

State Water Resources Control Board

TO: Eileen Sobeck
Executive Director
State Water Resources Control Board

FROM: Erik Ekdahl 
Deputy Director
Division of Water Rights

DATE: SEPTEMBER 30, 2020

**SUBJECT: TRANSFER OF PETITIONS ON LICENSE 3404 AND PERMIT 20789
(APPLICATIONS 9686 and 29981) TO THE ADMINISTRATIVE HEARINGS OFFICE**

The Division of Water Rights (Division) proposes to transfer the pending petitions on License 3404 and Permit 20789 to the Administrative Hearings Office (AHO) for hearing. As described below, Garberville Sanitary District's (GSD) petitions for change in place of use to serve water to Southern Humboldt Community Park (the Park), will require a hearing to resolve the outstanding protests. Given the significant number and complexity of pending petitions before the Division, these two petitions would be aided by the AHO's role in ensuring water rights matters are resolved in a timely manner.

License 3404 and Permit 20789

License 3404 (Application 9686) was issued to Garberville Water Company (GWC) on February 29, 1952. License 3404 authorizes the year-round diversion of 0.155 cubic foot per second (cfs) and a maximum of 112.2 acre-feet per year from the South Fork of the Eel River (SF Eel River) for municipal purposes. The licensed place of use is the town of Garberville as bounded by GSD in the southern portion of Humboldt County.

SF Eel River is state and federally designated Wild and Scenic River with habitat for threatened steelhead trout, coho, and Chinook salmon. The North Coast Regional Water Quality Control Board has listed SF Eel River watershed as impaired for water quality, temperature, and sedimentation. SF Eel River is designated as a fully

appropriated stream system, Water Right Order 98-08, Declaration of Fully Appropriated Stream Systems (November 19, 1998).

On July 22, 1990 GWC submitted Application 29981 to appropriate water by permit, expanding the place of use to the GWC service boundaries. On May 15, 1995, the Division issued Permit 20789 (Application 29981) to GWC, which authorizes the diversion of 0.595 cfs and a maximum of 430 acre-feet per year from the same point of diversion as License 3404. The permitted place of use and purpose of use is also the same as License 3404. Garberville Sanitary District (GSD) purchased GWC in November 2004.

On October 7, 2019, GSD petitioned to amend its water rights to include the Park in the place of use. The proposed project is for connection of a 3/4" meter to one of GSD's 8" waterlines to supply 18 acres of the Park with potable water. This meter would be limited to 2,000 cubic feet per month. The connection would provide service for two residences, existing out buildings, and drinking water fountains throughout the park.

Southern Humboldt Community Park

The Park is a privately owned, 406-acre park located one mile west of Garberville. The SF Eel River flows across the northern portion of the Park. The Park has three riparian claims: S024337, S024338, and S024339, for a total diversion of 0.79 cfs from SF Eel River and a developed spring for irrigation, domestic, and stock watering purposes of use.

Most of the Park has been used for ranching and agricultural activities since the mid-1800s. Numerous dwellings and out-buildings are located in the Park. The property has been operating as a public park since 2000. The Park includes, 3.5 miles of trails, a playground, picnic areas, and swimming beach. There are currently four people on-site including three caretakers and one resident. The Park use was estimated at 46,000 visitor days per year in 2012. There are also gravel mining and agricultural operations in other areas of the Park. The current land use designation is a combination of Agricultural Rural and Agricultural Lands. The development of the Park would change the County's General Plan land use designation for the entire site to the Public Recreation (PR) designation. The zoning of 87 acres would change from Agriculture Exclusive (AE) to Public Facilities (PF).

The Park's proposed changes include sports fields, public assembly and events, playgrounds, picnic areas, trails, educational activities, and camp activities. Existing and additional agricultural projects would continue on the project site. The proposed project is expected to increase the number of visitors by an estimated 800 persons per

day during the peak seasons. Small events (birthday parties, weddings, and nonprofit fundraisers), five special events per year with 800 to 2,500 attendees, and one annual event per year with up to 5,000 attendees are planned for the Park.

California Environmental Quality Act (CEQA) compliance

In 2004, when GSD acquired the GWC, there were water service connections outside the existing GWC boundary. GSD continued service to all existing and historical customers, even if they were outside the GSD boundary or places of use. In 2013, GSD completed the CEQA review of the modification of the jurisdictional boundary approved by Humboldt Local Agency Formation Commission (LAFCo), and the change of place of use under License 3404 and Permit 20789 in the document: Garberville Sanitary District Annexation Project: Change in Jurisdictional Boundary and Place of Use Final Mitigated Negative Declaration State Clearinghouse No. (SCH No.) 2012032025 (2013 Final MND).

In June 2019, GSD applied to Humboldt LAFCo for an out of boundary service extension to supply the Park with water for residential and public drinking fountain use. Since the proposed project had changed from the original project in the 2013 Final MND, LAFCo determined that additional CEQA review was necessary, and an Addendum would be adequate to provide this additional information. The Addendum found that the proposed service extension to the Park was expected to result in less than significant impacts to all resources of concern.

Humboldt County prepared Draft and Final Environmental Impact Reports (Park EIR) for the Park in 2016 (SCH No. 2010092037) to inform potential Humboldt County General Plan and Zoning Ordinance changes and to obtain a conditional use permit for certain proposed uses of the Park. The Park EIR identified one significant unavoidable project-level impact which is the removal of agricultural lands. All other identified impacts could be mitigated to a less-than-significant level with the implementation of the recommended mitigation measures.

Public Comments and Protests to Petitions to Amend License 3404 and Permit 20789 to Include the Park

GSD's petitions were publicly noticed on November 5, 2019. The Division received 27 letters from individuals who currently use the Park for recreational purposes in support of adding water fountains to the Park.

The following public agency and private individuals (Protestants) filed timely protests to GSD's petitions to serve water to the Park: Redway Community Services District, Kristin Vogel, Linda Sutton, and Ed Voice.

By letters to the Protestants dated December 18, 2019, the Division acknowledged receipt of the protests. On February 10, 2020, GSD responded to the Protestants' concerns in detail but there were no clear proposals of resolution. As requested by Division staff, the Protestants then responded with their proposals for resolution. The Protestants' unresolved issues centered around potable water from GSD being used for future development of the Park, water usage exceedances by GSD; monthly reporting to the public; and a request to have the Park annexed by GSD so actions by the Park are transparent to the public.

In response to many of the concerns raised by the Protestants, GSD referred to a Water Service Agreement between GSD and the Park which will place limitations on the water service connection use. GSD also stated that it will not accept any conditions that remove the drinking fountains as acceptable uses of the municipal water with the proposed amended place of use. By letters dated June 1, 2020, GSD notified the Protestants that the terms of resolutions were not acceptable. GSD did not provide a schedule for protest negotiations and requested that the Division dismiss the protests. Consideration of whether to dismiss the protests can be expeditiously evaluated through the hearing process.

The Division proposes to transfer the pending petitions on Permit 20789 and License 3404 to the AHO for hearing. The purpose of the hearing will be to resolve the outstanding protests to the petitions to add Southern Humboldt Community Park to the place of use for Permit 20789 and License 3404.

Proceeding before the Administrative Hearing Office

Referring this matter to the AHO will provide a neutral, fair, and efficient forum for resolving issues that may arise during future water rights proceedings.

If you have any questions regarding this memo, please contact Sam Boland-Brien, Chief of the Petitions, Licensing, and Registrations Section at 916-322-6797 or by email at Samuel.Boland-Brien@waterboards.ca.gov.

cc: Erik Ekdahl, Deputy Director, Division of Water Rights
Jule Rizzardo, Assistant Deputy Director, Permitting and Enforcement Branch
Michael Lauffer, Chief Counsel
Conny Mitterhofer, Hearings Section Chief, Division of Water Rights