

DRAFT/CONFIDENTIAL: DELIBERATIVE PROCESS

PROPOSED OUTLINE FOR DISCUSSIONS ON WATER TRANSFERS

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The following is a proposed outline that we may want to use to
(1) determine whether we are all starting from the same page and
(2) help focus our discussions on the many issues we may need to
grapple with over the next few months.

Folks should feel free to add, strike-out or otherwise change
this draft. It is admittedly incomplete and very draft. (Folks
should also feel free to suggest we not use it at all.)

I. Overall Goal

To draft, for inclusion in the CALFED EIS/EIR, a policy
statement on water transfers and recommendations for facilitating
such transfers.

II. Premise/Assumption

CALFED believes that water transfers have an important role in
water management. Specifically, water transfers can assist in the
effort to improve water supply reliability, water use efficiency
and ecosystem restoration. CALFED also recognizes that water
transfers can have direct and indirect negative impacts.
Accordingly, CALFED endorses efforts to facilitate the transfer of
water, so long as, such transfers are consistent with the
Governor's 1992 policy. [Taken from previously issued CALFED draft
memos.]

III. ~~Baseline Screening Criteria~~ Objectives?

- Transfers should
 - *Increase water use efficiency
 - *Improve water supply reliability
 - *Free up water for environmental restoration

IV. Detailed Screening Criteria [Gov.'s 1992 policy]

- Transfer program recommended by CALFED will
 - *Occur on a voluntary basis, protect the water rights of
sellers and result in the transfer of "real" and not "paper"
water
 - *Not harm fish and wildlife resources and their habitats
 - *Not result in overdraft or degradation of groundwater basins
 - *Require transferees to show that they are efficiently using

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existing water supplies, i.e., at a minimum, following Urban BMPs, and Agricultural Water Efficiency Practices.
*Ensure appropriate involvement of local communities and water districts.

[Query for Workgroup: If current transfer system does not meet criteria set forth in Sections III and IV above, presumably CALFED would recommend a different approach? Similarly, if potential options, set forth below, do not meet these criteria they will not be evaluated further?]

V. Evaluation of Current Transfer System

A. Legal Framework

1. Identification of Applicable Law

a. Federal

*CVPIA: all individuals and districts receiving CVP water may transfer it to any other entity for any project or purpose recognized as a beneficial use under State law with approval of DOI.

b. State

- 1) Constitution: reasonable and beneficial use
- 2) Protection of rights of other water users
 - i) water supply
 - ii) water delivery impacts
- 3) Statutory provisions
 - i) limit fallow to 20% of water stored or supplied by the supplier
 - ii) prohibit use of public agency facilities to transfer water unless no unreasonable impact on local economy or environment
 - iii) prohibit transfers that would deprive areas of origin reasonably required to meet beneficial needs
 - iv) prohibit exports of groundwater from Sacramento and Delta regions w/o approved groundwater management plan
 - v) prohibit transfers that significantly reduce the quantity or quality of water available for fish and wildlife
 - vi) definition of conservation "the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative rights."
 - vii) assurances
- 4) Public trust doctrine, Mono Lake

c. Local

2. Procedural requirements

*Evaluation of permitting, CEQA and other approval

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- requirements (noting among other things differences amongst various responsible agencies and districts)
- a. CEQA may apply if holder of right is a public agency
- b. Post 1914 appropriative rights require permit from SWRQB (non CVP water)
 - i) transfers < 1 yr, no CEQA
 - ii) temporary urgency transfer (also < 1 yr) = CEQA
 - iii) transfers > 1 yr = CEQA
- c. Federal
 - * Transfers of CVP water must be approved by Secretary of DOI
 - * Transfers > 20% of the CVP water under a long term contract between Bureau and an irrigation district must also be approved by the irrigation district.
- 3. Contractual commitments (for both water supply and delivery)
- 4. Agreements
 - * Monterey Agreement: Statement of principles by State Water Contractors and DWR for potential amendments to SWP contracts.
- B. Policy Considerations
 - *Evaluation of federal, State and local policies (noting among other things differences amongst various agencies and districts).
- C. Technical Issues
 - Measurement and monitoring
 - Conveyance/wheeling
 - Physical structures, economic considerations (including fees charged for wheeling)
- D. Public Perception/Concerns
 - 1. water right assurances
 - 2. area of origin
 - 3. third party impacts
 - * Recognition and protection of public welfare of local economies/communities "losing" water
 - 4. water is a community resource
 - *environment and wildlife
- E. Examination of completed transfers.
 - what has worked or has not.
- F. Examination of Drought Bank
 - what worked and did not.

VI. Limitations/ Concerns

- [Need to ensure we identify all stakeholder concerns]
- A. Protection of third parties
 - 1. Rights of other water users
 - *water supply
 - *water delivery impacts

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- 2. Recognition and protection of public welfare
(Including the environment and wildlife)
- 3. local economies/communities
- B. Wheeling
- C. Movement of water from Ag to Urban
- D. Administrative process (including CEQA, NEPA and ESA)
timing, cost
- E. Role of water rights holders and users in the review and approval process

VII. Potential Frameworks for Conducting Transfers

Tools?

[Examination of other western states, reveals that there are many potential ways to facilitate the transfer of water.]

A. Status Quo

-Pros:

-Cons:

[Pros/Cons identified through evaluation process in Section VI above]

B. "Free-market" transfers (eliminate or reduce existing "barriers")

-Pros:

provide old fashion American incentive to conserve water by allowing owner of right to sell to highest bidder

-Cons:

likely to have adverse impacts on local communities "losing" water (likely to disproportionately impact socio-economic disadvantaged communities).

may result in changes in demographics that will, in the not so long term, be less desirable from a water use management and environmental perspective.

C. Water Banks

-Pros:

central clearinghouse for transfer of water (may increase efficiency in moving water, provides an established safety net for droughts).

-Cons:

same as above

D. Trusts (Washington)

Rather than leave future water use to market forces, water rights may be purchased or donated to a State run entity to reallocate water to "community" uses.

Possible incentives for donating water: tax relief, money for improvements in systems

E. Combination of Options

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*More
Tools or
Approaches*

VIII. Potential Fixes

- A. Protection of third parties
 - 1. Rights of other water users
 - *water supply
 - *water delivery impacts
 - 2. Recognition and protection of public welfare
 - *local economies/ communities. Monetary tax. (Although never imposed, NV has a statute authorizing up to \$6/AF/year tax to be used by local communities for "economic development, health care and education.") [Impose on transferor since individual is arguably redistributing wealth by selling a community resource for individual gain?
 - 3. Environment and wildlife
 - Water tax. Facilitated water transfer market may not make more water available for environmental purposes (goal of CALFED). Therefore, a tax in the form of water may "free" up water. [Impose on transferee since we want to encourage purchaser to do all to conserve water?]
- B. Wheeling
- C. Movement of water form Ag to Urban
 - *Raises issue of whether one would want to support a "Show me the Water" requirement/policy to help ensure new communities have sufficient water (e.g., New Mexico), or limit duration and amount of transferable water (reduce chance that purchaser would become dependent on transferred water.) Could also limit "facilitated" transfers to dry-year options, i.e., set up a more streamlined process for these options.
- D. Administrative process: Develop uniform set of procedures for all transfers in State to have uniform set of criteria for approval of application, avoid duplication of processes and shorten length of process, and reduce costs to parties.

IX. Evaluation of Options

[Develop refined screening criteria to evaluate options based on implementability, stakeholder concerns, agency concerns?]

X. Recommendation