

Proposed Policy Principles and Guidelines for Environmental Water Acquisitions

For Discussion Purposes Only

March 12 Draft

This is a merged version with upstream members language and then enviro language or edits. There appears to be a level of emerging consensus that, where there is not alternative language, the principle appears acceptable and where alternative language has been proposed, the alternative language appears acceptable. However, this draft does not represent a complete consensus among the workgroup members. Three notes were suggested additions from the BDAC Water Transfer Workgroup staff.

1. Purpose and Need: The environmental water acquisition program must be developed under a widely accepted statement of purpose and need. Such statement should articulate the relationship between ecosystem improvement investments and the broader CALFED water management infrastructure improvements.

-or- *Delete second sentence.*

2. Virtual Pool: Funds for environmental water acquisition should be made available under a comprehensive plan which considers acquisitions from the CVPIA Restoration Fund and all other sources. The Ecosystem Roundtable should support efforts to consolidate environmental water acquisition efforts within a single public-private entity.

-or- Add "Acquisitions should also be matched to need ("spot" market, short-term, long-term, permanent, options, etc.) Based on the different types of funds available, e.g. regular annual collections tied to water/power sales, general fund appropriations, general fund appropriations with limited authorization windows, bond debt, etc.

*Change "plan" to "program" and consider deleting "public-private".*

3. Watershed planning: Water purchased must meet specified flow criteria for designated watersheds and locations which are broadly supported among stakeholder interests.

-or- Water purchased must be used to achieve desired flow criteria for designated watersheds (and for the ecosystem as a whole) identified by local, regional, state and federal planning efforts.

Discussion: The issues surrounding local support would be consolidated into 4 and 3 would just address the planning aspects with the suggested changes. Also, flows might be acquired that do not fully meet the flow criteria but address those needs in part.

4. Local Support: All environmental water acquisitions should be on a voluntary basis from

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willing sellers and be fully supported by local interests. Demonstration of local support should be required before funds are allocated for purchases in an area. Prior to any water acquisition, there should be at least one public hearing held in the immediate geographic area from which the water is being transferred.

- or- Implementation Partnerships: All environmental water acquisitions should be on a voluntary basis from willing sellers. Partnerships between local interests and environmental water acquisition entities should be encouraged in order to utilize local expertise, increase program accountability, and build broad local support for acquisition programs. Prior to implementing an acquisition program in a particular watershed, at least one public hearing should be held in that watershed.

The Water Transfer workgroup staff suggests adding the concept that if a local process had been established to review transfers, we would follow that process. In the absence of that process, then at least one public hearing should be held.

5. Environmental and Economic Analysis: An environmental and economic analysis should be conducted of all transactions to insure against impacts that are unacceptable to local interests. This analysis should be based on a range of water year types and include consideration of cumulative impacts of the comprehensive program.

- or- A series of regional programmatic environmental and economic analyses should be conducted to ensure that local acquisition benefits are taken fully into account and that local acquisition impacts are reduced or appropriately mitigated. *Retain second sentence.*

The Water Transfer workgroup staff suggested that the programmatic environmental and economic analysis be at sufficiently focused and detailed so that local impacts can be detected.

6. Information System: The acquisition program should include an "Information Management System" element, which contains all relevant biological and financial data to assure accountability.

- or- *No changes.*

7. Adaptive Management: All acquisition projects should include adaptive management provisions requiring specification of environmental objectives, methods of measuring and monitoring performance, and adjustment mechanisms. If the benefits that motivated the sale are not being realized or if unanticipated adverse impacts result, the appropriate oversight body should modify or terminate the transaction.

- or- All environmental water acquisition programs should include monitoring and assessment criteria. Based on these criteria, the terms of the specific acquisitions may be modified to

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better achieve program objectives and to respond to unanticipated impacts.

Water Transfer workgroup staff suggested that the second version be modified to allow transfers to be terminated if needed.

8. Verification of water rights: Verification should be required to assure that the seller is the water right holder or otherwise holds an unequivocal right to sell the water.

*Still being reviewed. Group was wondering if there were any actual circumstance where this had been an issue.*

9. Water rights protection: A previous transfer of water will not be used to commit the transferor to provide a water supply beyond the term of the transfer or on terms other than those set forth in the transfer agreement. (For example, once the fishery has benefited from the increased flow it will not cause an adverse environmental impact under CEQA or Fish and Game Code Section 5937 to stop the release.)

-or- Add "...except where water rights are being permanently acquired for instream purposes."

10. Competition: All bona-fide sellers should be given the opportunity to participate as sellers.

-or- Add "...and no area or seller should be excluded from possible participation in the environmental purchase program."

*Group was wondering what "bona-fide" added to the language?*

11. Protection of flows: Acquired water must reach and be available throughout the targeted watershed or ecosystem without significant threat of prior diversion.

-or- All water acquired with environmental funds must reach and remain available throughout the targeted watershed and ecosystem. Diversion or export of acquired environmental water will only take place (1) with the express concurrence of the purchasing entity (USFWS/CDFG/other?) And (2) with mutually agreed to?/full? compensation. Compensation funds would then be available for subsequent environmental purchases.

12. Maximum benefit: Where two sources of water or means of conveyance are available, environmental water should be acquired using the source and means which provides the greatest ecosystem benefit.

*Group wanted to better understand this term and need for it.*

13. Right of first refusal: Entities within the area of origin should have the right of first

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refusal to purchase water before such water is transferred out of the area.

*Needs discussion in relation to rest of program. Could potentially be mitigation measure?*

14. Term and other condition: Preference should be given to multiple-year transactions of up to five years. As a long-term CALFED solution is implemented, longer terms should be considered. In addition, preference should be considered for larger purchases and purchases of water held under senior water rights.
- or- Delete first two sentences and replace with: Preference should be given to multiple year and permanent transactions, including dry year options, acquisitions of water rights for instream purposes, and shared-use rights (*clarify?*).

Other questions and issues:

What baseline are we working with here?

What about groundwater?

Can/should we distinguish between re-op purchases (i.e. making more water available when you what it but not really increasing total flows overall) vs. Those that serve to increase total flow by reducing diversions/depletions/consumptive use, etc?

This is the version which is beginning to capture the consensus of the group.

1. Purpose and Need: The environmental water acquisition program must be developed under a widely accepted statement of purpose and need.
2. Virtual Pool: Funds for environmental water acquisition should be made available under a comprehensive program which considers acquisitions from the CVPIA Restoration Fund and all other sources. The Ecosystem Roundtable should support efforts to consolidate environmental water acquisition efforts within a single entity. Acquisitions should also be matched to need ("spot" market, short-term, long-term, permanent, options, etc.) Based on the different types of funds available, e.g. regular annual collections tied to water/power sales, general fund appropriations, general fund appropriations with limited authorization windows, bond debt, etc.
3. Watershed planning: Water purchased must be used to achieve desired flow criteria for designated watersheds (and for the ecosystem as a whole) identified by local, regional, state and federal planning efforts.
4. Implementation Partnerships: All environmental water acquisitions should be on a voluntary basis from willing sellers. Partnerships between local interests and

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environmental water acquisition entities should be encouraged in order to utilize local expertise, increase program accountability, and build broad local support for acquisition programs. Prior to implementing an acquisition program in a particular watershed, any local process established to evaluate transfers should be used, and in the absence of an established local process, at least one public hearing should be held in that watershed.

5. **Environmental and Economic Analysis:** A series of regional programmatic environmental and economic analyses should be conducted to ensure that local acquisition benefits are taken fully into account and that local acquisition impacts are reduced or appropriately mitigated. The analyses should be at a level of detail where local impacts can be evaluated. This analysis should be based on a range of water year types and include consideration of cumulative impacts of the comprehensive program.
6. **Information System:** The acquisition program should include an "Information Management System" element, which contains all relevant biological and financial data to assure accountability.
7. **Adaptive Management:** All environmental water acquisition programs should include monitoring and assessment criteria. Based on these criteria, the terms of the specific acquisitions may be modified to better achieve program objectives and to respond to unanticipated impacts. The specific acquisition may also be terminated if needed.
8. **Verification of water rights:** Verification should be required to assure that the seller is the water right holder or otherwise holds an unequivocal right to sell the water.
9. **Water rights protection:** A previous transfer of water will not be used to commit the transferor to provide a water supply beyond the term of the transfer or on terms other than those set forth in the transfer agreement. (For example, once the fishery has benefited from the increased flow it will not cause an adverse environmental impact under CEQA or Fish and Game Code Section 5937 to stop the release.) This provision would not apply where water rights are being permanently acquired for instream purposes.
10. **Competition:** All sellers should be given the opportunity to participate as sellers and no area or seller should be excluded from possible participation in the environmental purchase program.
11. **Protection of flows:** All water acquired with environmental funds must reach and remain available throughout the targeted watershed and ecosystem. Diversion or export of acquired environmental water will only take place (1) with the express concurrence of the purchasing entity (USFWS/CDFG/other?) And (2) with mutually agreed to compensation. Compensation funds would then be available for subsequent environmental purchases.

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12. **Maximum benefit:** Where two sources of water or means of conveyance are available, environmental water should be acquired using the source and means which provides the greatest ecosystem benefit.
13. **Right of first refusal:** Entities within the area of origin should have the right of first refusal to purchase water before such water is transferred out of the area.
14. **Term and other condition:** Preference should be given to multiple year and permanent transactions, including dry year options, acquisitions of water rights for instream purposes, and shared-use rights. In addition, preference should be considered for larger purchases and purchases of water held under senior water rights.

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