


NOTICE TO STATE WATER PROJECT CONTRACTORS**Date:** DEC 18 2017**Number:** 17- 11**Subject:** Water Management and the Existing Long-Term Water Supply Contracts**From:**

Grant Davis, Director
Department of Water Resources

The recent drought in California has highlighted the importance and need for flexibility in managing the State's limited water resources. To that end, the Department encourages the State Water Project Contractors to pursue water management actions that ensure supplies from the State Water Project (SWP) are used effectively.

In particular, the existing Long-Term Water Supply Contracts (Contracts) provide flexibility as to how SWP supplies are transferred, exchanged, and managed over extended periods of time. Accordingly, Attachment A is intended to clarify the Department's considerations and objectives with respect to bona fide exchanges and multi-year water transfers. In reviewing SWP Contractor requests for water management actions, the Department will follow a similar approach it has used in past years. That is, the Department will review requests on an individual, case-by-case basis and will examine:

1. any adverse impact on the ability of the SWP Contractor to continue to make payments under its Contract;
2. any adverse effect the action may have on the water rights permits granted to the Department for the operation of the SWP;
3. any adverse impact on the ability of the Department to make deliveries to other SWP Contractors or to meet other obligations of the SWP; and
4. consideration of any issues identified by and compliance with the California Environmental Quality Act.

Furthermore, although the Department believes that the water management actions listed in Attachment A already are available under the terms of the existing Contracts, the Department intends to confirm and supplement its position in the public process that was initially noticed on November 21, 2014. The Department intends to resume this process to include discussion of the water management actions specified above. The Department will issue a public notice for these negotiations.

If you have any questions or need additional information, please contact Joel Ledesma at (916) 653-8043.

Attachment

Attachment A

Department Considerations Related to Bona Fide Exchanges and Multi-Year Water Transfers Under the Water Supply Contracts

In reviewing and approving any proposed bona fide exchanges or multi-year transfers, the Department will apply the following considerations:

- A. Bona Fide Exchanges: In the review of bona fide exchanges, the Department will apply Article 56(f) of the Contracts, which provides that “an exchange of water involving a contractor and another party where the primary consideration for one party furnishing water to another is the return of a substantially similar amount of water, after giving due consideration to the timing or other nonfinancial considerations of the return.”
1. Return Period: Flexibility is provided under the existing Contracts regarding the return period, provided the return period is not greater than 10 years or does not extend beyond the expiration date of the current Contract.

If the return for the exchange cannot be completed within 10 years, the Department may approve an extension for an additional 10 years or to the end of the current Contract, whichever is shorter. The exchange parties shall provide adequate justification for the extension of the exchange agreement. Adequate justification may include reasons such as hydrologic conditions, allocation percentages, capacity/conveyance limitations, economic hardships, health and safety issues, etc.
 2. Return Ratio: Flexibility is provided under the existing Contracts regarding the exchange ratio, provided the amount of water returned is of a “substantially similar amount” and considering timing and other non-financial considerations. The following ratios are consistent with the above considerations, including differing hydraulic conditions, subject to review under the Department’s existing authority:

For allocations $\geq 50\%$, return ratio is up to 2 : 1
For allocations $>25\%$ & $<50\%$, return ratio is up to 3 : 1
For allocations $<25\%$, return ratio is up to 4 : 1
 3. Time of Delivery: If an exchange agreement is executed in the latter half of the calendar year, capacity limitations may prohibit delivery in the year the exchange agreement is executed. To allow for delivery in the following year, the Department will allow reclassification of exchange water so long as it complies with Article 56 of the Contracts.

4. Cost Compensation: Maximum cost compensation for a bona fide exchange may not exceed the exchanging SWP Contractor's transportation capital charges.

B. Multi-year Transfers:

1. All multi-year transfers must be consistent with the existing Contracts.
2. Multi-year transfers pertain only to SWP Table A water (not Articles 21, 55, or 56 and area of origin supplies) in the year in which the water moves from one SWP Contractor to another for compensation, which does not need to include the return of water.
3. SWP Contractors can be engaged in multiple multi-year temporary transfers as a buyer or seller, provided that a Contractor cannot be both a buyer or seller in the same year.
4. Compensation for multi-year transfers will be determined by the transfer proponents.
5. Proponents of multi-year transfers must comply with all existing environmental (including CEQA compliance) and regulatory requirements. The Department will serve as a lead or responsible agency where applicable.
6. The term of each multi-year transfer must be at least two years.
7. A multi-year transfer cannot be used to pay back any existing water exchange obligation.
8. The Department will review and approve multi-year transfers consistent with the terms of the Contracts, including but not limited to, assuring that: (1) the terms of multi-year temporary transfer comply with the existing SWP Contracts; (2) the delivery of the water is possible/feasible considering the hydrologic conditions and delivery capacity of the SWP; and (3) the financial and operational integrity of the SWP is not impaired.
9. The Department retains its right to review and reconsider at any time a multi-year transfer agreement if it determines that delivery under the agreement is impairing the financial feasibility of project facilities or is impacting any other SWP Contractor's ability to deliver/store its SWP Table A.