

State of California
State Water Resources Control Board
DIVISION OF WATER RIGHTS
P.O. BOX 2000, Sacramento, CA 95812-2000
Info: (916) 341-5300, FAX: (916)3415400, Web: <http://www.waterrights.ca.gov>

PROTEST – (Petitions)

BASED ON ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS
Protests based on Injury to Prior Water Rights should be completed on other side of form

APPLICATION 1699 PERMIT 1793 LICENSE 2033

We, California Water Impact Network and AquAlliance of (C-WIN) P.O. Box 148, Quincy, CA 95971 and (AquAlliance) P.O. Box 4024, Chico, CA 95927 have read carefully a notice relative to a petition for change or extension of time under **APPLICATION 1699 of Garden Highway Mutual Water Company** to divert 5,802 acre-feet (at a rate of up to 39 cubic feet per second) from its point at N 72 degrees E, 4,130 feet from SW corner of Section 24, T13N, R3E, along Sutter Bypass borrow pit for transfer between July 1, 2010, to June 30, 2011, to eight State Water Contractor agencies (the Dudley Ridge Water District, Kern County Water Agency, Napa County Flood Control and Water Conservation District, the Metropolitan Water District of Southern California, Antelope Valley-East Kern Water Agency, Oak Flat Water District, Palmdale Water District, and the San Bernardino Valley Municipal Water District). It is our understanding this proposed transfer assumes that the petitioner will substitute groundwater for surface water.

It is desired to protest against the approval thereof because to the best of our information and belief the proposed change/extension will:

1. not be within the State Water Resources Control Board's jurisdiction
2. not best serve the public interest
3. be contrary to law
4. have an adverse environmental impact

State facts, which support the foregoing allegations:

C-WIN and AquAlliance protest and comment on Garden Highway Mutual Water Company's petition for change of place of use for transfer under Water Code Sections 1330 (actually protesting "an application") and 1726 (f) ("commenting" which must be considered by SWB in deciding the disposition of the short-term transfer change of use petition). Our organizations protest this transfer because we believe it does not serve the public interest, is contrary to the California Water and Public Resources Codes, and would have an adverse environmental impact.

- 1) Transfer is not in the public interest: Garden Highway Mutual Water Company's proposed transfer of surface water to eight State Water Project contractors (as cited in the petition dated April 7, 2010) is not in the public interest. Since some groundwater substitution will occur, the transferor, Garden Highway Mutual Water Company, must demonstrate, not merely assert, that the transfer of surface water from the district will have little to no impact on other parties within or downstream of the District.

Sutter County's groundwater management planning effort in 2008 found that southern Sutter County lands within which Garden Highway Mutual Water Company's lands occur, saw groundwater elevations fall variously from 5 feet above mean sea level nearest to the Feather

River confluence (with the Bear) to 15 feet below mean sea level closer to the rivers between 1912-13 and 2007. While not as serious a drop in groundwater elevation as occurs elsewhere in California, such decreases indicate that groundwater pumping costs are higher than they would be had Sutter County groundwater management policies protecting against the lowering of its water table. Removal of surface water supplies that offset demand for groundwater pumping is not in the public interest since application of the surface water under existing rights (absent the transfer) could instead help raise groundwater elevations under Garden Highway's lands. Other landowners in this area who would have to cope with declines in groundwater elevations. Their increased costs of pumping could have adverse effects on the local economy that go unexamined by the petitioner.

The petition fails to disclose probable third party impacts in the area of origin (Garden Highway Mutual Water Company and its environs) and the area(s) where delivery occurs. Even DWR acknowledges that all transfers have the potential to impact third parties (see Unresolved Issues at <http://www.swpao.water.ca.gov/transfers/index.cfm#Unresolved%20Issues>).

Evaporation of water will occur from the ground surface of the District's irrigated lands during July through September, to the extent that rice fields or other crops are flood-irrigated. The District's petition for temporary transfer provides no accounting of this evaporative loss and how much additional groundwater individual landowners in the vicinity would need to pump to make up for it.

2) Transfer is contrary to law.

- a. Water Code Section 1725. Transfers by Garden Highway Mutual Water Company with nearly identical terms, timing of release, transfer amounts, additional purposes of use, and proposed new users have occurred serially since 2009, as shown in the table below.

Cumulating Petitions for Temporary Changes

Year of Petition	Application Number	Applicant/ Water Right Holder	Average Diversion Rate of Transfer (cfs)	Changed Point of Rediversion	Changed Place of Use	Changed Purpose of Use	Proposed New User(s)	Transfer Amount	Term of Transfer	Timing of Releases
2009	1699	Garden Highway Mutual Water Company	39	Banks PP and Barker Slough PP, Jones PP, Contra Costa Canal	Service areas of the Central Valley Project(Application 5626) and State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	Water users within the places of use of the CVP and SWP, facilitated through the Drought Water Bank.	up to 4,000 AF	July 1, 2009 to June 30, 2010	Not to exceed one year
2010	1699	Garden Highway Mutual Water Company	up to 39 cfs, July 1 through September 30, 2010	Banks PP and Barker Slough PP	Service area of the State Water Project (Application 5630)	Addition of domestic, municipal, and industrial uses	Dudley Ridge WD, Kern County Water Agency, Napa County Flood Control & WCD; MWDSC; San Bernardino Valley MWD; Antelope Valley East Kern WA; Palmdale WD; Oak Flat WD	up to 5,802 AF	July 1, 2010 - June 30, 2011	July 1 to September 30, 2010

C-WIN and AquAlliance believe that the proposed 2010 water transfer by Garden Highway Mutual Water Company is evidence of a long-term water transfer to the State Water Project that masquerades as a pair of short-term, temporary transfers that are coterminous by the calendar. Water Code Section 1735 states: "The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year." The series of transfers undertaken by Garden Highway Mutual Water Company shown above indicates that by approving a temporary change petition from the District in 2010, the State Water Board would fail to recognize that the District

is actually engaging in a long-term transfer (one that is longer than one year) that should be the subject of a petition under Water Code Section 1735, in violation of the intent of the short-term transfer provision of Water Code Section 1725. This is a reasonable presumption because currently the State Water Project's storage capacity, despite a wet winter in 2010, remains well below capacity because of other priorities for flows from the Feather River. Department of Water Resources meteorologists and planners have stated publicly that it will take at least another year or two for Lake Oroville to fill from winter snowmelt and runoff. Petitioners should acknowledge these existing conditions as context for their proposed transfer. Garden Highway does not acknowledge in its 2010 petition's environmental information that it engaged in a similar transfer in 2009, when it proposed up to 4,000 acre-feet and actually transferred 2,403 acre-feet to the 2009 Drought Water Bank. These one-year transfers, while nominally legal, add to a consistent pattern of nearly identical transfers from the same seller's point of diversion to the same changed points of rediversion (which in both years included State Water Project pumping and conveyance facilities at Banks Pumping Plant and Barker Slough Pumping Plant) to nearly identical customers. The 2010 transfer includes eight state water contractors that are identified as transfer recipients, and four (Metropolitan, Kern County Water Agency, Napa County Flood Control and Water Conservation District, and San Bernardino Valley Municipal Water District) appear among the 2009 Drought Water Bank pool of transfer recipients a year ago, according to Drought Water Bank pool recipients identified by the State Water Board (accessed as of June 2010). Garden Highway's report to the State Water Board about its Drought Water Bank transfer, dated November 30, 2009, indicates that by November 25, 2009, Metropolitan and San Bernardino were definite recipients of its transferred surface water. Finally, the CEQA exemption based on a declaration of drought emergency by the Governor was disallowed by Alameda County Superior Court in March 2010, and the remedy includes a requirement that DWR prepare an environmental review of the 2009 Drought Water Bank transfers. We are also aware that DWR and the US Bureau of Reclamation plan a "water transfer program" for 2010 through 2011 (and which is modeled on the 2009 Drought Water Bank which was successfully challenged), so it is a reasonable presumption that Garden Highway Mutual Water Company is likely to prepare another short-term transfer petition to provide water to this water transfer program next year. We urge the State Water Board to reject this short-term water transfer petition and advise the petitioner to file a long-term transfer petition instead.

- b. The proposed transfer, with nearly identical transfers occurring last year, evidences a long-term transfer subject to review under the California Environmental Quality Act.

Following on the reasoning with respect to the Water Code, C-WIN and AquAlliance allege that the proposed short-term transfer by Garden Highway Mutual Water Company to the State Water Project contractors would represent another increment of a "project" that is improperly exempted from CEQA. We believe that, unlike in the case of *Sierra Club v. The West Side Irrigation District* (2005), the current transfer should be treated as a long-term transfer (one that represents a transfer of water recurring over a period greater than one year), and is subject to CEQA review. Garden Highway Mutual Water Company's transfers in 2009 and 2010 constitute a single project put forward by a single independent water agency; environmental review has been evaded because these transfers were filed incrementally as temporary short-term petitions; only a single water right (application 14804) is involved; each incremental petition would be for

similar “up to” amounts to be transferred (between 4,000 and 5,802 acre-feet); and the petitions have essentially the same terms, identified in the table above. In addition, with the vacation of the CEQA exemption on the 2009 Drought Water Bank, there really is no programmatic coverage under CEQA for transfers like this, so serial water transfers are effectively out of compliance with CEQA. Cumulative effects of this and other transfers have been poorly handled or not examined at all. We believe this would represent an abuse of the State Water Board’s discretion to approve this project as a short-term temporary transfer, and would violate the California Environmental Quality Act, which requires that projects be treated as “the whole of an action,” and that the environmental effects of the action be fully disclosed to the public prior to its conduct.

Individual, when serial, transfers, such as Garden Highway Mutual Water Company’s, confirms for C-WIN and AquAlliance the desperate need for the California Department of Water Resources to collaborate with the State Water Resources Control Board (as the steward of California’s public trust resources) to undertake a systematic programmatic environmental review under CEQA of water transfer programs that would transfer water from Sacramento Valley sources across the Delta to San Joaquin Valley and southern California users. This is necessary to gain a greater understanding of the “whole” of the actions involved in water transfers and their incremental, cumulative, and perhaps growth-inducing effects.

- c. The proposed transfer is contrary to Water Code Section 1745.10. Garden Highway Mutual Water Company is located in southern Sutter County. Sutter County has undertaken, but has not yet adopted, a groundwater management plan for its territory. Section 1745.10 prohibits surface water transfers that rely on groundwater substitution when there is either no groundwater management plan present for the affected area, or when (if no groundwater management plan is present) the local water supplier (in this case, Garden Highway Mutual Water Company) determines that the water transfer will not create or contribute to long-term overdraft conditions in the affected groundwater basin. C-WIN and AquAlliance protest this short-term transfer petition from the District because the District fails to demonstrate that no long-term overdraft conditions are present in its affected groundwater basin. As noted, there is no adopted groundwater management plan in Sutter County. We refer the State Water Board to the Sutter County data on groundwater elevations cited above. While not on the scale of other areas of California, the data indicate a long-term overdraft condition exists. We believe the burden of explaining the drop in groundwater elevations lies with Garden Highway Mutual Water Company in this instance given reasonably available public information about this subject. The State Water Board should not allow this petition, or a long-term transfer petition, to proceed without such analysis.
- 3) The proposed transfer would have adverse environmental impacts.
- a. The petitioner requests approval for a year-long transfer when fisheries problems in the Yuba and Feather Rivers continue year-round. Water temperature, flow timing (particularly with respect to attraction flows), and water level issues have been identified and these fishery issues need CEQA review under the aegis of a long-term transfer petition so that cumulative effects on fish and wildlife may be adequately evaluated and mitigated.
 - b. Cumulative effects of lost Delta outflows. Garden Highway Mutual Water Company would add Banks Pumping Plant and Barker Slough Pumping Plant to its points of

rediversion under this petition. C-WIN and AquAlliance protest these proposed rediversion points because the transfer generates inflows to the Delta, but no net outflows to Suisun Bay, Suisun Marsh, and San Francisco Bay. Instead, the transfer is "accounted for" as water that proceeds through the Delta Cross Channel, and contributes to reverse flows in Old and Middle River that in turn contribute to fish entrainment at Banks Pumping Plant, before being exported to water users south of the Delta. However small a contribution these transfer water flows make on a percentage basis to Delta inflow, they are nonetheless cumulatively subtracted from Delta outflows, both intraseasonally and interannually. Loss of Delta outflow means that the low salinity zone in the Delta is smaller than it would otherwise be, and therefore critical habitat for estuarine species, including striped bass young of the year and Delta smelt, may be adversely affected by increased density-dependence relationships.

These and other cumulative effects must be disclosed and analyzed on individual bases and as part of a programmatic environmental review under the California Environmental Quality Act to ensure all significant environmental effects of cumulating are taken into account.

- c. There may be habitat conservation plans and natural community conservation plans in the vicinity of transfer flows that could be affected by the proposed transfer.

4) Conclusion

C-WIN and AquAlliance urge the State Water Board that the requested transfer should be denied as a temporary transfer under Section 1725 of the Water Code. As a long-term transfer under Section 1735 of the Water Code, the proposed transfer should be analyzed under CEQA. The CEQA analysis should evaluate cumulative effects, not merely incremental effects.

Under what conditions may this protest be disregarded and dismissed? Withdrawal of the petition

A true copy of this protest has been served upon the petitioner Garden Highway Mutual Water Company, c/o Gary Kienlen, Agent, 1771 Tribute Road, Suite A, Sacramento, CA 95814

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Date 11 JUNE 2010



Protestant(s) or Authorized Representative sign here

Protests MUST be filed within the time allowed by the SWRCB as stated in the notice relative to the change or such further time as may be allowed.

Proof of Service

I hereby certify that on this day, June 11, 2010, I, Tim Stroshane, have placed in first class mail at Albany, California, a true copy of this comment letter mailed to:

**Garden Highway Mutual Water Company
c/o Gary Kienlen
MBK Engineers
1771 Tribute Road, Suite A
Sacramento, CA 95814**



Tim Stroshane