

DRAFT

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Response to Comments for June 1999 Water Transfer Program Plan

0. General Responses

WT 00-1. Requiring water suppliers to meet water use efficiency requirements in order to participate in a water transfer will not negatively impact a water market. This requirement, as currently discussed in the June 1999 Water Use Efficiency Program Plan, is that a water supplier will participate in urban or agricultural planning and implementation programs, administered by the California Urban Water Conservation Council and the Agricultural Water Management Council. A key aspect of these programs focuses on the identification of feasible conservation measures, not necessarily the immediate implementation. Therefore, a water supplier could easily be in compliance with the council's process prior to implementing all feasible conservation measures. They would then be able to participate in a water transfer by acquiring water (buyer) until feasible conservation measures can be put in place or generating revenue (seller) to finance water conservation measures.

WT 00-2. The June 1999 Water Transfer Program Plan does not attempt to estimate the potential volume of water that may be transferred under any particular market conditions. Because it is extremely difficult to understand the reaction of buyers and sellers to market, water resource, and local conditions, it is difficult to estimate how much water could be transferred in a given year. The CALFED Water Transfer Program is intended to resolve issues regarding the functions of a market: operational and technical rules; third-party resource protections; and conveyance constraints. The Preferred Alternative does not include any specific transfers as part of the Water Transfer Program. (Other aspects of the CALFED Program such as the Ecosystem Restoration Program do identify water transfer actions. These will obtain temporary water supplies for instream flow purposes and will be subject to project specific environmental compliance when willing sellers are identified.)

WT 00-3. Water transfers are based on the premise of a voluntary transaction between a willing seller and a willing buyer. Such a market exists already. The CALFED Water Transfer Program simply seeks to improve the structure in which this current market operates. CALFED is not in the business of developing specific water transfer proposals (with the exception of programs funded through CALFED that may seek to purchase water from willing sellers to augment instream flows). Specific transfer proposals will continue to be developed by local interests interested in participating in a water market.

CALFED is not attempting to discourage or promote particular water transfers intended to move water from one area of the state to another; CALFED is not halting water transfers until such time as new storage is developed; CALFED is not implementing actions that would result in mandatory or uncompensated water transfers.

Many stakeholders have expressed concern that CALFED will promote transfers that violate water rights established in the California Water Code, adversely affecting both local surface and groundwater resources. This is not true. The Water Transfer Program entails changes, clarifications, and enhancements to approval procedures, operational requirements

(reservoir refill and carriage water requirement, etc.), and analysis and disclosure requirements. Nothing in the program changes existing water rights or other California Water Code provisions such as the "no-injury" rule, or authorizes inappropriate transfers or stops appropriate transactions.

One action CALFED will implement is to have CALFED agencies with transfer approval jurisdiction require transfer proponents to provide an analysis of potential groundwater impacts. This information will result in increased understanding of groundwater impacts that may be associated with a proposed transfer and allow for approval, conditioning, or denial of the proposal by the appropriate regulating entity based on information that may have otherwise not been provided.

It should also be noted that, as of October 1999, Governor Davis has signed legislation (SB 970) that includes additional water rights protection provisions. The author of this bill, Senator Jim Costa, intended these provisions to provide additional water rights protection to those who offer their water for temporary transfer to other users, including the environment. CALFED believes this bill sufficiently addresses the issue whether additional water rights protection is needed.

100's hundreds

WT 00-4. A viable water market exists today. Each year, literally ~~tens~~ of thousands of acre-feet of water are transferred between various water users throughout the state. This does not mean there are not problems with water transfers that are yet to be fully resolved. It is in this context that CALFED has developed the Water Transfer Program Plan. The program is focused on resolving these problems while facilitating the further development of the water market.

For instance, statutes and rules governing water transfers exist at both the state and federal levels, but not everybody agrees with their interpretation and application by the entities granted jurisdictional authority. CALFED has identified programmatic level actions to clarify and standardize these rules. Because the rules are complex and each transfer situation is unique, it could take several months to make changes to the existing rules. In the mean time, deliberations at the State Water Resources Control Board may help provide more immediate clarity on interpreting a few provisions of the California Water Code.

WT 00-5. CALFED is a consortium of state and federal agencies with water or environmental management responsibilities in the Bay-Delta system. Therefore the decision makers of CALFED are the same agencies that are active in discussing water transfer matters in forums outside of CALFED. As part of CALFED, these same agencies are working together to better define and disclose their water transfer policies and procedures, thus allowing CALFED to find opportunities for improvement. However, as CALFED works toward solutions, stakeholders continue to bring water transfer issues before the State Water Resources Control Board and the California Legislature hoping to get rapid changes implemented. Unfortunately, this takes time and energy away from these same agencies participating as part of CALFED. Reacting to issues raised in "outside" forums, particular CALFED agencies will tend to stick strongly to their current policies and positions. Until CALFED can facilitate consensus that may lead to changes in these policies, this is not a surprising reaction.

WT 00-6. Performance criteria developed for the Water Transfer Program will consist of ensuring that actions identified in Section 4 of the June 1999 Water Transfer Program Plan are implemented, including establishment and funding of a clearinghouse and adoption by state and federal approving agencies of additional impact disclosure requirements. In essence a performance criteria could be developed for each of the actions listed in Section 4 of the document.

WT 00-7. As stated in other sections of the Programmatic EIR/EIS, the CALFED Preferred Alternative does not include land fallowing as a direct means of obtaining water supplies. Land fallowing, however, may result from locally initiated water transfer proposals, CALFED Ecosystem Restoration Program actions, and Levee System actions. Several of these actions are intended to improve habitat and levee integrity but are not included as a water supply measure. Any changes to the use of water associated with these lands would have to be discussed with the water right holder at the time of the specific action.

WT 00-8. The CALFED Program does not include a description of historic transfers and their benefits to both the buying and selling participants and regions, but there are numerous benefits from properly designed and executed water transfers. Not only can a transfer provide a revenue stream for one-time capital expenditures, it can provide a useful revenue stream to assist economic sustainability and regional water resource goals for a community - if proactively planned with the appropriate project "ownership".

WT 00-9. Water transfers involve a change in the use of water rights, on a temporary or permanent basis. For transfers subject to State Water Resource Control Board jurisdiction, the water right holder must petition for change. CALFED has no intention of changing this basic premise. Generally a water user who is provided water through a water right held by a water supplier does not have the authority to transfer that water without the water right holder's (supplier) permission. In the case of the CVP, federal law allows for "user" initiated transfers, but the USBR, as a practical matter, still requires district interaction prior to federal approval.

WT 00-10. Water transfer proposals need to be able to document how much water is made available to transfer and what action is resulting in the availability. Such assessments require proponents to satisfy the queries of other legal users that there is "real" water available. The best way to accomplish this is through comprehensive measurement systems that document water movement throughout a particular system. It does not necessitate metering of every field delivery.

WT 00-11. Water transfers are one of several water management tools included in the CALFED Preferred Alternative. CALFED is assuming that the current water market will continue to function and, with CALFED's improvements, will be stronger in the future. However, other aspects of the Program are not dependent on changes to the existing water market. Even given the existing water market, CALFED's other actions will still be implementable and will move the State toward a long-lasting solution.

WT 00-12. Water transfer proposals need to be able to document how much water is available to transfer and what action results in the availability. Such assessments allow proponents to demonstrate that there is "real" water available. Water currently flowing to degraded groundwater or salt sinks is an ideal example of real water that can be conserved

and made available to transfer. Other examples include reservoir re-operations, land fallowing, and conjunctive use. Regardless of the method used to make water available for transfer, the transfer must satisfy the applicable test of "no-injury" to legal users of water, including in-Delta water rights holders.

WT 00-13. This comment speculates on the possible outcome of Phase 8 of the State Water Resources Control Board's Bay Delta proceedings. The Water Transfer Program Plan makes no assumption about any specific result of that proceeding with respect to water allocations. The Program Plan assumes only that a voluntary, willing seller-willing buyer water transfer market is part of the water management landscape in California and will continue to be an important tool for water management in the future. It is true that to the extent water rights are re-allocated or diminished through independent legal or regulatory processes, a negative effect on the water transfer market may result, simply because there will be less water held under private water rights to transfer in the open market. The Program also acknowledges that water transfers in and of themselves do not create additional water supply and are not a solution to the long term water management problems of the state. This issue is also addressed in the components on water use efficiency, conjunctive use, and storage.

WT 00-14. The existing water market has indicated that the price paid to the seller ranges from \$20 to \$200 an acre-foot. It is likely that increased competition for the limited amount of water made available by willing sellers will raise these prices. However, it is very unlikely that this price will increase so high that nobody would be farming. This is primarily because of other options, such as water conservation, water recycling, and even seawater or brackish water desalting that become more competitive as the price for water on the market increases. These options also can be more reliable as a local supply and have other advantages over water transfers.

Furthermore, the demand for municipal and industrial water is relatively small against the total agricultural use. Even if all municipal and industrial demand was met with agricultural transfers, it would not put agricultural out of business.

WT 00-15. The CALFED Program's proposal to condition the construction of new storage on making improvements in the structure of the water transfer market would be satisfied by implementing the actions described in the June 1999 Water Transfer Program Plan. There are no target quantities in this proposed condition. The condition could be satisfied, for instance, by implementing the water transfer information clearinghouse, clarifying definitions of transferable water, and having agencies adopt a additional disclosure requirements.

WT 00-16. The requirement to show efficient use by both the buyer and the seller in a water transfer transaction is based on the premise that all water users should be using water in the most efficient manner feasible (as discussed in the CALFED Water Use Efficiency Program). This requirement would be satisfied by a seller being in compliance with planning and implementation guidelines developed and administered by the California Urban Water Conservation Council and the Agricultural Water Management Council.

1. Introduction

1.1 WHY CALFED HAS INCLUDED WATER TRANSFERS IN THE PREFERRED PROGRAM ALTERNATIVE

WT 1.1-1. Attachment 1 to this document is a list of participants in the Bay-Delta Advisory Committee's Water Transfer Work Group. The group met monthly for over a year, from August 1997 until November 1998. The participation of members listed below fluctuated, but all were present at one time or another in the 14 meetings held. This group was instrumental in helping identify issues and constraints and to develop and discuss potential solution options.

WT 1.1-2. The Water Transfer Program Plan does not propose any changes to current legal or regulatory requirements for water transfers, except that specified information regarding a proposed transfer would be provided to the Water Transfer Clearinghouse. The clearinghouse would not have any regulatory authority over a transfer (see Response to Comments WT 4.4.1-10). The Program Plan recognizes that water transfers must be developed by local interests and will be subject to local control and approval, subject to applicable federal and state law and the regulatory jurisdiction of the State Water Resources Control Board.

1.2 THE ROLE OF WATER TRANSFER IN WATER MANAGEMENT

WT 1.2-1. As described in this section of the June 1999 Water Transfer Program Plan, water transfers are considered by the Program to be only one of many water supply management tools available to help resolve current water conflicts. Water transfers are based on the premise of "willing seller/willing buyer" and will continue to help meet water supply needs as hydrology and regulations continue to change. However, because markets are based on the willingness to sell, CALFED cannot readily predict the quantity of water that may be made available for "sale" under different conditions. Even without this information, CALFED believes it is inaccurate to assume that water transfers are a threat to responsible planning. Responsible planning is exactly what the CALFED Bay-Delta Program is about and as a result it has developed the Preferred Alternative that combines numerous complex and inter-linked actions to resolve a statewide problem.

WT 1.2-2. The potential benefits offered by water transfers identified in this section of the June 1999 Water Transfer Program Plan are not applicable in all cases nor in all regions of the State. Each, however, is a legitimate benefit that has been achieved by one or more transfers in the past. CALFED does not assume that any future water transfers would provide all of these benefits. Benefits will be case-specific.

Furthermore, CALFED recognizes that water transfers are not a source of "new" water. Rather they are a mechanism to allow water to move between water rights holders and other users, including the environment.

WT 1.2-3. As described in this section of the June 1999 Water Transfer Program Plan, one of the primary benefits of water transfers is "helping to relieve the mismatch ... by moving water available in one area to satisfy needs in another area." This is a broad description for allowing the reallocation, on a temporary or permanent basis, of water diverted for one use to be transferred for use elsewhere. Transfers shift existing water uses and do not result in

additional diversions from the environment. [For instance, if some water currently diverted to export regions for agricultural uses was transferred to an urban use (also in the export area) through land fallowing or conservation activities, future demands for increased export diversions to meet growing urban needs could be reduced, though existing diversions levels would remain constant.]

This also means that water transfers can provide water for other uses within the same basin. Transfers do not have to result in water moving out of a basin.

WT 1.2-4. Water transfers are simply the legal mechanism to move water between legal users of that water. If conservation efforts reduce evaporation or reduce water flowing to unusable groundwater sources, it is the conservation effort that creates the "new" water, not the transfer activity. This is an important distinction. The statutes and policies that govern water transfers are based on how the water is made available to transfer, not on the simple fact that there is a "transfer". For instance, water made available through conservation, land fallowing, reservoir re-operation, contract entitlement shifts, or other mechanisms needs to satisfy particular "tests" to ensure that the water truly exists and that it can legally be "transferred" from one user to another. CALFED agrees that many mechanisms can create new water, but it is not the transfer that does so. It is the method employed by the water user to implement a change in place of use. The State Water Resources Control Board treats a transfer proposal as an application for a "temporary change" of a water right. The transfer is simply the mechanism to move the water made available through some action.

WT 1.2-5. CALFED agrees that water transfers can result in the movement of water between uses with different economic values. However, CALFED is not trying to direct a certain type of market. A market needs to operate with relative freedom to determine who is willing to sell, who is willing to buy, and at what price. The CALFED Water Transfer Program is improving the framework within which this market will continue to function (i.e., the policies, rules, and protocols). Some water may be transferred from "low-value" uses to "high-value" uses, if the willingness exists. This is a difficult scenario to evaluate in a programmatic document. Therefore, the use of the CALFED's Economic Evaluation of Water Management Alternatives effort may be the more appropriate location to perform different "willingness to sell" scenarios. This work is already underway but is envisioned as a tool for helping make decisions during Stage 1, not now.

WT 1.2-6. CALFED does not believe that all water currently put to beneficial use in the Sacramento Valley will transfer it to areas outside the Sacramento Valley. However, one of the Water Transfer Program objectives is that more analysis and disclosure of potential impacts, including cumulative impacts, of water transfers be part of the public debate on specific transfer proposals.

WT 1.2-7. Water transfers can be designed to operate on several different time frames. One-year, annual long-term, optional long-term, and permanent transfer of water rights are all examples. The Owens Valley example cited by many stakeholders as a reason to be concerned with protecting water rights is actually an example of a permanent sale of water rights. Though such transfers may still occur, the majority of transfers that have been happening and are anticipated by buyers and sellers are one-year transfers and various types of long-term arrangements with life spans of 5, 10, or 20 years. The current transfer

provisions in the California Water Code specify that transfers of this sort do not change the underlying water rights.

Furthermore, as of October 1999, Governor Davis has signed legislation (SB 970) that includes additional water rights protection provisions. The author of this bill, Senator Jim Costa, intended these provisions to provide additional water rights protections to those who offer their water for sale - helping further ensure that water rights held by many northern California interests would not be put at risk by offering water for temporary transfer to other users, including the environment. CALFED believes this bill removes the need for it to further investigate the need for additional water rights protections.

WT 1.2-8. Water transfers will continue to be governed by California water rights law. Actions taken by the United States or other countries under agreements such as the North American Free Trade Agreement (NAFTA) will not undermine the State's system of water rights.

1.2.1 Relationship to Other Programs

WT 1.2.1-1. As described in this section of the June 1999 Water Transfer Program Plan, CALFED believes that storage and conveyance must be enhanced to allow transfers to play an optimal role in statewide water management. However, even without improvements in storage or conveyance, CALFED intends to resolve issues that constrain the existing transfer market, including issues such as third-party impacts, operational rules, and approval processes.

WT 1.2.1-2. As described in this section of the June 1999 Water Transfer Program Plan, the CALFED Preferred Alternative includes several mechanisms to ensure water is available for augmenting instream flows or for improving the health of fisheries. One of these is water transfers - purchasing water from a willing seller. The Water Transfer Program is improving the framework within which transfers operate. The transfer program, however, is not where specific water transfer needs are discussed. These and other mechanisms including regulatory actions, fish screens, flexibility in Delta operating standards, the Environmental Water Account, and habitat restoration, to name a few are discussed in other parts of the Preferred Alternative. The Water Transfer Program is evaluating additional mechanisms described in Section 4 of the June 1999 Water Transfer Program Plan, such as improved tracking and monitoring protocols for water transferred to the environment, and the possibility of establishing additional protections for instream flows. CALFED sees water transfers and improvements in the water transfer framework as one tool to be used in achieving to goal of a healthy ecosystem.

1.3 PROGRAMMATIC NATURE OF THE WATER TRANSFER FRAMEWORK

2. Water Transfers Defined

WT 2-1. As discussed in the sidebar in this section of the June 1999 Water Transfer Program Plan, CALFED is not in the water transfer business. Because of the Program's focus on the structure and operation of the water market, analysis of specific water transfers is not appropriate in this programmatic environmental document. As willing sellers and willing buyers continue to come together, individual transfer proposals will need to comply with state and/or federal regulatory and environmental requirements. At such time, these

transfers will necessarily undergo more detailed analysis to ensure water rights are protected, third-parties impacts are appropriately handled, and environmental impacts are avoided or mitigated.

2.1 WATER TRANSFER LAW AND POLICY: STATE AND FEDERAL

WT 2.1-1. The overview of water transfer law in this section of the June 1999 Water Transfer Program Plan was intended to be just that, an overview. CALFED will consider expanding some aspects of the overview to try to articulate CVPIA provisions and how they interact with state law and to explain the definition of "imported water" as used by the State Water Resources Control Board.

WT 2.1-2. The CALFED Bay Delta Program does not have any legal or regulatory jurisdiction over transfers or over the application of the "no injury" rule in state law. CALFED does not intend to recommend changes to the current system of water rights as defined in the California Water Code. The Program Plan recognizes and attempts to describe how Code sections such as the "no injury" rule are generally applied by the regulatory agencies.

Individual water transfer proposals will be subject to applicable federal and state law and, in some cases, the regulatory jurisdiction of the State Water Resources Control Board. The State Water Resources Control Board has no authority to directly address groundwater rights but does consider impacts to groundwater users as part of its evaluation of "no-injury" for specific water transfer proposals.

Furthermore, there are provisions in the Water Code that do require water transfer proposals to satisfy groundwater management requirements as one aspect of approval, for instance, Section 1745.10. Most proposed transfers do not fall under these provisions, however.

To help with this situation, as stated in section 4.4.2 of the June 1999 Water Transfer Program Plan, CALFED is implementing a requirement for transfer applicants to provide groundwater impacts assessments prior to review of the application by the relevant state or federal agencies. This disclosure requirement is intended to provide analysis when it otherwise may not be required.

WT 2.1-3. The CALFED Bay Delta Program does not have any legal or regulatory jurisdiction over transfers or over the application of the "no injury" rule in state law. CALFED does not intend to recommend changes to the current system of water rights as defined in the California Water Code. Individual water transfer proposals will be subject to applicable federal and state law and, in some cases, the regulatory jurisdiction of the State Water Resources Control Board. CALFED is not intending to promote one type of transfer over another.

3. Identification of Issues and Potential Solution Options

3.1 IDENTIFICATION OF ISSUES

3.2 ESTABLISHMENT OF POTENTIAL SOLUTION OPTIONS

3.3 ENVIRONMENTAL, SOCIOECONOMIC, AND WATER RESOURCE PROTECTION

WT 3.3-1. The potential solution options identified for each issue in this section of the June 1999 Water Transfer Program Plan, were developed through numerous stakeholder and inter-agency meetings. The strategic plan of action to resolve each of these issues is described in Section 4 of that document. For each issue, only one solution option was brought forward. The selected option was the result of many months of stakeholder and CALFED agency meetings and discussions. The solutions chosen typically do not fully satisfy all stakeholders and CALFED agencies. They do, however, represent consensus solutions that provide some satisfaction to all parties.

3.3.1 Third-party Socioeconomic Impacts

3.3.2 Groundwater Resource Protection

WT 3.3.2-1. The CALFED Program has developed a set of conjunctive use principles that articulate the need for local ownership, local involvement, and local acceptance of conjunctive use projects, including a need to adequately address third party concerns. These principles can be found in the June 1999 Phase II document that was an appendix to the draft Programmatic EIR/EIS.

3.3.3 Area of Origin and Watershed Priorities

3.3.4 Environmental Protection in Source Area

3.3.5 In-stream Flow (Section 1707) Transfers

3.3.6 Rules and Guidelines for Environmental Water Transfers

3.4 TECHNICAL, OPERATIONAL, AND ADMINISTRATIVE RULES

3.4.1 Transferable Water and the "No Injury" Rule

WT 3.4.1-1. The identification of water as "imported" falls under the jurisdiction of the State Water Resources Control Board. (%% need to add Jerry John's input).

WT 3.4.1-2. CALFED did not create the definitions or rules for saved or conserved water, or the concept of "real water". This section of the June 1999 Water Transfer Program Plan attempts to objectively describe how the existing law is interpreted and applied by the agencies (primarily, the State Water Resources Control Board, the Department of Water Resources and the Bureau of Reclamation) with varying degrees of jurisdiction over water transfers. The CALFED Bay Delta Program does not have any legal or regulatory jurisdiction over transfers or over the application of the "no injury" rule of state law. The Program Plan recognizes and attempts to describe how the "no injury" rule is generally applied by the regulatory agencies. The Program Plan specifically recognizes that there is a difference in opinion among various interests as to how the "no injury" rule should apply to some types of transfers and that there are differences in viewpoints about the transferability of saved or conserved water. The intent of the Program Plan is to identify and describe these issues and to propose solutions or solution processes which will facilitate the further development of the already existing water transfer market, while protecting local water

rights and interests. Solutions were presented in Section 4 of the June 1999 Water Transfer Program Plan, not in Section 3.

The comment accurately states the problem of interpretation of Water Code provisions by noting that in the Sacramento Valley tailwater or return flows that are not recaptured for direct use by the diverter generally return to the system. This very directly highlights the problem of transferability of saved or conserved water, since one of the tests of transferability is whether the water would be used downstream in the absence of the transfer (i.e., returns to the system). If so, the "no injury" rule is applicable and the transfer could not be approved. The comment states an interpretation of the "no injury" rule which is inconsistent with the interpretation made by the State Water Resources Control Board. Not all conserved or saved water is transferable. Saved or conserved water may be transferable if it meets the transferability tests of other provisions of California, such as the "no injury" rule. The seniority of a water right is irrelevant to the determination of the applicability of the "no injury" rule.

3.4.2 Saved or Conserved Water

3.4.3 Operations Criteria and Carriage Water Requirements

See F. Chung
→ WT 3.4.3-1. The comment notes that conveyance of a water transfer across the Delta does not reduce Delta outflow, but may require additional releases to maintain a salinity requirement. (????? Talk with Cowin or Finch)

3.4.4 Reservoir Refill Criteria

Finch system may be unique fill since seeds to be addressed in case by case basis.
WT 3.4.4-1. The June 1999 Water Transfer Program Plan accurately states that "Transferors of stored water contend that their actions do not cause harm to other legal users of water." CALFED believes the issue descriptions adequately portrays the issue. More emphasis should be placed on considering the solutions discussed in Section 4. The CALFED agencies are committed to standardizing the application of refill criteria through stakeholder interaction. This will occur early during Stage 1 implementation.

3.5 WHEELING AND ACCESS TO FEDERAL AND STATE CONVEYANCE FACILITIES

3.5.1 Predictability of Access for Transferred Water in Existing Facilities

3.5.2 Priority of Transferred Water in New Facilities

3.5.3 Wheeling Costs

4. Program Framework

WT 4-1. The June 1999 Water Transfer Program Plan is CALFED's strategic plan to improve the framework within which the water market in California functions. Section 4 of the June 1999 Water Transfer Program Plan describes several actions and processes for resolving issues. These are necessarily programmatic in nature, since the CALFED Bay-Delta program is completing the programmatic impact analysis at this time. As stated in Response to Comment #WT 00-4, the existing California Water Code provisions and articles of the 1992 Central Valley Project Improvement Act contain the "rules" governing current market functions. CALFED agrees that they need to be improved, but disagrees that there is no

viable market in the meantime. Many stakeholders have commented that they do not want the CALFED Water Transfer Program to adversely affect their current ability to transfer water.

CALFED agrees with the immediate need to continue to move toward resolution on all of the issues described in Section 3 of the June 1999 Water Transfer Program Plan. The actions and processes in Section 4 describe the work plan that CALFED is following. Early implementation of some of these actions is feasible and is currently underway. Otherwise, implementation is expected during the early years of CALFED's Stage 1. More detailed descriptions of many of the actions are included in the Final Water Transfer Program Plan that accompanies this document.

WT 4-2. As described for many of the actions identified in this section of the June 1999 Water Transfer Program Plan, stakeholder involvement is critical to successful implementation of these actions. At this time, specific actions are only described at a programmatic level. This is in part because of the need for more stakeholder interaction to discuss specific components of each action. Plans for stakeholder involvement during the Stage 1 are being developed and in some instances, moving forward. For example, CALFED is working with the Bay-Delta Modeling Forum to facilitate a public workshop to discuss appropriate modeling tools for estimating carriage water requirements. Consensus on a tool will only come after such stakeholder interaction. Other actions will have similar stakeholder involvement.

One of the reasons CALFED has limited stakeholder interaction during the few months prior to the release of the June 1999 Water Transfer Program Plan was because of a need to facilitate inter-agency discussions on several key issues where CALFED agencies have jurisdiction. Clear disclosure of current interpretations by DWR and USBR on particular Water Code provisions is essential for engaging stakeholders in useful interactions. Stakeholder interaction will be increased for these types of issues during Stage 1 implementation.

WT 4-3. The concern that CALFED agencies which participate in developing solutions for water transfer constraints have a conflict of interest, because they themselves participate in markets and have water rights to protect, is valid. However, these agencies also have legal authority and responsibility for water transfers under state and federal statute, and are required to be involved in the review and approval of water transfer proposals. CALFED hopes that actions described throughout this section of the June 1999 Water Transfer Program Plan will help eliminate these concerns. For instance, developing standard definitions for transferable water is an important objective, but not very useful if those definitions are developed with absolutely no stakeholder interaction and debate. CALFED recognizes that the key to moving forward with a market is to have all water rights interests agree to standardized procedures for determining transferability. This would mean that federal agencies buying water for streamflow would be subject to the same rules and definitions that local public entities would be. This will not be an easy task and will require time and dedication by stakeholders to have objective discussions on such issues. As described in Comment Response #4-2, stakeholder interaction will be increased as we move into implementation stages. The actions described in the final Water Transfer Program will still be programmatic in nature.

WT 4-4. Consistent terminology is vital to overcoming concerns about water transfers and allowing legitimate issues to be addressed. Through the implementation of actions described throughout this section of the June 1999 Water Transfer Program Plan, CALFED will strive to build standard, mutually agreeable language for water transfer related terms. This will most likely manifest itself through the development of a web-based water transfer application system where adherence to and understanding of terms is critical to successfully inform water transfer interests about requirements, procedures, and protocols.

WT 4-5. CALFED is not promoting a "free" water transfer market. The Water Transfer Program actions are intended to improve the structure of the current water market, including many regulatory protections and protocols. This section of the June 1999 Water Transfer Program Plan fully describes the programmatic actions CALFED will implement during Stage 1 (after the signing of the Record of Decision on a Final Programmatic EIR/EIS).

WT 4-6. The actions listed in this section of the June 1999 Water Transfer Program Plan are intended to result in similar improvements to the current water market.

WT 4-7. CALFED agencies, especially the California Department of Water Resources, the U.S. Bureau of Reclamation, and the State Water Resources Control Board are all actively participating in developing CALFED's Water Transfer Program. These agencies are committed to resolving differences, improving coordination, and working with stakeholders to make necessary improvements in the existing water market framework.

4.1 OBJECTIVES GOVERNING THE DEVELOPMENT OF SOLUTION OPTIONS

WT 4.1-1. CALFED agrees with this suggestion and has incorporated the change.

WT 4.1-2. The objectives and criteria included in this section of the June 1999 Water Transfer Program Plan already embody this principle.

4.2 INTEGRATION OF SOLUTION OPTIONS

4.3 FORMAT OF RECOMMENDATIONS TO RESOLVE ISSUES

4.4 ENVIRONMENTAL, SOCIOECONOMIC, AND WATER RESOURCES PROTECTION SOLUTIONS

WT 4.4-1. As part of the effort to facilitate instream transfers under Water Code Section 1707, CALFED is developing improved tracking and monitoring protocols to ensure water designated for a particular downstream purpose reach its destination. CALFED will formalize when and how those transferring water to the streams can use this provision to protect their investments.

In addition, all water transfer proposals that involve local agency action or review by state or federal agencies need to comply with appropriate environmental impact assessment requirements. This legal requirement will not be affected by actions of the CALFED Water Transfer Program, and in many instances should be enhanced.

WT 4.4-2. Actions included in this section of the June 1999 Water Transfer Program Plan are intended to increase the level of protection for third party interests and improve understanding of water transfer benefits and impacts. Actions such as additional analysis could seem counter-productive to proponents, but they are really intended to address the realities, fears and perceptions of third party and source area interests. CALFED is concerned that a lack of information and understanding of transfer impacts results in further barriers to viable water transfers. However, this same lack of information can allow irresponsible transfers to be approved, resulting in unnecessary impacts to local resources. It is CALFED's belief that by being more forthright with information, transfer proponents can alleviate many third party concerns by fully disclosing what may happen to local resources and how such impacts will be avoided or mitigated. A water transfer market cannot function efficiently without a free flow of information among transfer proponents and third party interests. CALFED's actions move toward that long-term objective of a regulated and protective market that will provide local benefits as well as benefits to the buying and selling entity and region.

WT 4.4-3. CALFED agrees that there should not be significant impacts imposed on low-income farm workers as a result of water transfers. However, CALFED does not agree that a "tax" paid by proponents would facilitate a water market, it may instead create an obligation that would discourage desirable transfers. CALFED intends that efforts of the clearinghouse will help reduce the potential for adverse impacts to local work forces by facilitating research and development of mitigation "tool boxes". Project specific mitigation may include fees to be paid but may not. A universal tax is inappropriate.

4.4.1 Water Transfers Information Clearinghouse

WT 4.4.1-1. As discussed in this section of the June 1999 Water Transfer Program Plan, a clearinghouse would be created to perform several functions. Through the facilitation and development of impact assessment tools and mitigation strategies, the clearinghouse will be able to help third-parties ensure that their interests are considered in the evaluation of water transfer proposals. The clearinghouse could develop a "toolbox" of mitigation strategies, which would be useful to local interest concerned about transfer impacts. The clearinghouse will also facilitate research regarding the cause/effect relationships between changes in water management as a result of transfers and attributes such as local groundwater resources, terrestrial habitats, and job base. The clearinghouse should also ensure that all information regarding a proposed transfer is publicly disclosed, so that both local and state/federal entities are better enabled to make decisions with a full understanding of the proposed transfer.

WT 4.4.1-2. As referred to in this section of the June 1999 Water Transfer Program Plan, the CALFED Comprehensive Monitoring Assessment and Research Program (CMARP) concurs with the need for development of baseline hydrologic surface and groundwater information. Through CMARP and the information clearinghouse, such information will be developed. This type of general information should provide transfer proponents as well as local interests with a broader understanding of basic configurations and relationships of their local water resources. Additionally, monitoring of specific water transfer projects will need to be included as part of each water transfer proposal. One way to ensure this is

included is by developing mitigation and monitoring tools as described in Comment Response WT 4.4.1-1 for use by project proponents and local and state agencies with jurisdiction over a specific water transfer.

WT 4.4.1-3. The term "if necessary" in this sentence refers to whether the proponent needs such a "toolbox" of mitigation strategies. The toolbox will be developed by the clearinghouse and will be used by proponents "if necessary".

WT 4.4.1-4. The clearinghouse described in the June 1999 Water Transfer Program Plan will assist with disclosure of information through the use of a web site. As applications are submitted to the Department of Water Resources, the State Water Resources Control Board, and/or the U.S. Bureau of Reclamation, the agencies will forward the information to the clearinghouse for "posting". (Currently, not all transfers go through the State Water Resources Control Board process and are not adequately noticed.) It will still be the responsibility of local interests to monitor this information to ensure they know about proposed transfers that may affect them. The clearinghouse may also provide a public forum, or ensure that such is provided, for a public discussion of proposed transfers, as needed.

Legislation recently signed into law by Governor Davis (SB 970) adds provisions to the California Water Code that impose some additional noticing requirements on transfer applicants.

WT 4.4.1-5. CALFED believes that the clearinghouse will assist with developing a better understanding of the relationships between water sources, transfers, and various "externalities" (e.g., third party impacts). Improved understanding should help ensure that water transfers occur when there is appropriate support for them and necessary impacts are mitigated. CALFED's Water Transfer Program, however, is based on the current system of water rights in California, and current law does not require that water rights holders be responsible for all impacts of a transfer. CALFED anticipates that, by development and disclosure of better information and research findings, impacts that may occur from a water transfer are better known and issues about responsibility can be more easily resolved.

WT 4.4.1-6. CALFED agrees that disclosure of environmental impact information associated with a proposed transfer is necessary. It is the intent that the clearinghouse, upon receipt of a proposal, would "post" all relevant information, including all impact reports, on a web-site for public review. This posting is simply for disclosure purposes and does not initiate any formal public review process. The reviewing and approving agencies (USBR, DWR, and SWRCB) would provide the appropriate public involvement forums in accordance with existing legal requirements.

WT 4.4.1-7. Any models developed or facilitated by CALFED to improve our collective understanding of groundwater and surface water interactions would be necessarily be directed toward specific basins or groups of basins. CALFED does not intend that one Central Valley model be developed.

WT 4.4.1-8. The intra-district water transfers referenced in this section of the June 1999 Water Transfer Program Plan are those that happen when water users within a district transfer their surface water among each other. This is heavily practiced in districts such as Westlands Water District, a Central Valley Project contractor. CALFED does not see long-

term cumulative impact potential from these types of transfers. They require only the approval of the water district and only involve water rights or water contracts that the district already holds. In recent years, Westlands Water District alone has had several thousand water transactions among its growers.

WT 4.4.1-9. The referenced statement from the June 1999 Water Transfer Program Plan is included in a section on optional functions of a clearinghouse. The clearinghouse is not intended to be a new regulatory entity. Its primary function will be public disclosure of proposed water transfers.

WT 4.4.1-10. The functions of the clearinghouse are two:

- Disclose information on proposed transfers through an electronic medium (web-site or other) for broader public access to the details of the transfer.
- Promote or facilitate data analysis of historic water transfers, and adding new transfers to a database as they are approved to increase the overall understand of relationships between water transfers and real or perceived impacts.

The clearinghouse has no regulatory function. The clearinghouse does offer an opportunity for DWR, USBR, and the State Water Resource Control Board to coordinate functions, standardize policies and procedures, and further streamline review periods.

4.4.2 Analysis and Disclosure Requirements

WT 4.4.2-1. Water supply development by management of groundwater is a sound concept in many areas of the state. Generally referred to as conjunctive use or groundwater banking, this process allows existing groundwater resources to be managed to produce additional water supplies - either for use locally to meet growing needs or for temporary transfer. The potential for such projects varies throughout regions of the State. If a project is developed for transferring water to another user, either directly or in combination with a surface water supply, the CALFED Water Transfer Program will require the seller to satisfy certain analysis and disclosure objectives. These requirements, discussed in Section 4.4.2 of the June 1999 Water Transfer Program Plan, should result in a transfer being developed and conditioned such that local groundwater users are not adversely impacted.

The CALFED Bay-Delta Program does not believe it is appropriate to limit local entities who wish to develop conjunctive use projects for the local management of groundwater resources. Therefore, the program, including the conjunctive use actions and principles described as part of the storage component of the Preferred Alternative (June 1999 Phase II Report), does not contain any actions to stop the transfer of groundwater out of a "basin" simply because of failure to increase storage in the statewide system. CALFED is advocating locally developed conjunctive use projects to include monitoring and mitigation mechanisms as key aspects of their projects to gain local acceptance and to ensure that local impacts, if any, are mitigated to acceptable levels.

WT 4.4.2-2. CALFED agencies with jurisdiction over proposed water transfers will begin to require additional impact assessments as part of an application to transfer. Local socioeconomic impacts, cumulative impacts, and groundwater impacts will be part of the information provided and publicly disclosed by the proponents. In addition, all proposed

transfers will need to satisfy applicable state or federal environmental compliance requirements, regardless of the proposed use of the transferred water. CALFED believes that all transfers should be subject to the same review criteria and analytic requirements. The proposed actions reflect that view.

WT 4.4.2-3. As described in this section of the June 1999 Water Transfer Program Plan, CALFED has included an action to require additional impact assessments to be provided by the proponent at the time of applying for approval for a proposed water transfer. These requirements include: socioeconomic impact analysis, cumulative impact analysis, and groundwater impact analysis. The level of analysis will vary with the type of water transfer (i.e., a fallowing transfer needs to address socioeconomic impacts more so than a reservoir re-operation transfer).

4.4.3 Solution Process for Environmental Protection Issues

WT4.4.3-1. CALFED agrees with the need to recognize the legal rights and benefits associated with multiple uses. The intention of this solution process is to develop protocols so that instream flow transfers are more likely to be implemented for multiple uses. Initial efforts will focus on ensuring that instream flow transfers are clearly defined by purpose and destination, and by identifying who "owns" the water at what point in the system. This will allow for more opportunities to benefit instream flows as well as diverted uses with the same transfer.

WT 4.4.3-2. CALFED will include a wide array of stakeholders in this process. Those with experience on similar issues will provide much needed insight and context.

4.4.4 Additional Water Rights Legislation

WT 4.4.4-1. In October 1999, Governor Davis signed legislation (SB 970) that includes additional water rights protection provisions. The author of this bill, Senator Jim Costa, intended these provisions to provide additional water rights protections so that those who offer their water for sale would not put their water rights at risk by temporary transfers to other users, including the environment. CALFED believes this bill removes the need for it to further investigate the need for additional water rights protections.

4.4.5 Local Assistance for Groundwater Management

4.5 TECHNICAL, OPERATIONAL, AND ADMINISTRATIVE RULES

WT 4.5-1. Many of the actions discussed in this section of the June 1999 Water Transfer Program Plan are directed at clarifying and standardizing rules and procedures. Among these is a need for the State Water Resources Control Board to clearly articulate the definition of a "basin" as used in many aspects of water transfers. The potential exists to have rules vary based on "in-basin" and "out-of-basin" uses, but only if there is a clear understanding of what a basin is. CALFED will facilitate this clarification as it implements the actions described in this section.

4.5.1 Solution Process to Resolve Transferable Water Definitions

WT 4.5.1-1. The concern about whether or not water proposed to be transferred will impact another legal user of water is hotly debated. The California Water Code contains several provisions directing agencies with jurisdiction to approve water transfers to only allow so if other legal users of water are not impacted; known as the "no-injury" rule. The question often debated is "who is a legal user?" There are instances where return flows from an irrigation activity do not provide water to another legal water user, but even more instances where they do. There are instances where groundwater users have legal rights to water that has percolated into an aquifer and there are instance where they do not. The CALFED Water Transfer Program, through implementation of the action described in this section of the June 1999 Water Transfer Program Plan, will help clarify when all variations of water rights are transferable and when they are not. This should allow for the notion of using water transfers as an economic incentive to conserve to be successfully applied in the correct circumstances. Transfer rules reflect that a significant amount of the return flow generated by irrigation events generally returns to a surface or groundwater source that is available to other legal users of water. However, opportunities to transfer conserved water without adversely impacting other legal water users do exist and should be facilitated by the implementation of the CALFED program.

WT 4.5.1-2. As discussed in this section of the June 1999 Water Transfer Program Plan, CALFED will continue to facilitate discussions to resolve transferable water issues. Stakeholder participation will be a key component of developing better definitions and interpretations of sections of California Water Code where disagreement now exists. More facilitated stakeholder participation will occur in Stage 1, after the Record of Decision is signed for the Final Programmatic EIR/EIS. It is CALFED's goal to ensure that all interests are fully represented during these discussions.

4.5.2 Clarification of Carriage Water Requirements

4.5.3 Resolution of Reservoir Refill Criteria

WT 4.5.3-1. Reservoir refill criteria arise from the application of the California Water Code's "no injury" rule to stored water transfers. Refill criteria do not preclude the application of the no injury rule to other types of transfers.

WT 4.5.3-2. Standardization of reservoir refill criteria is necessary to resolve an issue between reservoir operators and other legal users of water regarding the application of the "no-injury" rule to stored water transfers. The need to ensure that refill does not occur at a time when instream flow pulses are needed is a valid concern, but will be addressed through project specific environmental impact assessments. CALFED does not intend to complicate resolution of this issue with additional environmental requirements when other regulations already provide this assessment and necessary mitigation.

4.5.4 Streamlined Approval Process for All Transfers

WT 4.5.4-1. The actions discussed in this section of the June 1999 Water Transfer Program Plan are intended to make application for and approval of water transfers more timely. CALFED is developing a web-based transfer application system that would provide all relevant information to applicants to ensure that applications are complete when submitted.

and to fully inform applicants of all policies and criteria. This will help proponents be better informed of what is required and ensure that reviewing agencies consistently apply their requirements (and that their requirements are fully understood by all parties).

WT 4.5.4-2. The guidebook is currently available through the State Water Resources Control Board (www.waterrights.ca.gov). The guidebook provides a useful overview of current water transfers policies and procedures. CALFED is working with the agencies who have jurisdictional authority to review and approval transfers to make other improvements to the review and approval processes. These activities will require more stakeholder involvement as CALFED proceeds with implementation during Stage 1.

4.5.5 Expedited Approval Process for Some Transfers

WT 4.5.5-1. The development of expedited approval processes cannot occur until other water transfers issues are resolved, especially the need to clarify when water is transferable. CALFED would expect to involve stakeholders during Stage 1 implementation in looking for opportunities to expedite particular types of water transfers, possibly with the development of programmatic environmental compliance, similar to what the U.S. Bureau of Reclamation does for transfers within some of its delivery units.

4.6 WHEELING AND ACCESS TO FEDERAL AND STATE CONVEYANCE FACILITIES

4.6.1 Forecasting and Disclosure of Available Capacity in Existing Project Facilities

WT 4.6.1-1. The action described in this section of the June 1999 Water Transfer Program Plan is intended to improve upon existing forecast and disclosure mechanisms.

4.6.2 Evaluating Policies for Transporting Water in Existing Project Facilities

WT 4.6.2-1. This section of the June 1999 Water Transfer Program Plan describes an action intended to improve the ability to gain access in project facilities for conveyance of water being transferred without harming existing contract obligations. CALFED recognizes that conveyance restrictions are a serious impediment to cross-Delta water transfers and is committed to looking for ways to improve the situation. Operating protocols need to be reviewed while being mindful of existing CVP and SWP contracts. This process will be a priority early in Stage 1.

4.6.3 Establishing Priority for Transporting Water in a New Conveyance Facility

4.6.4 Costs Associated with Conveyance of Transferred Water in a State or Federal Project Facility

5. Implementation, Governance and Finance Issues

WT 5.3.1-1. Water transfer proposals will continue to be subject to numerous requirements that may result in their approval, conditional approval, or denial. CALFED's water transfer program is designed to ensure that all parties have a better understanding of the potential impacts related to particular transfers and that those impacts are avoided or mitigated prior to approval. Third-party interests should not be burdened with "costs" associated with water transfers.

Attachment A

WT A-1. CALFED's consensus based effort resulted in CALFED planning for the establishment of an information clearinghouse and adding requirements for additional impact analysis (as described in Section 4 of the June 1999 Water Transfer Program Plan). There was no consensus on establishing another regulatory entity to review water transfers.

Attachment 1 - BDAC Water Transfer Work Group Participants