



STATE OF CALIFORNIA

RESOURCES AGENCY

DEPARTMENT OF WATER RESOURCES

NOTICE TO STATE WATER PROJECT CONTRACTORS

NUMBER: 03-09

DATE: 7/3/03

SUBJECT: Guidelines for Review of Proposed
Permanent Transfers of State Water
Project Annual Table A Amounts

FROM: 
INTERIM DIRECTOR, DEPARTMENT OF WATER RESOURCES

The Department of Water Resources is issuing the following guidelines prepared in connection with the Settlement Agreement, dated May 5, 2003, reached in *Planning and Conservation League et al. v. Department of Water Resources*, 83 Cal. App. 4th 892 (2000). These guidelines are effective upon the superior court's approval of the Settlement Agreement on May 20, 2003.

1. **Purpose:** The purpose of these guidelines is to describe the process for DWR's review of proposed permanent transfers of State Water Project Annual Table A Amounts and, by so doing, provide disclosure to SWP contractors and to the public of DWR's process and policy for approving permanent transfer of SWP Annual Table A Amounts. Such disclosure should assist contractors in developing their transfer proposals and obtaining DWR review expeditiously, and assist the public in participating in that review.
2. **Coverage:** These guidelines will apply to DWR's approval of proposed permanent transfers of water among existing SWP contractors and, if and when appropriate, to proposed permanent transfers of water from an existing SWP contractor to a new SWP contractor.
3. **Interpretation:** These guidelines are in furtherance of the State policy in favor of voluntary water transfers and shall be interpreted consistent with the law, including but not limited to Water Code Section 109, the Burns-Porter Act, the Central Valley Project Act, the California Environmental Quality Act, area of origin laws, the public trust doctrine, and with existing contracts and bond covenants. These guidelines are not intended to change or augment existing law.
4. **Revisions:** Revisions may be made to these guidelines as necessary to meet changed circumstances, changes in the law or long-term water supply contracts, or to address conditions unanticipated when the guidelines are adopted. Revisions shall be in accordance with the Settlement Agreement.

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5. **Distribution**: The transfer guidelines shall be published by DWR in the next available edition of Bulletin 132, and also as part of the biennial disclosure of SWP reliability as described in the Settlement Agreement.
6. **Contract Amendment**: Permanent transfers of SWP water are accomplished by amendment of each participating contractor's long-term water supply contract. The amendment consists of amending the Table A upwards for a buying contractor and downwards for a selling contractor. The amendment shall be in conformity with all provisions of the long-term water supply contracts, applicable laws, and bond covenants. Other issues to be addressed in the contract amendment will be subject to negotiation among DWR and the two participating contractors. The negotiations will be conducted in public, pursuant to the Settlement Agreement and Notice to State Water Project Contractors Number 03-10.
7. **Financial Issues**: The purchasing contractor must demonstrate to DWR's satisfaction that it has the financial ability to assume payments associated with the transferred water. If the purchasing entity was not a SWP contractor as of 2001, special financial requirements pertain as described below, as well as additional qualifications.
8. **Compliance with CEQA**: Consistent with CEQA, the State's policy to preserve and enhance environmental quality will guide DWR's consideration of transfer proposals (Public Resources Code Section 21000). Identification of the appropriate lead agency will be based on CEQA, the CEQA Guidelines, and applicable case law, including *PCL v. DWR*. CEQA requires the lead agency at a minimum to address the feasible alternatives to the proposed transfer and its potentially significant environmental impacts (1) in the selling contractor's service area; (2) in the buying contractor's service area; (3) on SWP facilities and operations; and (4) on the Delta and areas of origin and other regions as appropriate. Impacts that may occur outside of the transferring SWP contractors' service areas and on fish and wildlife shall be included in the environmental analysis. DWR will not approve a transfer proposal until CEQA compliance is completed. The lead agency shall consult with responsible and trustee agencies and affected cities and counties and, when DWR is not the lead agency, shall provide an administrative draft of the draft EIR or Initial Study/Negative Declaration to DWR prior to the public review period. A descriptive narrative must accompany a checklist, if a checklist is used. The lead agency shall conduct a public hearing on the EIR during the public comment period and notify DWR's State Water Project Analysis Office of the time and place of such hearing in addition to other notice required by law.
9. **Place of Use**: The purchasing contractor must identify the place and purpose of use of the purchased water, including the reasonable and beneficial use of the water.

Typically, this information would be included in the environmental documentation. If a specific transfer proposal does not fit precisely into any of the alternatives listed below, DWR will use the principles described in these Guidelines to define the process to be followed. The information to be provided under this paragraph is in addition to the CEQA information described in Paragraph 8 of these guidelines.

- a. If the place of use is within the contractor's service area, the contractor should disclose the purpose of the transferred water, such as whether the water is being acquired for a specific development project, to enhance overall water supply reliability in the contractor's service area, or some other purpose. If the transferred water is for a municipal purpose, the contractor should state whether the transfer is consistent with its own Urban Water Management Plan or that of its member unit(s) receiving the water.
- b. If the place of use is outside the contractor's service area, but within the SWP authorized place of use, and service is to be provided by an existing SWP contractor, then, in addition to Paragraph 9(a) above, the contractor should provide DWR with copies of LAFCO approval and consent of the water agency with authority to serve that area, if any. In some instances, DWR's separate consent is required for annexations in addition to the approval for the transfer.
- c. If the place of use is outside the SWP authorized place of use and service is to be provided by an existing SWP contractor, the contractor should provide information in Paragraph 9(a) and 9(b). Prior to approving the transfer, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.
- d. If the place of use is outside the SWP authorized place of use and service is not to be provided by an existing SWP contractor, DWR will consider the transfer proposal as a proposal to become a new SWP contractor. Prior to adding a new SWP contractor, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. DWR will consult with existing SWP contractors regarding their water supply needs and the proposed transfer. In addition to the information in Paragraph 9(a), 9(b), and 9(c), the new contractor should provide information similar to that provided by the original SWP contractors in the 1960's Bulletin 119 feasibility report addressing hydrology, demand for water supply, population growth, financial feasibility, etc.

DWR will evaluate these issues independently and ordinarily will act as lead agency for CEQA purposes. In addition, issues such as area of origin claims, priorities, environmental impacts and use of water will be addressed. The selling contractor may not be released from financial obligations. The contract will be subject to a CCP 860 validation action initiated by the new contractor. If DWR approves the transfer, DWR will petition the SWRCB for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

10. DWR Discretion: Consistent with the long-term water supply contract provisions, CEQA, and other provisions of law, DWR has discretion to approve or deny transfers. DWR's exercise of discretion will incorporate the following principles:
 - a. As required by CEQA, DWR as an agency with statewide authority will implement feasible mitigation measures for any significant environmental impacts resulting from a transfer if such impacts and their mitigation are not addressed by other public agencies and are within DWR's jurisdiction.
 - b. DWR will invoke "overriding considerations" in approving a transfer only as authorized by law, including but not limited to CEQA, and, to the extent applicable, the public trust doctrine and area of origin laws.

If you have any questions or need further information, please contact Dan Flory, Chief of DWR's State Water Project Analysis Office, at (916) 653-4313 or Nancy Quan of his staff at (916) 653-0190.