

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

**DIVISION OF WATER RIGHTS**

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**IN THE MATTER OF WATER RIGHT LICENSE 2033 (APPLICATION 1699)  
OF GARDEN HIGHWAY MUTUAL WATER COMPANY**

**PETITION FOR TEMPORARY CHANGE INVOLVING THE TRANSFER OF UP TO  
5,500 ACRE-FEET OF WATER TO STATE WATER CONTRACTOR AGENCIES**

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SOURCE: Feather River

COUNTY: Sutter

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**ORDER APPROVING TEMPORARY CHANGES**

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

**1.0 OVERVIEW**

On March 24, 2021 Garden Highway Mutual Water Company (Garden Highway or Petitioner) filed with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) a petition for temporary change (Petition) involving the transfer of water under water right License 2033 (Application 1699), pursuant to Water Code section 1725 et seq. On April 30, 2021 Garden Highway amended its petition to reduce the amount proposed for transfer from 6,500 acre-feet to 5,500 acre-feet. Under the revised petition, water will be transferred to participating State Water Contractor (SWC) Agencies. The SWC Agencies that will use the water include: Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, San Geronio Pass Water Agency, Santa Clarita Valley Water Agency, Metropolitan Water District of Southern California, San Gabriel Valley Water Company, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, and Napa County Flood Control and Water Conservation District. The temporary transfer period begins on June 1, 2021 and is effective through September 30, 2021.

**2.0 TRANSFER TYPE**

Petitioner proposes to make water available by pumping groundwater in lieu of diverting surface water under License 2033.

## 2.1 Groundwater Substitution

Under a groundwater substitution transfer, surface water supply is made available for transfer as a result of a petitioner reducing the amount of water it would have diverted under its surface water right and replacing those diversions with groundwater pumping. Depending on various factors including the distance of the groundwater well(s) from the surface stream, depth of the well(s), and local hydrogeologic conditions, the increase in groundwater pumped by the petitioner to enable the transfer results in a reduction in the amount of water that would otherwise have accrued to the stream due to the interconnection of surface water and groundwater (streamflow depletion).

Consequently, groundwater pumping for transfer operations will provide water at the expense of current and future streamflow. Flow reduction in a river, stream, canal, or drain due to groundwater substitution transfers has the potential to injure other legal users of water if it occurs when the Delta is in balanced conditions<sup>1</sup> or there is limited streamflow in the channel from which the water is being transferred.

Proposals for transfers of water through Central Valley Project (CVP) and/or State Water Project (SWP) facilities that involve groundwater substitution are developed consistent with the *Draft Technical Information for Preparing Water Transfer Proposals* (Draft Technical Information), dated December 2019, prepared by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation).

Depending on well location and associated impacts to surface water supply, DWR and Reclamation determine which wells are appropriate for groundwater substitution transfer use. The DWR and Reclamation well criteria used to evaluate groundwater substitution transfers are intended to minimize impacts to streamflow during balanced conditions in the Delta and potential impacts to SWP and CVP operations.

All groundwater substitution transfers are subject to applicable county regulations, including any regulations prohibiting transfers. The boundaries of Garden Highway are within the Sutter County Groundwater Sustainability Agency (GSA), and Garden Highway has notified the GSA's point of contact regarding the proposed groundwater substitution activity within the GSA boundary. Groundwater substitution transfers are also required to comply with current groundwater management law under the 2014 Sustainable Groundwater Management Act (SGMA). Garden Highway is located within the Sacramento Valley Sutter County subbasin. For this subbasin, SGMA requires the GSA to adopt a groundwater sustainability plan by January 31, 2022 for review by DWR.

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<sup>1</sup> The Delta is in balanced conditions when the SWP and CVP agree that releases from upstream reservoirs, plus unregulated flow, approximately equal water supply needed to meet Sacramento Valley in-basin uses and Project exports. During balanced conditions in the Delta when water must be withdrawn from storage to meet Sacramento Valley and Delta requirements, 75 percent of the responsibility to withdraw from storage is borne by the CVP and 25 percent by the SWP.

### *Long-Term Impacts to Stream Flow from Groundwater Substitution Transfers*

Depletion of surface stream flows due to groundwater pumping, including groundwater substitution transfers, has been a long-standing issue of concern in California. Part of the concern involves whether default streamflow depletion factors (SDF) being used pursuant to groundwater substitution transfers are stringent enough to protect against long-term negative impacts to surface water flows. Because real-time streamflow depletion due to groundwater pumping cannot be directly measured, DWR and Reclamation estimate impacts on streamflow due to groundwater pumping using analytical and numerical groundwater models. For Garden Highway, DWR and Reclamation have determined that a 24 percent SDF is necessary to mitigate the effect of the proposed groundwater substitution transfer on streamflow.

DWR and Reclamation anticipate that on-going refinement of groundwater substitution transfer modeling will allow them to more accurately evaluate potential long and short-term surface water depletion impacts from individual transfers and be able to condition future transfers as necessary to protect against those impacts.

## **3.0 PETITIONS FOR TEMPORARY CHANGE INVOLVING TRANSFER**

### **3.1 Description of the proposed temporary changes**

In order to facilitate the transfer, Garden Highway proposes to temporarily add the following to License 2033:

- 1) SWP's Barker Slough Pumping Plant as a point of diversion, located within NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 18, T5N, R2E, MDB&M;
- 2) SWP's Banks Pumping Plant via the Clifton Court Forebay as an additional point of diversion, located within NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 20, T1S, R4E, MDB&M;
- 3) San Luis Reservoir as a point of redirection, located within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 15, T10S, R8E, MDB&M;
- 4) a portion of the SWP's service area (as shown on Map 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630); and
- 5) municipal, industrial, and domestic purposes of use.

### **3.2 Summary of Garden Highway's License 2033**

License 2033, which has a priority date of March 2, 1920, authorizes the direct diversion from the Feather River of up to 39 cubic feet per second from April 15 to October 31 of each year for irrigation purposes. The authorized point of diversion for License 2033 is in Sutter County and located by the California Coordinate System, Zone 2, NAD 83, North 2,110,287 feet and East 6,679,958 feet, being within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 24,

T13N, R3E, MDB&M. The authorized place of use consists of a net of 3,708.45 acres within a gross of 3,765.45 acres, said gross acreage lying within: projected Section 1, fractional Section 2, and Section 3, T12N, R3E, and projected Sections 24, 25 and 36, fractional Sections 23, 26 and 35, and Sections 22, 27 and 34, T13N, R3E, all within MDB&M.

#### **4.0 PUBLIC NOTICE OF THE PROPOSED TEMPORARY CHANGE**

On March 29, 2021, a public notice of the Petition was provided by posting on the Division's website and via the State Water Board's electronic subscription mailing list. On the same date, Petitioner noticed the Petition via publication in The Sacramento Bee and mailed the notice via first class mail to interested and downstream parties. The comment deadline was April 28, 2021. Timely comments on the transfer were received from the California Department of Fish and Wildlife (CDFW), Reclamation, and AquAlliance, California Water Impact Network, and California Sportfishing Protection Alliance (collectively "AquAlliance et al."). Petitioner provided responses to the comments by letters to the Division dated April 30, 2021 and May 19, 2021 that are available in the record for License 2033. The Petitioner consented under Water Code section 1726, subdivision(g)(3) by email dated May 7, 2021 to extend the deadline for issuing this Order to eight business days following submittal of responses to comments.

#### **4.1 Comments by CDFW**

CDFW noted that transfer-related groundwater pumping lowers groundwater levels, potentially harming groundwater-dependent ecosystems where groundwater-surface water interconnectivity exists and recommends that transfer water groundwater pumping cease when groundwater elevations are 80% of the historical low.<sup>2</sup> CDFW also noted that transfers tend to leave more water in the stream during the summer – the opposite of a natural flow hydrograph. To mitigate the effect on native species and aid spring salmon migration, CDFW suggests “front-loading” transferred water in May and tapering off through the remainder of the diversion season.

#### Petitioner's and State Water Board Response to CDFW

Garden Highway's monitoring program includes the reduction/cessation of groundwater substitution pumping if it causes groundwater levels to recede to historical lows. The low areas where GDEs exist are more affected by nearby surface water bodies than by groundwater pumping. DWR controls river levels through its operation of Oroville Reservoir in accordance with regulatory requirements. As a Feather River settlement

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<sup>2</sup> It is assumed that the 80 percent of the historical low described by CDFW is intended to be quantified in terms of depth below ground surface.

contractor, Garden Highway receives water from Oroville Reservoir but DWR ultimately determines the timing and rate at which transfer water is released for conveyance.

#### **4.2 Comments by Reclamation**

To protect its water rights and South of Delta export operations, Reclamation commented that any Order approving the proposed transfer should be conditioned to ensure that the proposed transfer is consistent with the Draft Technical Information, except that a site-specific SDF of 24 percent should be used for transfer water accounting. In addition, the crediting of transferred water should occur only when balanced conditions prevail in the Sacramento-San Joaquin River Delta.

#### State Water Board Response

Condition 12 of this Order requires compliance with the groundwater substitution agreement executed pursuant to the Draft Technical Information. In addition, the Delta was declared to be in balance by DWR in February 2021 and is expected to remain so through at least the end of the transfer period.

#### **4.3 Comments by AquAlliance et al**

First, AquAlliance et al. argue that the Board should deny the petition, because the Board cannot make the findings required under Water Code section 1727.

AquAlliance et al. assert that because of the difficulty in determining the amount of water available for transfer, the Board cannot make the required finding that the transfer will not injure any legal user of water. AquAlliance et al. describe the uncertainty of water rights claims in the Delta watershed and suggest a water availability analysis is required to ensure there is no injury to other legal water users. AquAlliance also raise concerns about the quantity of return flows, and how the State Water Board relies on return flows to make the no injury determination.

In addition, AquAlliance et al. assert that the Petitioner has failed to make a prima facie case that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses. AquAlliance et al. describe the need for greater Delta inflows and outflows to support native Delta fish species. AquAlliance et al. reject the Petitioner's assertion that the increased flow will benefit fish in the Delta. AquAlliance et al. also raise concerns about the impacts of the Jones and Banks pumps on fish mortality.

AquAlliance et al. argue that groundwater substitution will harm other legal users of water and fish and wildlife, contra the required findings in Water Code section 1727. AquAlliance et al. argue that compliance with the Draft Technical Information is not sufficient to protect fish and wildlife and other legal users of water. AquAlliance et al. also are critical of the use of the SDF of 13 percent and recommend instead that the Petitioner submit a site-specific technical analysis supporting a proposed SDF for review by the relevant agencies.

Second, AquAlliance et al. recommend that the Board review all transfer petitions together as a program, in order to fully consider the cumulative impacts. AquAlliance et al. acknowledge that temporary changes are exempt from the requirements of CEQA under Water Code section 1729. Last, AquAlliance et al. note that the Petitioner has filed a petition for temporary change in order to allow water transfer in eight of the last thirteen years, including this proposed transfer. Because the Petitioner has repeatedly attempted to transfer water, AquAlliance et al. argue that the transfer should be considered a long-term transfer, requiring analysis under CEQA.

#### Petitioner's Response to AquAlliance et al.

Garden Highway responded that AquAlliance et al.'s assertion of a 13 percent SDF is erroneous; the SDF agreed to with DWR and described in the petition is 24 percent. Its temporary change petition provides substantial evidence for the State Water Board to ascertain compliance with the relevant statutes, Water Code sections 1725 - 1732. Garden Highway states it has met "its initial burden to demonstrate that the proposed water transfer will neither injure any legal user of water, nor cause any unreasonable effects to fish, wildlife, or other instream beneficial uses". It will only transfer water that would have otherwise been consumptively used by direct surface diversion. Past transfers by Garden Highway have occurred without any injury complaints from downstream users or neighboring groundwater pumpers and monitoring indicates that groundwater levels have recovered from past transfer pumping.

Regarding SWP operation, Garden Highway notes that operation of the Barker Slough and Banks pumping plants are subject to the US Fish and Wildlife Service's 2019 biological opinion and State Water Board Orders and Decisions that regulate operation of the facilities. DWR must also find that the transfer will be without injury to legal users of water and will not unreasonably affect fish, wildlife or other instream beneficial uses.

#### State Water Board Response

AquAlliance et al. argue that the proposed transfer may injure other legal users of water, but do not identify any specific water right holders. AquAlliance et al. raise broader concerns about how the State Water Board determines whether a transfer may cause injury to a legal user of water but does not provide any evidence that this particular transfer will do so.

The Petitioner provided sufficient information for the State Water Board to make the required finding under Water Code section 1727 that the proposed transfer will not injure any legal user of water. (See Section 8.2.) Water transferred only involves water that would have been consumptively used. (See Section 8.1) Before making the finding that the proposed transfer will not injure any other legal user of water, the State Water Board considers the impact of reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).) A water availability analysis is required for the issuance of a permit for new appropriations of water, but not for a petition for temporary change. (Wat. Code, § 1375, subd. (d); Cal. Code Regs., tit. 23, § 695.)

The Petitioner notified the Sutter County GSA of the potential transfer. In order to avoid impacts to groundwater, Condition 14, subsections (e) and (f) require the Petitioner to measure the daily average pumping rate of groundwater pumped in excess of that which would have been pumped in the absence of this transfer, and to monitor the groundwater elevations within the vicinity of the wells utilized for the transfer prior to the proposed transfer.

The Petitioner has met their burden in showing that the transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses. The proposed transfer will result in increased inflow in the Delta. Water that otherwise would have been appropriated at the Petitioner's point of diversion under License 2033 will flow downstream in the Feather River and into the Delta to the added points of diversion at the Banks Pumping Plant and Barker Slough Pumping Plant. AquAlliance et al. raise concerns about the impact of the operation of the Banks Pumping Plant on fish and wildlife, including Delta smelt, Chinook salmon, Sacramento splittail, and others. Condition 11 requires that the diversion of water comply with the State Water Board's Decision 1641, the federal and state Endangered Species Acts, and applicable biological opinions.

AquAlliance et al. acknowledge that temporary changes are exempt from the requirements of CEQA under Water Code section 1729. In addition, transfer proponents decide whether or not to submit a petition for temporary change in a given year. Because the State Water Board does not initiate transfers, it cannot evaluate them programmatically while meeting statutory deadlines (Wat. Code, § 1726, subd. (g).)

Although the Petitioner has filed petitions for temporary change for similar transfers in previous years, requested transfers were not approved by the Division in 2014 and 2015. As the Petitioner notes in their response, the State Water Board has addressed the issue of similar temporary changes in several previous orders (See WR 2005-0025-DWR; WR 2006-0010-DWR; WR 2007-0012-DWR; WR 2010-0022-DWR.) The Water Code does not require Petitioners for temporary change to make a diligent effort to seek approval for the proposed changes under other provisions of the Water Code or prohibit the approval of a series of similar temporary changes.

## **5.0 POTENTIAL CURTAILMENT**

During any Notice of Water Unavailability (curtailment) period in 2021 that includes License 2033, Garden Highway will be required to cease all diversions under the license, including any diversions for temporary transfer, regardless of whether the actual diversion would be facilitated by DWR or other SWP facilities. A condition is therefore included in this Order that the transfer pursuant to this Order must cease should the State Water Board issue notification that water is unavailable for License 2033.

## **6.0 COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Water Code section 1729 exempts temporary changes involving a transfer of water from the requirements of the California Environmental Quality Act. (Pub. Resources Code, § 21000 et seq.) The State Water Board will file a Notice of Exemption.

## **7.0 CRITERIA FOR APPROVING THE PROPOSED TEMPORARY CHANGES**

The State Water Board shall approve a temporary change involving the transfer of water under Water Code section 1725 et seq., if it determines that a preponderance of the evidence shows both of the following:

- a. The proposed change would not injure any legal user of water, during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water, or reduction in return flows.
- b. The proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(Wat. Code, § 1727, subd. (b).)

In addition, the proposed change must involve only the amount of water that would have been consumptively used or stored in the absence of the temporary change. (*Id.*, § 1726, subd.(e).)

Temporary changes pursuant to Water Code section 1725 may be effective for a period of up to one year from the date of approval. (Wat. Code, § 1728.) “The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out.” (*Ibid.*)

The State Water Board also has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419.) The State Water Board considers the evaluation of public trust resources as part of its evaluation of impacts to fish, wildlife, or other instream beneficial uses under Water Code section 1727, subdivision (b)(2) (see Section 8.3 of this Order).



## **8.0 REQUIRED FINDINGS OF FACT**

### **8.1 Transfer Only Involves Water That Would Have Been Consumptively Used or Stored**

Before approving a temporary change due to a transfer or exchange of water pursuant to Chapter 10.5 of Part 2 of Division 2 of the Water Code, the State Water Board must find that the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change or conserved pursuant to Water Code section 1011. (Wat. Code, §§ 1725, 1726.) Water Code section 1725 defines “consumptively used” to mean “the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.”

Garden Highway has indicated that its proposed transfer of water will be consistent with the Draft Technical Information. As such, the groundwater substitution component of this transfer is conditioned to allow use of only those wells found acceptable by DWR and Reclamation, and the wells must follow DWR’s and Reclamation’s well construction, location, and monitoring criteria as well as the application of the SDF. A site-specific SDF of 24 percent will be applied to Garden Highway’s groundwater substitution transfer. To account for streamflow depletion related to groundwater pumping, Garden Highway will only transfer 76 percent of the total quantity pumped in exchange for the surface water available for transfer. Therefore, the amount available for transfer will be up to 4,180 af. For South-of-Delta transfers, an additional carriage water loss factor is applied by DWR to transferred water.

The State Water Board conducted an independent evaluation of its records. The amounts diverted and used under License 2033 was 13,774 af, 12,493 af, 10,255 af, 13,429 af, and 8,520 af during 2016, 2017, 2018, 2019, and 2020, respectively. These data indicate that Garden Highway has put the amount proposed to be transferred to recent beneficial use. In light of this, and in accordance with Water Code section 1726, subdivision (e), the State Water Board finds that the water proposed for transfer pursuant to this Order would be consumptively used in the absence of the proposed temporary change.

In light of the above, and in accordance with Water Code section 1726, subdivision (e), the State Water Board finds that the water proposed for transfer pursuant to this Order would be consumptively used or stored in the absence of the proposed temporary change.

### **8.2 No Injury to Other Legal Users of the Water**

Before approving a temporary change due to a transfer or exchange of water, the State Water Board must find that the transfer would not injure any legal user of the water

during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows. (Wat. Code, § 1727, subd. (b)(1).)

Thus, with respect to the “no injury” inquiry under Water Code section 1727, subdivision (b)(1), the State Water Board must evaluate whether the change will injure any legal user of the water involved in the change. The controlling consideration in the State Water Board’s inquiry is the effect of the change on the rights of others. (State Water Resources Control Bd. Cases (2006) 136 Cal.App.4th 674, 743, 805.) A person who claims injury from a proposed change “must show the change will interfere with his or her right to use the water, whatever the source of that right may be.” (Id. at p. 805, italics in original.) It is not enough for a water user to show that it will receive less water as a result of the change. Instead, a water user claiming injury must demonstrate that it has a right to the greater amount of water claimed and that the proposed change will interfere with that right. (*Ibid.*)

In general, the transfer of water that would have been consumptively used or stored will not result in injury to other legal users of water.

The water proposed for transfer consists of surface water made available through increased groundwater pumping. DWR and Reclamation have reviewed the proposed transfer and determined that, with the inclusion of the 24 percent SDF, as well as their oversight of the groundwater substitution operations described in Section 2.1 of this Order, the SWP and CVP will not be injured from the additional groundwater pumping associated with the transfer. The groundwater substitution conveyance agreement described in Section 2.1 of this Order includes mitigation and monitoring plans to address the impacts of additional pumping for this transfer. This Order requires compliance with these agreements and plans. In general, the transfer of water that would otherwise be consumptively used will not result in injury to other legal users of water. Additionally, the transfer is conditioned such that diversion pursuant to the transfer must cease if the Division notifies the Petitioner that water is unavailable under the water right priority for License 2033.

Water Code Section 1745.10 requires that groundwater substitution transfers be (a) consistent with a groundwater management plan adopted pursuant to state law for the affected area or (b) approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin. As indicated in Section 2.1 of this Order, the boundaries of Garden Highway are within the Sutter County GSA, and Garden Highway has notified the County’s GSA point of contact regarding the proposed groundwater substitution activity within the GSA boundary. Garden Highway’s petition also notes that they believe the proposed transfer will not result in overdraft based on data provided by a multi-completion continuous

groundwater monitoring well installed by DWR in 2010 within Garden Highway. The monitoring results obtained from the wells indicate seasonal fluctuations in water level but not a continued decline.

In light of the above, and in accordance with Water Code section 1727, subdivision (b)(1), the State Water Board finds that the proposed temporary changes would not injure any legal user of the water during any potential hydrologic condition that the State Water Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows, or otherwise unreasonably affect a legal user of water.

### **8.3 No Unreasonable Effect on Fish, Wildlife, or Other Instream Beneficial Uses**

Before approving a temporary change in order to facilitate a transfer of water, the State Water Board must find that the proposed change would not unreasonably affect fish, wildlife, or other instream beneficial uses. (Wat. Code, § 1727, subd. (b)(2).) The Petitioner provided CDFW and the Central Valley Regional Water Quality Control Board (Central Valley Water Board) with a copy of the petition in accordance with California Code of Regulations, title 23, section 794, subdivision (c). CDFW provided comments regarding the transfer as described in Section 4.1 that are addressed by the Petitioner and the conditions included in this Order. The Central Valley Water Board did not provide any comments to the State Water Board regarding potential effects of the proposed changes on water quality, fish, wildlife, and other instream beneficial uses.

In general, North of Delta transfers result in an incremental increase in instream flows between the Petitioner's point of diversion and the location where the water is removed from the stream system. The increase in flows is not anticipated to be harmful to instream resources, provided that the transfer water does not cause instream temperatures to increase to harmful levels and also does not result in false fish attraction flows to streams not suited for fish rearing. No information is available that suggests the transfer flows will contribute to false fish attraction flows or significantly change stream temperatures or water quality. The transfer will also be subject to all applicable federal and State Endangered Species Act requirements, including applicable Biological Opinions, Incidental Take Permits, court orders, and any other conditions imposed by other regulatory agencies applicable to diversions and exports of water at the SWP and CVP Delta pumps.

In light of the above, and in accordance with Water Code section 1727, subdivision (b)(2), the State Water Board finds that, as conditioned, the proposed transfer will not unreasonably affect fish, wildlife, or other instream beneficial uses.

## **9.0 STATE WATER BOARD'S DELEGATION OF AUTHORITY**

On June 5, 2012, the State Water Board adopted Resolution 2012-0029, delegating to the Deputy Director for Water Rights the authority to act on petitions for temporary change if the State Water Board does not hold a hearing. This Order is adopted pursuant to the delegation of authority in section 4.4.2 of Resolution 2012-0029.

## **10.0 CONCLUSIONS**

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1725 et seq.

The State Water Board concludes that, based on the available information:

1. The proposed transfer involves only an amount of water that would have been consumptively used or stored in the absence of the temporary change.
2. The proposed temporary change will neither injure, nor unreasonably affect, any legal user of water, including during any potential hydrologic condition that the Board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of water or return flows.
3. The proposed temporary change will not have an unreasonable effect upon fish, wildlife, or other instream beneficial uses.
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) will be performed in compliance with Water Code section 1745.10.

## **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petition filed for temporary change for the transfer of up to 5,500 acre-feet (af) of water under Garden Highway Mutual Water Company's (Garden Highway or Petitioner) License 2033 is approved.

All existing conditions of License 2033 remain in effect, except as temporarily amended by the following provisions:

1. The transfer is limited to the period commencing on the date of this Order and continuing through September 30, 2021.
2. The transfer amount under License 2033 is limited to a total of up to 5,500 af prior to subtracting streamflow depletion loss by groundwater substitution.

3. The Petitioner shall reduce its diversion rate at the original point of diversion authorized under License 2033 by an amount equal to the rate of additional groundwater pumped in order to make water available for transfer pursuant to this Order (both measured as a daily average). The amount of water transferred pursuant to this Order shall not exceed 76 percent of the rate of additional groundwater pumping. Accordingly, the maximum amount of water available for transfer given a 24 percent depletion rate is 4,180 af.
4. Municipal, industrial, and domestic uses are temporarily added as purposes of use.
5. The following points of diversion are temporarily added to License 2033:  
Barker Slough Pumping Plant located as follows: California Coordinate System, Zone 2, NAD 83, North 1,862,435 feet and East 6,619,928 feet being within NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 18, T5N, R2E, MDB&M.  
Harvey O. Banks Pumping Plant (Banks Pumping Plant) via the Clifton Court Forebay located as follows: California Coordinate System, Zone 3, NAD 83, North 2,126,440 feet and East 6,256,425 feet, being within NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 20, T1S, R4E, MDB&M.
6. The following point of rediversion is temporarily added to License 2033:  
San Luis Reservoir located as follows: California Coordinate System, Zone 3, NAD 83, North 1,845,103 feet and East 6,393,569 feet, being within SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Projected Section 15, T10S, R8E, MDB&M.
7. The place of use under License 2033 is temporarily expanded to include the service areas of Dudley Ridge Water District, Kern County Water Agency, County of Kings, Palmdale Water District, San Geronio Pass Water Agency, Santa Clarita Valley Water Agency, Metropolitan Water District of Southern California, San Gabriel Valley Water Company, Alameda County Water District, Zone 7 Water Agency, Santa Clara Valley Water District, Antelope Valley East Kern Water Agency, San Bernardino Valley Municipal Water District, and Napa County Flood Control and Water Conservation District, which are within a portion of the service area of the SWP as shown on Maps 1878 – 1, 2, 3, and 4 filed with the Division under Application 5630.
8. During the period of transfer, Petitioner shall comply with applicable terms and conditions imposed by other regulatory agencies. This Order shall not be construed as authorizing the violation of any agreement entered by the Petitioner.
9. If at any time prior to, or during the period of the transfer, the State Water Board issues notification that water is unavailable for diversion pursuant to License 2033, the transfer pursuant to this Order shall immediately cease. No transfer credit pursuant to this Order shall accrue for groundwater substitution during a period of water unavailability.

10. Carriage loss shall be deducted from any water transferred through the Delta and delivered under this Order.
11. Diversion of water at the Banks Pumping Plant is subject to compliance by the operators (California Department of Water Resources (DWR)) with the objectives currently required of operators set forth in Tables 1, 2, and 3 on pages 181-187 of State Water Board Revised Water Right Decision 1641 (D-1641), or any future State Water Board Order or decision implementing Bay-Delta water quality objectives at those points of diversion/rediversion, including compliance with the various plans required under D-1641 as prerequisites for the use of the Banks Pumping Plant by DWR. Diversion of water is also subject to compliance by DWR with all applicable federal and State Endangered Species Act requirements (ESA), including applicable Biological Opinions (BOs), Incidental Take Permits (ITP), court orders, and any other conditions imposed by other regulatory agencies applicable to these operations.
12. Petitioner shall comply with all provisions contained in the groundwater substitution agreement pursuant to the Draft Technical Information for Preparing Water Transfer Proposals, between DWR and Garden Highway as a condition of transferring water pursuant to this Order.
13. Garden Highway shall develop and submit to the Deputy Director for Water Rights, by April 1 of each year following 2021, a map defining the groundwater elevations within the vicinity of Garden Highway, until such time as these elevations correspond to pre-transfer levels. Each monitoring well will be identified using the same numbering and naming convention as used by the Sutter County GSA. The methods and units used to measure groundwater elevations shall be consistent with those utilized by the Sutter County GSA.
14. By December 15, 2021, Garden Highway shall provide to the Deputy Director for Water Rights one or more tables describing the transfer authorized by this Order. The table(s) shall include the following information:
  - a. The general location of where water was delivered, and the acreage and/or population served by water delivered to State Water Contractor Agencies pursuant to this Order;
  - b. For each day of the transfer, the daily amount of water made available for transfer pursuant to this Order;
  - c. For each day of the transfer, the daily average diversion rate of water directly diverted pursuant to License 2033 during the transfer period;
  - d. The average daily streamflow measured at the nearest representative gaging station on the Feather River;

- e. The daily average pumping rate of groundwater pumped by Licensee in excess of that which would have been pumped in the absence of this transfer; and
  - f. Groundwater elevations within the vicinity of the wells utilized for the transfer prior to the proposed transfer. Each monitoring well will be identified using the same numbering and naming convention as used in the Groundwater Sustainability Plan for the Sutter subbasin. The methods and units used to measure groundwater elevations will be consistent with those utilized in the groundwater sustainability plan and related annual reports.
15. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this transfer and temporary change Order, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the 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 also may be exercised by imposing specific requirements over and above those contained in this Order to minimize waste of water and to meet reasonable water requirements without unreasonable draft on the source.
16. This Order does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (ESA) (Fish and Game Code sections 2050 to 2097) or the federal ESA (16 U.S.C.A. sections 1531 to 1544). If a “take” will result from any act authorized under this temporary transfer, the Petitioner shall obtain authorization for an incidental take prior to commencing transfer of water. Petitioner shall be responsible for meeting all requirements of the applicable ESA for the temporary transfer authorized under this Order.
17. The State Water Board reserves authority to supervise the transfer, exchange and use of water under this Order, and to coordinate or modify terms and conditions, for the protection of vested rights, fish, wildlife, instream beneficial uses, and the public interest as future conditions may warrant.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Erik Ekdahl, Deputy Director*  
*Division of Water Rights*

Dated: MAY 28 2021