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A Model Water Transfer Act for California

Introduction by
Richard M. Rosenberg^o

As the four sponsoring business organizations (the California Business Roundtable, California Chamber of Commerce, California Farm Bureau Federation, and California Manufacturers Association) worked to develop the Model Water Transfer Act for California, we were often asked: With California's key water policymakers and stakeholders already absorbed in numerous major efforts to resolve the state's burgeoning water problems, why are you taking on the seemingly tangential issue of water transfer legislation right now?

Our answer was two-fold. First, the business community cannot envision successful resolution of major water problems in the state in the absence of a more effective market for voluntary water transfers than currently exists. Because existing water transfer law has developed rather haphazardly over several decades, it does not provide the framework for optimal distribution of developed supplies.

Although water transfers have been possible and occasionally used since Gold Rush days, the fragmentation, lack of clarity on key points, and inconsistent interpretations of partial regulatory jurisdiction provided by existing transfer laws have prevented the development of a fully functional market for voluntary sales and purchases. Delaying consolidating and improving those laws will only delay unnecessarily the enhancement of California's water system and supplies to meet our growing needs.

The second part of our answer is that, given the new willingness among stakeholders to approach solutions collaboratively, the timing for this undertaking could not have been better. When the idea of developing a new water transfer act for California first arose in the California Business Roundtable's Water Task Force late in the summer of 1994, the business community was witnessing the beginnings of a remarkable phenomenon. Agricultural, urban, and environmental water interests and the state government had been deadlocked for decades over how to resolve California's growing water problems. Arguments had abounded about the nature and extent of the problems; whose fault they were; and who would have to sacrifice how much to permit their solutions. As interest groups wrangled, the population grew; the aquatic environment, especially in the San Francisco Bay/Sacramento and San Joaquin River Delta, deteriorated; numerous fish and wildlife species disappeared or became endangered; and years of drought damaged crops and forced water rationing on millions of Californians.

^oRichard M. Rosenberg is the retired chairman and chief executive officer of BankAmerica Corporation and Bank of America, on whose boards of directors he continues to serve. With a long-term interest in water policy, Rosenberg in recent years has assumed a leadership role on major water policy issues within California's business community. He was instrumental in garnering the support of the state's major corporations for development by consensus of the 1994 Bay-Delta Accord. He has also served as Chair of the California Business Roundtable's Water Task Force, playing a lead role in the effort to develop "A Model Water Transfer Act for California" and its companion study "Financing Options for Water-Related Infrastructure in California." Rosenberg was involved, as well, in the recent establishment of the Bay Area Water Policy Forum, a joint effort by the Bay Area Economic Forum, the Bay Area Council, and the Association of Bay Area Governments, to explore water issues that specifically affect the San Francisco Bay Area. In his honor, Bank of America and the University of California have recently established the Rosenberg International Forum on Water Policy, which will focus on reducing water-related conflicts while encouraging environmental protection and economic growth.

In 1994, however, it became apparent that attitudes were shifting. With the specter of the federal government imposing water quality and flow standards for the Bay-Delta looming, the various interest groups and state and federal agencies engaged in cooperative efforts to develop standards that would be widely acceptable and that would keep California water policy decisions based in California. The resulting Bay-Delta Accord was both a milestone and a clear indication that a new era in California water politics had arrived.

Long concerned about the state's growing water problems, the business community recognized that a window of opportunity was opening. If consensus-building could bring about broad-based agreement on Bay-Delta standards, perhaps the time was right to address other water challenges in a similar fashion. The state Chamber of Commerce, the California Farm Bureau Federation, and the California Manufacturers Association all accepted the Business Roundtable's invitation to work cooperatively on improving the state's market for voluntary water transfers. This unprecedented coalition of statewide agricultural and business groups initiated and carried out over a period of 18 months an evaluation of existing water marketing statutes and the development of draft legislation by a panel of academics with expertise in the field. Committed to the most inclusive process possible, the sponsoring organizations invited several interest groups to assemble broad-based focus groups to provide input on the academic draft. The resulting Model Water Transfer Act for California represents both the best thinking in the state and the serious deliberations and discussion by representatives of virtually every category of water user in the state.

As the Model Act is shepherded through the legislative process (it has already been introduced as Preprint Senate Bill 15 by Jim Costa, Dem.-Fresno), no doubt some changes will be made. The sponsors believe, however, that the Model Act is an excellent proposal that should enjoy a high likelihood of approval.

The real significance of the Model Water Transfer Act for California is not just that it represents the best thinking of water policy experts, but that it also represents the consensus of so many interest groups throughout the state. The sponsoring organizations hope that their effort will prove to be a model process for developing legislation as well as a model act.