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CALFED Environmental Water Program Steering Committee
Briefing Paper No. 5

Introduction to Water Rights and Transfers

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INTRODUCTION

This briefing paper is being presented to the Environmental Water Program (EWP) Steering Committee members so that they can develop a basic understanding of water rights related issues that may be associated with environmental water transfers. This briefing paper is not intended to be a textbook on water rights, but rather a basic reference document to provide an understanding of the fundamentals of California water rights and the types of water transfers that may be undertaken by the EWP. A brief definition of water rights terms used in this paper is provided at the end.

IMPORTANT CONCEPTS

From a water rights standpoint there are 2 types of water: surface water and groundwater. Laws governing these 2 types of water are very different. Groundwater is treated essentially as a local water supply and is subject to little statewide regulation; however, this may change in the next few years. Surface water has a well-developed and complicated set of statewide regulations regarding its development and use.

In evaluating potential water acquisitions, the Steering Committee should understand 4 major issues related to the Water Code. The concepts of the "no injury rule," impacts to fish and wildlife, third-party impacts, and the 1707 process are provisions of the Water Code that protect other legal users of water and fish and wildlife during water transfers. A brief discussion of these concepts is provided below; excerpts from the California Water Code are found in appendix A.

No Injury Rule

A change in a water right cannot cause injury to any legal user of the water involved. This condition applies to modern water rights through Section 1702 of the state Water Code and applies to pre-1914 water rights through Section 1706 of the Water Code. The State Water Resources Control Board (SWRCB) supervises changes to post-1914 water rights, and the courts have jurisdiction over asserted violations of Section1706.

Effects on Fish and Wildlife

Water Code Sections 1435, 1725, 1735 require that the SWRCB make a finding that any proposed transfer not result in unreasonable effects on fish and wildlife or other instream beneficial uses. These code sections apply to specific types of water transfers (urgent, temporary, and long-term transfers) related to post-1914 water rights. Pre-1914 water rights are

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not subject to the permit system, although a change in use for instream flow may be permitted under Section 1707 on petition to the SWRCB (see below).

Third-Party Impacts

Third parties refers to any persons and resources other than the transferor and the person receiving the transfer of water. Although "third party impacts" are not defined in the Water Code, they traditionally include concerns related to downstream water rights, adjacent groundwater users, fish and wildlife, recreation, economic, and social impacts. Most third-party impacts are evaluated under Water Code Sections that protect prior rights and fish and wildlife as discussed above. However, Water Code Sections 382, 386, and 1810 require evaluation of other third-party impacts for some specific transfers. Transfers under Water Code Sections 382 and 386 are unlikely, and Section 1810 pertains to wheeling of transferred water. While the legal definition of protected interests has remained essentially unchanged for years, over time various third-party interests have sought standing to stop a proposed transfer or to require compensation based on claimed economic injury.

Section 1707 Process

California does not recognize the right to appropriate water for instream uses (instream use lacks the actual diversion required for an appropriation). However, in 1991 the California legislature authorized the dedication of flow previously claimed under an existing water right to instream uses by a petitioner by adding Section 1707 to the Water Code. Under Section 1707, the water dedicated may be used for the purposes of preserving or enhancing wetland habitat, fish and wildlife resources, or recreation in or on the water. The proposed change must not increase the amount of water that the petitioner is entitled to use and must not injure any legal user of water.

Section 1707 allows water users to make changes to their water rights for "preserving or enhancing wetlands habitat, fish and wildlife resources or recreation in or on the water." Water transfers that involve pre-1914 rights do not require SWRCB approval. However, if the transfer involves a dedication of water for instream purposes, the water-right holder may seek to protect this water right by filing for a water right transfer under Section 1707. Since post-1914 rights are already subject to the permit system, a transfer of this type of water right to an instream purpose would also require processing under Section 1707.

A riparian user may also request the SWRCB to approve a change whereby the exercised riparian right could be dedicated to instream uses. This formal recognition of the water right protects against future appropriations that may "injure" the instream appropriation. If the water right holder simply reduces the diversion to allow more instream water and does not complete the Section 1707 process, the water left in the stream is subject appropriation by other parties.

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TYPES OF ACQUISITIONS

The following presents a brief description of the types of acquisitions that may be considered during the search for available water. Water acquisitions may be classified by the duration of the transfer and by the source of the water. Both classifications are provided below.

Duration

Short Term

Short-term transfers are those that take place over a period of 1 year or less. The period of the transfer is defined as the time from when the transferor first makes the water available until the time the transferee receives all the water or puts the water into offstream storage. Water Code Section 1725 provides for the expedited processing of short-term transfers. Short-term transfers under Section 1725 are limited to water that would have been consumptively used or stored absent the water transfer. Short-term transfers qualify for this expedited process because the effects are limited to 1 year, minimizing the risk of potential impacts. Transfers qualified under Section 1725 are exempt from the California Environmental Quality Act (CEQA). The Water Code relies on notice to the affected parties and findings made by the SWRCB instead of the development of complex environmental documents under CEQA for short-term transfers approved under Section 1725.

Short-term transfers are subject to the usual rules that they must not injure any legal user or unreasonably affect fish, wildlife, or instream uses. For a transfer, a petitioner must provide the SWRCB notification in writing of the proposed change and provide information outlining the transferees' consumptive use and other requested permit or license information, including documentation that no unreasonable effects to fish and wildlife would occur. The petition is noticed and parties can file objections to the transfer. The SWRCB must evaluate and respond to the notification within 55 days if objections are filed.

Long Term

Long-term transfers are those transfers that take place over a period of more than 1 year and are governed under Section 1735 of the Water Code. They are not limited to stored or consumptively used water. Because of the long-term nature of these transfers and their potential effects, the Water Code does not allow the expedited processing that is provided for short-term transfers. Long-term transfers are all subject to the requirements of CEQA. They must also comply with the standard SWRCB public noticing and protest process. If valid protests to the proposed change cannot be resolved through negotiation between the parties, a hearing must be held prior to the SWRCB's decision on the requested transfer.

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The recent court case revealed that the SWRCB applies a 4-step analysis in reviewing any change petition. First, the SWRCB requires showing that the proposed use is both reasonable and beneficial. Second, the SWRCB requires that the change petition satisfy the applicable requirements of Division 2 of the Water Code. Essentially, the SWRCB considers the impacts of the proposed use in a manner similar to a new use, including application of the "no injury rule." Third, the SWRCB applies the public trust doctrine to ensure that the transfer will have no significant adverse effect on public trust resources. Applied as a balancing test, the SWRCB has discretion to weigh competing public policy concerns and allow impacts on public trust resources if important overarching policy goals are achieved. Finally, the SWRCB ensures that all pertinent CEQA, National Environmental Policy Act (NEPA), and Endangered Species Act (ESA) requirements have been satisfied.

Permanent Transfers

Permanent transfers or purchasing of a water right requires the same process as a long-term transfer, except there is obviously no return of the water right to an original user. Permanent transfer must follow the important concepts of no injury, beneficial use, and effects on fish and wildlife for SWRCB approval of the transfer.

Water Leases

Unlike water transfers, which are processed through the SWRCB, water leases are contractual agreements independently drafted between parties involved in a transfer. Recent legislation has created statutory authorization, under Sections 1020–1030 of the Water Code, for the lease of appropriated surface water. The legislation was designed to expedite the movement of water by limiting the SWRCB review and approval process requirements for changes in point of diversion or place of use where the lessee or the lessor is a public entity.

Water leases are still subject to several limitations, including a maximum lease period of 5 years. The SWRCB must provide public notice to legal water users who may be affected by the lease and to the DFG. Next, the ability to lease water is limited to 25% of the total water supply that would have been applied or stored by the lessor in any given hydrological year. Enforceable terms must be included within the lease to ensure that the lease will not unreasonably affect fish, wildlife, or other instream uses and will not injure any legal water user. Under Section 1027, any lease of water from the Sacramento–San Joaquin Delta must comply with special standards developed by the SWRCB to ensure that water quality or environmental degradation does not occur. There have been no leases of water under the Water Code since the statutes were added in 1991.

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Source of Water

Stored-Water Transfers

Water Code Section 1725 allows a permittee or licensee to temporarily change the point of diversion, place of use, or purpose of use of water. The transfer must involve water that would have been used consumptively or stored in the absence of the transfer. Consumptive use occurs by evapotranspiration, percolation underground to an unuseable source, or loss to beneficial use by downstream users. If conservation efforts reduce consumptive use, then that water is available for transfer. Because return flows (water that returns to a stream after being applied to land), are almost always used by downstream users, they are generally not available for transfer because the transfer of this water would injure these downstream users.

The amount of water in storage that is dedicated to the transfer is limited to the amount of water that would have been stored in the absence of the transfer and receives approval from the SWRCB.

Contract Water Supplies

State Water Project Transfers

The Department of Water Resources (DWR) operates the State Water Project (SWP). The 29 contractors that buy water from the SWP can sell water to each other provided certain conditions are met. All annual sales must be conducted through the "Turn-Back Water Pool." This program is available to contractors that have signed the Monterey Agreement. Water can be both purchased and sold from this pool. For SWP contractors, the contract entitlement available for transfer is limited to that portion that has been allocated for use that year. Pool water that is not sold to other contractors may be purchased by DWR or by non-contractors. (Status of the Monterey Agreement is in question due to recent litigation.)

Central Valley Project Transfers

The Central Valley Project Improvement Act granted the right to all individuals who receive Central Valley Project (CVP) water (contracts for water service, repayment contracts, water rights settlements, or exchange contracts) to sell this water for a profit to other parties, for reasonable and beneficial purposes.

The Secretary of the Interior must approve each transfer and the Secretary may not approve a transfer if it will impair the CVP's ability to meet its obligations to CVP users or fish and wildlife. Transfers of more than 20% of the amount of water under contract within any controlling district require mandatory public review and the approval of the district. Transfers of CVP water must be authorized within 90 days from the date a complete transfer proposal is

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received by the United States Bureau of Reclamation (Reclamation), the reviewing agency. If Reclamation fails to make a decision within the time allotted, the transfer is deemed approved.

Reclamation issues its decision in coordination with the United States Fish and Wildlife Service, contingent upon the evaluation of impacts on fish and wildlife. An approval must be accompanied by appropriate documentation under NEPA and must be in compliance with other applicable state and federal laws.

The SWRCB generally considers transfers of water under CVP water service or repayment contracts, water rights settlement contracts, or exchange contracts within the CVP place of use to be internal actions and not subject to SWRCB review. However, where the water right limits the place of use to a specific watershed, it is anticipated that transfers of water outside the watershed would require SWRCB approval. Transfers of CVP water outside of the CVP service area require SWRCB review and approval. Transfers to non-CVP parties are allowed, although Reclamation levies an additional fee on these transfers. Transfers to non-CVP contractors are also subject to a 90-day right of first refusal in favor of other CVP contractors. Transfers to CVP users for lands outside the CVP service area are limited to the average quantity of contract water delivered to the contracting district or agency during the last 3 years of normal water deliveries.

Three conditions or limitations on transfers within the CVP that had existed prior to September 30, 1999 are no longer in force: (1) the requirement that the transfer not cause an unreasonable impact on the water supply, operations, or financial conditions of the contractor; (2) the requirement that the transfer not result in a significant adverse impact on groundwater conditions in the transferor's service area; and (3) the right of first refusal on transfers outside of the CVP service area.

Groundwater

California water law distinguishes between groundwater that is part of an underground stream system and water that is percolating into a groundwater basin.

Water flowing in a known and definite underground channel (subterranean stream) is treated under the surface water rights system in California. Rights of overlying users of a groundwater basin are equivalent to riparian water rights adjacent to a stream. Whether groundwater is part of a subterranean stream is determined on a case-by-case basis.

Water underground that is not part of a subterranean stream is considered percolating groundwater and is outside laws that govern surface water. The courts and SWRCB treat underground water as percolating groundwater unless there are data to support the finding of a subterranean stream.

Percolating groundwater is shared by landowners who pump water for use on lands that overlie the groundwater basin. Use of this groundwater is entitled as long as the use is beneficial

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and reasonable. Water may be taken to lands that are not owned by the person pumping the water or that do not overlie the basin, provided the overlying landowners are not injured.

State water right permits are not required to pump groundwater. Each groundwater user can drill a well and pump groundwater without a state permit; however, local ordinances govern use of groundwater in some locations. Some groundwater basins, mostly in southern California, have been adjudicated and many groundwater basins have local groundwater management plans adopted under Water Code 10750 (also known as AB 3030 for the Assembly Bill that enacted these statutes).

There are 3 types of transfers that involve groundwater. (1) The use of groundwater in lieu of surface water, (2) use of "banked" groundwater, and (3) direct transfer of groundwater.

The use of groundwater in lieu of surface water usually consists of transferring surface water rights to a downstream user. The transferor is compensated for the extra costs of pumping groundwater. Replacement of surface water with groundwater may be governed by groundwater management plans or Section 1745.10 of the Water Code. If a groundwater management plan has not been adopted, the water supplier must determine that the transfer will not create or contribute to conditions of long-term overdraft of the affected groundwater basin. Water not subject to a groundwater management plan is nevertheless subject to SWRCB authority and requirements related to no injury and effects on fish and wildlife still apply.

Banked groundwater is water stored underground for later use. Most commonly, the water suppliers are part of an overall groundwater management plan; however, underground storage can be a localized practice of a small set of water users. The amount of transferable water for a banked groundwater transfer is simply equal to the amount of banked groundwater that is taken from storage for the purpose of the transfer. The amount of transferable water for a banked groundwater transfer is simply equal to the amount of groundwater banked by the transferor.

From a water right perspective, the storage of surface water in a groundwater basin is equivalent to surface water stored in an aboveground reservoir. The original water right holder banks the water and controls the eventual use of that water. Water rights of banked water are covered in permits and must comply with groundwater management plans.

Direct transfers of groundwater, such as the export of groundwater from the combined Sacramento and Delta–Central Sierra Basin, are covered under Water Code Section 1220. Because this article of the Water Code does not apply to appropriations subject to the Watershed Protection Statutes, it does not apply to the diversions of the CVP or the SWP to the extent diverters wish to directly pump groundwater outside these basins. The CVP and SWP do not divert groundwater from these basins; however, if this is proposed in the future, the CVP and SWP would have to comply with the provisions of the Watershed Protection Statutes set forth in Water Code Section 11460.

Other water users besides the CVP and SWP that wish to export groundwater from the combined Sacramento and Delta–Central Sierra Basins must comply with the provisions of

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Section 1220 (provided the appropriations were initiated after January 1, 1985). Water Code Section 1220 prohibits the export of groundwater in these basins unless:

1. The pumping is in compliance with a groundwater management plan.

2. The plan is approved by vote in the county or portions of the county that overlie the groundwater basin.

Conjunctive Use Opportunities

Conjunctive use is the coordinated and planned operation of surface water and groundwater resources to reduce waste or loss and to maximize water supplies for the maximum number of beneficial uses. If any appropriator fails to use an entire appropriative right (as a result of conjunctive use), the Water Code protects the appropriator from forfeiture of the unused water. The reduction is deemed reasonable and beneficial. Protection of the unused water is found under Section 1011.5 of the Water Code. Failure to report a conjunctive use under the Water Code provisions will deprive the user of the protective benefits of the section.

DEFINITIONS

The following terms are important to a basic understanding of water rights and water transfers.

Adjudicated surface water right—a water right secured by a court ruling on the maximum amount of water that could be extracted and the individual amounts that may be received from a common supply. Changes in the use of adjudicated rights may require review and approval of the courts.

Appropriator—a party that diverts water or extracts water for use on non-riparian lands.

Appropriative water right—water right associated with diverted or extracted water for beneficial use on non-riparian lands; described as either pre-1914 or post-1914 rights.

Pre-1914 water right—Appropriative right acquired before the adoption of the Water Code of 1914. This right is not subject to modification by the SWRCB; however, it is subject to forfeiture if it is not used for 5 consecutive years. Pre-1914 rights may be transferred without notifying the SWRCB; however, such changes must not cause injury to other legal users.

Post-1914 water right—Appropriative right validated by application for a permit from the SWRCB; such permit applications have been required for appropriations since the adoption of the Water Code of 1914.

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Beneficial use—use of water for some domestic, agricultural, industrial, social, recreational, or instream purposes. The actual use does not need to be profitable to be considered beneficial. Water-right holders must demonstrate that the use is both reasonable and beneficial.

Conjunctive use—the coordinated and planned operation of surface water and groundwater resources to reduce waste or loss to maximize or stretch water supplies for the maximum number of beneficial uses.

Flood water—water that escapes from a stream or other body of water and flows over adjacent lands in no regular channel.

Groundwater—water that exists beneath the earth's surface in saturated zones, accumulated as a result of seepage. California classifies 3 categories of groundwater: underflow of a surface stream, definite underground streams, and percolating waters.

Prescriptive rights—the rights acquired by parties who use water adverse to the rights of the lawful owner of property.

Reasonable use—a requirement that must be satisfied by any party asserting a water right in California. Primarily thought to refer to method, manner, and means of use. Consistent with the custom of similarly situated users.

Riparian land—land that adjoins or abuts a natural watercourse. To be riparian, the land must be within the watershed of the natural watercourse.

Riparian water right—water right that accompanies land that adjoins or abuts a natural watercourse. A riparian right cannot be forfeited for non-use. Riparian rights can be transferred only by selling the land on which they are based or by having the riparian right converted to an appropriative right by the SWRCB.

Seasonal stored water—water stored within a reservoir that is filled during the spring and winter wet seasons and released during the dry months to downstream appropriators.

Spring—a concentrated discharge of groundwater that finds its way to the surface in the form of flowing water.

ADDITIONAL INFORMATION

In July 1999, the SWRCB published a *Draft Guide to Water Transfers*. It is a helpful tool for anyone not familiar with the rules and procedures applicable to water transfers in California. It can be found at the SWRCB website http://www.waterrights.ca.gov or can be made available by the SWRCB upon request. Other helpful websites include:

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California Water Code	http://caselaw.lp.findlaw.com/cacodes/wat.html
State Water Resources Control Board	http://www.swrcb.ca.gov/index.html
California Department of Water Resources	http://wwwdwr.water.ca.gov/
Central Valley Project	http://www.mp.usbr.gov/regional/cvpiamain/
State Water Project Planning	http://wwwdop.water.ca.gov/
State Water Project Analysis Office	http://wwwswpao.water.ca.gov/

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State Water Resources Control Board. *Guide to Water Transfers*. 1999. Draft. Division of Water Rights.

APPENDIX A

EXCERPTED TEXT FROM CALIFORNIA WATER CODE

§109. Efficient use of water; encouragement of voluntary transfer of water and water rights

(a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water and transferability of such rights. It is hereby declared 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.
(b) The Legislature hereby directs the Department of Water Resources, the State Water Resources Control Board, and all other appropriate state agencies to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer.

§380. Legislative findings and declarations

The Legislature hereby finds and declares as follows:
(a) The various regions of the state differ widely in the availability of water supplies and in the need for water to meet beneficial uses.
(b) Decisions regarding operations to meet water needs can depend in part upon regional differences.
(c) Many water management decisions can best be made at a local or regional level, to the end that local and regional operational flexibility will maximize efficient statewide use of water supplies.
(d) The authority granted by this chapter to local and regional public agencies, as defined in subdivision (a) of Section 65930 of the Government Code and not including federal agencies, is in furtherance of the policy declared in Section 2 of Article X of the California Constitution and in Section 109.

§381. Local or regional public authority; supremacy

The authority of local or regional public agencies pursuant to this chapter shall control over any other provision of law which contains more stringent limitations on the authority of a particular public agency to serve water for use outside the agency, to the extent those other laws are inconsistent with the authority granted herein.

§382. Transfer of surplus water or water rights; authority of agency

(a) Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or entities within the service area of the agency may sell, lease, exchange, or otherwise transfer, for use outside the agency, either or both of the following: (1) Water that is surplus to the needs of the water users of the agency. (2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.
(b) This chapter does not prohibit or restrict the transfer of water or water rights by local or regional public agencies pursuant to other provisions of law.

§383. Surplus water defined

For the purposes of this chapter, water that is surplus to the needs of the agency's water users shall mean any of the following:
(a) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2(commencing with Section 1000), which the agency finds will be in excess of the needs of water users within the agency for the duration of the transfer.
(b) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000), of which any water user agrees with the agency, upon mutually satisfactory terms, to forego use for the duration of the transfer.
(c) Water, to which the right is held by a water user within the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000) where the water user and the agency agree, upon mutually satisfactory terms, that the water user will forego use for the period of time specified in the agreement and that the agency shall act as agent for the water user to effect the transfer.

§384. Compliance with state law prior to transfer
Prior to serving water to any person for use outside the agency, the agency shall comply with all provisions of the general laws of this state relating to the transfer of water or water rights, including, but not limited to, procedural and substantive requirements governing any change in point of diversion, place of use, or purpose of use due to such transfer.

§385. Consent to transfer by other agencies
No water may be transferred pursuant to this chapter for use within the boundaries of a local or regional public agency that furnishes the same water service to the transferee without the prior consent of that agency.

§386. Findings prior to transfer; fees of petitioner for transfer
The board may approve any change associated with a transfer pursuant to this chapter only if it finds that the change may be made without injuring any legal user of the water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and does not unreasonably affect the overall economy of the area from which the water is being transferred. A petitioner requesting a change which is subject to this section shall pay to the board a fee which shall be in an amount determined by the board to cover the reasonable costs of the board in evaluating and processing the petition.

§387. Duration of transfer
Any agreement for the transfer of water under the provisions of this chapter shall be for a period not to exceed seven years unless a longer period of time is mutually agreed upon by the agency and the transferee.

§470. Costa-Isenberg Water Transfer Act
This chapter shall be known as and may be cited as the Costa-Isenberg Water Transfer Act of 1986.

§475. Legislative findings and declarations
The Legislature hereby finds and declares that voluntary water transfers between water users can result in a more efficient use of water, benefitting both the buyer and the seller. The Legislature further finds and declares that transfers of surplus water on an intermittent basis can help alleviate water shortages, save capital outlay development costs, and conserve water and energy. The Legislature further finds and declares that it is in the public interest to conserve all available water resources, and that this interest requires the coordinated assistance of state agencies for voluntary water transfers to allow more intensive use of developed water resources in a manner that fully protects the interests of other entities which have rights to, or rely on, the water covered by a proposed transfer.

§480. Establishment of ongoing program to facilitate voluntary exchange or transfer of water
The department shall establish an ongoing program to facilitate the voluntary exchange or transfer of water and implement the various state laws that pertain to water transfers. The department shall seek to facilitate these transactions only if the water to be transferred is already developed and being diverted from a stream for beneficial use or has been conserved.

§481. List of entities seeking to enter water supply transfers; lists of physical facilities
The department shall create and maintain a list of entities seeking to enter into water supply transfers, leases, exchanges, or other similar arrangements. In addition, the department shall maintain a list of the physical facilities which may be available to carry out water supply transfers.

§482. Water transfer guide
The department shall prepare a water transfer guide which shall include, but not be limited to, all of the following:
(a) A review of existing and appropriate state and federal laws that pertain to water transfers, water markets, or water rights.
(b) A list of persons or public agencies throughout the state involved in water management who could be helpful to those seeking assistance to transfer water.
(c) Information and resources which could be used to identify potential third-party impacts and mitigation alternatives, including economic, environmental, and legal issues related to the transfer of water.
(d) A description of the services available to water users from the department.

§483. Coordination of activities with other state boards or agencies
The department shall consult and coordinate its activities with other state boards, departments, agencies, or offices whose assistance may be desirable or necessary in carrying out the purposes of this chapter.

§484. Temporary transfer of water or water rights
(a) The temporary transfer of any water or water right that otherwise would have been consumptively used or stored by the transferor in the absence of the temporary transfer, does not in anyway prejudice the transferor's right to the use of the water in the future.
(b) "Consumptively used," for purposes of this section, means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

§1005.1. Ground water; cessation or reduction in extraction; alternative supply; reasonable beneficial use; statement of amount used; definitions
Cessation of or reduction in the extraction of ground water by the owner of a right to extract, as the result of the use of an alternate supply of water from a nontributary source, shall be and is deemed equivalent to, and for purposes of establishing and maintaining any right to extract the ground water shall be construed to constitute, a reasonable beneficial use of the ground water to the extent and in the amount that water from the alternate source is applied to reasonable beneficial use, not exceeding, however, the amount of such reduction. Any such user of water from an alternate nontributary source who seeks the benefit of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of water from such source so applied to reasonable beneficial use pursuant to the provisions of this section during the next preceding water year (November 1st to October 31st),and such user cannot claim the benefit of this section for any water year for which such statement is not so filed
"Ground water," for the purpose of this section and of Sections 1005.2 and 1005.4, means water beneath the surface of the ground, whether or not flowing through known and definite channels. The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed, or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

§1010. Use of recycled, desalinated or polluted water as beneficial use; lapse, reduction or loss of rights;
extension of permit; periodic reports; transfer of water or water rights
(a) (1) The cessation of, or reduction in, the use of water under any existing right regardless of the basis of right, as the result of the use of recycled water, desalinated water, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses, is deemed equivalent to, and for purposes of maintaining any right shall be construed to constitute, a reasonable beneficial use of water to the extent and in the amount that the recycled, desalinated, or polluted water is being used not exceeding, however, the amount of such reduction.
(2) No lapse, reduction, or loss of any existing right shall occur under a cessation of, or reduction in, the use of water pursuant to this subdivision, and, to the extent and in the amount that recycled, desalinated, or polluted water is used in lieu of water appropriated by a permittee pursuant to Chapter 6 (commencing with Section 1375)of Part 2, the board shall not reduce the appropriation authorized in the user's permit.
(3) The use of recycled, desalinated, or polluted water constitutes good cause under Section 1398 to extend the period specified in a permit for application of appropriated water to beneficial use to the extent and in the amount that recycled, desalinated, or polluted water is used. The extension by the board shall be granted upon the same terms as are set forth in the user's permit, and for a period sufficient to enable the permittee to perfect his appropriation, while continuing to use recycled, desalinated, or polluted water.
(4) The board, in issuing a license pursuant to Article 3(commencing with Section 1610) of Chapter 9 of Part 2, shall not reduce the appropriation authorized by permit, to the extent and in the amount that reduction in a permittee's use, during the perfection period, including any extension as provided in this section, has resulted from the use of recycled, desalinated, or polluted water in lieu of the permittee's authorized appropriation.
(5) The board may require any user of water who seeks the benefit of this section to file periodic reports describing the extent and amount of the use of recycled, desalinated, or polluted water. To the maximum

extent possible, the reports shall be made a part of other reports required by the board relating to the use of water. (6) For purposes of this section, the term “recycled water” has the same meaning as in Division 7 (commencing with Section 13000). (b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), maybe sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

§1011. Appropriated water rights; cessation or reduction in use; forfeiture; transfer; reversion of rights

(a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Actor this code or the forfeiture period applicable to water appropriated prior to December 19, 1914. The board may require that any user of water who seeks the benefit of this section file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made apart of other reports required by the board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section. For purposes of this section, the term “water conservation” shall mean the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used by reason of land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section.

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(c) Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, or the right to the use of that water, that is available as a result of water conservation efforts described in subdivision (a), the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken.

§1011.5. Conjunctive use of surface water and groundwater

(a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914. The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply conforms to all requirements imposed pursuant to an adjudication of the groundwater basin, if applicable, and meets

one of the following conditions:
(1) Except as specified in paragraph (2), is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply and does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.
(2) Is from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No.118-80, for which the operating safe yield is exceeded prior to the extraction of the alternative supply, if all of the following requirements are met:
(A) The conjunctive use program is operated in accordance with a local groundwater management program that complies with the requirements of this section.
(B) The groundwater management program establishes requirements for the extraction of groundwater and is approved by a joint powers authority that meets the requirements of subparagraph (C).
(C) The joint powers authority includes each water agency overlying the contemplated points of groundwater extraction and each water agency that will share in the benefits to be derived from the local groundwater management program.
(D) By either of the following methods, the overdraft of the groundwater basin underlying the point of extraction has been reduced prior to the commencement of extraction: (i) Elimination of a volume of existing groundwater extractions in excess of the proposed new extraction. (ii) Recharge of the groundwater basin with a volume of water in excess of the proposed new extraction.
(E) The operation of that conjunctive use program ensures that the overdraft of the groundwater basin continues to be reduced.
(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.
(e) As used in this section, “substitution of an alternate supply”means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.
(f) This section does not apply to the Santa Ana River watershed.
(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.
(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.
(i) This section shall remain in effect only until January 1,2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

§1011.5. Conjunctive use of surface water and groundwater

(a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.
(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914. The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to

substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.
(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply meets all of the following conditions: (1) Is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply. (2) Does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded. (3) Conforms to all requirements imposed pursuant to any adjudication of the groundwater basin. (4) Is consistent with any applicable groundwater management plan. (5) Is approved by the water supplier whose service area the water is to be transferred from, if the groundwater basin has not been adjudicated or if a groundwater management plan has not been adopted.
(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.
(e) As used in this section, “substitution of an alternate supply”means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.
(f) This section does not apply to the Santa Ana River watershed.
(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.
(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.
(i) This section shall become operative on January 1, 2007.

§1020. Term of lease; application of chapter

Water may be leased for a period not to exceed five years to assist water conservation efforts pursuant to the terms and conditions of this chapter. The terms and conditions of this chapter are not applicable to water leases or transfers governed by other provisions of law.

§1021. Water subject to lease

(a) The water subject to a water lease agreement shall be water that is subject to a water right of the lessor. The amount of water leased shall not exceed 25 percent of the water that would have been applied or stored by the lessor in the absence of the lease agreement in any given hydrological year.
(b) Each lease agreement shall include enforceable terms which will ensure that the water lease will not injure any legal user of water and will not unreasonably affect fish, wildlife, or other instream beneficial uses.
(c) This chapter applies only to surface water appropriated pursuant to the Water Commission Act (Chapter 586 of the Statutes of 1913, as amended) or this code, or to water appropriated prior to December 19, 1914.

§1022. Water held by water district or water company

If the water subject to the lease is held by a water district, a water company, or a mutual water company, hereafter collectively referred to as the district, the following provisions apply:
(a) The governing body of the district may, by a resolution adopted and entered in its minutes, determine that the district should lease water pursuant to this chapter, or, if otherwise required by law, determine that an election should be held to lease water pursuant to this chapter. The district shall administer any water lease and determine whether water is in excess of the needs of the district and is available for a lease.
(b) Any water lease administered by the district shall include provisions to achieve all of the following: (1) Establish a schedule for district water users to provide written notice of the intention to participate in a water lease. (2) Establish a minimum price for the water available for leasing to maintain the financial integrity of the district and enter into leases for that water at market values at or above the minimum price.

§1024. Sale of water right or modification of water rights or contract

(a) Nothing in this chapter authorizes the sale of any water right or the modification of any water right or contract.
(b) No right in any water, water contract, or water right shall be acquired by a use permitted under this chapter.
(c) (1) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts and leases that conserved water under this chapter, any such cessation of, or reduction in, the use of the appropriated water that is leased is deemed equivalent to a reasonable beneficial use of water to the extent of that cessation of, or reduction in, use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act (Chapter 586 of the Statutes of 1913, as amended) or this code, or to water appropriated prior to December 19, 1914. (2) The state board may require any lessor of water who seeks the benefit of this chapter to file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this chapter. (3) For purposes of this chapter, "water conservation" means the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right. Where water appropriated for irrigation purposes is not used by reason of land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section.

§1024.5. Review of lessee's use of leased water

This chapter does not limit any review of the lessee's use of the leased water.

§1025. Notice by water lessor

If the lessor or lessee is a water district, the water lessor shall file a notice with the state board of the water lease agreement and include in the notice all of the following:
(a) A copy of the lease agreement.
(b) Any water permit or license number.
(c) A description of the environmental conditions in the lease, permit, and license which protect fish and wildlife.
(d) A statement of how the lease will assist water conservation efforts of the lessor.
(e) An agreement undertaken by the lessor and the lessee which specifies how the environmental protection terms and conditions in the permit, license, or lease, and the applicable conditions established pursuant to Section 1029 for the permit, license, or other water right, will be complied with for the duration of the lease.

§1025.5. Private parties; application by lessor; approval of lease

(a) If both the lessor and lessee are private parties, the lessor shall file an application with the state board for approval of the lease agreement and shall include in the application both of the following: (1) The information and materials described in subdivisions (a) to(e), inclusive, of Section 1025. (2) Other information which the state board determines is necessary to review the application.
(b) The state board, after providing notice and opportunity for a hearing, may approve the lease if, in the judgment of the state board, the lease would not operate to injure the legal users of water or unreasonably affect fish, wildlife, or other instream beneficial uses.

§1025.7. Change of point of diversion

Water leases pursuant to this chapter are not subject to Chapter 10 (commencing with Section 1700) or Chapter 10.5 (commencing with Section 1725) of Part 2.

§1026. Written public notice of approval of water lease

The lead agency shall not approve a water lease until 30 days after the state board provides written public notice, including notice by personal delivery or registered mail to legal users of water which may be affected by the lease, as identified by the state board, the Department of Fish and Game, and any party requesting special notice of water leases pursuant to this chapter. The water lessor shall pay a reasonable fee, in an amount determined by the state board, for the cost of providing the notice.

§1027. Sacramento - San Joaquin Delta

(a) Any water lease agreement entered into pursuant to this chapter involving the transfer of water from the Sacramento-San Joaquin Delta shall provide outflow consistent with the carriage water requirements determined by the department to be necessary for the transfer of the water subject to the lease to maintain the water quality which would exist in the delta without the transfer undertaken in connection with the water lease.

(b) Any water lease agreement providing for the lease of water from a lessor north of the Sacramento/San Joaquin Delta to a lessee south of the Sacramento/San Joaquin Delta shall provide for an amount of water for delta salt water repulsion and environmental purposes as administratively prescribed by the state board in proportion to all similar requirements for delta exports.

§1028. Effects of water transfer pursuant to lease on legal users of water and on fish and wildlife; court determination of issues

In any proceeding pursuant to Section 1029, the court shall determine issues relating to the lease and the effects of the water transfer pursuant to the lease on the legal users of water and on fish and wildlife, but any request or petition to permanently change the water right which may be subject to the lease shall be heard in a separate proceeding.

§1029. Environmental quality

Division 13 (commencing with Section 21000) of the Public Resources Code applies to water lease agreements authorized by this chapter. For purposes of that division, the lessor is the lead agency, except that if the lessor is a private party and the lessee is a water district, the lessee is the lead agency. If both the lessor and the lessee are private parties, the state board is the lead agency.

§1030. Monitoring lease; enforcement

During the term of the water lease, the state board shall monitor the lease, as appropriate. The state board shall initiate proceedings, if appropriate, to enforce the terms and conditions of water leases, and permits and licenses or water use authority to ensure that the water lease does not operate to injure any legal user of the water or unreasonably affect fish, wildlife, or other instream beneficial uses.

§1215. Application of article; exporters of water from protected area

This article shall only apply to a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

§1215.5. 'Protected area' defined

(a) For the purposes of this article, "protected area" means all of lands which normally drain to the ocean, to a hydraulic sink, or to another state within any of the following, and only the following, river systems:

(1) The Sacramento River System.
(2) The Mokelumne River System.
(3) The Calaveras River System.
(4) The San Joaquin River System.
(5) The Mono Lake System.
(6) The combined Truckee, Walker, and Carson River Systems.
(7) The combined river systems which drain to the ocean from and including the Russian River System northward to the California-Oregon border.

(b) The confluences of the Sacramento, Mokelumne, Calaveras, and San Joaquin River Systems are within the delta, as defined in Section 12220, and the delta shall be considered to be within each of these protected areas.

§1215.6. 'Water user or users' defined

For the purposes of this article, "water user or users"within a protected area means an appropriator or appropriators, a riparian user or users, or a groundwater user or users of water on land owned or controlled by them within a protected area.

§1216. Depriving protected area of adequate supplies of water prohibited

A protected area shall not be deprived directly or indirectly of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area, or any of the inhabitants or property owners therein, by a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

§1217. Water user's right to purchase water from exporters

(a) In addition to the right to obtain a water right which would have priority over the rights of an exporter, water users in a protected area shall have the right to purchase, for adequate compensation, water made available by the construction of any works by a water supplier exporting or intending to export water for use outside the protected area. Nothing in this section shall be construed to authorize export of water from a protected area to which users within the protected area are otherwise entitled, nor to require users within a protected area to pay for water to which they are otherwise entitled.

(b) At the request of a water user or users within a protected area, a water supplier exporting or intending to export water for use outside the protected area who is subject to Section 1216 shall meet and negotiate in good faith for the purpose of entering into contracts for the purchase of water as provided in subdivision (a).

(c) Any water user or users in a protected area may bring an action in the superior court to require compliance with the duty to meet and negotiate in good faith pursuant to this section. The court may issue a temporary restraining order, preliminary injunction, or permanent injunction, as appropriate, to secure compliance with this section.

(d) The meetings and negotiations required by this section may occur between the water supplier exporting water for use outside a protected area and any water user or users in a protected area, as determined appropriate by the parties. The meetings and negotiations shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

(e) Nothing in this section shall be construed as a limitation on the authority of the board to establish water quality standards or to subject water right entitlements to terms and conditions for the protection of reasonable and beneficial uses consistent with the provisions of Section 2 of Article X of the California Constitution.

§1218. Estimate of amount of water to be purchased

Upon the request of an applicant for a permit to appropriate water for use outside a protected area, a county of origin shall cooperate with the applicant in estimating the amount of water that may be purchased within the county pursuant to subdivision (a) of Section 1217 and that may be developed or used within the county impacting the proposed project, including an estimated time schedule. The purpose of this section is to assist the applicant in planning the export project and to assist the counties of origin in their water planning.

§1219. Mediation

A water supplier exporting or intending to export water outside a protected area, or a water user or users within a protected area, may declare that an impasse has been reached between the parties in negotiations over matters within the scope of negotiations specified in Section 1217 and may request the director to appoint a panel of five disinterested persons from whom the parties shall select, by a process of elimination, the mediator. After drawing lots to determine the order, the parties shall each, in turn, eliminate a name from the panel until there is only one person remaining on the panel, who shall be the mediator. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as the mediator may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the director shall not appoint a mediator.

§1219.5. Compensation of exporter of water

The provisions of this article shall not require any water supplier exporting or intending to export water for use outside a protected area to furnish to any water user or users in a protected area claiming rights under

this article, without adequate compensation therefor, any water made available for domestic, municipal, industrial, or agricultural uses by the construction of any works by the water exporter.

§1220. Pumping groundwater from combined Sacramento and Delta Central Sierra Basins

(a) No groundwater shall be pumped for export from within the combined Sacramento and Delta-Central Sierra Basins, as defined in Department of Water Resources' Bulletin 160-74, unless the pumping is in compliance with a groundwater management plan that is adopted by ordinance pursuant to subdivision (b) by the county board of supervisors, in full consultation with affected water districts, and that is subsequently approved by a vote in the counties or portions of counties that overlie the groundwater basin, except that water that has seeped into the underground from any reservoir, afterbay, or other facility of an export project may be returned to the water supply of the export project. For the purposes of this section, the county board of supervisors may designate a county water agency to act on its behalf if the directors of the county water agency are publicly elected and the county water agency encompasses the entire county. The county board of supervisors may revoke that designation by resolution at any time.

(b) Notwithstanding any other provision of law, a county board of supervisors whose county contains part of the combined Sacramento and Delta-Central Sierra Basins may adopt groundwater management plans to implement the purposes of this section. (c) A county board of supervisors shall not exercise the powers authorized by this section within the boundaries of another local agency supplying water to that area without the prior agreement of the governing body of that other local agency.

§1221. Groundwater regulation

This article shall not be construed to authorize the board to regulate groundwater in any manner.

§1222. Watersheds

Nothing in this article shall be deemed to diminish the rights and protections to watersheds of origin contained in existing law including, but not limited to, Part 4.5 (commencing with Section 12200) of Division 6.

§1435. Temporary Urgent Changes

(a) Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for, and the board may issue, a conditional, temporary change order without complying with other procedures or provisions of this division, but subject to all requirements of this chapter.

(b) Prior to issuing a change order pursuant to this chapter, the board shall make all of the following findings:

(1) The permittee or licensee has an urgent need to make the proposed change.

(2) The proposed change may be made without injury to any other lawful user of water.

(3) The proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses.

(4) The proposed change is in the public interest, including findings to support change order conditions imposed to ensure that the change is in the public interest, and may be made without injury to any other lawful user of the water, and without unreasonable effect upon fish, wildlife, and other instream beneficial uses.

(c) "Urgent need," for the purposes of this chapter, means the existence of circumstances from which the board may in its judgment conclude that the proposed temporary change is necessary to further the constitutional policy that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that waste of water be prevented; except that the board shall not find a petitioner's need to be urgent if the board in its judgment concludes, if applicable, that the petitioner has not exercised due diligence either (1) in petitioning for a change pursuant to provisions of this division other than this chapter, or (2) in pursuing that petition for change.

(d) The board may delegate to any officer or employee of the board all or any of its functions under this chapter.

§1700. Change of purpose

Water appropriated under the Water Commission Act or this code for one specific purpose shall not be deemed to be appropriated for any other or different purpose, but the purpose of the use of such water may be changed as provided in this code.

§1701. Application for change
At any time after notice of an application is given, an applicant, permittee, or licensee may change the point of diversion, place of use, or purpose of use from that specified in the application, permit, or license; but such change may be made only upon permission of the board.

§1702. Injury to legal user of water
Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved.

§1703. Notice of proposed change
After filing a petition for permission to make a change, the petitioner, in case the board so requires, shall cause notice thereof to be given or published in the manner prescribed by the board. In all cases the petitioner shall notify the Department of Fish and Game in writing of the proposed change.

§1704. Protest; hearing
If at any time prior to the granting of permission to make such a change a protest is filed with the board against allowance of the proposed change the board shall fix a time and place for the hearing of the petition and of objections thereto.

§1704.1. Field investigations
The Division of Water Rights shall conduct a field investigation of all minor protested petitions for change. The board shall notify the parties of the field investigation not less than 20 days prior to conducting the field investigation, to enable the parties to attend and present information to the board.

§1704.2. Right to request information in support of positions
The Division of Water Rights may request the parties to submit information in support of their positions. The Division of Water Rights may request information before, during, or after the field investigation. After the field investigation, the Division of Water Rights may conduct additional proceedings in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

§1704.3. Order acting on minor petition for change
Based upon the field investigation and any other information obtained under this chapter, the Division of Water Rights shall issue an order acting on the minor petition for change unless the board in its discretion determines that additional proceedings should be conducted under Section 183. An order of the Division of Water Rights is subject to review as provided in Chapter 4 (commencing with Section 1120) of Part 1.

§1704.4. Minor petition for change
For purposes of this chapter, a minor petition for change shall mean any petition which does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year.

§1705. Action by board
After the hearing the board shall grant or refuse, as the facts warrant, permission to change the point of diversion, place of use, or purpose of use.

§1706. Persons entitled to make change
The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

§1707. Changes for purpose of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in or on water
(a) (1) Any person entitled to the use of water, whether based upon an appropriative, riparian, or other right, may petition the board pursuant to this chapter, Chapter 6.6 (commencing with Section 1435) or Chapter 10.5

(commencing with Section 1725) for a change for purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water.

(2) The petition may be submitted for any of the purposes described in paragraph (1) and may, but is not required to, be submitted in combination with a petition to make any other change authorized pursuant to this part. The petition shall specify the time, location, and scope of the requested change, and other relevant information relating thereto.

(b) The board may approve the petition filed pursuant to subdivision (a), subject to any terms and conditions which, in the board's judgment, will best develop, conserve, and utilize, in the public interest, the water proposed to be used as part of the change, whether or not the proposed use involves a diversion of water, if the board determines that the proposed change meets all of the following requirements:

(1) Will not increase the amount of water the person is entitled to use.

(2) Will not unreasonably affect any legal user of water.

(3) Otherwise meets the requirements of this division.

(c) (1) Upon the request of the petitioner, the board may specify, as part of its approval of the petition, that the water that is subject to the approval pursuant to this section shall be in addition to water that is required, if any, to be used for instream purposes to satisfy any applicable federal, state, or local regulatory requirements governing water quantity, water quality, instream flows, fish and wildlife, wetlands, recreation, and other instream beneficial uses. If the request is approved by the board, state and local agencies, as well as the courts, shall not credit the water subject to that petition towards compliance with any of the regulatory requirements described in this subdivision. A federal agency shall comply with the requirement imposed by this paragraph to the extent required by federal law, or to the extent that it chooses to comply.

(2) For the purposes of this subdivision, "requirements" includes requirements or obligations that have not been formally established or allocated at the time of the petition, and obligations under any agreement entered into to meet those requirements. Neither any petition filed pursuant to this section nor any documents or statements made in connection therewith shall be construed or used as an admission, evidence, or indication of any obligation to meet any of the requirements described in this subdivision.

(d) Except as provided in subdivision (c), water that is subject to a petition granted pursuant to this section shall be used to meet, in whole or in part, any requirement described in subdivision (c) if any of these requirements exist. The water shall be credited to the petitioner, or to any other person or entity designated by the petitioner, whenever that person or entity has, or may have, obligations to meet one or more of the requirements described in subdivision (c). The water shall be credited towards compliance with any requirements described in subdivision (c), by state and local agencies, as well as the courts. A federal agency shall comply with the requirement imposed by this subdivision to the extent required by federal law, or to the extent that it chooses to comply.

§1725. Changes permitted

A permittee or licensee may temporarily change the point of diversion, place of use, or purpose of use due to a transfer or exchange of water or water rights if the transfer would only involve the amount of water that would have been consumptively used or stored by the permittee or licensee in the absence of the proposed temporary change, would not injure any legal user of the water, and would not unreasonably affect fish, wildlife, or other instream beneficial uses. For purposes of this article, “consumptively used”means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

§1726. Notice

(a) (1) A permittee or licensee who proposes a temporary change shall submit to the board a petition to change the terms of the permit or license as required to accomplish the proposed temporary change. Any petition for a temporary change shall be filed by the permittee or licensee. If the proposed temporary change is for the benefit of a contractor or user supplied directly or indirectly by the permittee or licensee, the permittee or licensee may authorize the contractor or user to participate as a copetitioner. The permittee or licensee shall identify any copetitioner in the petition.

(2) A contractor or user described in paragraph (1), whether or not designated as a copetitioner, and the person to whom the water is proposed to be transferred, shall be named as parties to the proceeding, with the same rights to receive notices, respond to board determinations, and petition for writ of mandate as the petitioner.

§1727. Evaluation

(a) The board shall review a petition for a temporary change of water rights in accordance with this section.

(b) The board shall approve a temporary change if it determines that a preponderance of the evidence shows both of the following:

(1) The proposed temporary change would not injure any legal user of the water, during any potential hydrologic condition that the board determines is likely to occur during the proposed change, through significant changes in water quantity, water quality, timing of diversion or use, consumptive use of the water, or reduction in return flows.

(2) The proposed temporary change would not unreasonably affect fish, wildlife, or other instream beneficial uses.

(c) The petitioner shall have the burden of establishing that a proposed temporary change would comply with paragraphs (1) and (2) of subdivision (b). If the board determines that that petitioner has established a prima facie case, the burden of proof shall shift to any party that has filed a comment pursuant to subdivision (f) of Section 1726 to prove that the proposed temporary change would not comply with paragraphs (1) and (2) of subdivision (b). The board may make a determination required by this subdivision without a hearing. (d) In reviewing a petition for a temporary change, the board shall not modify any term or condition of the petitioner's permit or license, including those terms that protect other legal users of water, fish, wildlife, and other instream beneficial uses, except as necessary to carry out the temporary change in accordance with this article. (e) In applying the standards set forth in paragraphs (1) and (2) of subdivision (b), the board shall not deny, or place conditions on, a temporary change to avoid or mitigate impacts that are not caused by the temporary change. Neither the Department of Fish and Game, nor any other state agency that comments on the proposed temporary change, shall propose conditions to mitigate effects on fish, wildlife, or other instream beneficial uses caused by factors other than the proposed temporary change. This subdivision does not limit the board, the Department of Fish and Game, or any other state agency, in proceedings pursuant to any provision of law other than this article.

§1728. Temporary change defined

For the purposes of this article, a temporary change means any change of point of diversion, place of use, or purpose of use involving a transfer or exchange of water or water rights for a period of one year or less. The one-year period does not include any time required for monitoring, reporting, or mitigation before or after the temporary change is carried out. If, within a period of one year or less, the water involved in the temporary change is moved to off-stream storage outside of the watershed where the water originated, the change shall be considered a temporary change, and the water moved to off-stream storage outside the watershed where the water originated may be put to beneficial use in the place of use and for the purposes of use specified in the board's order approving the temporary change either during or after that period.

§1729. Exemption

A proposed temporary change under this article shall be exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

§1731. Reversion of rights

Following the expiration of the temporary change period, all rights shall automatically revert to the original holder of the right without any action by the board.

§1732. Diligence in petitioning for changes

The board shall not approve a temporary change if the board, in its judgment, concludes, if applicable, that the petitioner has not exercised due diligence in petitioning for a change pursuant to provisions of this division other than this article.

§1735. Petition for long term changes

The board may consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use. A long-term transfer shall be for any period in excess of one year.

§1736. Approval of petitions

The board, after providing notice and opportunity for a hearing, including, but not limited to, written notice to, and an opportunity for review and recommendation by, the Department of Fish and Game, may approve such a petition for a long-term transfer where the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses.

§1737. Reversion of rights

Following the expiration of the long-term transfer period, all rights shall automatically revert to the original holders of the right without any action by the board.

§1740. Rights determined under court decrees

Any water right determined under a court decree issued pursuant to Chapter 3 (commencing with Section 2500) of Part 3, after January 1, 1981, shall be transferable pursuant to this chapter and Chapter 10 (commencing with Section 1700). The court having the appropriate jurisdiction over the decreed rights may enter a supplemental decree modifying any rights involved upon motion of the board or any party with a vested water right.

§1745. Definitions

As used in this article, the following terms have the following meanings:
(a) "Person" includes a public agency.
(b) "Water supplier" means a local public agency or private company supplying or storing water, or a mutual water company.

§1745.02. Reduction or elimination of use of water

A water supplier may, for a consideration to be specified in the contract, contract with persons entitled to service within the supplier's service area to reduce or eliminate for a specified period of time their use of water supplied by the water supplier.

§1745.03. Nature of services

Services performed under a contract entered into pursuant to this chapter or Chapter 3.6 (commencing with Section 380) of Division 1 which is offered generally to all persons entitled to water service from the water supplier are public services generally provided by the public agency for purposes of paragraph (3) of subdivision (a) of Section 1091.5 of the Government Code.

§1745.04. Transfer of water

A water supplier may contract with a state drought water bank or with any other state or local water supplier or user inside or outside the service area of the water supplier to transfer, or store as part of a transfer, water if the water supplier has allocated to the water users within its service area the water available for the water year, and no other user will receive less than the amount provided by that allocation or be otherwise unreasonably adversely affected without that user's consent.

§1745.05. Water eligible for transfer

(a) Water stored by the water supplier and water made available from either of the following sources may be transferred by the water supplier pursuant to Sec-tion 1745.04: (1) Conservation or alternate water supply measures taken by individual water users or by the water supplier. (2) Water developed pursuant to a contract by a water user to reduce water use below the user's allocation or to eliminate the use of water during the water year, including a contract to grow crops without the use of water from the water supplier, to fallow land, or to undertake other action to reduce or eliminate water use.
(b) The amount of water made available by land fallowing may not exceed 20 percent of the water that would have been applied or stored by the water supplier in the absence of any contract entered into pursuant to this article in any given hydrological year, unless the agency approves, following reasonable notice and a public hearing, a larger percentage.

§1745.06. Transfer of water not surplus to service area needs

A water supplier may transfer water pursuant to Section 1745.04 whether or not the water proposed to be transferred is surplus to the needs within the service area of the water supplier.

§1745.07. Effect of transfer on water rights

No transfer of water pursuant to this article or any other provision of law shall cause a forfeiture, diminution, or impairment of any water rights. A transfer that is approved pursuant to this article or any other provision of law is deemed to be a beneficial use by the transferor under this code.

§1745.08. Construction of article; additional authority of public agencies

This article is in addition to, and not a limitation on, the authority of any public agency under any other

provision of law, including, but not limited to, Article 1 (commencing with Section 1725).

§1745.09. Construction of article

Nothing in this article does any of the following:
(a) Creates in any person a right to require any water supplier to enter into a contract providing for the reduction or elimination of water use or for the transfer of water.
(b) Creates in any person reducing water use any interest in the water rights of the water supplier.
(c) Limits or otherwise affects the jurisdiction of any regulatory public agency over water transfers.
(d) Makes any change in existing water rights.

§1745.10. Transferred surface water

A water user that transfers surface water pursuant to this article may not replace that water with groundwater unless the groundwater use is either of the following:
(a) Consistent with a groundwater management plan adopted pursuant to state law for the affected area.
(b) Approved by the water supplier from whose service area the water is to be transferred and that water supplier, if a groundwater management plan has not been adopted, determines that the transfer will not create, or contribute to, conditions of long-term overdraft in the affected groundwater basin.

§1745.11. Previously recharged groundwater from overdrafted groundwater basin

Nothing in this article prohibits the transfer of previously recharged groundwater from an overdrafted groundwater basin or the replacement of transferred surface water with groundwater previously recharged into an overdrafted groundwater basin, if the recharge was part of a groundwater banking operation carried out by direct recharge, by delivery of surface water in lieu of groundwater pumping, or by other means, for storage and extraction.

§1810. Unused capacity

Notwithstanding any other provision of law, neither the state, nor any regional or local public agency may deny a bona fide transferor of water the use of a water conveyance facility which has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use, subject to the following:
(a) Any person or public agency that has a long-term water service contract with or the right to receive water from the owner of the conveyance facility shall have the right to use any unused capacity prior to any bona fide transferor.
(b) The commingling of transferred water does not result in a diminution of the beneficial uses or quality of the water in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred water is of substantially the same quality as the water in the facility.
(c) Any person or public agency that has a water service contract with or the right to receive water from the owner of the conveyance facility who has an emergency need may utilize the unused capacity that was made available pursuant to this section for the duration of the emergency.
(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.

§1811. Definitions

As used in this article, the following terms shall have the following meanings:
(a) "Bona fide transferor" means a person or public agency as defined in Section 20009 of the Government Code with a contract for sale of water which may be conditioned upon the acquisition of conveyance facility capacity to convey the water that is the subject of the contract.
(b) "Emergency" means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make water deliveries.
(c) "Fair compensation" means the reasonable charges incurred by the owner of the conveyance system, including capital, operation, maintenance, and replacement costs, increased costs from any necessitated purchase of supplemental power, and including reasonable credit for any offsetting benefits for the use of the conveyance system.
(d) "Replacement costs" mean the reasonable portion of costs associated with material acquisition for the correction of unrepairable wear or other deterioration of conveyance facility parts which have an

anticipated life which is less than the conveyance facility repayment period and which costs are attributable to the proposed use.
(e) "Unused capacity" means space that is available within the operational limits of the conveyance system and which the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of water proposed to be transferred.

§1812. Determination of amount and availability of unused capacity

The state, regional, or local public agency owning the water conveyance facility shall in a timely manner determine the following:
(a) The amount and availability of unused capacity.
(b) The terms and conditions, including operation and maintenance requirements and scheduling, quality requirements, term or use, priorities, and fair compensation.

§1812.5. Transfer of conserved water using water conveyance facilities of Metropolitan Water District of Southern California

(a) The Legislature finds and declares all of the following:
(1) This section is an extraordinary measure being taken only because the proposed transfer of conserved water from the Imperial Irrigation District to the San Diego County Water Authority is a matter of statewide interest in that it addresses a significant need for water in the southern state through the conservation of water now being consumed there. The Legislature further finds and declares that this section is not to be regarded as setting a precedent for any other legislative action.
(2) California's use of Colorado River water is limited to its basic annual apportionment of 4.4 million acre-feet, plus one-half of any excess or surplus water from the Colorado River. However, California continues to use up to 5.3 million acre-feet by relying on surpluses and apportioned, but unused water within the Colorado River Basin, which is not a reliable water supply. The Secretary of the Interior has strongly urged California to develop a plan to enable it to live within its basic apportionment of 4.4 million acre-feet from the Colorado River.
(3) It is of vital state interest that every effort be made to ensure that the Colorado River Aqueduct continues to operate at its full capacity at fair and reasonable terms in order to minimize statewide disruptions from diminishing Colorado River supplies.
(4) Negotiations assisted by the director are underway in 1997 between the Metropolitan Water District of Southern California and the San Diego County Water Authority for the development of a long-term wheeling agreement whereby the San Diego County Water Authority would use the Colorado River Aqueduct to wheel conserved water from the Imperial Irrigation District.
(b) The director shall assist the Colorado River Board and the six California water agencies that derive water from the Colorado River in developing a plan to ensure that California can live within its entitlement of 4.4 million acre-feet of water annually and to ensure that the needs of southern California for Colorado River water are met.
(c) (1) Notwithstanding any other provision of law, with regard to the proposed transfer of conserved water from the Imperial Irrigation District to the San Diego County Water Authority, using the Metropolitan Water District of Southern California's water conveyance facilities, including the Colorado River Aqueduct, if the San Diego County Water Authority and the Metropolitan Water District of Southern California have not reached an agreement in principle on the terms and conditions of the transfer of conserved water using the Metropolitan Water District of Southern California's water conveyance facilities on or before August 15, 1997, the director shall issue a formal recommendation within 30 days from that date, with regard to the appropriate terms and conditions of the transfer.
(2) The director, in issuing a recommendation regarding appropriate terms and conditions of the transfer, shall make those determinations prescribed by Section 1812.
(3) If the director's recommendations prescribed by Section 1812 are unacceptable to either the San Diego County Water Authority or the Metropolitan Water District of Southern California, that party may request a formal mediation process. If both parties agree to participate in the formal mediation process, the parties shall commence mediation within one month after the mediation request is made. If the parties cannot agree on a mediator, the director shall appoint a mediator or the director may serve as mediator. The San Diego County Water Authority and the Metropolitan Water District of Southern California shall reimburse the state for any General Fund money used in mediation entered into pursuant to this paragraph.
(d) No action taken pursuant to this section shall injure any legal user of water, and there shall be no shifting of costs for actions taken pursuant to this section to water users in any county in the State of

California.
(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

§1813. Findings by public agency

In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of water and shall support its determinations by written findings. In any judicial action challenging any determination made under this article the court shall consider all relevant evidence, and the court shall give due consideration to the purposes and policies of this article. In any such case the court shall sustain the determination of the public agency if it finds that the determination is supported by substantial evidence.

§1814. Application of article

This article shall apply to only 70 percent of the unused capacity.

11460. Prior right to watershed

In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.