

**Discussion Outline/Rough Draft**  
**Revised: April 24, 1998**  
**WORK-in-PROGRESS**

**THE CALFED BAY-DELTA PROGRAM**  
**WATER TRANSFER ELEMENT - POLICY FRAMEWORK**

*Purpose: To provide a policy framework to facilitate and encourage a properly regulated and protected water market to move water between users, including environmental uses, on a voluntary and compensated basis.*

## **1. INTRODUCTION**

The CALFED Bay-Delta Program's Water Transfer Policy Framework is designed to achieve improvements in the efficiency of the water transfer process, and to facilitate the further development of a statewide water transfer market. Because water transfers can impact third parties (those not directly involved in the transaction) and/or local groundwater or environmental conditions, the policy framework will also be designed to provide protection from such impacts. CALFED recognizes that water transfers can play a vital role in California's water management. CALFED also recognizes that water transfers can have adverse impacts as well. CALFED actions to reduce conveyance constraints or to facilitate cross-Delta transfers could potentially exacerbate adverse impacts associated with water transfers.

Water transfers are a daily occurrence in California. We constantly 'transfer' water that falls in the form of rain and snow via rivers and canals and underground aquifers to urban, environmental, and agricultural water uses throughout the state. However, the term 'water transfers' has come to define the *physical movement of water between users* on a voluntary and compensated basis. For instance, a water rights holder in the Sacramento Valley voluntarily sells water to a water user in the San Joaquin Valley who is willing to pay for it. As CALFED looks to solve the multiple program objective, there will be an expanded role for transfers as part of the Bay-Delta solution.

Ever year, hundreds of thousands of acre-feet are transferred or exchanged between willing parties. Most of these transfers consist of in-basin exchanges or sale of water among Central Valley Project (CVP) or State Water Project (SWP) contractors. Though many of these transfers have been successful, they have raised concerns regarding adverse impacts to other water users, to rural community economies and to the environment. In addition, some transfers raise issues about interpretations of state law, the lack of reliable ways to transport the transferred water, and complicated permitting and approval processes. Before the value of water transfers as a management tool can be fully realized, these issues need to be addressed. Water transfer issues can be generally characterized as:

- environmental, economic, and water resource protections;
- technical, operational, and administrative rules; and
- wheeling through and access to state and federal conveyance facilities.

The CALFED Program recognizes that water transfers already are an important part of the California water management landscape and are valuable in the effort to improve water supply reliability, water use efficiency, water quality and the aquatic ecosystem. Transfers can provide an effective means of moving water between users on a voluntary and compensated basis, as well as a means of providing incentives for water users to implement management practices which will improve the effectiveness of local water management. Transfers can also provide water for environmental purposes in addition to the minimum instream flow requirements.

However, the annual volume of transfers will still be dependent on locally developed agreements and assurances. Local governments along with a variety of public interests will necessarily be part of the analysis and review of specific transfer proposals.

## **The Role of Water Transfers in Water Management**

Active management of California's water resources is necessary to meet the State's numerous water resource benefits - from flood control to recreation and from instream flows for fish to water for agriculture. Many tools are available to help manage our water. More obvious tools include dams, reservoirs, canals, and pumps. Water conservation, another important water management tool, also plays an ever growing role. Less obvious tools such as the CALFED Ecosystem Restoration Plan Program and the Levee Integrity common program also aid in the management of this resource. Water transfers, the physical movement of water between users, also offers a unique method of water management.

Water transfers primarily have two water management functions:

- Provide a temporary source of water during drought conditions when other sources of water are constrained. In this manner, the transfer helps improve water supply reliability. Typically, such water transfers would be for short periods of time, not occurring every year; or,
- Augment existing sources of water to meet existing or projected unmet demands. In this manner, the transfer provides a new water supply. Typically, such water transfers would be a long-term, annual reallocation of water.

In addition to these primary functions, transfers can be viewed in more general terms as:

- providing an efficient and protected water transfer market to help reduce the mismatch between water supply and demand;
- providing short-term water management options while other facilities are being constructed (i.e., new conveyance, surface storage, conjunctive use);

- potentially reducing the need for other water management options (i.e., reduce the size of new surface storage); and,
- aid in moving water from new facilities to various users throughout the state, including the environment.

*(Expand discussion to include role of transfers for different beneficial purposes:*

- *Transfers are a way of improving water supply reliability for in-basin needs, environmental purposes and exports; transfer can also result in water quality improvements*
- *Water transfers are linked to water use efficiency. It is not a CALFED objective to increase the economic efficiency of water in the sense of causing water to move from relatively lower value uses to relatively higher value uses per unit of water. However, a more efficient water transfer market should result in some level of increased economic efficiency in the use of water as water gravitates by market force to higher value uses.*
- *Water transfers are not efficiency measures per se but water transfers may encourage more efficient use of water and produce revenue which can be applied to investments in efficiency improvements.)*

## **Relationship to Conjunctive Management and Surface Storage**

Water transfers do not operate in a vacuum. A water transfer is merely an action to move water from one user or water rights holder to another. It is the source of the water being transferred that primarily differentiates between various water transfers. One potential source for transferrable water is water stored in surface or subsurface storage facilities.

The CALFED Bay-Delta Program views appropriate and effective groundwater and surface water management as an essential piece of water management. Local development of conjunctive use facilities and modified operations of existing reservoirs can generate water that can be transferred to other beneficial uses in the Bay-Delta system. However, water transfers do not wholly substitute for other potential increases in new water supply within the Bay-Delta system.

*(Expand this discussion and linkage to storage/conveyance)*

## **Water Transfer Law and Policy, State and Federal**

Both State and federal law contain provisions that authorize, acknowledge, or support water transfers. In the past five years, important policy on water transfers has been established or reaffirmed at both the State and federal levels.

In his water policy speech in April of 1992, Governor Wilson reiterated the State's support for use of water transfers and the water transfer market, and described five criteria which transfers must meet:

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First: Water transfers must be voluntary. And they must result in transfers that are real, not just paper. Above all, water rights of sellers must not be impaired.

Second: Water transfers must not harm fish and wildlife resources and their habitats.

Third: We need to assure that transfers will not cause overdraft or degradation of groundwater basins.

Fourth: Entities receiving transferred water should be required to show that they are making efficient use of existing water supplies, including carrying out urban Best Management Plans or Agricultural Water Efficiency Practices.

Fifth and finally: Water districts and agencies that hold water rights or contracts to transferred water must have a strong role in determining what is done. The impact on the fiscal integrity of the districts and on the economy of small agricultural communities in the San Joaquin Valley can't be ignored . . . any more than can the needs of high value-added, high tech industries in the Silicon Valley.

In addition to the Governor's policy, both California law and federal law include provisions that authorize and acknowledge transfers as reasonable and beneficial uses of water. California Water Code section 109 says in part: "It is hereby declared to be the established policy of this state to facilitate the voluntary transfers of water and water rights ...".

*(Add summary of additional transfer statutes)*

The 1992 Central Valley Project Improvement Act also addressed transfers. Section 3405(a) of the CVPIA authorizes all individuals or districts who receive Central Valley Project (CVP) water under water service, repayment, water rights settlement or exchange contracts to transfer all or a portion of the CVP water they receive to any other California water user.

Both state law and federal law have provisions allowing for the use of available capacity in facilities for transfers (Water Code section 1810 et seq and federal Warren Act).

## 2. CALFED PROGRAM APPROACH TO WATER TRANSFERS

The CALFED Program is not intending to enter into the business of brokering transfers or banking water as a result of this policy framework, but may purchase water for the Ecosystem Restoration Program. The purpose is to facilitate and encourage the use of water transfers as a water management tool. The recommendations discussed later in this document will, however, include policies for implementation by CALFED agencies.

The CALFED water transfer element proposes a policy framework for water transfer rules, baseline data collection, public disclosure, and analysis and monitoring of water transfers, both short and long-term. The element also identifies areas where additional regulation or statutory changes are desirable. Such modifications to existing policy are expected to facilitate the water transfer market, although the annual volume of transfers will still be dependent on locally developed agreements and assurances.

### Objectives of the Water Transfer Policy Framework

*(Expand discussion to introduce objectives and provide context)*

1. Promote, encourage and facilitate water transfers, within the framework of the Governor's water policy.
2. Address the institutional, regulatory and assurance issues which need to be resolved to provide for a more effective water transfer system.
3. Address the physical issues which need to be resolved to provide for a more effective water transfer system, and particularly cross-Delta transfers.
4. Encourage transfers that result in net improvements for water supply reliability, ecosystem health, and water quality.
5. Encourage the development of a water transfer system that avoids adverse impacts where possible and that adequately mitigates unavoidable adverse impacts.
6. Promote and encourage uniform rules for transfers using state and federal project facilities and cross Delta conveyance capacity.
7. Promote and encourage the development of standardized rules for transfers based on replacement with groundwater and other conjunctive use type transfers, so that water transfers do not cause degradation of groundwater basins and long-term groundwater levels

are sustained or improved.

8. Identify and resolve Delta carriage water and reservoir refill criteria issues.

Development and refinement of the water transfer policy framework will be guided by several criteria that form the basis of California transfer policy:

- Water transfers must be voluntary
- These transaction must result in the transfer of water that truly increases supply, not the transfer of “paper water” such as water that a transferor has never used, or water that would be available for downstream use even in the absence of the transfer.
- Water rights of sellers must not be impaired.
- Water transfers must not harm fish and wildlife resources and their habitats.
- Water transfers must not cause overdraft or degradation of groundwater basins.
- Entities receiving transferred water should be required to show that they are making efficient use of existing water supplies.
- Water districts and agencies that hold water rights or contracts to transferred water must have a strong role in determining how transfers are conducted.
- The impact on the fiscal integrity of the districts and on the economy of small agricultural communities cannot be ignored.

*(Expand discussion)*

### **3. DEVELOPMENT OF WATER TRANSFER POLICY**

*(Expand introduction)*

#### **BDAC Policy Direction on Water Transfers**

The question of how the CALFED Program should approach water transfer issues was presented to BDAC for policy advice. BDAC concurred that water transfers are an appropriate and useful part of the CALFED water management strategy. BDAC members also expressed the view that the CALFED program should consider several water transfer issues, including third party impacts, protection of water rights, and the proper roles of water rights holders and water users in the review and approval process for transfers.

#### **Role and Function of BDAC Water Transfer Work Group**

At the May 22, 1997, BDAC Meeting, Chairman Madigan announced the appointment of a BDAC Work Group to consider the policy issues related to transfers and the appropriate role of CALFED in

developing a water policy/water market framework. The Work Group is co-chaired by Tib Belza and Roger Strelow.

The Work Group has held nine meetings so far to identify issues, consider case studies, develop solution options and to provide guidance to CALFED staff in the development of recommendations for BDAC and CALFED.

## **Role and Function of Transfer Agency Group**

The Transfer Agency Group was formed as a sub-group of CALFED agencies representatives. The function of this group is to assist in the identification of water transfer issues and help develop workable solution options.

*(Expand discussion briefly)*

## **Process for Development of Solution Options**

*(Expand discussion to present the process used to develop solution options that are discussed in Section 5.)*

## **4. SOLUTION OPTIONS FOR PRIORITY ISSUES**

At the first BDAC Water Transfer Work Group meeting, in July of 1997, BDAC members and invited participants identified third party impacts and groundwater resources protection as priority issues for consideration. CALFED Staff proposed a process which would allow the Work Group to focus its efforts on developing solution options and, if possible, policy recommendations to BDAC and CALFED regarding these issues.

BDAC Water Transfer Work Group meetings subsequent to the first meeting centered on presentations of case studies which provided "real world" illustrations of transfer projects, third party impacts and groundwater issues.

At the November and December Work Group meetings, participants "brainstormed" solution options and produced a rough list of ideas to be considered in developing policy recommendations for addressing third party impacts and groundwater resource protection. These solution options were sorted, and based on the discussion among Work Group members and meeting participants, staff attempted to refine and prioritize the solution options which had some general measure of support as part of a water transfer policy framework.

Support for these solution options was not unanimous, and in some cases was (and is) tentative or conditional, depending on other aspects of the policy framework, how the policy is implemented, or other components of the long term CALFED program. Nevertheless, it is the opinion of CALFED staff and consultants that these solution options will be supported by a significant number of stakeholders from the Work Group and the public at large.

## **Broadly Supported Solution Options**

The major themes of the broadly supported solution options are: (1) baseline data collection; (2) neutral party analysis and monitoring of transfers; (3) cumulative impact analysis; (4) public disclosure of data and analysis; and (5) public participation in the transfer review and approval process.

Specifically, the solution options discussed and supported by the Work Group can be described as functions to be performed by an institution or entity as yet undefined. This could mean a new entity of some type or existing entities and agencies.

The functions identified are:

1. Research and development as necessary to establish credible and adequate baseline information on groundwater conditions and groundwater/surface water interaction.
2. Extensive groundwater monitoring programs before, during and after specific water transfer projects.
3. Development of analytic requirements for specific water transfer projects based on the type of water transfer (e.g., intra- basin, inter-district, change in purpose of use, instream or environmental use or out of basin transfer).
4. Adequate, project-specific environmental review and analysis of each water transfer proposal.
5. Basin wide planning goals for surface and groundwater resources.
6. Definition of the range of transfers needed for the long term CALFED solution.
7. Public disclosure of all pertinent information on each water transfer proposal, through a process funded by transfer proponents, and public participation in the review and approval process, including:
  - a. public notice of proposed water transfer projects;
  - b. public disclosure of water transfer proposals and plans, explanation of anticipated impacts and mitigation strategies;

- c. disclosure and explanation of claims process for parties seeking compensation for damages resulting from water transfers;
- d. decision making by the parties to the transfer and other legally responsible authorities in and through the public process;
- e. educational programs for the public regarding water transfer terminology, process and technical information.

## Other Solution Options

In addition to the solution options which were broadly supported by the Work Group, a number of other solution options received support from a significant subset of the Work Group. Again, support for these solution options was often tentative or conditional depending on other factors or aspects of the program.

The solution options or functions which received some level of support among Work Group participants are summarized as follows:

1. Evaluation of water transfers should include analysis of growth inducement in areas receiving transfer water.
2. Evaluation of water transfers should include analysis of local economic benefits and impacts of transfers. This might include fund tracking or establishing accountability for funds received for transferred water.
3. Entities purchasing or receiving transferred water should be required to meet certain efficiency criteria as a condition of obtaining transferred water.
4. Transfer which rely on groundwater substitution should not be approved on the basis of programmatic level environmental impact analysis.
5. Groundwater substitution pumping should be restricted to times when overlying groundwater users (not participating in the transfer) are not pumping for their own use.
6. CALFED should support the separation of the management of the State Water Project from the Department of Water Resources.
7. CALFED should support the levy of a tax on every transfer of water to be used for transfer mitigation projects.

The Work Group also expressed a view on a concept which should not be part of a CALFED water transfer policy framework - the idea that a physical limit should be imposed on the amount of water which a region or political entity may transfer. The sense of the Work Group was that this decision

should be made at the local level, provided that the review and approval process is adequate to protect local interests from adverse impacts of the transfer.

## **5. SUMMARY OF ISSUES AND SOLUTION OPTIONS**

*(Expand introduction)*

### **Environmental, Economic and Water Resources Protection**

Issue: Third Party Impacts

Solution Options: Discussion Paper No. 2; Clearinghouse Process; Mitigation measures

Issue: Groundwater Resource Protection

Solution Options: Discussion Paper No. 2; Clearinghouse Process; Conjunctive Use Programs; Local Control (Ordinances)

Issue: Instream Flow (1707) Transfers

Solution Options: Transfer Registry; Instream and Environmental Water Rights; Agreement on Tracking and Accounting Methods

Issue: Environmental Protection in Source Area

Solution Option: Agreement on limited use of programmatic EIR's and more project specific analysis; Mitigation measures

Issue: Area of Origin/Watershed Priorities

Solution Option: "Modification" of transferable water rules; permit streamlining for in-basin transfers

Issue: Rules/Guidelines for Environmental Water Transfers

Solution Option: Consistency with transfers for consumptive uses; multiple benefit mechanisms

### **Technical, Operational and Administrative Rules**

Issue: Transferable Water and the "no injury rule"

Solution Options: Agreement on application of rules; interagency process for development of uniform criteria

Issue: Operations Criteria and/or Carriage Water Requirements

Solution Options: Isolated conveyance facility

Issue: Reservoir Refill Criteria

Solution Option: Agreement on refill percentage

Issue: Permitting Process

Solution Options: Process streamlining; "pre-approval" of certain types of transfers

## **Wheeling and Access to Federal and State Facilities**

Issue: Priority of transferred water in existing project facilities (no capacity in other than dry years)

Solution Options: disclosure of transfer windows and risk factors

Issue: Priority of transferred water in new facilities

Solution Options: Dedicated capacity in new facilities

Issue: Wheeling Costs

Solution Options: Agreement based on trial court decision in MWD validation case (issue is how to recover capital costs)

## **6. INTEGRATION OF SOLUTION OPTIONS INTO A POLICY FRAMEWORK**

*(This part will describe how various solution options are integrated to address multiple issues and create a cohesive water transfer policy framework.)*

*A. Some issues involve the need to provide a certain level of protection from the effects of a water transfer market: e.g. third party impacts, protection of groundwater resources, protection of water rights and area of origin priorities, and environmental protection. The clearinghouse may provide a means of addressing these issues. (Refer to clearinghouse discussion paper.)*

*B. Some issues involve real or perceived impediments to the efficient operation of the water transfer market: e.g., different interpretations of transferable water; carriage water and reservoir refill; wheeling costs and access to facilities; the regulatory, permitting and approval processes. One aspect of the CALFED policy framework may be that the responsible agencies should provide additional disclosure of their calculations for determination of transferable water, carriage water and reservoir refill criteria. Another might be disclosure of the transfer windows and risk curves for moving transfer water across the Delta.*

*C. Some issues deal with problems related to water transfers for instream or other environmental purposes. The CALFED water transfer policy framework may include proposals for accounting and tracking of instream transfers, or possible the creation of instream or environmental water rights.*

*D. A fourth component of the policy framework would be recommendations for any legislative changes necessary, for example, to set up and provide funding for the clearinghouse or to provide accounting or registry mechanisms for environmental water transfers.*

## **7. IMPLEMENTATION AND ASSURANCE ISSUES**

*(This text will address assurance and implementation needs for the water transfers element)*

*A. Do we need changes in the scope of regulatory authority over transfers? Transfers often require approvals or permits at several levels: the water agency, the county, the federal or state project operator, the State Water Resources Control Board. Some transfers are exempt from CEQA. Others are not. Some transfer are subject to the jurisdiction of the State Board. Others are not.*

*- Should State Board jurisdiction over water transfers be expanded to include transfer of pre-1914 water?*

*- What is the appropriate role of DWR and USBR in approving transfers (separate from issue of wheeling and access to project facilities)?*

*- Should some types of transfers be exempt from CEQA analysis. If so, which ones?*

*B. Who pays for transfer capacity in new facilities? How are costs recovered?*

*C. If legislation is needed, what is the process for negotiation of new laws or regulations?*

*D. What is the time frame for implementation? Is there a staging or phasing aspect to any of this? What is the linkage between new facilities and transfers? Is there a linkage between transfers and ERP actions?*