern Humboldt] CP as its Board of Directors. (2021-11-29 Redway CSD comments, p. 1.)

Response: These issues are not within the purview of the State Water Board

7. Redway CSD's comments on the AHO's draft proposed order expressed concerns that Southern Humboldt CP will "exceed the allocated volumetric usage" and "will not have regulatory practices in place, which are necessary to enforce volumetric limitations," and, as a result, Redway SCD's operations could be adversely affected. (*Id.*, pp. 1-2.)

Response: As discussed in section 3.2, term 11 of amended License 3404 and term 12 of amended Permit 20789 will limit the amounts of water Garberville SD may divert under this license and this permit and deliver to Southern Humboldt CP. These terms will require the district to include a table in each annual report it files with the Division that lists the amounts of monthly deliveries to the park. The district's representative that files each annual report will need to declare, under penalty of perjury, that the statements in the report are correct. If any report is not correct or shows any that the district's deliveries to Southern Humboldt CP exceeded any of the applicable delivery limits, then the Division may bring an appropriate enforcement action.

8. Ed Voice's comments on the AHO's draft proposed order state that Garberville SD's "change petition is built on the false premise that the Park had a historical water service connection with GSD." (2021-12-01 E. Voice comments, p. 1, ¶ 1.)

Response: This order does not contain any findings on this issue, and it is not necessary for us to address this issue in this order.

9. Mr. Voice's comments express concerns that the Southern Humboldt CP may use the potable water that Garberville SD delivers to the park throughout the park's 400 acres, and not just on the 18 acres within the park that will be added to the authorized places of use in License 3404 and Permit 20789. (*Id.*, pp. 1-2, ¶¶ 2-6.)

Response: The AHO added a new term 12 to amended License 3404 to address this issue. It states:

Right holder shall attach to each year's annual report of licensee a diagram of the water-conveyance infrastructure that conveys water diverted under this right within the Southern Humboldt Community Park and a map of the places within the park where such water is used, sufficient to demonstrate that no

water diverted under this right and delivered to Southern Humboldt Community Park is used anywhere outside the authorized place of use specified in this license.

The AHO added a new term 13 to amended Permit 20789, which contains similar language. These new terms are appropriate to require Garberville SD to demonstrate that it and Southern Humboldt CP are complying with the place-of-use provisions of License 3404 and Permit 20789, especially considering the district's past violations of these provisions. (See sections 2.3 and 2.5.)

10. Mr. Voice's comments refer to some of his prior e-mails to the AHO and his closing brief, and assert that representatives Garberville SD and Southern Humboldt CP made misstatements, and that the State Water Board should address "perjury under sworn testimony." (*Id.*, p. 3, ¶ 9.)

Response: The AHO hearing officer reviewed Mr. Voice's arguments and assertions and concluded that they all concerned issues that the State Water Board does not need to resolve in this order. We agree with the AHO hearing officer's conclusion.

11. Kristen Vogel's comments on the AHO's draft proposed order assert that there has been considerable community opposition to proposed re-zoning of the Southern Humboldt CP that would have opened the park up to activities that would adversely affect nearby neighborhoods and the Town of Garberville. Her comments state concerns about "high decibel noise" and traffic and parking problems. (2021-12-01 K. Vogel comments, pp. 1-2.)

Response: The comments and policy statements in the administrative record indicate substantial support for the Board's granting Garberville SD's petitions to change License 3404 and 20789, which support our conclusion that granting the petitions would be in the public interest. (See section 3.1.3.) We defer to the local agencies with regulatory authority over land-use and related issues to address the noise, traffic and parking issues raised by Ms. Vogel's comments.

12. Ms. Vogel's comments state the concern that Southern Humboldt CP may circulate water it receives from Garberville SD throughout the 400-acre park. (2021-12-01 K. Vogel comments, p. 2.)

Response: As discussed above, the AHO added a new term 12 to amended License 3404, and a new term 13 to amended Permit 20789, to address this issue.

13. Ms. Vogel's comments raise the issue of the employment relationship between Ms. Short and Garberville SD. (*Id.*, p. 2.)

Response: It is not necessary for this order to address this issue.

14. Ms. Sutton's comments on the AHO's draft proposed order state concerns about whether Garberville SD will comply with the limitations in License 3404 and Permit 20789 on the amounts of water Garberville SD may deliver to Southern Humboldt CP and on the places where the park may use this water. (2021-11-30 L. Sutton comments, pp. 1-2.)

Response: As discussed above, term 11 of amended License 3404 and term 12 of amended Permit 20789 specify the maximum amounts of water diverted under this license and this permit that Garberville SD may deliver to Southern Humboldt CP, and term 12 of amended License 3404 and term 13 of amended Permit 20789 address the place-of-use issue.

15. Ms. Sutton's comments also raise concerns about the potential impacts on Redway CSD.

Response: Those potential impacts are discussed in section 3.1.1.