

California Economic Summit

SOAR Water Transfer Team

Proposals To Streamline Water Transfers



**May 20, 2013 – Governor Brown Issues Executive Order B-21-13
To Streamline Approvals For Water Transfers**

“The Governor’s Executive Order directs the State Water Resources Control Board (SWRCB) and the Department of Water Resources (DWR) to expedite the review and processing of voluntary transfers of water and water rights consistent with current law.”

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Submitted by the SOAR Water Transfers Action Team on April 29, 2014
Streamline Our Agency Regulations

Proposals To Expedite Water Transfers

All recommendations are focused on streamlining the water transfer process by reducing uncertainty and delays due to unnecessary redundancies and providing more water into the system, while adhering to current laws, regulations and environmental protections.

1. Agency Administrative and Processing Efficiencies

a. Create a common template for all agencies for applications

All of the State agencies with review/approval authority for water transfers should work together to develop common application forms to include all of the required information and avoid the unnecessary confusion, duplication and cost of completing overlapping forms.

b. Defined time frames for responses

Each of the review/approval agencies should develop and publish reasonable review and response schedules. We recognize that maintaining reasonable schedules is taxing on limited staff resources. Therefore, we also propose modifications to the currently cumbersome and often duplicative processes for transfers as well as reallocating funding/staffing to allow the agencies to complete their work within the time frames required.

2. Review Process for Contractor-to-Contractor Water Transfers (details follow)

3. Consolidated Place of Use (details follow)

4. Water Storage

a. Expedite review for surface storage

Four surface water-storage projects have been identified as having the greatest potential to safely increase year-to-year storage so that California has a better system for capturing water when it is in surplus in order to manage longer and more frequent droughts. The four include:

- i. Increase the height of Shasta Dam;
- ii. Sites Reservoir at an off-stream site near Maxwell;
- iii. Increase the size of Los Vaqueros Reservoir in Contra Costa County; and
- iv. Temperance Flats upstream of Millerton Reservoir in Fresno County.

For too long, serious consideration of these projects has been held hostage to debate about whether additional water conservation and additional groundwater storage are adequate substitutes for additional surface storage reservoirs. It is time to acknowledge that California will need all three approaches – surface storage, groundwater storage and conservation -- to cope with climate change and to effectively manage the State's existing plumbing system in the future. Consideration of each of these projects, winnowed from a list of 53, deserves focused and expedited review leading to a clear, defensible conclusion about whether each of them should proceed to construction or be abandoned because of an identified flaw or unaffordability.

b. Clarification of groundwater storage as a beneficial use of water

In the event owners of water rights wish to store any unused water in aquifers or other storage facilities for later use, these rights will not be usurped or deemed waived by any agency or regulation because groundwater recovery is a beneficial use of a surface water right and will not require SWRCB permitting.

c. Responsible maintenance of existing facilities

The State, as steward of the State Water Project, has responsibility to maintain these critical facilities. In the face of the current drought, deferred maintenance—whether caused by budget constraint or prioritization of effort—has negatively impacted California's ability to manage its scarce and precious water resources. We understand that roughly 800,000 acre-feet of stored water in Oroville Dam is stuck there because the replacement of two faulty valves has been deferred for more than two years. A top objective is the implementation of a prioritized list of such projects with a timeline for repairs and maintenance.

5. Emergency Action to Permit Reverse Operation of the California Aqueduct for Banked Groundwater Delivery

We support the April 25, 2014 Executive Order issued by Governor Brown suspending CEQA to expedite the implementation of pump-back delivery of water through the State Water Project on behalf of water districts.

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2. PROPOSAL TO EXPEDITE THE REVIEW PROCESS FOR ROUTINE CONTRACTOR-TO-CONTRACTOR WATER TRANSFERS

Purpose: To expedite routine short-term water transfers among contractors of the State Water Project (“SWP”) and the Central Valley Project (“CVP”) that currently require SWRCB redundant approval. Expediting such short-duration, low-risk water transfer reviews would be consistent with the State’s policy of encouraging water transfers to promote better water management, particularly in conditions of overall water shortage. Notice and regulatory review would continue to assure no injury.

Background: Short-term (less than one year) water-transfer petitions pursuant to Water Code §1725 are exempt from CEQA, because the review process requires notice and a finding that a proposed transfer will not injure another legal water right and will not have an adverse effect on the environment. Those notice and findings requirements make a separate CEQA process unnecessary. Currently, when project contractors identify an opportunity for a mutually beneficial transfer, they typically negotiate terms (timing, price, path, etc.) and then seek approval for and assistance in carrying out the transfer first from DWR, in its role as manager of the SWP, and/or from USBR, in its role as manager of the CVP. In reviewing such requests for contractor-to-contractor water transfers, the project manager(s) will approve and carry out the transfer only upon its/their own finding(s) that the transfer will not injure another legal water right and will not have an adverse impact on the environment. Following this review by project manager(s), the proposed transfer is then submitted by petition to the SWRCB, which, pursuant to its authority under §1725, conducts an essentially duplicative review. We include a public-review period in this proposal. Experience with such contractor-to-contractor transfers demonstrates that (i) the vast majority are ultimately approved, (ii) standard conditions can eliminate the potential for injury, and (iii) the duplicative processes followed by the project manager(s) and the SWRCB are time-consuming (four to five months after the transferring contractors have agreed on terms), expensive, and wasteful of resources.

Proposal: For the limited universe of contractor-to-contractor water transfers (pursuant to which water will be put to beneficial use within the service areas of the SWP and the CVP), SWRCB should delegate to DWR its notice, review, and approval authority under §1725. Pursuant to such delegated authority, DWR would require that:

1. Public notice be given within 5 days of the time the transfer proposal is received;
2. Interested parties may comment on the transfer proposal within 20 days;
3. DWR review and either approve or deny the transfer proposal within 10 days following the close of the comment period;
4. The SWRCB, either upon petition or upon its own motion, could reclaim approval authority over any transfer within 5 days following DWR's decision.

Benefits: Routine transfers could be proposed, noticed, commented upon, reviewed and approved or denied in less than two months and at far lower cost than the current redundant process. Any controversial transfer proposal could be subject to further review by the SWRCB. All requirements of §1725 would be fully observed—but without administrative redundancy. Finally, California would be better able to respond to the urgencies of the devastating drought by effectuating more timely water transfers, while still evaluating their impacts, providing protective provisions, and reducing their costs.

Authorization Required: This proposal could be carried out either by Executive Order or by approval of delegation by resolution of the SWRCB and acceptance by DWR. No legislative action would be required. Such delegation could be effective immediately, although the primary benefits would come in future years by increasing the efficiency of transfers and improving water management among SWP and CVP contractors.

3. PROPOSAL TO MERGE THE PLACES OF USE FOR THE STATE WATER PROJECT (“SWP”) AND THE CENTRAL VALLEY PROJECT (“CVP”)

Purpose: To eliminate the artificial barrier between service areas of the two parallel water management systems serving California so as to (i) improve customer responsiveness, (ii) enhance capital efficiency, and (iii) reduce a hindrance to cross-project water transfers.

Background: California surface water diversion/use rights—including the rights held by the SWP and the CVP—specify the place where the water appropriated under the right can be put to use. Both the CVP and the SWP have extensive places of use specified under their water rights granted by the SWRCB. The CVP place of use (service area) stretches from Shasta Dam in the north to Kern County in the south. The SWP place of use is from Oroville Dam all the way to the Mexican border. These huge service areas are carefully delimited by the boundaries of the service areas of their respective contractors, the middlemen who take deliveries from the projects and distribute water to their own customers. Because these places of use are separate (with one notable exception in Santa Clara County and some overlap in Kings and Kern Counties), water diverted under the CVP water rights cannot be legally delivered to a user in the SWP place of use (and vice versa), without approval of a petition by the SWRCB.

Currently, a transfer of water between willing project contractors can consume six months, even when the proposed transfer presents issues already vetted in similar transfers. When the physical windows to carry out transfers open and close in much shorter time frames, the several months and at-risk dollars required to secure three different sets of approvals significantly reduces badly needed system flexibility.

Proposal: We suggest that the two projects, SWP and CVP, jointly petition the SWRCB to unify, merge or consolidate the two places of use. Under traditional water rights procedures for dealing with such a petition, the SWRCB would provide notice and opportunity for hearing before issuing an order in response. Through such a process the Board would be informed of any nuances or conditions that ought to be taken into account, and legitimate objections could be heard and addressed in a transparent fashion. Ultimately, the SWRCB could issue an order merging the two places of use under appropriate conditions.

This proposal is the logical “next step” in promoting greater cooperation and coordination between the two largest water management infrastructure projects serving the State. Creating a consolidated place of use (“CPOU”) is the logical “next step” following joint development and ownership of San Luis Reservoir, the

CVP/SWP Coordinated Operations Agreement, Joint Point of Diversion (JPOD) and the south-of-Delta intertie between the Delta Mendota Canal (CVP) and the California Aqueduct (SWP).

Benefits: Each of the projects would continue to hold its own licensed water rights for the benefit of its own contractors. No contractor of one project would have a call on water arising under the water rights of the other project as a result of the CPOU. With a CPOU, however, the respective water rights would become more flexible and responsive to needs of the projects, the contractors, their customers, the environment and the State. For example, contractor-to-contractor transfers could be carried out across, not just within, the projects, without the need of a change petition before the SWRCB. By combining the places of use, the two projects could also create more consistent, transparent, predictable and flexible procedures for reviewing and approving transfers between and among their respective contractors.

There could be some concern among the projects' contractors (or their customers) that the CPOU could have the ultimate effect of diverting water from one project to the other in a way that might exacerbate shortages within one project for the benefit of alleviating shortage in the other project -- that is, robbing Peter to pay Paul. The protection, however, is that water transfers made easier through the creation of the CPOU could still only take place between willing transferors and willing transferees. Each transfer would still require review and approval by one or both of the project operators, and would still have to meet the requirement of avoiding injury to another legal water right or to the environment. That is, this proposal would only reduce the transactional friction for transfers with clear mutual benefits and no harm.

This proposal would not create any additional water in the system, but it would encourage more water transfers by eliminating the time and cost involved in redundant approval processes administered by the two project operators and the SWRCB.

Authorization Required: This proposal could be carried out through a joint petition of the Department of Water Resources, operator of the SWP, and the United States Bureau of Reclamation, operator of the CVP. The petition would request the SWRCB to include each place of use within both sets of water rights. Because their interests are directly affected, the proposed petition should be fully vetted with the projects' contractors prior to submission. However, the proposal should not be allowed to be "buried" by the bureaucracy (once the drought eases) based on the traditional fiefdoms among the State's "water buffaloes". By the same token, creating a CPOU should not be allowed to be hijacked by third-parties seeing the simple change as an opportunity to leverage their own unrelated interests.