

98-447

**LAW OFFICES OF  
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TELEFAX (916) 321-4422****VIA FACSIMILE****December 11, 1998****CONFIDENTIAL AND PRIVILEGED****Steve Ritchie  
CALFED Bay/Delta Program  
1416 Ninth Street, Room  
Sacramento, CA 95814****Re: Draft Water Transfer Program****Dear Steve:**

I regret that we were not able to get in touch personally to discuss the draft Water Transfer Program document. However, I do still want to communicate my primary comments on the draft your office faxed over. Additional comments will wait for another day!

1. It is essential to avoid confusion between jurisdiction over water transfers, and jurisdiction over wheeling arrangements. This has been a problem in the past which CALFED should mitigate rather than exacerbate. Entities with water conveyance facilities should evaluate any wheeling requests under the applicable statutes (i.e., Water Code §§ 1810-1814). This does not confer the right of review or approval over the transfer itself. Those entities certainly have the right to and should participate in the appropriate forum for evaluation of the water transfer, such the SWRCB.
2. The California Water Transfers Information Clearinghouse should function as a data collector and disseminator only. Analysis of impacts and similar functions should proceed only after mechanisms to ensure objectivity can be put in place.

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3. The address of Section 1707 instream transfers should incorporate and reflect the considerable work done in fine-tuning the business community's draft text during the Senate Bill 1011 (Costa) process.<sup>1</sup> A copy of the final version of that bill is attached. For example, petitioners should be provided the option of requesting that the water to be put instream be in addition to the regulatory requirements. Absent this election, the presumption should be that the water goes towards satisfying those requirements. It is also important that the petitioner be entitled to decide the reach within which the water will remain instream. This will encourage dedications in the context of transfers, which dedications might not otherwise occur.

The focus on monitoring and enforcement of instream dedications in the draft is welcome, and will inure to the benefit of all but the illegal user.

I have asterisked the attached draft with numbers in accordance with the above comments. I would also be happy to do further drafting if that would be helpful. Call me if you have questions or would like further explanation.

Thank you for your consideration of this input.

Sincerely,

LAW OFFICES OF MARTHA H. LENNIHAN

By: 

Martha H. Lennihan

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<sup>1</sup> This bill did not pass only because of the difficulties experienced by the water bond, to which it was tied.