

Single-Year Water Transfers and the Delta Plan

Summary: When adopting the Delta Plan, the Delta Stewardship Council (Council) made a determination that single-year water transfers conducted over the next four years would not have a significant impact on the coequal goals. This determination will expire on December 31, 2016 unless the Council takes further action. To update and inform the Council of technical aspects of water transfers and the potential for environmental impacts to the Delta from single-year water transfers, the Council sought recommendations from DWR and SWRCB through Delta Plan recommendation WR R15 – Improve Water Transfers. This briefing will be the first of several over the coming months to update the Council on the status of WR R15 and determine a course of action to address the single-year transfers after December 31, 2016.

Background

Water transfers are transactions between willing sellers, who may have an excess supply of water or are financially motivated to temporarily sell some of their current supply, and willing buyers, who need additional water supplies to meet their demands. During droughts or other times of unexpected water supply shortages, water transfers - particularly single-year water transfers - can be an effective tool for water managers to move water to where it is needed most. Single-year water transfers - those agreements lasting up to one year – allow farmers, water districts, and other water managers to react to seasonal circumstances and enter into short term commitments.

In the case of most water transfers that originate in, terminate in, or flow through the Delta, the water transfer is subject to an independent review by the State Water Resources Control Board (SWRCB), the Department of Water Resources (DWR), the U.S. Bureau of Reclamation (USBR), or a combination of these agencies.

SWRCB has regulatory authority over water rights and must approve all water transfers that involve post-1914 water rights. As managers of the State Water Project (SWP) and Central Valley Project (CVP) facilities, both DWR and USBR are required to make independent findings that all water transfers that use their respective facilities. Only a small and specific group of single-year water transfers, those that involve pre-1914 water rights and are diverted from the Delta by a local agency, are exempt from all of these reviews. Yet even these water transfers would be required to comply with the California Environmental Quality Act (CEQA) and the transfer parties are required to analyze the water transfer for adverse environmental impacts.

The Delta Plan and Single-Year Transfers

In developing the Delta Plan, the Council recognized the importance and contribution of water transfers to statewide water supply reliability and acknowledged the existing regulatory controls over water transfers. The Council sought ways that the Delta Plan could encourage or promote the use of water transfers. The Council adopted a recommendation

for DWR and SWRCB to work with stakeholders to identify and implement measures to reduce procedural administrative impediments to water transfers while protecting water rights and environmental resources. Finding ways to reduce administrative impediments to water transfers was such an important issue that Governor Brown issued a [May 20, 2013](#) Executive Order and a subsequent [April 25, 2014](#) Executive Order, also directing DWR and SWRCB to expedite the review and processing of water transfers.

With the existing oversight applied to water transfers, the Council was cautious about the potential to disrupt water transfers through the application of additional regulatory oversight – specifically, the Council’s authority over covered actions. The Council has the discretion to define categories of activities that will or will not have a significant impact on the coequal goals for the purpose of determining whether a project meets the definition of a covered action (Water Code section 85057.5). The Council considered using its discretion to determine that single-year water transfers do not have a significant impact on the coequal goals. However, the Council also was concerned that this determination could apply to the group of water transfers that does not receive any independent regulatory review. In addition, members of the Council were concerned that recurring single-year water transfers could be used in lieu of a multi-year water transfer agreement, thus avoiding analysis of the adverse environmental impacts of exporting water over a longer term.

As it was considering the Delta Plan, the Council did not have sufficient information to determine whether recurring single-year water transfers that occurred outside of the December 31, 2016 time horizon would pose a significant risk to the Delta ecosystem. Nor could the Council adequately determine if single-year water transfers that were exempt from regulatory oversight by DWR, SWRCB or USBR posed a risk to the Delta. The Council chose to seek guidance from DWR and SWRCB on that matter and adopted the following recommendation:

WR R15 - *The California Department of Water Resources and the State Water Resources Control Board should work with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers.*

Additionally, while the Council had general information about the review processes followed by other agencies, it lacked information about the rigor or adequacy of those processes for advancing the coequal goals. Pending completion WR R15, and the receipt of additional information from DWR and the SWRCB, the Council made a determination that single-year transfers over the December 31, 2016 time horizon do not have a significant impact on the coequal goals. Thus it made the determination temporary and adopted into the Delta Plan regulations the following:

California Code of Regulations, Title 23, Section 5001(dd) - *Temporary water transfers of up to one year in duration. This provision shall remain in effect only through December 31, 2016, and as of January 1, 2017, is repealed, unless the*

Council acts to extend the provision prior to that date. The Council contemplates that any extension would be based upon the California Department of Water Resources' and the State Water Resources Control Board's participation with stakeholders to identify and recommend measures to reduce procedural and administrative impediments to water transfers and protect water rights and environmental resources by December 31, 2016. These recommendations should include measures to address potential issues with recurring transfers of up to 1 year in duration and improved public notification for proposed water transfers.

Unless the Council takes additional action, the determination that single-year water transfers do not have a significant impact on the coequal will expire Dec. 31, 2016. Starting on Jan. 1, 2017 all water transfers, including single-year water transfers would be subject to the Council's authority over covered actions and would be required to file a certification of consistency with the Council.

Today's Briefing

Today's briefing will be by Council staff and is the first of several through which the Council can re-engage in discussions on single-year water transfers. Staff will briefly describe some elements of the technical and regulatory setting of water transfers, review what the Delta Plan says about water transfers, and lay out a possible course of action and schedule in which the Council could deal with the topic of single-year water transfers and their impacts to the Delta and role in statewide water supply reliability.

Ultimately, the Council will have to decide if it wants to take action to extend the current Delta Plan approach, or require that single-year transfers file consistency determinations as covered actions under the Delta Plan. Possible options include:

- Taking no action and allowing the determination to expire. As a result, starting Jan. 1, 2017 all water transfers, including single-year water transfers, would be subject to the Council's authority over covered actions.
- Extending or making permanent the determination. This will require an amendment to the Delta Plan regulations, and require submission of the regulation to the California Office of Administrative Law's (OAL) rulemaking process. This course of action also will require a review of the Delta Plan's EIR to ensure the regulatory amendment was considered in the environmental analysis. If it was not, the impacts of any amended regulation would have to be analyzed which may result in new CEQA documentation.
- Amending the determination to become permanent, but yet exclude single-year transfers that meet criteria determined by the Council. This also will require submitting the amended regulation to the OAL process and CEQA evaluation.

Additionally the Council may consider adding new or revised recommendations in the Delta Plan related to water transfers based on discussion and testimony to the Council.

Proposed Next Steps

September 2015:

- Invite DWR and SWRCB staff to present information related to Delta Plan recommendation WR R15, and present their recommendations on reducing the impediments to water transfers while protecting water rights and environmental resources, including any recommendations to deal with the potential issue of recurring single-year transfers.
- To ensure any action the Council takes is based on the best available science and information, the Council may consider directing staff to invite additional panels of expert stakeholders in September to present on the topic of single-year transfers. Initial ideas for panels/members include:
 - Members of the Independent Science Board
 - Environmental organizations that have raised concerns about the impacts water transfers
 - Fishery agencies involved in the stakeholder group convened by DWR and SWRCB
 - Parties to water transfers, both the buyer and sellers, who can provide testimony to the importance of single-year transfers

October - November 2015:

Should the Council choose any course other than no action, staff would present drafts of any new language to Council for consideration.

December 2015:

The Council would vote on the development of any new regulatory language and direct staff to make changes to the Delta Plan and its regulations, and initiate the OAL and CEQA processes.

2016:

Staff will complete the OAL and CEQA processes prior to Dec. 31, ensuring that the expiration of the existing determination is concurrent with any new or amended Delta Plan regulation.

List of Attachments

Attachment 1: PowerPoint Presentation – Single-Year Water Transfers and the Delta Plan
Attachment 2: DWR Document – Report on Background and Recent History of Water Transfers in California

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