

Water Transfer Discussion Papers

Issue 8

Environmental Impacts and Effects on
Legal Users of Water

Background

Both the Governor's 1992 water transfer policy statement and the Water Code refer to the desire that water transfers not cause environmental impacts nor affect other legal users of water. The level of allowable impact on the environment is somewhat unclear. The Governor's water policy states that water transfers "must not cause harm to fish and wildlife resources and their habitats" and "not cause overdraft or degradation of ground water basins". By reasonable extension the Governor's policy also can be interpreted to include surface diverters. The Water Code has several provisions that allow changes to water right permits for the purpose of water transfers or leases. These include sections 1020, 1435, 1700, 1725 and 1735. Each of these sections require that the SWRCB make the following findings before approving a change in a water right permit to allow a water transfer: (1) the change will **not injure** any other legal user of water and (2) the change will not cause an **unreasonable** effect on fish or wildlife. Other findings are also required depending on the code section but the above two requirements are common to all sections on water transfers. In addition, all of the transfer provisions in the Water Code, except a 1725 transfer, are subject to the California Environmental Quality Act (CEQA). This act requires that the environmental effects be evaluated before an action is approved. In cases where the impacts are likely to be **significant** an environmental impact report must be prepared. A transfer under section 1725 is statutorily exempt from the provisions of CEQA. The preparation of an adequate CEQA document can take several months and even years to complete.

Issues

The issues involving environmental and water user impacts include:

- The type of analysis needed to critically evaluate the impacts of the water transfer on water users and the environment. The impacts of concern can include the effects of lower reservoir levels on water temperature and river flows and how this affects fish habitat downstream, stranding of eggs or young in periods following the transfer period, flow and diversion impacts in the Delta, water quality impacts in the summer if historic flows are shifted to other periods of the year for water transfers, water level impacts in the Delta due to additional exports; the list goes on.

- The time it takes to conduct such an analysis. Water transfers are often put together in response to changing and often critical water supply situations. The analysis of impacts can be time consuming and complicated.
- General acceptance of the analysis of impacts. In the haste to conduct needed analyses criticism can be levied that the analysis is not complete. Incomplete analyses foster unnecessary controversy and litigation.
- The time it takes to circulate documents and comply with the requirements under CEQA. The time it takes to prepare an in depth CEQA review can often delay a transfer long enough to make it impossible to complete. Many transfers now are either 1725 transfers (transfers involving conserved or previously stored water) or they qualify for one of the exemptions under CEQA.
- Concerns of some water right holders that change petitions require evaluation of impacts on "any legal user of water" not just those with "prior rights". California water law allows a water right holder to conserve water on his property to help irrigate other parcels covered by his water right without the need of concerns with the water supply impacts to other users (e.g., less return flow, changes in timing of return flows, etc). However, if a water right holder wants to transfer that water via a water right change petition, impacts to other water users must be evaluated and conditions included to mitigate for these impacts.
- Determination of who's water is being transferred. In the Sacramento River there is a commingling of natural flow which is available for appropriation and transfer by in-basin water right holders, and CVP and SWP stored water intended for their use.

In order to determine if water is available for transfer, the amount of natural flow (including abandon flows) available under various priorities of rights needs to be determined. A key assumption in this determination is whether natural flow is used first to help meet Delta flow and quality standards before water available for transfer under various rights is determined.

- Determination of what constitutes an "unreasonable effect" on fish or wildlife. There are no guidelines on what constitutes an unreasonable effect on fish or wildlife. In this changing landscape of water policy in California perhaps a case by case evaluation will remain to be necessary.

Solutions

Perhaps the only solution to the concerns with the impacts of water transfers on fish, wildlife and users of water is to have such impacts evaluated carefully well in advance of the proposed transfer. This requires some up-front planning on the part of the transferor. In the past such up-front analysis has been difficult due to the fact that transfers were relatively new, it takes time to negotiate a proposed transfer and the hydrology of the year is always changing. What may seem like a good idea in January may not make sense or the impacts may differ greatly once the summer rolls around. There needs to be a commitment on the part of CALFED to insure that environmental impacts will be critically evaluated and mitigation measures developed in advance of asking the SWRCB to approve a water transfer. This may require a group of staff that conducts or oversees these analyses and coordinates with interested parties to make sure issues are properly addressed.