

Single-Year Water Transfers and the Delta Plan

Summary: This briefing is a follow-up to the July staff presentation on single-year water transfers and the Delta Plan. Several panels of water transfer practitioners and stakeholders will brief the Council on the status of Delta Plan recommendation WR R15 (Improve Water Transfer Procedures) and provide information that may be useful to the Council as it considers whether to modify its existing policy on single-year transfers. That policy recognizes single-year transfers that occur before Dec. 31, 2016 as not having significant impacts on the coequal goals. It recognizes single-year transfers that occur after that date as potentially having significant impacts.

Background

In developing the Delta Plan, the Council recognized water transfers' contribution to statewide water supply reliability and acknowledged the existing regulatory controls over transfers. To encourage the use of water transfers to improve water supply reliability, the Delta Plan recommends that the Department of Water Resources (DWR) and State Water Resources Control Board (SWRCB) work with stakeholders to reduce procedural and administrative impediments to transfers while protecting water rights and environmental resources:

Improve Water Transfer Procedures (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.*

Finding ways to reduce administrative impediments to water transfers is so important that Governor Brown issued a May 20, 2013 Executive Order and a subsequent April 25, 2014 Executive Order, directing DWR and SWRCB to expedite the review and processing of water transfers.

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). When adopting the Delta Plan, the Council considered creating a permanent exemption for single-year transfers, but the evidence before it did not support such a permanent exemption. Instead, the Council created a limited exemption that would sunset on Dec. 31, 2016. The Council determined that single-year transfers prior to that date would not, either individually or cumulatively, have significant impacts. This determination addressed the concern that a series of single-year transfers could, over a period of

years, cause cumulative impacts as significant as the impacts caused by multi-year transfers. The Council determined that it needed more information, and it adopted an interim regulatory policy that single-year transfers occurring before Dec. 31, 2016 would not have significant impacts. The Council wrote the interim policy so it would sunset on that date. The policy provides, in part:

The following categories of project will not have a significant impact for purposes of whether a project meets the definition of “covered action” (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 December 31, 2016. Starting on January 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 (California Code of Regulations, Title 23, Section 5001).

At the July 2015 Council meeting, staff sought to re-engage the Council on the topic of single-year water transfers; prepare it for future briefings by water transfer regulators, practitioners and stakeholders; and propose a process and schedule by which the Council can address the status of single-year water transfers, specifically their impacts to the Delta and their role in statewide water supply reliability in light of the Dec. 31, 2016, sunset date.

The July briefing included a high level overview of common single-year water transfers, primarily those that utilize the State Water Project (SWP) and Central Valley Project (CVP) pumping facilities in the Delta, a description of existing regulatory oversight of water transfers, and the challenges in executing a successful transfer. It also included a summary of how the Council came to adopt Delta Plan recommendation WR R15 (Improve Water Transfer Procedures) and the Delta Plan regulation specific to single-year water transfers (California Code of Regulations, title 23, section 5001, subdivision (dd)) which includes the “sunset” date of Dec. 31, 2016. The July staff report also contained an informative background document on water transfers prepared by DWR for the Council.

Today’s Briefing

Today’s briefing will cover two topics:

1. The progress being made on the Delta Plan recommendation (WR R15) to reduce administrative impediments to water transfers, including information on recurring single-year water transfers, specifically if these types of transfers are being used in lieu of a multi-year water transfer agreements.
2. The longer term impacts single-year transfers have on the Delta's ecosystem, including the impacts of single-year transfers that are not subject to the review of DWR, SWRCB or the U.S. Bureau of Reclamation (USBR).

This information is intended as background for the Council with respect to decisions it may make about whether single-year transfers they could 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 format for today's briefing will include several panels of representatives from DWR, SWRCB, water transfer stakeholders and water transfer practitioners. The first panel consists of DWR and SWRCB, the two agencies specifically identified in Delta Plan recommendation WR R15, who will report on their progress in carrying out the recommendation. These two agencies will discuss a document they have jointly developed (Attachment 1) that details their efforts in identifying and reducing impediments to water transfers; protecting water rights and environmental resources; making recommendations aimed at assessing recurring single-year water transfers and their impacts; and improving public notification of proposed water transfers.

Panel 1:

Tom Howard – Executive Director, State Water Resources Control Board

Mr. Howard has been employed with the State Water Resources Control Board for over 26 years. During that time, Mr. Howard has worked in many of the water quality and water rights programs at SWRCB. He was appointed Deputy Director at SWRCB in October 2000 and Executive Director in August 2010.

Bill Croyle – Deputy Director Statewide Emergency Preparedness and Security Department of Water Resources

Mr. Croyle currently serves as DWR's Drought Emergency Operations Manager and he represents DWR on Governor Brown's Interagency Drought Task Force, which coordinates drought assessment, response and mitigation actions among a multitude of local, State and federal agencies.

A second panel will discuss potential impacts that water transfers may have on the environment. Specifically, this panel will discuss: the connectivity between groundwater and surface water (considering whether groundwater substitution transfers decrease stream flows in the Sacramento River and its tributaries which could ultimately decrease flows to the Delta); potential adverse impacts that water transfers resulting from crop idling or crop fallowing may have on terrestrial species, including giant garter snake and bird species; and impacts that may result from water transferred across the Delta,

including the potential impacts on Delta fish such as the Delta smelt, longfin smelt, and Sacramento splittail.

Panel 2:

Bruce Herbold, PhD – Estuarine Ecology consultant, retired Fish Biologist from U.S. Environmental Protection Agency

Dr. Herbold's career includes over 35 years of water management and water quality as they affect endangered species, salmonids and sport fish in California's Sacramento-San Joaquin Estuary. Most of his work has involved interagency efforts to address significant resource management challenges, primarily within established interagency efforts like the nine-agency Interagency Ecological Program and the twenty-two agency CALFED Bay-Delta Program.

Sandi Matsumoto – Associate Director, The Nature Conservancy, Integrated Water Management

Ms. Matsumoto leads a multi-disciplinary team to ensure that California operates its surface and groundwater storage and conveyance systems collectively and proactively to meet the needs of nature as it delivers water for communities, industry and agriculture. Prior to this role, she worked on local and regional water management issues, focusing on providing wetlands for migratory birds in the Central Valley and on protecting floodplain for steelhead in southern California.

Michael Jackson – California Water Rights Attorney

Mr. Jackson represents the California Sportfishing Protection Alliance (CSPA) and the California Water Impact Network (C-WIN). He serves on the steering committee of the California Environmental Water Caucus. He has litigated issues involving the Colorado, Santa Ynez, and Carmel Rivers, and many other cases in the Central Valley and San Francisco Bay-Delta.

The final panel will consist of single-year water transfer practitioners. This panel will discuss the typical time frames for water transfers and related procedural considerations, and will also identify any beneficial changes that have occurred since the Council adopted Delta Plan recommendation WR R15. Finally, this panel will make recommendations for additional streamlining measures that would continue to maintain adequate environmental and third party protections.

Panel 3:

Dustin Cooper – Attorney/Partner, Minasian, Meith, Soares, Sexton & Cooper, LLP

Mr. Cooper's practice areas include public agency representation, water law, environmental law, employment law, and civil litigation and contract disputes. Mr. Cooper regularly serves as counsel for water districts, irrigation districts and water companies that participate as sellers in the temporary transfer market by providing water supplies to areas and buyers in need.

Frances Mizuno – Assistant Executive Director, San Luis & Delta-Mendota Water Authority

As the Assistant Executive Director for the Water Authority for the past 23 years, Ms. Mizuno's primary responsibility is the management of the operation and maintenance of the USBR's south of Delta facilities, including the Jones Pumping Plant, the Delta-Mendota Canal and O'Neill Pump/Generating Facilities. She also manages the Authority's water transfer program for purchases of supplemental water for its member agencies.

Steve Hirsch – Program Manager III, Metropolitan Water District of Southern California

Mr. Hirsch is Program Manager for Water Transfers and Exchanges for the Metropolitan Water District of Southern California. Mr. Hirsch works out of Metropolitan's Sacramento office and is responsible for identifying and developing potential partners for transfers and exchanges to meet Metropolitan's water supply needs. He has represented Metropolitan in negotiations for water transfers from the Sacramento Valley and storage programs in the San Joaquin Valley.

As the Council hears from and engages with the panelists, it may wish to consider the following questions:

- Have DWR and SWRCB addressed WR R15 to the Council's satisfaction, or does the Council think that more should and/or can be done to reduce the procedural and administrative impediments to water transfers while protecting water rights and environmental resources?
- What does it mean for a single-year transfer to recur? What characteristics must single-year transfers share from one year to the next in order for them to be part of a pattern of recurring transfers? To what extent do recurring single-year transfers pose cumulative significant impacts on the coequal goals?
- How effectively does the existing regulatory oversight provided by DWR, SWRCB and USBR on water transfers provide checks and balances to protect the Delta environment and water rights?
- What additional information does the Council need to be able to determine what impacts water transfers may have on the Delta ecosystem relative to the entire setting of Delta inflows and exports?
- How could single-year transfers help or hurt the coequal goal of improved water supply reliability, as understood in the Delta Reform Act and the Delta Plan? Similarly, how could single-year transfers help or hurt the coequal goal of ecological restoration?

Proposed Next Steps

The Council will need to decide if it wants to allow the exemption for single-year transfers to sunset on Dec. 31, 2016, as provided for in its current policy, or if it wants to amend that policy. The Council may request staff present additional information on impacts of single-year water transfers to inform the Council, or if the Council finds that it has received and considered the best available science on the subject, it may choose to take action with the information currently before it. If the Council chooses to take action, staff proposes the following next steps and tentative schedule:

October 2015

Staff will provide any additional information requested by the Council, and the Council may wish to further discuss possible options for amending the Delta Plan and its provisions regarding single-year water transfers.

November 2015

Staff will bring back draft language to amend the Delta Plan for the Council's consideration.

December 2015

The Council would vote on proposed new Delta Plan regulatory language and other provisions, and direct staff to pursue the next steps (e.g., compliance with CEQA and the Administrative Procedures Act (APA), as needed).

2016

Staff will work with the Council to complete the CEQA and APA processes prior to Dec. 31, 2016, ensuring that the expiration of the existing determination is concurrent with any new or amended Delta Plan regulation.

List of Attachments

Attachment 1: Report on Water Transfers and the Delta Plan

Contact

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