



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898



IN REPLY REFER TO:

MP-400  
WTR-4.00

JAN 28 2016

Jeanine Townsend  
Clerk to the State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

Dear Ms. Townsend:

Reclamation submits the following comments on the proposed Emergency Conservation Regulations published for comment by the State Water Resources Control Board (State Board) on January 15, 2016.

Reclamation requests that these regulations be amended to include a determination as to whether the water conserved under the mandate is transferable outside of the conserving entity's normal place of use.

Sections 863(a)(3) and (4) of the Emergency Conservation Regulations state that the Governor issued an Executive Order on April 15, 2015 that "directs the State Board to impose restrictions on water suppliers to achieve as statewide 25 percent reduction in potable urban usage through February 2016", and that the Governor extended these reductions in potable usage until October 31, 2016 (emphasis added). Transfers of conserved water do not reduce use of water supplies: transferring the conserved water only shifts the place of use to another area in the State. A transfer of this water would result in consumptive use of water conserved by the measures in these regulations that would otherwise remain in the system for future use.

In 2015, there was considerable controversy as to whether or not the water conserved under the Executive Order was transferable. Reclamation and the Department of Water Resources received requests to facilitate transfers of water conserved pursuant to the Governor's conservation order during 2015. The uncertainty as to whether or not the water was transferable became problematic in the overall transfer process. Water Code sections 1702 and 1706 require that no injury occur to other legal users of water as a result of a transfer. Historically, transfers are premised on "real" water being made available to prevent injury to other users. Development of real water occurs by a seller taking an action that would not otherwise occur minus the

transfer rather than an action required by regulation. (Reclamation recognizes that some regulatory requirements do include negotiated transfers as a result of the regulation being met.)

In order to avoid such confusion in 2016, Reclamation requests that the Emergency Conservation Regulations be amended to include a determination of the transferability of water conserved pursuant to these regulations. If determined that the water is transferable, Reclamation, the Department of Water Resources, and the State Water Resources Control Board will need to work with project proponents to identify technically feasible approaches and methods to determine the real water made available for transfer.

Reclamation appreciates your consideration of these comments. Please contact Sheri Looper at [slooper@usbr.gov](mailto:slooper@usbr.gov) if you have any questions.

Sincerely,



Richard J. Woodley  
Regional Resources Manager