

Analysis of  
Impact of SB 506 on the EWA  
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The EWA will depend upon routine and inexpensive access to surplus capacity in state and federal conveyance facilities. On the other hand, EWA operations could reduce the volume and reliability of conveyance capacity available for use in the market. Therefore, some accommodation, whether in SB 506 or elsewhere which defines the respective rights and priorities of the Projects, the EWA, the contractors, and buyers and sellers of water.

Issues to be addressed include:

- Define unused capacity to accommodate the EWA. Many EWA operations are based upon reducing export pumping at particular times. These operations will necessarily create empty capacity in the export canals, but they cannot create "surplus" capacity.
- Even more difficult is the case where a water transfer is all set to go – permits granted, space in the Project canals granted etc. – then the EWA decides that it wishes to use this capacity, either to move its own water or to reduce exports for fish protection. Does the EWA have the right to displace the transfer? If so, is the EWA required to pay any kind of damages to the parties?
- More generally, is the EWA just another user of surplus capacity or does it have a special status, below the projects but above all other users of capacity? I would argue that the answer is yes, in that the EWA is an attempt to create a non regulatory solution to a problem that would otherwise call for direct regulation of the Projects. This implies that EWA operations are, in a sense, Project operations in support of Project goals (compliance with environmental regulation).
- Nevertheless, unbridled access to surplus capacity for the EWA could unduly impact the water transfer market – particularly the market for long-term transfers. Certainly the increased unreliability caused by the right of the EWA to intrude on operations in real time would reduce the value of water purchased north of the Delta from the perspective of the export areas. On the other hand, EWA operations are unlikely to restrict export capacity during the summer and fall of dry years. Since this is when the water is most needed in the export areas, the short-term market should not be affected too much.
- Thus, a possible accommodation would be to give water transfers between users a higher priority for the use of surplus capacity during the months July – September of dry and critical years. In all other circumstances, the EWA would have an unrestricted right to access surplus capacity ahead of all other users. This will become less of an issue as pumping capacity at Banks is increased.

SB 506 should probably be modified to make explicit reference to the EWA and to declare, for example, that unused capacity created by the EWA in the course of its operations does not count as "unused" for purposes of the legislation. Other details might best be left to the negotiations over EWA. If the EWA becomes a long-term contractor to the Projects, then SB 506 would not apply to the EWA – it would retain a higher priority for capacity water than other transferors.