

POLICY STATEMENT OF MARY JOHANNIS
United States Bureau of Reclamation
Regarding Water Transfers

INTRODUCTION

I am the Program Management Branch Chief, Resources Management Division, of the MidPacific Regional Office of the United States Bureau of Reclamation (Reclamation). The purpose of this statement is to provide comments on the July, 1999 draft "Guide to Water Transfers" and to state Reclamation's position on water transfers in California. Following is a brief description of the Central Valley Project Improvement Act (CVPIA) water transfer process and the relationship of transfers of Central Valley Project (CVP) water to State Water Law.

CENTRAL VALLEY PROJECT IMPROVEMENT ACT OF 1992

Transfers and exchanges of CVP water had been taking place among Federal water contractors before the passage of CVPIA, but the intent of CVPIA was to encourage even more water market activity as a way of promoting efficient management of a scarce resource. In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of subsection 3405 (a) of CVPIA; all individuals or districts who receive CVP water under water service or repayment contracts, water rights settlement contracts or exchange contracts are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian Tribe, or private non-profit organization for project purposes or any purpose recognized as beneficial under California State law.

In an attempt to make the water transfer process more transparent, Reclamation issued the "Interim Guidelines for Implementation of the Water Transfer Provisions of the Central Valley Project Improvement Act" (Interim Guidelines) in 1993. These Interim Guidelines were intended to provide guidance until formal rule-making could be completed. The Guidelines spell out in greater detail the transfer policy as outlined in CVPIA. They also provide for a simplified process for historic and routine transfers that are "intra-regional" or within CVP service areas. The Interim Guidelines provide for a process to transfer CVP water consistent with State Water Law.

On September 30, 1999, several provisions of CVPIA sunsetted. Because of Congress' intention to phase out these temporary provisions, Reclamation does not have discretion over these aspects of the policy. Draft Revised Interim Guidelines were issued in December. A public comment period ensued and the final Revised Interim Guidelines will be issued shortly. CVPIA and the Interim Guidelines emphasize that CVP water transfers take place in accordance with State Water Law, so Reclamation has a real interest in how the Board interprets State Water Law as it pertains to water transfers.

COMMENTS ON "A GUIDE TO WATER TRANSFERS"

Reclamation is very pleased that the State Water Resources Control Board (Board) staff initiated the process to define water transfers in California. Reclamation staff participated in the formulation and review of "A Guide to Water Transfers" (Guide) issued by Board staff. It is an important document that describes in layperson's terms water transfer law and policy in California. The guide describes the specific water transfer areas over which the Board, the Department of Water Resources and Reclamation have jurisdiction. Reclamation is pleased that the Guide defines transferable water under various situations because much of the potential controversy related to water transfers results from disagreements regarding what constitutes transferable water. Reclamation generally agrees with the Guide. One area where Reclamation is not able to concur is in the treatment of refill criteria for in-basin transfers of stored water, described on pg 6-8. The Guide indicates that refill criteria for this type of transfer should only apply at times when Term 91 is triggered; whereas, Reclamation believes refill criteria should also apply during times of balanced conditions in the Delta. As noted on pg 6-10, "Balanced conditions occur much more often than conditions under Term 91." This is an issue that will need to be addressed by the Board.

As helpful as the Guide is, it is limited in its application as it has not been adopted by the Board. This leaves us with near complete consensus on the policy among the three major agencies responsible with oversight of water transfers, yet the rules of the game are still left to interpretation until the Board affirms them in individual rulings or adopts them as regulations.

SUMMARY AND CONCLUSIONS

Reclamation is dedicating resources to the CALFED effort that will streamline and clarify Reclamation's business practices and policies applied when reviewing water transfer proposals. Reclamation is committed to fostering a robust water market in California. To better facilitate this water markets, Reclamation recommends the Board dedicate the time and resources to adopt this Guide, or something similar, through a formal rule-making process, or another appropriate process.