

Single-Year Water Transfers and the Delta Plan

Requested Action: Adopt draft policy findings that support a proposed amendment of the Delta Plan's implementing regulations to either: (a) exempt single-year water transfers as covered actions (Option 1), or (b) preserve the current exemption of single-year water transfers from covered action consistency requirements for an additional three (3) years (Option 1(a)). Staff recommends the option that excludes single-year water transfers as covered actions.

In addition, under either Option 1 or 1(a), adopt a proposed draft amendment to Delta Plan Recommendation WR R15 that promotes enhanced interagency cooperation, review and reporting of cross-Delta water transfers.

The Council's approval of draft policy findings, draft regulatory, and draft recommendation language will trigger an environmental review effort by staff. No final action will be taken by the Council until the environmental review is complete. Furthermore, any regulation amended at the conclusion of environmental review will not take effect until the Office of Administrative Law rulemaking process is completed.

Background

In developing the Delta Plan, the Council recognized the important contribution of water transfers to statewide water supply reliability and acknowledged the existing regulatory controls over water transfers. Given the existing oversight, the general state policy of encouraging transfers, and the lack of information showing that single-year transfers have significant impacts on the coequal goals, the Council found that single-year transfers occurring between that time and Dec. 31, 2016, would not have impacts on the coequal goals that were individually or cumulatively significant. Thus the Council exempted single-year transfers from its covered actions process, but only until Dec. 31, 2016, by concluding they did not have a significant effect on the coequal goals.

In anticipation of that sunset date, the Council directed staff to research single-year water transfers and report back throughout 2015. The Council received briefings from water transfer regulators, practitioners and stakeholders on topics ranging from single-year water transfer regulatory oversight, impacts to the Delta ecosystem, and single-year water transfers' role with respect to statewide water supply reliability.

At its November 19, 2015 meeting, the Council considered two options proposed by staff: (1) to exempt one-year water transfers from regulation as covered actions, or (2) to take no action and allow the exemption to expire. Staff also proposed draft language to update Delta Plan Recommendation WR R15 to reflect the improvements the Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB) have made in reducing procedural and administrative impediments to water transfers; and to reflect that DWR and SWRCB have provided the Council with

recommendations to address recurring single-year transfers. Attachment 1 is the Nov. 15, 2015, staff report presenting the recommendation and analysis regarding these Delta Plan provisions.

The Council did not support the option that would allow the exemption to expire. It instead requested that staff return to the Council at this December meeting with two versions of a transfer policy. Specifically, the Council requested draft findings that would support: (1) Option 1, and (2) a refinement of Option 1 (i.e., Option 1(a)) that would extend the sunset date for two-four more years. Attachment 2 contains the proposed draft regulatory language and supporting draft findings for Option 1, along with proposed draft amendment to Delta Plan Recommendation WR R15. Attachment 3 contains the proposed draft regulatory language and supporting draft findings for Option 1(a), along with proposed draft amendment to Delta Plan Recommendation WR R15.

Staff Recommended Action: Adopt Option 1, along with proposed draft amendment of Delta Plan Recommendation WR R15

The staff continues to recommend that the Council adopt the proposed draft language of Option 1 that exempts single-year water transfers as covered actions, rather than Option 1(a) which extends the sunset date in the current regulation a further three years, until Dec. 31, 2019. Both options support the conclusion that the evidence presented to the Council and the best available science, as reflected in the Lead Scientist's advice, indicates that single-year water transfers do not have a significant impact on the coequal goals.

In recommending the Council adopt Option 1, the staff relies on its own analysis of the impacts of single-year water transfers on the coequal goals, presented in the November 19, 2015 staff report. Staff is also relying on the independent review of water transfers that currently occurs by DWR, the SWRCB, and the state and federal fish agencies, which collectively ensures that impacts of these transfers on the Delta ecosystem and other water users are avoided or minimized. While these regulatory programs are not oriented toward the advancement of the coequal goals, they are sufficiently related such that staff believes that they will, at a substantive level, work toward the advancement of the coequal goals. There is no substantial evidence that the regulatory oversight provided to single-year water transfers or the amount of, timing of, or type of single-year water transfers are likely to change during the foreseeable future in a way that would cause any additional impacts to the coequal goals.

A potential reason for favoring Option 1(a) is that extending the regulation's sunset date until Dec. 31, 2019, provides an additional period to obtain more information about single-year transfers' impacts on the coequal goals. During this period, the Council could review any new information from stakeholders or its staff on the cumulative impacts of single year transfers on the coequal goals, or on the ways that the improved Delta conveyance options currently being considered by DWR could alter impacts of single-year transfers on the coequal goals. However, because these transfers represent

only a modest proportion of both the amount of water exported from the Delta and the amount of groundwater withdrawn from the areas where the transfers originate, it is unlikely any new evidence related to the cumulative effects of single-year water transfers will appear before the 2019 sunset date. The staff believes the Council's attention and effort can better contribute to furthering the coequal goals by concentrating on issues, such as storage, water project operations, ecosystem restoration, or risk reduction, whose significant effects are evident, rather than on another near-term review of single-year water transfers. Notably, under either option, the Council retains the authority to revisit the impacts of single-year water transfers at any time evidence becomes available, and can update the Delta Plan based on any new findings as appropriate.

In light of these considerations, the staff remains convinced that Option 1 to exempt single-year water transfers as covered actions continues to be the preferred course of action.

In addition, the Council should direct staff to:

1. Prepare an Initial Study to analyze whether amending the Delta Plan regulation will require the preparation of a Delta Plan Supplemental EIR under CEQA.
2. Return to the Council, at the completion of environmental review, with final proposed recommended actions.
3. Schedule a Council meeting for certification of the CEQA process and adoption of the revised Delta Plan regulation.
4. If the Council adopts regulatory language after completion of environmental review, staff will prepare and submit to the Office of Administrative Law, a Notice of Proposed Rulemaking to commence the state rulemaking process pursuant to the Administrative Procedure Act (APA) for the amended Delta Plan regulation, including the 45-day public comment period required by the APA and a subsequent public hearing on the proposed regulations.
5. Provide periodic updates to the Council on single-year water transfers. The Council should be updated on any changes to the water transfer setting such as: any changes in the water transfer regulatory setting; any changes in the amount, frequency or timing of single-year water transfers; any relevant new information pertaining to the impacts of single-year water transfers on the Delta ecosystem or Delta inflows; or other changes staff find relevant to the determination that single-year water transfers do not have a significant impact on the coequal goals of statewide water supply reliability and the protection, restoration, and enhancement of the Delta ecosystem.

No final action will be taken by the Council until the environmental review is complete. Furthermore, any regulation amended at the conclusion of environmental review will not take effect until the Office of Administrative Law rulemaking process is completed.

List of Attachments

Attachment 1: Nov. 19, 2015 Staff Report - Single-Year Water Transfers and the Delta Plan

Attachment 2: Proposed Draft Regulatory Language and Proposed Draft Findings in Support of Option 1, Along with Proposed Draft Amendment to Delta Plan Recommendation WR R15

Attachment 3: Proposed Draft Regulatory Language and Proposed Draft Findings in Support of Option 1(a), Along with Proposed Draft Amendment to Delta Plan Recommendation WR R15

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