

1996

## A Model Water Transfer Act for California

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### Recommended Citation

Brian E. Gray, *A Model Water Transfer Act for California*, 4 *Hastings W.-Nw. J. Envtl. L. & Pol'y* 3 (1996).

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## **A Model Water Transfer Act for California**

*Text of Proposed Statute*

### **PART A: PURPOSES AND POLICIES**

#### **Section 101. Declaration of Policies.**

The Legislature hereby declares that voluntary transfers of water are an integral part of water resources management and planning in this State. Voluntary water transfers improve the administration of California's existing water resources by increasing the flexibility of water supply and allocation, particularly during droughts and other water shortages.

The Legislature also declares that short-term and long-term water transfers are in the public interest and promote the purposes of Article X, Section 2 of the California Constitution. Water transfers serve the public interest by creating economic incentives to use water more efficiently and by allowing market processes to direct the distribution of developed water supplies.

The Legislature further declares that the recognition and protection of water rights are in the public interest and are necessary to facilitate voluntary transfers of water in California.

The Legislature recognizes that some water transfers may adversely affect a variety of third-parties, including other water right holders, other lawful water users, local water agencies, cities and counties, and other persons who use the State's water resources for their livelihood, recreation, and aesthetic enjoyment. To the extent that water transfers cause injury to other water users, water quality, fish and wildlife, other instream uses of water, groundwater resources, and the regional economies of areas from which water is transferred, these third-party interests must be appropriately protected or compensated.

The Legislature also recognizes that federal, state, and local water agencies exercise significant control over the distribution of water in California. The Legislature therefore further declares that such agencies should assist their members and customers who seek to transfer water and, subject to terms and conditions that protect the water supply obligations of the agencies, should make available their water transportation and distribution facilities to facilitate voluntary water transfers.

The Legislature finally declares that a variety of other institutional changes are required to encourage the voluntary transfer of water. These changes include revision of the law governing the State Water Resources Control Board's review of water transfers within its statutory jurisdiction, authorization of expedited transfers of conserved and salvaged water, improvement of the processes for transferring water to instream uses, authorization of regional water banks, and

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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clarification of the relationship between the water transfer laws and the California Environmental Quality Act.

**Section 102. Purposes.**

In accordance with the policies set forth in section 101, the Legislature hereby enacts a comprehensive set of laws to govern voluntary transfers of surface water and to protect the legitimate interests of others who may be affected by such transfers. The purposes of this Act include the following:

- a. Establishment of a unified code to govern voluntary transfers of surface water and voluntary changes in surface water rights;
- b. Authorization of short-term and long-term water transfer agreements as voluntarily agreed to by the parties and subject to the requirements of this Act;
- c. Revision of the standards governing transfers of water within or through the Sacramento-San Joaquin Delta;
- d. Clarification of rules applicable to the conjunctive use of groundwater to replace transferred surface water;
- e. Amendment of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, to exempt water transfer negotiations and certain water transfers from its provisions;
- f. Protection of water rights during the term, and after the conclusion, of water transfer agreements;
- g. Creation of economic incentives for, and legal protection of, water conservation and efficient use of developed water resources;
- h. Prevention of harm to third-party water rights holders and other legal water users from voluntary water transfers;
- i. Protection of groundwater resources, instream uses, fish and wildlife, and other environmental resources that may be adversely affected by voluntary water transfers;
- j. Establishment of economic and legal incentives to encourage voluntary water transfers that are unlikely to cause significant adverse environmental and economic harm to third-parties;
- k. Creation of an expedited process for transfers of conserved and salvaged water;
- l. Creation of a security system to provide for the monetary compensation of legal water users and other third-party interests injured by expedited transfers of conserved and salvaged water undertaken pursuant to this Act;
- m. Authorization of transfers of water to instream uses;
- n. Enactment of a water transfer fee to provide funding for the State Water Resources Control Board's review of voluntary water transfers within its statutory jurisdiction;
- o. Recognition and definition of the respective rights of local water agencies and their members and customers to transfer water and to receive transferred water;
- p. Revisions of the laws governing the transport of water through water supply facilities owned or operated by an entity other than the owner of the transported water;
- q. Authorization for the creation of a State Water Bank and local and regional water banks; and

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**West • Northwest, Vol. 14, No. 1, Winter 2008**

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- r. Establishment of a registry of water transfers to be administered or supervised by the State Water Resources Control Board.

**Section 103. Title.**

This Act shall be titled the "California Water Transfer Act."

**PART B: GENERAL AUTHORITY****Section 201. Coverage of the Act and Definitions.**

The provisions of this Act shall apply to: (1) voluntary changes in surface water rights that do not involve a transfer of water from the existing water right holder to another user; (2) voluntary changes in surface water rights that do involve a transfer of water from the existing water right holder to another user; and (3) voluntary transfers of water that do not require a change in water rights.

All references in this Act to "water transfers" or to "transfers of water" shall include voluntary changes in surface water rights, voluntary transfers of surface water rights, and voluntary transfers of water. Water transfers include transfers of water held pursuant to a surface water right, water held pursuant to a contract right, and water distributed by any local water supply agency.

The provisions of this Act shall not apply to changes in pueblo rights or transfers of water based on pueblo rights. Except as set forth in section 207, the provisions of this Act shall not apply to changes in riparian rights or transfers of surface water based on riparian rights. Except as set forth in section 208, the provisions of this Act shall not apply to changes in groundwater rights or to transfers of groundwater.

**Section 202. Authorization of Water Transfers.**

Notwithstanding any other provision of law, surface water rights and surface water (as set forth in section 201) may be transferred in accordance with the provisions of this Act.

**Section 203. Agreements to Transfer Water.**

Agreements to transfer water may include purchase and sales contracts, deeds, leases, exchange agreements, options, futures contracts, subordination agreements, gifts, agreements to forego the use of water, and other types of arrangements to transfer water that are mutually agreeable to the parties.

**Section 204. Short-Term and Long-Term Water Transfers.**

Short-term proposals or agreements to transfer water are proposals or agreements the term of which is two years or less. Long-term proposals or agreements to transfer water are proposals or agreements the term of which is greater than two years. Long-term proposals and agreements include permanent changes in water rights and permanent transfers of water.

If a water right holder or water transferor enters into successive short-term agreements with the same party (or agents, representatives, subcontractors,

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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assignees, or beneficiaries of the same party), and such successive agreements have commencement dates within one year of each other and result in the transfer of water for a term in excess of two years, the agreements shall be regarded as a long-term agreement and the provision of this Act governing long-term agreements shall apply to the second agreement and any successive agreements.

**Section 205. Compliance With Other Laws.**

Throughout the term of all water transfer agreements, the parties to the agreement shall comply with all requirements of federal law and state law where applicable, including but not limited to: Article X, Section 2 of the California Constitution; sections 1410-1418 of the California Civil Code; other provisions of this Code; terms and conditions imposed by permit or license administered by the State Water Resources Control Board; and other judicial and administrative decisions respecting water rights, water quality, and other beneficial uses

**Section 206. Through Delta Transfers.**

No transfer of water within or through the Sacramento-San Joaquin Delta (as defined in section 12220 of this Code) shall cause a violation of the water quality standards (including flow requirements and temperature standards) applicable to the Delta as established under state and federal law. Within one hundred eighty days of the effective date of this Act, the State Water Resources Control Board shall promulgate regulations to implement this section. Following the promulgation of these regulations, all transfers of water shall be consistent with the regulations, and compliance with the regulations shall be deemed compliance with this section.

In the rulemaking proceedings required by this section, the Board shall determine whether transfers of water within or through the Sacramento-San Joaquin Delta should be accompanied by an additional amount of carriage water to ensure that such transfers do not cause a violation of applicable water quality standards. If the Board determines that additional carriage water is required, it shall include in the regulations a table that states the additional amount of carriage water that must accompany each transfer of water within or through the Delta for various hydrologic conditions and types of transfers.

The Board shall consult with the California Department of Water Resources, the California Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the United States Environmental Protection Agency before promulgating the draft of the regulations required by this section. The Board also shall submit the draft regulations to academic experts in the fields of hydrology, marine biology, water supply engineering, water quality, water rights, and related disciplines for peer review and comment before the Board promulgates final regulations.

**Section 207. Transfers of Quantified Riparian Rights and Agreements to Forego the Use of Water Held Pursuant to Riparian Rights.**

Riparian rights that have been quantified by judicial decree issued pursuant to Chapter 3 (commencing with section 2500) of Part 3 of this Code, and water held pursuant to such decreed rights, may be transferred in accordance with Parts D, E, and F of this Act. The court may enter a supplemental decree as necessary to modify the original decree to incorporate the transfer of water pursuant to this section.

Nothing in this Act or any other law shall preclude any agreement to forego the use of water held pursuant to riparian rights for any period established by the agreement.

**Section 208. Surface Water Transfers and Groundwater Replacement.**

Transferors of surface water from groundwater basins subject to critical conditions of overdraft, as designated by the Department of Water Resources in the Bulletin 118 Series, shall not initiate or increase the use of groundwater to replace the transferred surface water if the surface water is exported for use outside the overdrafted groundwater basin. This prohibition shall not apply to the use of groundwater stored for the purpose of subsequent extraction for surface water replacement or direct transfer as part of a groundwater banking program carried out by direct recharge, delivery of surface water in lieu of groundwater pumping, or by other means.

Transferors of surface water from groundwater basins that are not subject to critical conditions of overdraft, as designated by the Department of Water Resources in the Bulletin 118 Series, may not initiate or increase the use of groundwater to replace the transferred surface water except in compliance with the following requirements:

1. The transferor has legal authority to use groundwater and such use does not exceed the transferor's groundwater rights under state and local law.
2. The transferor's use of groundwater is consistent with all valid laws that govern the extraction, appropriation, and use of groundwater, including groundwater management statutes, local groundwater management plans adopted pursuant to sections 10750 through 10755.4 of this Code, city or county ordinances, judicial decisions and decrees governing the extraction and use of groundwater, and the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.
3. The transferor's use of groundwater does not cause the long-term operating safe yield of the groundwater basin to be exceeded.

The absence of a local groundwater management plan or city or county ordinance governing groundwater shall not preclude the use of groundwater to replace transferred surface water in accordance with the terms of this section.

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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**Section 209. California Environmental Quality Act.**

The provisions of Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to short-term agreements or proposals to transfer water.

For other agreements and proposals to transfer water, the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code shall be applicable only to the decision by a public agency whether to approve, to amend, to renew, or to rescind a long-term transfer. The provisions of Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to the consideration, negotiation, or execution of agreements or proposals to transfer water or to the payment of monetary or other consideration related to such agreements or proposals. The provisions of Division 13 (commencing with Section 21000) of the Public Resources Code also shall not apply to the termination of long-term agreements to transfer water at the conclusion of the term of such agreements.

**PART C: PROTECTION OF WATER RIGHTS****Section 301. Protection of the Rights of the Transferor.**

The offer of water for transfer, the transfer negotiations, and the agreement to transfer water shall not be used as evidence of the transferor's waste or unreasonable use, or cessation of use, of the water or water rights made available for transfer. Nor shall the transfer of water cause, or be the basis of, a forfeiture or abandonment of any water rights, contract rights, or other right to use water.

**Section 302. Protection of Water Rights During Transfer.**

Throughout the term of all water transfer agreements, compliance with Article X, Section 2 of the California Constitution, sections 100 through 101, 1410 and 1675 of this Code, and any other legislative, administrative, or judicial limitation on water rights shall be determined based on an assessment of the reasonableness of the transferee's use of the transferred water.

Except for permanent transfers of water or water rights, if the transferee's right to use transferred water is reduced or divested on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use, the reduced or divested rights shall revert immediately to the transferor. In the case of permanent transfers of water or water rights that are reduced or divested on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use, the forfeited rights shall be extinguished.

**Section 303. Protection of Water Rights After Transfer**

Except for permanent transfers of water or water rights, at the conclusion of the term of a water transfer agreement, all rights in, and to the use of, the water subject to the transfer agreement shall revert back to the transferor. Following the conclusion of the term of a water transfer agreement, neither the transferee nor any other beneficiary of the transfer may bring any claim for a continuation of the

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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water supply made available by the transfer agreement. Nor may the transferee or any beneficiary of the transfer claim any right to a continued supply of water based on reliance, estoppel, intervening public use, water shortage emergency, unforeseen or unforeseeable increases in demand, or any other cause.

**Section 304. Water Conservation.**

The conservation, salvage, or other reduction in the use of water for the purpose of transferring the amount so conserved, salvaged, or reduced shall be deemed a reasonable and beneficial use of water.

**PART D: GENERAL STANDARDS AND PROCEDURES GOVERNING TRANSFERS OF WATER****Section 401. Coverage.**

Except for Expedited Transfers of Conserved Water pursuant to Part E, all transfers of water governed by this Act shall comply with the standards and procedures set forth in this Part.

**Section 402. Jurisdiction of the State Water Resources Control Board.**

The State Water Resources Control Board shall have jurisdiction over transfers of water appropriated pursuant to water rights acquired under authority of the Water Commission Act or this Code and over transfers of water held pursuant to riparian rights that have been quantified by judicial decree issued pursuant to Chapter 3 (commencing with section 2500) of Part 3 of this Code, where the transfer requires an alteration of the purpose of use, place of use, point of diversion, point of return flow, or any other term or condition of the water right as set forth in the applicable permit, license, or decree.

The Board shall not have jurisdiction over any other transfers of water unless the water right holder requests the Board to exercise jurisdiction pursuant to sections 403 and 404.

The State Water Resources Control Board shall review proposals to transfer water over which it has jurisdiction pursuant to the authority granted by this section in accordance with the procedures and standards set forth in sections 403 and 404. All other transfers of water governed by this Part shall comply with the standards and procedures set forth in section 405.

**Section 403. Procedures for Review by the State Water Resources Control Board of Petitions to Transfer Water.**

The State Water Resources Control Board shall review proposals to transfer water in accordance with the procedures set forth in this section

All petitions to transfer water shall be filed by the water right holder. If the proposed change or transfer is for the benefit of a contractor or user supplied directly or indirectly by the water right holder, the water right holder may authorize the contractor or user to participate as co-petitioner. The water right holder shall

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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notify the Board in the petition of all co-petitioners. Co-petitioners shall have the same rights and responsibilities under this section as the petitioner.

- a. Petition.** A water right holder who seeks to transfer water shall submit to the Board a petition to change the terms of the permit, license, or decreed right as required to accomplish the proposed transfer. The petition shall include a written explanation of the changes in water storage, timing and point of diversion, place and purpose of use, timing and point of return flow, and water quality or instream flows that are likely to occur as a result of the proposed transfer. Where applicable, the petition shall be accompanied by a copy of the water transfer agreement. The petitioner may omit the financial terms of the agreement from its submission to the Board. The petitioner shall provide copies of these documents to the California Department of Fish and Game and to the Supervisors of the county or counties in which the petitioner currently stores or uses the water subject to the petition.
- b. Notice.** Within ten days of submission of the petition to the Board, the petitioner shall cause to be published in at least one newspaper of general circulation in the county or counties in which the petitioner currently stores or uses the water subject to the petition a notice of the petition and a brief description of the terms of the proposed water transfer. The Board shall publish general notice of the submission of the petition and of all subsequent actions taken on the petition. The Board may impose other reasonable notice requirements on the petitioner.
- c. Investigation.** Within ten days of receipt of the petition, the Board shall begin an investigation of the proposed water transfer. The Board shall determine and evaluate the changes in water storage, timing and point of diversion, place and purpose of use, timing and point of return flow, and water quality or instream flows that would be likely to occur as a result of the proposal.
- d. Protests.** Water users that may be affected by the proposed water transfer and other interested parties may file written protests with the Board. Protests shall be filed no later than thirty days after publication of the notice required by subsection (b). Copies of the protest and supporting documentation shall be served on the petitioner, the California Department of Fish and Game, the Board of Supervisors of the county or counties described in subsection (a), and the proposed transferee.
- e. Analysis.** For petitions that involve a short-term proposal or agreement to transfer water, the Board shall complete its investigation and prepare a written analysis of the proposed transfer no later than thirty days after commencement of the investigation. For petitions that involve a long-term proposal or agreement to transfer water, the Board shall complete its investigation and prepare a written analysis of the proposed transfer no later than ninety days after the commencement of the investigation. For good cause, the Board may extend these time periods for no more than thirty days. Upon completion of the analysis of the proposal, the Board shall provide copies of the analysis to the petitioner, the California Department of Fish and Game, the Board of Supervisors of the county or

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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counties described in subsection (a), the proposed transferee, and any party who has filed a written protest.

- f. Response.** The Board shall grant the petitioner, the California Department of Fish and Game, the Board of Supervisors of the county or counties described in subsection (a), the proposed transferee, and any party who has filed a written protest an opportunity to respond in writing to the Board's analysis of the proposed water transfer. All written responses shall be submitted to the Board no later than twenty days after receipt of the Board's analysis.
- g. Hearing.** The Board shall conduct a hearing on all petitions that involve a long-term proposal or agreement to transfer water within thirty days of completion of its analysis of the proposal. The Board shall provide individual notice to the petitioner, the California Department of Fish and Game, the Board of Supervisors of the county or counties described in subsection (a), the proposed transferee, and any party who has filed a written protest of the time and place of the hearing. If no protest was filed within the thirty days set forth in subsection (d), and if the petitioner waives its right to a hearing, the Board may act on the petition without a hearing.
- h. Decision.** For petitions that involve a short-term proposal or agreement to transfer water, the Board shall render a decision on the petition, without a hearing, no later than twenty days after receipt of the last timely filed written response. For petitions that involve a long-term proposal or agreement to transfer water, the Board shall render a decision on the petition no later than thirty days after the conclusion of the hearing, or no later than thirty days after receipt of the last written response if there is no hearing. The petitioner may stipulate to an extension of the time for decision.

The Board shall grant the petition unless it determines, based on the evidence, that the proposed water transfer would not comply with the requirements of section 404. The Board may grant the petition subject to conditions imposed by the Board to ensure compliance with the requirements of section 404. If the Board grants the petition, it shall amend the terms and conditions of the permit, license, or decreed right as necessary to accomplish the water transfer.

The Board shall explain its decision in writing and shall serve copies of the decision on the petitioner, the Department of Fish and Game, the Board of Supervisors of the county or counties described in subsection (a), the proposed transferee, and any party who has filed a written protest.

- i. Judicial Review.** The petitioner, the proposed transferee, and any party who has filed a written protest in accordance with the requirements of this section may petition the Superior Court for a writ of mandate to review a decision of the Board rendered pursuant to this section and section 404. The petition for writ of mandate shall be filed no later than thirty days after receipt of the decision of the Board. Venue shall be in the County of Sacramento and in the county or counties in which the water that is the subject of the transfer petition is currently stored or used. The Superior Court shall review the decision of the Board pursuant to the requirements of section 1094.5 of the Code of Civil Procedure, except that in all cases the court

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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shall sit without a jury and shall review the decision of the Board under the substantial evidence standard set forth in subsection 1094.5(c).

- j. **Limitation on Damages.** Except as required by the California Constitution or by the Constitution of the United States, the courts shall have no authority to award damages or other monetary relief to the petitioner, the proposed transferee, or any other party alleged to be injured or aggrieved by a decision of the Board to deny, to grant, or to place conditions on a petition to transfer water pursuant to this section.

**Section 404. Standards for Review by the State Water Resources Control Board of Petitions to Transfer Water.**

The State Water Resources Control Board shall review petitions to transfer water according to the standards set forth in this section.

- a. **Short-Term Water Transfer Agreements.** For short-term water transfers, the Board shall approve the petition unless it concludes that the proposed transfer:
- (1) would result in significant injury to any legal user of water; or
  - (2) would unreasonably affect fish, wildlife, or other instream beneficial uses.

The petitioner shall have the burden of producing prima facie evidence that the proposed transfer would comply with the standards set forth in this subsection. The establishment of a prima facie case shall shift the burden of proof to those parties (if any) that have filed protests in accordance with the requirements of section 403 to prove that the proposed transfer would not comply with the standards set forth in this subsection. The standard of proof shall be by a preponderance of the evidence.

- b. **Long-Term Water Transfer Agreements.** For long-term water transfers, the Board may approve the petition only if it concludes that the proposed transfer:
- (1) would not result in significant injury to any legal user of water and
  - (2) would not unreasonably affect fish, wildlife, or other instream beneficial uses.

The petitioner shall have the burden of proving that the proposed transfer would comply with the standards set forth in this subsection. The standard of proof shall be by a preponderance of the evidence.

- c. **Long-Term Agreements Based on Land-Fallowing or Retirement.** The Board may not approve a petition for a long-term water transfer based on the fallowing or retirement of previously irrigated land if it concludes that the proposed transfer would cause substantial harm to the economy in the area from which the water is to be transferred. The prohibition set forth in this subsection is in addition to the standards governing long-term transfers set forth in subsection (b).

In determining whether a proposed water transfer would violate the prohibition set forth in this subsection, the Board shall consider any actions that the petitioner or other parties to the transfer agreement have taken to mitigate harm to the economy in the area from which the water is to be transferred.

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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The petitioner shall have the burden of proving that the proposed transfer would comply with the standards set forth in this subsection. The standard of proof shall be by a preponderance of the evidence.

This subsection shall apply only to long-term water transfers that: (1) would obtain water for transfer by fallowing or retirement of land previously used for agricultural purposes; and (2) would change the place of use or transfer the water to uses outside the county or counties in which the water previously has been used.

This subsection shall not apply to long-term water transfers based on the fallowing or retirement of previously irrigated land within the San Joaquin Valley Drainage Program study area—as defined in U.S. Department of the Interior & California Resources Agency, A Management Plan for Agricultural Subsurface Drainage on the Westside of the San Joaquin Valley: Final Report of the San Joaquin Valley Drainage Program (1990)—that the Board concludes would contribute to the reduction of agricultural drainage that adversely affects surface water or groundwater quality.

- d. Transfers of Water Based on Consumptive Use or Irretrievable Loss.** To the extent that any petition to transfer water includes water that, in the absence of the change or transfer, would be consumed by the petitioner in applying the water to reasonable and beneficial uses or would have been irretrievably lost to all beneficial uses, the Board shall calculate the quantity of such water in accordance with the standards set forth in section 503. The Board shall apply a rebuttable presumption as to the water so quantified that the transfer would not result in significant injury to any legal user of water or unreasonably affect fish, wildlife, or other instream beneficial uses.

The burden of proving that a transfer of water quantified pursuant to this subsection and section 503 would result in significant injury to any legal user of water or unreasonably affect fish, wildlife, or other instream beneficial uses shall be on those parties (if any) that have filed protests in accordance with the procedural requirements set forth in section 403. The standard of proof shall be by a preponderance of the evidence.

This subsection shall apply only at the option of the petitioner.

- e. Compliance With Permits and Licenses.** If the Board determines that both the release of water for transfer and the diversion or redirection of the transferred water would comply with the terms and conditions of existing permits and licenses that protect other legal water users, fish, wildlife, and other instream beneficial uses affected by the appropriation and use of the water that is the subject of the petition, the proposed transfer shall be deemed to comply with the requirements of subsections (a) and (b).
- f. Causation.** In applying the third-party protection standards set forth in this section, the Board shall consider only the effects of the proposed transfer of water on such third-party interests. The Board shall not deny a petition to transfer water in order to protect third-parties from injury caused by factors other than the proposed water transfer. Nor shall the Board impose any conditions on its approval of a water transfer petition to mitigate adverse

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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effects on fish, wildlife, or other instream beneficial uses, or to mitigate harm to the economy in the area from which the water is to be transferred, that would be caused by factors other than the proposed water transfer.

As used in this subsection, "factors other than the proposed water transfer" include, but are not limited to: drought or other water shortages; changes in the operation of water facilities not controlled by the petitioner or the other parties to the change in water rights or water transfer agreement; changes in river flows, groundwater extraction, or groundwater recharge not related to the proposed change in water right or water transfer; changes in commodities prices, cost of goods and services, or labor costs; changes in the general economic conditions of the region; and other hydrologic and economic conditions not related to the proposed water transfer.

- g. Proof of Water Rights.** In all cases, the petitioner shall have the burden of proving by a preponderance of the evidence that it has valid water rights to the water included in the petition to transfer water.

**Section 405. Transfers of Water Not Subject to the Jurisdiction of the State Water Resources Control Board.**

Transfers of water that are not subject to the jurisdiction of the State Water Resources Control Board as defined in section 402 shall comply with the procedures set forth in this section. This section shall not apply to transfers of water within a local water agency.

- a. Notice.** If the water transfer will alter the purpose of use, place of use, point of diversion, or point of return flow from that of the existing use, the water right holder or transferor shall:
- (1) submit to the State Water Resources Control Board a brief description of the proposed water transfer and a written explanation of the changes in water storage, timing and point of diversion, place and purpose of use, consumption, timing and point of return flow, and any changes in water quality or instream flows that are likely to occur as a result of of the transfer; and
  - (2) provide a copy of the foregoing to the California Department of Fish and Game and to the Supervisors of the county or counties in which the water right holder or transferor currently stores or uses the water subject to the proposal.
- b. Effective Date.** The water transfer shall not become effective until the water right holder or transferor has complied with the notice requirements of subsection (a).
- c. Compliance With Other Laws.** Nothing in this section shall be construed to alter any other law that may be applicable to changes in water rights or transfers of water described in this section. This section shall not be construed to expand the jurisdiction of the State Water Resources Control Board over such changes in water rights or transfers of water except as provided by this section. Nor shall this section be construed to limit the jurisdiction of the courts to review changes in water rights or transfers of water.

**Section 406. Optional Use of Expedited Transfer Procedures**

If a petition to transfer water pursuant to this Part includes conserved water as defined in section 501, the petitioner may transfer such water in accordance with the standards and procedures governing expedited transfers of conserved water set forth in Part E. In such a case, the portion of the petition that pertains to the conserved water shall be governed by the requirements of Part E, and the remainder of the petition shall be governed by the requirements of this Part.

**PART E: STANDARDS AND PROCEDURES FOR EXPEDITED TRANSFERS OF CONSERVED WATER****Section 501. Definition of Conserved Water.**

Except as set forth in section 507, a water user who seeks to transfer "conserved water" may use the expedited procedures and standards set forth in this Part.

"Conserved water" is water that: (1) the transferor is legally entitled to use during the term of the transfer agreement pursuant to existing water rights, contracts, or other legal authority; and (2) the transferor has used within the five years immediately preceding the transfer agreement. Conserved water includes, but is not limited to: water that the transferor conserves through salvage of water irretrievably lost to all consumptive uses during storage, transportation, or distribution; increased efficiency of irrigation or other use; changes in the acreage or type of crop irrigated; land fallowing or retirement; changes in operations; reduction in demand within the transferor's place of use or service area; substitution of reclaimed or recycled water; pricing changes; and other conservation measures.

**Section 502. Transfers of Conserved Water.**

Transfers of conserved water shall not exceed, for any water accounting year during the term of the transfer, the lesser of: (1) the amount of water that is both legally and physically available to the transferor during the water year; or (2) the average annual quantity of water consumed by the transferor, or irretrievably lost to all consumptive uses, during the ten water years immediately preceding the transfer.

**Section 503. Quantification of Transferable Water.**

The quantity of water that may be transferred pursuant to the expedited procedures set forth in the Part shall be calculated in accordance with the following standards:

- a. **Changes in Acreage or Type of Crop Irrigated.** For water made available for transfer by changes in the acreage or type of crop irrigated by the transferor or by land fallowing or retirement, the "average annual quantity of water consumed by the transferor" as set forth in section 502 shall be calculated by reference to the "Water Consumption Table for California Agriculture" promulgated by the Department of Water Resources. Actual consumption data shall not be used to calculate the quantity of conserved irrigation water made available for transfer pursuant to this subsection.

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**West & Northwest, Vol. 14, No. 1, Winter 2008**

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1. The Department shall promulgate a rule that sets forth the "Water Consumption Table for California Agriculture." The Department shall promulgate the Table within one year of the effective date of this Act and shall revise the Table whenever necessary to more accurately calculate water consumption by irrigated agriculture in any hydrologic region included in the Table.
  2. The Department shall include in the "Water Consumption Table for California Agriculture" a calculation of the water consumed in the irrigation and growth of each crop grown in California. The Department shall publish such water consumption data for each hydrologic region (as defined in Department of Water Resources Bulletin 160-93).
- b. Changes in Efficiency of Water Use.** For water made available for transfer by the salvage of water irretrievably lost to all consumptive uses, use of reclaimed or recycled water, pricing changes, reduction in demand, or other methods of conservation, the "average annual quantity of water consumed by the transferor" shall be calculated by reference to actual water consumption or water loss data.

**Section 504. Notice of Intent to Transfer and Verification of Transferable Quantities.**

All notices of intent to transfer conserved water on an expedited basis shall be filed by the water right holder in accordance with the procedures set forth in this section. If the proposed transfer is for the benefit of a contractor or user supplied directly or indirectly by the water right holder, the water right holder may authorize the contractor or user to participate as co-transferor. The water right holder shall notify the Board in the petition of all co-transferors. Co-transferors shall have the same rights and responsibilities under this section as the water right holder.

- a. Notice.** The transferor shall submit to the State Water Resources Control Board a copy of the water transfer agreement and a written explanation of the changes in water storage, timing and point of diversion, place and purpose of use, timing and point of return flow, and any changes in water quality or instream flows that are likely to occur as a result of the agreement. The transferor shall provide copies of these documents to the California Department of Fish and Game and to the County Supervisors of the county or counties from which the water will be transferred. The transferor also shall cause to be published in at least one newspaper of general circulation in the county or counties from which the water will be transferred a notice of the proposed transfer and a brief description of the terms thereof.

The Board shall publish general notice of the submission of the transfer proposal and of all subsequent actions taken on the proposal.

- b. Verification.** The transferor shall submit to the State Water Resources Control Board a declaration under penalty of perjury that explains the method of conservation and the transferor's calculation of the conserved water made available for transfer. The declaration shall include a verification that such calculations are accurate and consistent with the requirements of this Part. For

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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transfers of conserved water from irrigation, the declaration also shall describe the land from which the water was conserved, the acreage subject to the transfer agreement, and the types of crops irrigated by the transferor on the land that is subject to the transfer agreement before and during the term of the agreement.

- c. Comments.** Any interested party may submit written comments regarding the transfer proposal to the State Water Resources Control Board.
- d. Review.** Within thirty days of receipt of the declaration set forth in subsection (b), the Board shall review the transferor's calculation of the quantity of conserved water available for transfer. The Board shall approve the transferor's calculations if they are accurate and conform to the requirements of this Part. The Board shall set forth its findings and conclusions in a brief memorandum, which the Board shall serve on the transferor. If the Board rejects any of the transferor's calculations, the Board shall state (to the extent feasible) its determination of the correct calculations and the quantity of conserved water that in its judgment is available for transfer.
- e. Certificate of Transfer.** If the Board approves the transferor's calculations, or if the transferor accepts the Board's calculations, the Board shall issue a "Certificate of Transfer" to the transferor. The Certificate of Transfer provides full legal authorization for the transfer. Where applicable, the Board shall amend the transferor's and transferee's permits or licenses as required to accomplish the transfer.
- f. Approval by Default.** If the Board fails to act on the transferor's declaration within thirty days of receipt, the transferor's calculation of the quantity of conserved water available for transfer shall be deemed approved. Upon request of the transferor, the Board shall immediately issue a Certificate of Transfer based on the transferor's calculation of the quantity of conserved water available for transfer.
- g. Notice of Decision.** The Board shall explain its decision to grant or to deny a Certificate of Transfer in writing and shall provide copies of the decision to the transferor, the Department of Fish and Game, the Board of Supervisors of the county or counties described in subsection (a), the proposed transferee, and any party who has filed a written comment pursuant to subsection (c).
- h. Judicial Review.** The transferor may petition the Superior Court for a writ of mandate to review a decision of the Board rendered pursuant to this section. The petition for writ of mandate shall be filed no later than thirty days after receipt of the decision of the Board. Venue shall be in the County of Sacramento and in the county or counties in which the water that is proposed for transfer is currently stored or used. The Superior Court shall review the decision of the Board pursuant to the requirements of section 1094.5 of the Code of Civil Procedure, except that in all cases the court shall sit without a jury and shall review the decision of the Board under the substantial evidence standard set forth in subsection 1094.5(c).

Except as required by the California Constitution or by the Constitution of the United States, the courts shall have no authority to award damages or

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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other monetary relief to the transferor or to any other party alleged to be injured or aggrieved by a decision of the Board pursuant to this section.

- i. **Limitation on Collateral Challenge.** Except as provided in subsection (h), the courts shall have no authority to review a decision of the Board rendered pursuant to this Part. Nor shall the courts have authority to award damages or other monetary relief to any party alleged to be injured or aggrieved by a decision of the Board pursuant to this section. A legal water user who is alleged to be injured or aggrieved by a decision of the Board pursuant to this section may file a claim for monetary compensation in accordance with the standards and procedures set forth in section 506.
- j. **Determination of Water Rights.** Neither the Board's approval of a transferor's calculation of conserved water available for transfer, nor the issuance of a Certificate of Transfer pursuant to subsections (e) or (f) shall constitute a determination or quantification of the water rights of the transferor or of the rights to use water by the transferor or any other person, except for the purpose of authorizing the transfer of conserved water pursuant to this section.

**Section 505. Security.**

- a. **Coverage.** Except as provided in subsection (b), every person or entity that acquires water transferred pursuant to this Part shall deposit with the State Water Resources Control Board a security in the amount of five dollars (\$5.00) per acre foot of transferred water. The security required by this section shall be in the form of a cash deposit, money order, certified check, or bond payable to the State Water Resources Control Board.
- b. **Exemptions.** If the transfer includes a Delta carriage water requirement imposed by the Board pursuant to section 206, the transferee may exclude this water from its calculation of the amount of the security required by this section. Transfers of water between users located in the same local water agency also are exempt from the requirements of this section.
- c. **Management of Security Deposits.** The transferee shall deposit the security with the Board at least ten days before the date on which the physical transfer of water commences. The Board shall hold the security deposited for each transfer in a separate account and shall not commingle the security deposits from one transfer with the security deposits from other transfers.

The California Treasurer shall invest the money in each account in a prudent manner that (1) does not place the principal in the fund at risk and (2) provides adequate liquidity to pay claims or to discharge the security in accordance with section 506.

- d. **Price Adjustment.** The Board annually shall adjust the amount of the security required by this section based on changes in the Consumer Price Index published by the United States Department of Commerce. The Board also shall have authority by regulation to adjust the amount of the security requirements if it determines that these requirements will generate insufficient or excess funds to provide fair compensation to third-party claimants under

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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section 506. The Board shall have sole discretion to adjust the amount of the security requirements set forth in this section.

- e. Restriction on Expenditures.** The proceeds of security deposited with the Board pursuant to this section shall be used exclusively for the purposes set forth in this Part. These funds shall not be part of the general budget of the State and shall not be impounded or used to meet general State obligations.

**Section 506. Claims for Compensation.**

Third-parties alleged to be injured by expedited transfers of conserved water authorized by this Part may file claims for compensation in accordance with the procedures and standards set forth in this section. The compensation system established by this section shall not apply to transfers of water between users located in the same local water agency.

- a. Eligibility.** The California Department of Fish and Game, the county or counties from which water is transferred, and any legal water user who is alleged to be injured by an expedited transfer of conserved water may file a claim for compensation.
- b. Compensable Injuries.** Injuries that are compensable under this section are limited as follows:
1. The California Department of Fish and Game may seek compensation for reduction in water quantity or flows and diminution in water quality caused by the transfer that adversely affect fish and wildlife, recreation, other instream uses, aquatic and riparian habitat, or wetlands.
  2. The county or counties from which water is transferred may seek compensation for loss of tax revenues and increased social services costs caused by the transfer.
  3. Other legal water users may seek compensation for reduction in the supply of water that the claimant is legally entitled to use, diminution in water quality that adversely affects the claimant's water use, and increased pumping costs caused by the transfer.
- c. Procedures.** Except as provided in this section, arbitration of disputes under this Part shall be conducted pursuant to the provisions of sections 1280, 1280.1, 1281.9, 1282(e), and 1282 through 1284.2 of the Code of Civil Procedure.
1. The claimant shall file a claim with the State Water Resources Control Board and serve copies of the claim on parties to the transfer, the California Department of Fish and Game, the Supervisors of the county or counties from which the water is transferred, and other parties designated by the Board.
  2. The claimant shall publish notice of the filing of the claim, along with a brief description of the nature and legal basis of the claim and the amount of damages the claimant seeks, in at least one newspaper of general circulation in the counties from which and to which the water is transferred.
  3. The Board shall publish general notice of the filing of the claim and of all subsequent actions taken on the claim.

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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4. The Board shall appoint a single neutral arbitrator to adjudicate the claim and to render a final judgment in accordance with the law and evidence.
  5. If more than one claim is filed with respect to a single transfer, the Board shall assign all such related claims to the same arbitrator. The arbitrator shall coordinate the arbitration of related claims and shall have authority to consolidate such related claims into a single arbitration.
  6. The parties to the transfer shall serve the claimant with a response to the claim within thirty days of receipt of the copy of the claim. The response shall contain an admission or denial of each element of the claim, with a brief explanation of the reasons and legal bases for each denial. The respondents also shall serve copies of the response on the arbitrator, the Board, the California Department of Fish and Game, the Supervisors of the county or counties from which the water is transferred, and other parties designated by the arbitrator or by the Board.
  7. The arbitrator may extend the time in which the respondents have to respond to the claim if the arbitrator determines that additional time is necessary to prepare the response. The arbitrator also may require the parties to file legal memoranda, motions, offers of proof, and other legal and evidentiary documents that in the arbitrator's judgment would assist the arbitrator in rendering judgment on the claim.
- d. Burden and Standard of Proof.** The burden of proof shall be on the claimant. To prevail on the merits of the claim, the claimant must establish by a preponderance of the evidence that the claimant's injuries were caused by the water transfer and not by other factors. These other factors shall include, but are not limited to: drought or other water shortages; changes in the operation of water facilities not controlled by the parties to the transfer; changes in river flows, groundwater extraction, or groundwater recharge not related to the transfer; changes in commodities prices, cost of goods and services, or labor costs; changes in the general economic conditions of the region; and other hydrologic and economic conditions not related to the transfer.
- e. Judgment and Relief.** The arbitrator shall render judgment on the claims in accordance with the evidence and the standards set forth in this section. The arbitrator shall explain the judgment in a written opinion and provide copies of the opinion and judgment to the Board, the claimant, the respondents, the California Department of Fish and Game, the Supervisors of the county or counties from which the water is transferred, and other parties designated by the arbitrator or by the Board. The arbitrator shall have no authority to provide any relief other than monetary compensation as provided by subsection (f).
- f. Compensation.** A claimant who prevails on the merits of the claim shall be entitled to monetary damages in the amount that the arbitrator determines is adequate to compensate the claimant for the injuries caused by the water transfer. The arbitrator shall not award damages in excess of the amount of the security posted by the transferee in accordance with the requirements of section 505.

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**West & Northwest, Vol. 14, No. 1, Winter 2008**

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In arbitrations involving multiple claims, if the aggregate damages exceed the amount of the security, the arbitrator shall apportion the available funds in an equitable manner among the prevailing claimants.

Compensation received by the California Department of Fish and Game shall be used by the Department for the protection, restoration, and enhancement of water quality, instream flows, fish and wildlife, aquatic and riparian habitat, wetlands, and other features of the natural environment. The Department shall give first priority to mitigation and restoration of harm to those resources caused by the water transfer that were the subject of the arbitration.

- g. Disbursement of Funds.** Following entry of judgment, the arbitrator shall collect the proceeds of the security, and any interest or income earned on the investment of the security, from the Board and shall disburse such funds in accordance with the judgment.
- h. Finality.** The judgment of the arbitrator shall be final. Except as provided in subsection (i), the courts shall have no jurisdiction to review the judgment of the arbitrator.
- i. Enforcement.** The judgment of the arbitrator shall be enforceable in court as authorized by sections 1285 through 1294.2 of the Code of Civil Procedure.
- j. Limitation on Claims.** All claims for compensation must be filed within one hundred eighty days of the date on which the alleged injury occurred.
- k. Costs and Attorneys Fees.** The reasonable fees and expenses of the arbitrator, and the other costs and attorneys fees incurred by the parties, shall be borne by the parties. As directed by the Board, the parties shall make periodic payments to the arbitrator for the reasonable fees and expenses incurred during the arbitration.
- l. Return of Security and Discharge of the Bond.** Following entry of arbitrator's judgment, the Board shall ensure the return to the transferee of all proceeds from the security, plus interest earned on investment of the security, that are not required to satisfy the judgment. If the transferee posted a bond as security, the Board shall discharge the bond after ensuring that all claimants have been paid in accordance with the judgment of the arbitrator.

If no claims are made pursuant to this section, or if a claim is withdrawn before the judgment of the arbitrator is entered, the Board shall return the security to the transferee in accordance with the following rules:

1. For short-term transfers, the security shall be returned to the transferee (or the bond discharged) one hundred eighty days after the conclusion of the short-term water transfer agreement.
2. For long-term transfers, the security shall be returned to the transferee (or the bond discharged) five years after the commencement of the first physical transfer of water pursuant to the long-term water transfer agreement.

**Section 507. Long-Term Transfers Based on Land Fallowing or Retirement.**

The provisions of this Part shall not apply to long-term agreements to transfer conserved water that (1) would obtain water for transfer by fallowing or retirement of land previously used for agricultural purposes and (2) would transfer

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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the water to uses outside the county or counties in which the water was used before the transfer occurred. Such transfers shall not be eligible for the expedited procedures set forth in this Part and instead shall be governed by the standards and procedures set forth in Part D.

**PART F: TRANSFERS OF WATER TO INSTREAM USES****Section 601. Transfers of Water to Instream Uses.**

All water right holders and other legal users of water may transfer all or a portion of their water or water rights to instream uses. Transfers of water to instream uses shall comply with the general standards and procedures governing transfers of water set forth in Part D or the standards and procedures governing expedited transfers of conserved water set forth in Part E.

For purposes of this Part, the term "instream uses" includes the restoration, protection, and enhancement of water quality, instream flows, fish and wildlife, wetlands, riparian and estuarine habitat, recreation, and other instream beneficial uses.

**Section 602. Relationship to Other Instream Protection and Water Quality Laws.**

Water that is transferred to instream uses pursuant to the authority granted in section 601 shall be in addition to all water devoted to instream uses as required by federal, state, and local regulatory requirements governing water quality, instream flows, fish and wildlife, wetlands, riparian and estuarine habitat, recreation, and other instream beneficial uses. Federal, state, and local agencies, as well as the courts, shall exclude water transferred to instream uses pursuant to section 601 from their determination of the amount of water or flows required to comply with these regulatory requirements.

The regulatory requirements described in this section include, but are not limited to, the following laws and their implementing regulations: the Clean Water Act, 33 U.S.C. §§ 1251 et seq., as amended; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., as amended; the National Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 et seq., as amended; Article X, Section 2 of the California Constitution; the California Wild and Scenic Rivers Act, Natural Resources Code §§ 5093.50 et seq., as amended; Fish and Game Code § 5937; other applicable provisions of this Code; terms and conditions imposed by permit or license administered by the State Water Resources Control Board; and other judicial and administrative decisions respecting water rights, water quality, and other beneficial uses.

**Section 603. Transfers of Water to Comply With Instream Protection and Water Quality Laws.**

Notwithstanding the provisions of section 602, water right holders and other legal users of water may transfer water to instream uses for the purpose of satisfying, or partly satisfying, their obligations under the regulatory requirements described in section 602. If the water right holder or legal water user so indicates, the water shall be credited to the water right holder or legal water user and shall be included in the

**West & Northwest, Vol. 14, No. 1, Winter 2008**

determination of the amount of water or flows required of the water right holder or legal water user to comply with such regulatory requirements.

**PART G: WATER TRANSFER FEES****Section 701. Coverage.**

- a. **Obligation to Pay Fees.** Except as provided in subsection (b), every person or entity that acquires water transferred pursuant to Parts D or E shall pay to the State Water Resources Control Board a fee based on the Water Transfer Fee Schedule authorized in section 702.
- b. **Exemptions.** The water transfer fees shall not be applicable to transfers of water over which the Board has no jurisdiction as set forth in section 402, unless the water right holder files a petition with the Board pursuant to section 403. The water transfer fees also shall not be applicable to dedications or transfers of water to instream uses as authorized by Part F.
- c. **Compliance Dates.** The transferee shall pay the water transfer fees at least ten days before the date on which the physical transfer of water commences.
- d. **Carriage Water.** If the transfer includes a Delta carriage water requirement imposed by the Board pursuant to section 206, the Board shall not include such carriage water in its calculation of the amount of the water transfer fees required by this section.

**Section 702. Water Transfer Fee Schedule.**

- a. **Creation of the Schedule.** Within ninety days of the effective date of this Act, the State Water Resources Control Board shall promulgate regulations that establish a "Water Transfer Fee Schedule" in accordance with the requirements of this Part. The fee schedule shall contain separate fees for water transfers governed by Part D and for expedited transfers of conserved water governed by Part E, and the fees shall decline as the quantity of water proposed for transfer increases to account for economies of scale in the review process.
- b. **Maximum Amounts of Fees.** The water transfer fees shall be adequate, but no greater than necessary, to pay for all expenses incurred by the Board in its review of water transfer petitions governed by Parts D and E. The water transfer fees shall not exceed:

<b>Quantity in acre-feet (af)</b>	<b>Part D Transfers</b>	<b>Part E Transfers</b>
Up to 10,000	\$1.00/af	\$.50/af
Next 10,000 to 49,999	\$.75/af	\$.35/af
Next 50,000 to 100,000	\$.50/af	\$.25/af
Increments above 100,000	\$.25/af	\$.25/af

- c. **Price Adjustment.** The Board annually shall revise the Water Transfer Fee Schedule based on changes in the Consumer Price Index published by the United States

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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Department of Commerce. The Board also shall revise the Water Transfer Fee Schedule whenever it determines that the fees are generating insufficient funds to fulfill the purposes of the Part or are producing excess funds in light of the purposes of this Part. The maximum fees set forth in subsection (b) shall automatically adjust annually based on changes in the Consumer Price Index.

**Section 703. Use of Funds.**

The State Water Resources Control Board shall use the water transfer fees to implement the requirements of Parts D and E. The Board may use any residual proceeds generated by the water transfer fees to support its other administrative responsibilities.

**Section 704. Restriction on Expenditures.**

The proceeds of the water transfer fees shall be used exclusively for the purposes set forth in this Part. These funds shall not be part of the general budget of the State and shall not be impounded or used to meet general State obligations.

**PART H: AUTHORITY OF LOCAL WATER AGENCIES****Section 801. Transfers of Water by Local Agencies.**

Local water agencies shall have authority to enter into contracts to transfer water to purchasers located outside the service area of the local agency and to transfer water according to the following rules:

- a. **Water Owned by the Agency.** A local water agency may transfer: (1) water to which the agency has water rights or contract rights that is in excess of the reasonable and beneficial demands of its members and customers; and (2) water that is made available for transfer by conservation measures undertaken or funded by the agency.

Without the consent of the member or customer, the agency shall not declare as "excess" water that a member or customer of the agency has authority to use, or to transfer pursuant to section 802, during the term of the transfer proposed by the agency, if the member or customer has applied the same quantity of water to a beneficial use, or has transferred the same quantity of water pursuant to the provisions of section 802, at least once during the preceding five years.

- b. **Water Made Available By Members or Customers of the Agency.** With the consent of individual members or customers who make water available for transfer, a local water agency may transfer water for the benefit of such members and customers or for the benefit of the agency. The financial terms and operational conditions of such transfers shall be established by agreement between the local agency and the members or customers who participate in the transfer.
- c. **Water Owned By Members or Customers of the Agency.** Without the consent of the member or customer, a local water agency shall not transfer or otherwise claim water to which the member or customer holds the water right or that the member or customer has the right to use by contract with a party other than the local water agency.

**Section 802. Transfers of Water By Members and Customers of Local Water Agencies.**

Members and customers of local water agencies may transfer water with the approval of the governing board of the agency. The financial terms and operational conditions of such transfers shall be established by agreement of the local agency and the members or customers who participate in the transfer.

**Section 803. Transfers of Water to Local Water Agencies.**

Local water agencies may acquire transferred water for distribution to the agency's members or customers, on behalf of the agency's members or customers, and for other reasonable and beneficial uses within the agency's water storage and service areas.

**Section 804. Transfers of Water to Members and Customers of Local Water Agencies.**

Members and customers of a local water agency may acquire transferred water from sources other than the local water agency. If the transfer requires use of the agency's water supply system, the respective rights and responsibilities of the agency and the members and customers who seek to use the water supply system shall be governed by the provisions on wheeling set forth in Part I. The agency shall not impose any conditions or charges on the transfer of such water, except for the use of the agency's water supply system as authorized by Part I.

**Section 805. Definition of Local Water Agency.**

The term "local water agency" includes irrigation districts, county water districts, California water districts, California water storage districts, reclamation districts, county waterworks districts, county drainage districts, water replenishment districts, levee districts, municipal water districts, water conservation districts, cities and counties, all water agencies authorized by the special legislation codified in the Appendices to this Code, mutual water companies, canal companies, water supply cooperatives, groundwater management districts, and other public agency or private water company that provides local or regional water service to members or customers. The term "local water agency" does not include the United States Bureau of Reclamation, the Army Corps of Engineers, or the California Department of Water Resources.

**PART I: WHEELING****Section 901. Use of Water Supply Systems.**

- a. **Authorization of Wheeling.** A legal water user who transfers water or who receives transferred water may use up to seventy percent of the unused capacity of water supply systems owned or operated by public water supply agencies to transport the water. The legal water user shall have the right to use this portion of the agency's water supply system throughout the term of the water transfer agreement.

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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- b. Definitions.** As used in this Part, the following terms shall have the following meanings:
1. The term "water supply system" shall include all of the public water supply agency's diversion, storage, transportation, treatment, distribution, and related facilities required to accomplish the transfer of water by the legal water user.
  2. The term "unused capacity" shall mean the portion of the public water supply agency's supply system, if any, not required by the agency during the term of the water transfer agreement to supply water obtained by the agency or its members and customers from water rights, contracts, or other entitlements that exist at the time the legal water user requests permission to use the agency's water supply system.
  3. The term "public water supply agency" includes the United States Bureau of Reclamation, the California Department of Water Resources, irrigation districts, county water districts, California water districts, California water storage districts, reclamation districts, county waterworks districts, county drainage districts, water replenishment districts, levee districts, municipal water districts, water conservation districts, cities and counties, all water agencies authorized by the special legislation codified in the Appendices to this Code, groundwater management districts, and other public water agencies that provide local or regional water service to members or customers.

**Section 902. Procedures Governing Agency Review of Wheeling Requests.**

The use of water supply systems to transport water as authorized by section 901 shall be governed by the procedures set forth in this section.

- a. Request for Use of System.** The legal water user who seeks to use the public agency's water supply system shall submit to the agency a written request to use the system and to determine the amount of unused capacity available to transport the water. The request shall include a statement of the source and destination of the water proposed for wheeling through the agency's system, the dates on which the legal water user seeks to use the agency's system, the portion of the system included in the request, and other information required to permit the agency to evaluate the request in accordance with the provisions of section 903. If the legal water user has obtained authorization from the State Water Resources Control Board to transfer water or has signed a water transfer agreement, the user shall include a copy of the authorization or agreement with the request.
- b. Determination of Unused Capacity.** The agency shall promptly determine the amount of unused capacity available for use by the legal water user throughout the period of requested use. The agency's determination of unused capacity shall comply with the definition of that term set forth in subsection 901(b)(2). The agency also shall define the terms and conditions that will govern the use of its water supply system in accordance with the standards set forth in section 903.
- c. Decision and Notice.** Within thirty days of receipt of the request to use the system, the agency shall provide written notice to the legal water user of its

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**West • Northwest, Vol. 14, No. 1, Winter 2008**

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determination of unused capacity available for use by the legal water user, and of the terms and conditions applicable to the use of its water supply system. The agency shall include an explanation of the reasons for its decision, including all data used to calculate unused capacity.

- d. Good Faith.** In making the determinations or calculations required by this section, the agency shall act in a reasonable and good faith manner consistent with the requirements of law to facilitate the voluntary transfer of water.

**Section 903. Standards Governing Agency Review and Financial Requirements.**

The use of water supply systems to transport water as authorized by section 901 shall be governed by the standards set forth in this section. Except as authorized by this section, public water supply agencies shall not impose any conditions, charges, or taxes on the use of its water supply system pursuant to the provisions of this Part.

- a. Water Quality and Blending of Water.** The agency shall have authority to deny, or to place conditions on, requests to transport water through the unused capacity of its water supply system only in accordance with the following standards.
1. If the transfer can be implemented only by blending the transferred water with other water in the agency's supply system, the agency may charge the legal water user for any additional costs of treatment of the blended water attributable to the addition of the transferred water to the system.
  2. If the transfer can be implemented only by blending the transferred water with other water in the agency's supply system, and the addition of the transferred water would diminish the quality of the water in the system to such an extent that the blended water could not be treated for distribution to the agency's other members and customers using the agency's existing water treatment facilities, the agency may prohibit or place conditions on the transfer as required to protect the water quality within its system.
  3. The agency may impose other reasonable terms and conditions on the use of its water supply system to comply with all applicable water quality and environmental standards.
- b. Fair Reimbursement.** The agency shall have authority to charge the legal water user for the following costs attributable to the legal water user's use of the unused capacity in the agency's water supply system:
- (1) the portion of the capital, operation, maintenance, and replacement costs paid by the agency for the portion of the unused capacity made available by the agency for the transfer of water by the legal water user;
  - (2) the cost of supplemental power purchased or used by the local water agency to transfer the additional water for the benefit of the legal water user;
  - (3) the additional cost of treating the water in the agency's water supply system caused by the blending of the water transferred by the legal water user with the other water in the agency's system; and

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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- (4) a reasonable fee for the administrative costs incurred by the agency in its review of the legal water user's request to use the unused capacity in the agency's water supply system.

The agency shall credit to the legal water user the value of any benefits to the agency's water supply system that result from the transport of water for the benefit of the legal water user, including any decrease in power or treatment costs.

As used in this subsection, "replacement costs" are limited to the reasonable portion of costs associated with material acquisition for the correction of unrepairable wear or other deterioration of parts of the water supply system that have an anticipated life that is less than that of the water supply system and which costs are attributable to the transfer of water for the benefit of the legal water user.

- c. **Legal Restrictions.** The agency shall have authority to deny, or to place reasonable terms and conditions on, the use of its water supply system by private persons or private entities to ensure that the private use of the agency's system does not jeopardize the agency's tax-exempt status, affect the agency's authority to issue tax-exempt bonds, or violate the requirements or limitations of federal law.

**Section 904. Arbitration and Judicial Review.**

- a. **Arbitration.** Disputes arising under subsection 903(c) shall be subject to judicial review. All other disputes arising under this Part shall be subject to binding arbitration.
- b. **Procedures.** Except as provided in this section, arbitration of disputes under this Part shall be conducted pursuant to the provisions of sections 1280, 1280.1, 1281.9, 1282(e), and 1282.2 through 1284.2 of the Code of Civil Procedure.
1. Arbitration proceedings may be commenced by either the agency or by the legal water user who seeks to use the agency's system to transport water pursuant to the authority granted in this Part.
  2. The party that commences the arbitration shall serve a demand for arbitration on the other party. The demand for arbitration shall describe the nature and legal basis of the claim and shall set forth the relief requested.
  3. The party that commences the arbitration also shall file a copy of the demand for arbitration with the State Water Resources Control Board. Within ten days of receipt of the copy of the demand, the Board shall appoint a single neutral arbitrator to conduct the arbitration. If the parties have stipulated to the appointment of a specific person, the Board shall appoint that person as the arbitrator. If the parties have not so stipulated, the Board shall appoint the arbitrator from a list of potential arbitrators maintained by the Board.
  4. The respondent shall serve a response to the demand for arbitration on the demanding party within twenty days of receipt of the demand. The response shall contain an admission or denial of each of the claims set forth in the demand, with a brief explanation of the reasons and legal

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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- bases for each denial. The respondent also shall file a copy of the response with the Board and with the arbitrator.
5. The arbitrator may allow the respondent to file cross-demand for arbitration against the demanding party. The cross-demand for arbitration shall describe the nature and legal basis of the claim and shall set forth the relief requested.
  6. The arbitrator may require the parties to file legal memoranda, motions, offers of proof, and other legal and evidentiary documents that in the arbitrator's opinion would assist the arbitrator in rendering judgment on the claims.
- c. Burden and Standard of Proof.** In all proceedings under this section, the public water supply agency shall have the burden of proving its compliance with the standards and procedures set forth in this Part. The burden of proof shall be by a preponderance of the evidence.
- d. Judgment and Relief.** The arbitrator shall render judgment on the claims in accordance with the law and evidence. If a party fails to respond to a demand or cross-demand for arbitration, the arbitrator shall enter judgment against the party by default.
1. The arbitrator shall have authority to declare the rights and obligations of the parties and to compel the parties to comply with the requirements of this Part.
  2. The arbitrator shall have authority to award monetary damages only for violations of subsections 903(a) and 903(b).
  3. The arbitrator shall have no authority to award punitive damages or to impose any other form of relief.
- e. Finality.** The judgment of the arbitrator shall be final. Except as provided in subsection (f), the courts shall have no jurisdiction to review the judgment of the arbitrator.
- f. Enforcement.** The judgment of the arbitrator shall be enforceable in court as authorized by sections 1285 through 1294.2 of the Code of Civil Procedure.
- g. Limitation on Claims.** All demands for arbitration must be filed within one hundred eighty days of the date of discovery of the alleged violation.
- h. Costs and Attorneys Fees.** The party that loses on the merits of the arbitration claim, as determined by the arbitrator, shall pay the opposing party's costs and reasonable attorneys fees incurred in the arbitration.

**Section 905. Rulemaking Authority.**

Public water supply agencies may promulgate rules, bylaws, and other policies to govern the transport of water through their water supply systems that are consistent with the provisions of this Part.

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**West & Northwest, Vol. 14, No. 1, Winter 2008**

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**PART J: WATER BANKS****Section 1001. State Water Bank.**

- a. **Authorization.** The Governor is authorized to establish a State Water Bank to be administered by the California Department of Water Resources. The State Water Bank may be established on a temporary or permanent basis, at the discretion of the Governor, based on the Governor's determination that the allocation of water resources would be improved by direct state participation in water transfers through a State Water Bank.
- b. **Powers.** The State Water Bank shall have authority to take any action to facilitate voluntary transfers of water, including the acquisition of water or water rights for subsequent transfer to willing buyers or for other state purposes, including augmentation of water supplies to wetlands, fish and wildlife, and other instream beneficial uses. The Governor may assign additional responsibilities to the State Water Bank.
- c. **Consistency with Water Transfer Laws.** The provisions of this Act shall govern all transfers of water by or through the State Water Bank.
- d. **Jurisdiction.** During its existence, the State Water Bank shall not have exclusive jurisdiction over water transfers. Any person or entity may transfer water without the involvement of the State Water Bank.
- e. **California Environmental Quality Act.** The establishment and operation of the State Water Bank, and all short-term agreements to transfer water by or through the State Water Bank, shall be exempt from the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

The California Department of Water Resources shall review and revise, at least once every five years, the 1993 environmental impact report entitled "State Drought Water Bank: Program Environmental Impact Report" to ensure the currency and accuracy of information required to assess the environmental consequences of State Water Bank operations.
- f. **Delegation of Authority.** The Governor may delegate to the State Water Bank authority to administer the provisions of Part E for expedited transfers of conserved water by or through the State Water Bank. When exercising this authority, the State Water Bank shall perform all functions assigned to the State Water Resources Control Board by the provisions of Part E, and the Board shall have no authority over such expedited water transfers.

**Section 1002. Regional Water Banks.**

- a. **Authorization.** Local water agencies, cities, counties, other local governmental agencies, and other interested parties are authorized to establish regional water banks. A regional water bank may be established by a single party or by agreement between two or more parties. A regional bank may be established on a temporary or permanent basis. The purpose of regional water banks is to facilitate voluntary transfers of water within the region.

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**West & Northwest, Vol. 14, No. 1, Winter 2008**

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- b. Powers.** Regional water banks shall have authority to take any action to facilitate voluntary transfers of water, including but not limited to:
- (1) establishment of a list of current offers to sell and to purchase water and water rights;
  - (2) acquisition of water for subsequent sale or distribution to members of the water bank or for sale to willing buyers outside the water bank;
  - (3) acquisition and storage of water during periods of surplus for sale and distribution during periods of shortage;
  - (4) acquisition and sale of water transfer options, water futures, subordination agreements, and other types of arrangements to transfer water for the benefit of the members of the water bank;
  - (5) establishment of a local or regional program for the conjunctive management and use of surface and ground water supplies owned or controlled by members of the water bank;
  - (6) augmentation of water supplies to wetlands, fish and wildlife, and other instream beneficial uses;
  - (7) facilitation of transfers by management of water storage, water delivery, accounting, financing, or other matters relevant to the interests of the members of the water bank;
  - (8) provision of assistance to potential transferors and transferees in the negotiation and implementation of transfer agreements; and
  - (9) creation of an insurance system to pay claims for compensation brought by third-parties against water transfers implemented through the bank on behalf of the members of the bank.
- c. Consistency with Water Transfer Laws.** The provisions of this Act shall govern all transfers of water by or through regional water banks.
- d. Jurisdiction.** Regional water banks shall not have exclusive jurisdiction over water transfers. Any person or entity may transfer water without the involvement of a regional water bank.
- e. California Environmental Quality Act.** The establishment of a regional water bank shall be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. Short-term agreements to transfer water by or through a regional water bank shall be exempt from the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.
- f. Delegation of Authority.** The State Water Resources Control Board may delegate to a regional water bank the authority to administer the provisions of Part E for expedited transfers of conserved water by or through the regional bank. When exercising this authority, the regional bank shall perform all functions assigned to the State Water Resources Control Board by the provisions of Part E, and the Board shall have no authority over such expedited water transfers. The Board may delegate administrative authority pursuant to this subsection only if it concludes that the regional water bank is capable of implementing and enforcing the requirements of Part E.

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**West ◊ Northwest, Vol. 14, No. 1, Winter 2008**

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**PART K: STATE WATER RESOURCES CONTROL BOARD****Section 1101. Continuing Authority.**

The State Water Resources Control Board shall retain its full authority to enforce the terms and conditions of water rights permits or licenses during the term of all water transfers governed by this Act. The Board also shall retain its full authority to ensure that, throughout the term of all water transfers, the impoundment, storage, diversion, distribution, use, and return flow of water comply with applicable pollution control and water quality standards, are consistent with the requirements of Article X, Section 2 of the California Constitution and this Code, and comply with all other applicable federal and state laws.

**Section 1102. Water Transfer Registry.**

The State Water Resources Control Board shall create and maintain a "Water Transfer Registry" of all final agreements to transfer water and water transfers governed by this Act. The Registry shall include the names of the parties to the transfer, a brief description of the transfer, and an explanation of the changes in water storage, timing and point of diversion, place and purpose of use, consumption, and timing and point of return flow caused by the transfer.

The Board shall revise the Registry to incorporate each final water transfer agreement and each water transfer governed by this Act. The Board shall ensure that the Water Transfer Registry is available in print form and over the Internet.

**Section 1103. Rulemaking Authority.**

Within one year of the effective date of this Act, the State Water Resources Control Board shall review its existing rules and policies and amend such rules and policies as necessary to ensure that they comply with the terms of this Act. The Board also shall have authority to promulgate other rules that it determines would assist in the implementation of the Act.

**PART L: MISCELLANEOUS****Section 1201. Repeal of Existing Law.**

Upon the effective date of this Act, the following sections of the Water Code are repealed: §§ 109, 380-387, 470-484, 1020-1030, 1435-1442, 1700-1707, 1725-1745.11 & 1810-1814.

**Section 1202. Judicial Authority.**

The courts shall have authority to enforce the requirements of this Act. The courts shall have no authority to adjudicate disputes arising under Parts D, E, and I, except as specifically provided therein.

**Section 1203. Reference to Statutes.**

Whenever reference is made in this Act to any other statute, the reference shall apply to all amendments to the other statute.