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**CALFED Water Transfer Element**

**Draft Discussion Paper No. 4 - Access to CVP and SWP Facilities**

Issue/Question

What are the rules for priority of access to CVP and/or SWP facilities for conveyance or storage of transferred water?

Summary

Stakeholders are concerned that long term transfers cannot be implemented without knowing whether and when the water will be pumped and conveyed to the transferee. This need for reliability is in conflict with the obligations of the CVP and SWP to move project water before moving transferred water.

Applicable Law - Water Code section 1810 et seq. provide that the owner of a water conveyance facility (including the State and any regional or local public agency) must make up to 70% of the unused capacity of the facility available for transfers, subject to certain conditions. The owner of the facility is entitled to fair compensation and may establish terms and conditions for its use, including requirements for operations and maintenance, scheduling, water quality, terms of use, and priorities. The owner must also make findings of no injury to another legal user and no unreasonable impact on fish and wildlife.

Access to federal facilities is governed by the Warren Act of 1911 (43 USC sect. 523). This law authorizes the Secretary of Interior to enter into contracts for the impoundment, storage or conveyance of water, in accordance with certain conditions (compliance with reclamation law, preserving a "first right" for project contractors).

Discussion

Water transferred across the Delta must be pumped and conveyed by CVP or SWP facilities. Pumping and conveyance of project water has priority over non-project transfers. It is difficult for project operators to make firm commitments regarding the transfer of non-project water, more than a few months (sometimes, weeks) in advance, due to the many variable conditions in the Delta. This lack of reliability in the timing or availability of project facilities for pumping, conveyance and storage of transferred water is a strong disincentive to long term transfers. Buyers are reluctant to purchase water not knowing whether or when it will be delivered.

As a practical matter, the availability of project pumping capacity for transfers has been further reduced in recent years by the pumping reductions in April and May and the additional "make up" pumping which must then occur in the fall of the year. The effect of these actions is to further narrow the window of time in which transfer water can be pumped from the Delta.

Essentially, the issue presented here is who should bear the risk of long term transfers. If the projects commits capacity to long term transfers, their contract deliveries may be put at risk, if circumstance arises which restrict pumping. However, transfers which are dependant on available capacity, in unknown quantities at unknown times, are less attractive to buyers and sellers than transfers which have firm delivery schedules. Is there a way to provide more reliability for transfer without impairing the projects primary obligation to deliver project water?

#### Options to resolve this issue

Additional capacity for storage and delivery of project water would create more and larger transfer windows, even with the same priority requirements as those currently in place.

New facilities could operate with a different set of priorities. For example, transfers could be given a priority for some portion of the capacity of an isolated conveyance facility.

The CVP and SWP could sell on a long term or short term basis a quantity of conveyance capacity which could then be operated with a priority for transfers.