



United States Department of the Interior



BUREAU OF RECLAMATION

Mid-Pacific Regional Office

2800 Cottage Way

Sacramento, California 95825-1898

IN REPLY
REFER TO:
MP-440
WTR-4.00

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To: All Interested Persons, Organizations, and Agencies
ACTING FOR
From: Regional Director
Subject: Bureau of Reclamation's Interim Guidelines for Implementation of
Water Transfers Under Title XXXIV of Public Law 102-575 (Water
Transfer)

Enclosed are Reclamation's Interim Guidelines for the implementation of the water transfer provisions of Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575, 106 Stat. 4600). These Interim Guidelines have been prepared pursuant to the provisions of Section 3405(a) authorizing the transfer of water developed, diverted, stored, or delivered by the Secretary of the Interior in accordance with the statutes authorizing the Central Valley Project.

If you have any questions, please contact the Bureau of Reclamation, MP-440, 2800 Cottage Way, Sacramento CA 95825-1898.

Enclosure

**INTERIM GUIDELINES FOR IMPLEMENTATION OF THE WATER TRANSFER
PROVISIONS OF THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT
(TITLE XXXIV OF PUBLIC LAW 102-575)**

I. OBJECTIVE

Reclamation's objective in developing Interim Guidelines for the implementation of Section 3405(a) of Public Law 102-575 (PL 102-575) are to address all water transfers equitably, to provide for a more efficient and effective use of the water supply developed by the Central Valley Project (Project), and to provide greater flexibility to water users in transferring water developed by the Project. These Interim Guidelines will establish the conditions for transfer of Project water authorized by Section 3405(a).

II. AUTHORITY

Section 3405(a) authorizes all individuals or districts who receive Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts to transfer, subject to certain conditions, all or a portion of the water subject to such contracts to any California water user or agency, State or Federal agency, Indian Tribe or private nonprofit organization for Project purposes or any purpose recognized as beneficial under State law.

The authority provided in Section 3405(a) for transfers of Project water is supplemental and in addition to Reclamation's existing authority to allow annual transfers between Project water users, which have historically been allowed and which are encouraged under existing contracts for efficient and effective Project water management.

III. APPLICABILITY

These Interim Guidelines will be effective immediately in order to implement PL 102-575 and will remain in effect until the final rules and regulations for PL 102-575 are promulgated. However, as the water transfer process under PL 102-575 evolves, these guidelines may be revised as necessary by Reclamation. Any long-term water transfers approved under these Interim Guidelines will be subject to all terms, conditions, and criteria contained in the final rules and regulations promulgated for water transfers pursuant to PL 102-575.

All transfers implemented in accordance with Section 3405(a) will be deemed to be a beneficial use of water for purposes of Section 8 of the Reclamation Act of 1902 (32 Stat. 390; 43 U.S.C. Section 372).

All transfers implemented in accordance with Section 3405(a) will be consistent with State law. Long-term transfers will also be subject to all subsequent State laws enacted during the period of the transfer.

The applicability of these Interim Guidelines will not impede or restrict annual short-term transfers of Project water between Project contractors as currently provided for under existing contract provisions.

These Interim Guidelines will not apply to transfers of base supply as defined in and recognized under the Sacramento River water rights settlement contracts. Transfers of base supply under those contracts will be accomplished pursuant to the water transfer provisions of California State law.

IV. IMPLEMENTATION

The application of these Interim Guidelines depends on the type of water transfer involved. There are two separate categories of water transfers.

(A) Historic Water Transfers. All Project water users who have existing water transfer provisions in their current contracts as provided under prior Reclamation authorities, will be allowed to continue annual short-term transfers in accordance with the provisions of those contracts. These transfers are typically intraservice area transfers for periods of 1 year or less, and are made for water management/efficiency purposes. The criteria specified in Section V of these Interim Guidelines do not apply to this category of water transfers.

(B) All Other Water Transfers. All water transfers specifically authorized by Section 3405(a) of PL 102-575. These transfers will include both short-term and long-term transfers. Short-term transfers will be Project transfers for periods of 1 year or less. Long-term transfers will be those transfers for a period or periods of more than 1 year with the maximum period being limited by the term of the Project contract under which the transfer is being made.

v. CRITERIA FOR TRANSFERS AUTHORIZED UNDER SECTION 3405(a)

A Transferor can be a contracting district or agency, an individual water user within a contracting district or agency, or an individual contractor under a water service or repayment contract, water rights settlement or exchange contract.

(A) All transfers of Project water must be between willing buyers and willing sellers.

(B) Transfer proposals shall be completed in accordance with these criteria and shall be submitted in writing to Reclamation for review. Appendix No. 1 attached hereto and made a part of these Interim Guidelines, contains the criteria checklist that shall be used in developing written transfer proposals.

(C) Individual Project water users within any contracting district or agency who propose to transfer Project water shall submit the proposal to Reclamation with a duplicate copy of the complete written proposal to the contracting district or agency. These individuals must be able to document to the satisfaction of Reclamation that they are authorized to transfer the Project water.

(D) All transfer proposals by individual Project water users within a contracting district or agency shall be reviewed by the contracting district or agency to ensure the transfer will have no unreasonable impact on the water supply, operations, or financial conditions of the transferor's contracting district or agency or its water users. The contracting district or agency will have 45 days upon receipt of the transfer proposal to evaluate and advise Reclamation of the impacts on the water supply, operations, or financial conditions on the contracting district or agency.

(E) Transfer proposals involving 20 percent or more of Project water subject to long-term contract within a contracting district or agency shall be evaluated by the contracting district or agency and shall be subject to review in a public participation process similar to the provisions contained in Public Law 97-293. This 20-percent figure is cumulative.

(F) All proposals for transfer outside the Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Project service area. The right of first refusal must be exercised within 90 days from the date of public notification of the proposed transfer.

(G) To ensure notification for right of first refusal, a public notice of intent to transfer shall be submitted by the Transferor to all Project water users associations and published at least once in all major newspapers within the Project service area prior to submittal of a written proposal to Reclamation. The minimum notice requirements, along with a list of Project water user associations and major newspapers within the Project service area are included in Appendix No. 2 of these Interim Guidelines.

(H) All transfers will be limited to Project water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.

(1) Crop consumptive use shall be the total evapotranspiration of applied water minus effective precipitation and does not include transportation losses, return flows, leaching, frost protection, or deep percolation to usable ground-water basins.

(2) Project water irretrievably lost to beneficial use shall mean deep percolation to an unusable ground-water aquifer (e.g., a saline sink or a ground-water aquifer that is polluted to the degree that water from that aquifer cannot be directly used.)

(I) No transfer or combination of transfers of Project water shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last 3 years of normal delivery prior to October 30, 1992.

(J) Transfers between Project contractors within counties, watersheds or other areas of origin shall be deemed to meet the conditions set forth in subparagraphs (H) and (I) above.

(K) The quantity of Project water available for transfers shall be subject to the amount of water available annually under the Project water service or repayment contracts, water rights settlement or exchange contracts under which the transfer is being made.

(L) All transfers of Project water shall be consistent with Federal and State laws, including compliance with all environmental requirements of the National Environmental Policy Act (NEPA), the Endangered Species

Act (ESA), the Fish and Wildlife Coordination Act (FWCA) (if applicable), the California Environmental Quality Act (CEQA), and the California Endangered Species Act (CESA).

(M) Compliance with environmental analysis, including preparation of all documents and mitigation requirements under NEPA, ESA, FWCA (if applicable), CEQA or CESA, will be the responsibility of the Transferor.

(N) All proposals for long-term transfers of Project water that involve ground water substitution must include a comprehensive ground-water basin study or evaluation of ground-water supplies to ensure the transfer will have no significant long-term adverse impact on ground-water conditions in the transferor's service area or inter-related surface streams. Transferors may contact the State Department of Water Resources to review any ground-water data they may have available.

(O) All transfers of Project water must be consistent with Federal laws and will have no significant adverse effects on the Secretary of the Interior's (Secretary) ability to deliver water pursuant to Project contractual obligations or fish and wildlife obligations under Title XXXIV of PL 102-575 because of limitations in conveyance or pumping capacity.

(P) Project water can be subsequently transferred by the Transferee during the period of the transfer. The Transferee will be treated as a Transferor for all subsequent transfers of Project water during the term of the original transfer. Such transfers shall be subject to all terms, conditions and criteria contained in these Interim Guidelines. The contractual right to the Project water will be retained by the contracting district or entity.

(Q) All long-term transfers of Project water shall be reviewed annually by Reclamation to ensure the transfer quantity is consistent with Section (K) above, and to ensure there are no changes in the Project operations or environmental conditions which may have an adverse impact to Project purposes if the long-term transfer continued. Long-term transfers involving 20 percent or more of Project water subject to long-term contracts within a contracting district or agency shall also be reviewed annually by the contracting district or agency to ensure there are no changes to contracting district or agency operations, water supply or financial conditions. Approval of long-term transfers may be conditioned, temporarily suspended and/or terminated by Reclamation should such conditions occur.

(R) All transfers of Project water outside the water rights permitted place of use for the Project will require prior approval by the State Water Resources Control Board.

(S) Power to convey Project water beyond the contractual point of delivery through Project facilities must be supplied by the parties requesting the transportation. No Project-use power will be used to convey Project water beyond the contractual point of delivery. First priority at Project facilities shall be given for pumping Project district's or agency's contract allocation of Project water.

(T) The Secretary or his designated representative shall have final approval on all transfers of Project water.

VI. TRANSFEROR'S RESPONSIBILITY

It shall be the Transferor's responsibility to:

(A) Comply with all criteria for the transfer of Project water and ensure all proposals are complete written proposals. A water transfer proposal will not be deemed complete until all items listed in Appendix 1 of these Interim Guidelines have been satisfied. The 90-day review period specified in Section VII(a) of these Interim Guidelines will start upon receipt of the complete written transfer proposal.

(B) Ensure a complete written transfer proposal is submitted to Reclamation for review and approval. Individual Transferors within a contracting district or agency shall also provide a copy of the complete written transfer proposal to its respective district or agency.

(C) Provide Reclamation with a written statement from the contracting district or agency documenting that the transfer will have no unreasonable impact on the water supply, operations, or financial conditions of the Transferor's contracting district or agency or its water users.

(D) Pay Reclamation all additional water rates and charges associated with water transfers. Individual Transferors within a contracting district or agency shall submit all additional water rates and charges to the contracting district or agency. The contracting district or agency will remit to Reclamation this additional revenue. Reclamation will provide water rates and charges associated with water transfers upon request.

(E) Reimburse the Department of the Interior for all costs associated with reviewing and processing transfer proposals. The Transferor is also responsible for all costs associated with developing and completing

a complete written transfer proposal. If the Transferor is an individual within a contracting district or agency, the individual is responsible for all costs associated with developing a complete written transfer proposal.

VII. RECLAMATION RESPONSIBILITY

It shall be Reclamation's responsibility to:

(A) Approve or disapprove water transfer proposals within 90 days from receipt of a complete written proposal. If the transfer proposal is disapproved, Reclamation shall inform the Transferor and Transferee in writing why the transfer does not comply with the terms, conditions and criteria of these Interim Guidelines and what alternatives, if any, could be included so that the transfer would reasonably comply with the terms, conditions and criteria of these Interim Guidelines.

(B) Ensure that no transfer will be approved if Reclamation, in consultation with the U.S. Fish and Wildlife Service (Service), determines that such transfer would result in significant reduction in quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, unless Reclamation, in consultation with the Service, determines pursuant to findings setting forth the basis for such determination that such adverse effects would be more than offset by the benefits of the proposed transfer. In the event of such determination, Reclamation, in consultation with the Service, shall develop and implement alternative measures and mitigation activities as integral and concurrent elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer.

Appendix No. 1
Drafted 12/17/92
Revised 01/08/93
Revised 02/19/93

**CRITERIA CHECKLIST
FOR A COMPLETE
WRITTEN TRANSFER PROPOSAL**

1. Name and Location of Transferor: (If within a district or contracting entity, identify):
2. Name and Location of Transferee (If within a district or contracting entity, identify):
3. Provide a detailed location map of the area(s) proposed to receive the transferred water.
4. If Transferor is individual within a contracting district or agency, provide documentation supporting claim of right to the quantity of Project water being transferred under the contracting district or agency's Project contract.
5. Complete written description of transfer proposal, including the proposed time period and/or term of transfer.
6. Identify Central Valley Project facility/facilities required to facilitate transfer for conveyance, pumping and/or storage.
7. State quantity of water involved with transfer and identify purpose of use for the transferred water.
8. Provide detailed consumptive use analysis to document how the quantity of water available for the proposed water transfers was calculated.
9. Is quantity to be transferred more than 20 percent of the Transferor's contracting district or agency's Project water supply? Explain and provide applicable supporting documentation.
10. Will this transfer along with other transfers to date cumulatively total more than 20 percent of the Transferor's contracting district or agency's Project water supply? Explain and provide applicable supporting documentation.
11. Provide data identifying percentage of total contract supply transferred to date from the Transferor's contracting district or agency under whose contract the Project water is being transferred.

12. Identify method by which water is being made available for transfer:

(A) Fallowing:

- (1) All transfer proposals involving fallowing shall be submitted no later than March 1 of each irrigation season or 30 days after the effective date of these Interim Guidelines.
- (2) Acres fallowed as part of normal rotation or crop set aside program will not be considered as making water available for transfer.
- (3) Identify and document crop and total number of acres being fallowed, explaining any differences from historical cropping pattern/historical mix.
- (4) Identify and document consumptive use of crop being fallowed.
- (5) Historical cropping data for lands being fallowed (minimum of last 5 years or from 1987 to present).

(B) Requirements for substituting ground-water use for surface supply:

- (1) Comprehensive ground-water basin study or evaluation of ground-water supplies demonstrating that the transfer will have no significant long-term adverse impacts on ground-water conditions, inter-related surface streams, or other ground-water supplies in Project service area; OR

Comprehensive evaluation of the potential impact on ground-water supplies accompanied by an adopted ground-water management plan.

- (2) Location map of ground-water well(s) to be utilized.
- (3) Drillers log for ground-water well(s) to be utilized.
- (4) Provide location of other ground-water wells in Project service area.
- (5) Identify and document area(s) normally irrigated by wells.

(C) Conservation:

- (1) Identify method of conservation.
- (2) Transfer proposals involving water made available by conservation measures will be reviewed on a case by case basis.

13. Have requirements of the NEPA, ESA, and FWCA (if applicable) been completed? Explain and provide documentation.
14. Have requirements of the CEQA and CESA been completed? Explain and provide documentation.
15. If transfer is 20 percent or more of the Transferor's contacting district or agency's Project water supply, has public participation necessary to complete the transfer been done? Explain and provide supporting documentation.
16. If electric power, other than Project-use power, is necessary to transfer Project water, then the Transferor must provide documentation that such electric power has been obtained. The Transferor must also provide documentation that the Western Area Power Administration finds that the source of power is available for pumping at the Project facilities.
17. The Transferor must submit a deposit of \$3,000 to cover the administrative costs of reviewing each water transfer proposal. If the transfer proposal is denied, any deposit remaining will be refunded to the Transferor. If the transfer is approved, the transferor will be refunded any deposit remaining or billed for any additional administrative costs incurred in processing the transfer proposal.
18. Attach statement by the Project contractor holding the contract for the water being transferred that the transfer will have no unreasonable impact on water supply, operations, or financial conditions of Project contractor or its water users.
19. If the transfer will involve use of Project water outside Project service area, provide proof of public notification for right of first refusal.

PUBLIC NOTICE REQUIREMENTS

1. **Name and Address of Transferor (if within a contracting district or agency, identify).**
2. **Name and Address of Transferee (if within a district or contracting agency, identify).**
3. **Brief description of transfer proposal (identify terms of transfer, period of transfer, quantity of water involved, cost per acre-foot, and where transferred water will be used).**
4. **Identify a contact point for questions on the proposed transfer.**
5. **Include statement: "If you are interested in exercising right of first refusal, please notify the contact point and write the Bureau of Reclamation, MP-440, 2800 Cottage Way, Sacramento CA 95825."**

**CENTRAL VALLEY PROJECT
WATER ASSOCIATIONS AND AUTHORITIES**

Central Valley Project Water Association
1715 Capital Avenue
Sacramento, California 95814

Friant Water Users Authority
854 North Harvard Avenue
Lindsay, California 93247

Mid-Valley Water Authority
4886 East Jensen Avenue
Fresno, California 93725

Sacramento River Water Contractors Association
921 11th Street, Suite 703
Sacramento, California 95814

Tehama-Colusa Canal Water Users Association
PO Box 1054
Willows, California 95988

Tehama-Colusa Canal Authority
PO Box 1025
Willows, California 95988

Delta-Mendota and San Luis Water Users Authority
PO Box 2157
Los Banos, California 93635

Central California Irrigation District
(Operating Entity of Delta Mendota Pool)
PO Box 1231
Los Banos, California 93635

Madera Irrigation District
(Operating Entity of Madera Canal)
12152 Road 28-1/4
Madera, California 93637

**MAJOR NEWSPAPERS WITHIN
CENTRAL VALLEY PROJECT SERVICE AREA**

Antioch Daily Ledger
P.O. Box 70
Antioch CA 94509

Auburn Journal
1030 High Street
Auburn CA 95603

Bakersfield California
P.O. Box 440
Bakersfield CA 93302-0440

Chico Enterprise-Record
P.O. Box 9
Chico CA 95926

Contra Costa Times
P.O. Box 471
Martinez CA 94553

Fresno Bee
1626 E Street
Fresno CA 93786

Los Banos Enterprise
1253 W. I Street
Los Banos CA 93635-3930

Merced Sun-Star
P.O. Box 739
Merced CA 95340

Modesto Bee
P.O. Box 3928
Modesto CA 95352

Record Searchlight
P.O. Box 492397
Redding CA 96049-2397

Red Bluff Daily News
P.O. Box 2200
Red Bluff CA 96080

Sacramento Bee
P.O. Box 15779
Sacramento CA 95852

San Francisco Chronicle
905 Mission Street
San Francisco CA 94103

San Jose Mercury News
750 Ridder Park Drive
San Jose CA 95190

Stockton Record
P.O. Box 900
Stockton CA 95201

Trinity Journal
P.O. Box 340
Weaverville CA 96093