

SINGLE-YEAR WATER TRANSFERS AND THE DELTA PLAN

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OVERVIEW

- Existing laws and policies encourage responsible transfers
- Treating temporary transfers as covered actions has the potential to significantly undermine the ability to implement responsible transfers
- The fallacy of “recurring” temporary transfers

FACILITATING TRANSFERS

- Water Code section 109(a): “It is hereby to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import.”
- Delta Plan, Recommendation WR R15 “Improve Water Transfer Procedures” to “reduce procedural and administrative impediments to water transfers”
- California Water Action Plan, p. 13 State Agencies directed to “take all feasible steps to streamline water transfer processes”
- Governor Brown’s May 20, 2013 Executive Order and April 25, 2014 Executive Order to facilitate transfers by “immediately and expeditiously process[ing] requests to move water to areas of need.”

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ENSURING RESPONSIBLE TRANSFERS

- Water Code section 1810(d): “This use of a water conveyance facility is to be made without injuring any legal user of water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and without unreasonably affecting the overall economy or the environment of the county from which the water is being transferred.”
- Water Code section 1727(b): State Water Board shall approve petition if the proposed change
 - (1) “would not injure any legal user of the water...through significant changes in water quantity, water quality, timing of diversion or use...” and
 - (2) “would not unreasonably affect fish, wildlife, or other instream beneficial uses.”
- Water Code section 1706: Change in pre-1914 appropriative rights may be made “if others are not injured by such change”
- CEQA/NEPA

APPROVAL AGENCIES

- Buyer(s)/Seller
- Department of Water Resources
 - When Using SWP Facilities to Store or Convey
 - When Purchasing from DWR Settlement Contractor
- State Water Resources Control Board
 - Post-1914 Water Right
 - Temporary Change Petition to Change Point of Diversion and/or Place of Use and/or Purpose of Use
- Bureau of Reclamation
 - When Using CVP Facilities to Store or Convey
 - When Purchasing from CVP Settlement Contractor

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TEMPORARY TRANSFERS = COVERED ACTIONS FACILITATING RESPONSIBLE TRANSFERS?

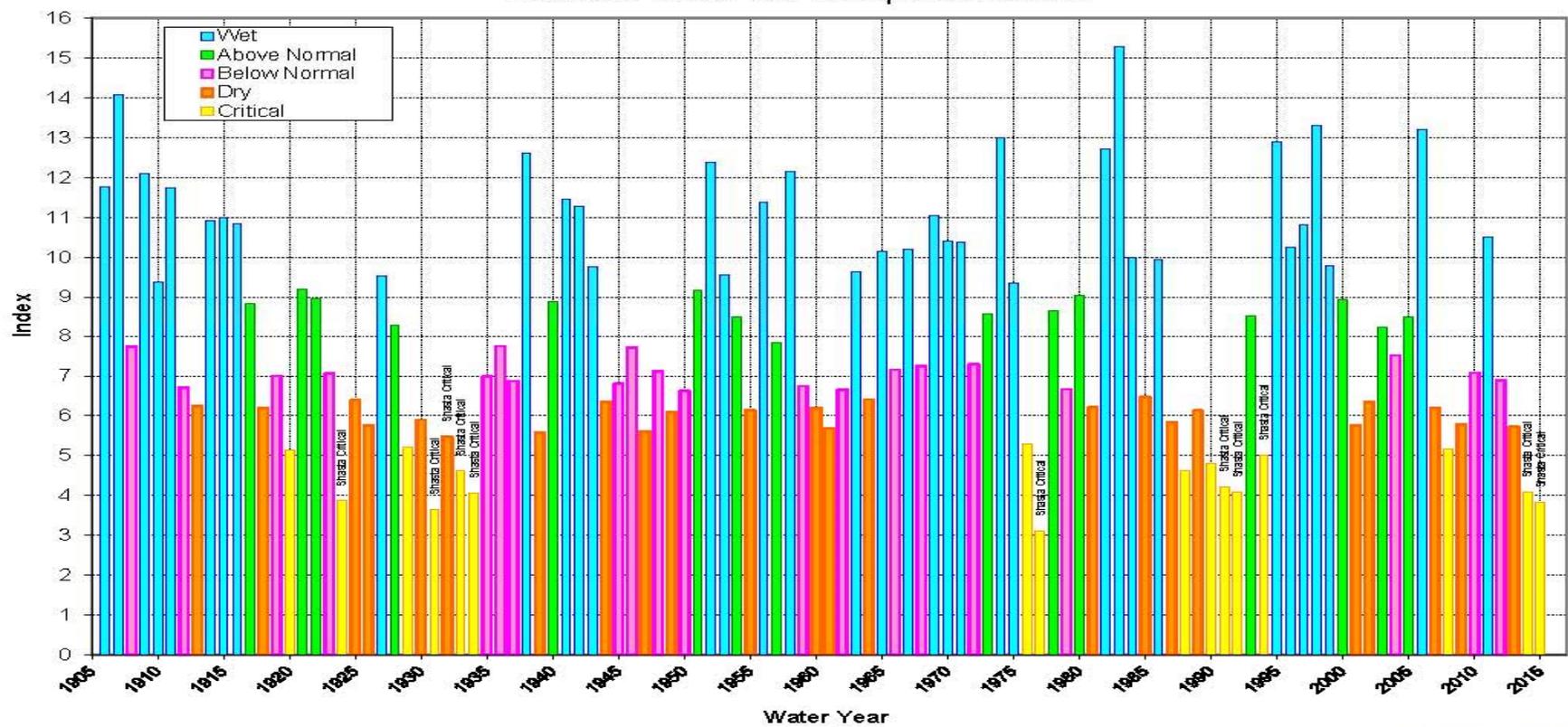
- Process would duplicate existing DWR, SWRCB and USBR responsibilities to facilitate responsible transfers
- Treating temporary transfers as covered actions would significantly undermine the ability to implement temporary transfers
 - Day 0: file Certification of Consistency (Water Code section 85225)
 - +30 days: “Any person” may file appeal (Water Code section 85225.10)
 - +60 days: Council must hear appeal (Water Code section 85225.20)
 - +60 days: Council must issue decision (*Ibid.*)
 - Unless and until appeal is denied, transfer may not proceed (Administrative Procedures Governing Appeals, Part 1, section 15)

ALLEGED “RECURRING” TEMPORARY TRANSFERS

- Each temporary transfer involves a distinct analysis and consideration of a variety factors before committing to any transfer. For example:
 - Does seller have adequate supply to make transfer water available?
 - Does buyer have demand for transfer water supplies?
 - Is there sufficient capacity in the SWP and CVP facilities to export the transfer water?
 - Can seller and buyer agree on purchase terms (e.g., allocation of risk, price, etc.)
- Each temporary transfer must obtain necessary regulatory approvals (SWRCB, DWR, Bureau, CEQA/NEPA)
- Each temporary transfer is unique
 - Participating seller(s) and buyer(s) vary
 - Quantities vary
 - Type of transfer may vary
 - Participating fields may vary (land idling)
 - Participating wells may vary (groundwater substitution)

Sacramento Valley Water Year Type Index (40-30-30) 1906 - 2015

Based on Observed Unimpaired Runoff



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SUMMARY

- Existing regulatory oversight and processes are adequate to ensure that temporary transfers are responsible
- Adding the covered action process to existing regulatory processes has the potential to significantly undermine responsible transfers
- We ask that the Council take action to make its temporary exemption permanent
 - Temporary transfers do not have significant impacts on the coequal goals