



— BUREAU OF —
RECLAMATION

Public Law 102-575

Section 3405. Water Transfers, Improved Water Management & Conservation

(a) Water Transfers.--In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian Tribe, or private non-profit organization for project purposes or any purpose recognized as beneficial under applicable State law. Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.

(1) Conditions for Transfers.--All transfers to Central Valley Project water authorized by this subsection shall be subject to review and approval by the Secretary under the conditions specified in this subsection. Transfers involving more than 20 percent of the Central Valley Project water subject to long-term contract within any contracting district or agency shall also be subject to review and approval by such district or agency under the conditions specified in this subsection:

(A) No transfer to combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.

(B) All water under the contract which is transferred under authority of this subsection to any district or agency which is not a Central Valley Project contractor at the time of enactment of this title shall, if used for irrigation purposes, be repaid at the greater of the full-cost or cost of service rates, or, if the water is used for municipal and industrial purposes, at the greater of the cost of service or municipal and industrial rates.

(C) No transfers authorized by this subsection shall be approved unless the transfer is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon.

(D) No transfer authorized by this subsection shall be approved unless the transfer is consistent with State law, including but not limited to provisions of the California Environmental Quality Act.

(E) All transfers authorized by this subsection shall be deemed a beneficial use of water by the transferor for the purposes of section 8 of the Act of June 17, 1902, 32 Stat. 390, 43 U.S.C. 372.

(F) All transfers entered into pursuant to this subsection for uses outside the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's total costs associated with the development and negotiation of the transfer.

(G) No transfer authorized by this subsection shall be considered by the Secretary as conferring supplemental or additional benefits on Central Valley Project water contractors as provided in section 203 of Public Law 97-293 (43 U.S.C. 390(cc)).

(H) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary has determined, consistent with paragraph 3405(a) (2) of this title, that the transfer will not violate the provisions of this title or other Federal law and will have no significant adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations or fish and wildlife obligations under this title because of limitations in conveyance or pumping capacity.

(I) The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.

(J) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary determines, consistent with paragraph 3405(a) (2) of this title, that such transfer will have no significant long-term adverse impact on groundwater conditions in the transferor's service area.

(K) The Secretary shall not approve a transfer unless the Secretary determines, consistent with paragraph 3405(a) (2) of this title, that such 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.

(L) The Secretary shall not approve a transfer if the Secretary determines, consistent with paragraph 3405(a) (2) of this title, that such transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, unless the Secretary determines pursuant to finding 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 a determination, the Secretary 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.

(M) Transfers between Central Valley Project contractors within countries, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs (A) and (I) of this paragraph.

(2) Review and Approval of Transfers.--All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:

(A) Decisions on water transfers subject to review by a contracting district or agency or by the Secretary shall be rendered within ninety days of receiving a written transfer proposal from the transferee or transferor. Such written proposal should provide all information reasonably necessary to determine whether the transfer complies with the terms and conditions of this subsection.

(B) All transfers subject to review by a contracting district or agency shall be reviewed in a public process similar to that provided for in section 226 of Pub. L. 97-293.

(C) The contracting district or agency or the Secretary shall approve all transfers subject to review and approval by such entity if such transfers are consistent with the terms and conditions of this subsection. To disapprove a transfer, the contracting district or agency or the Secretary shall inform the transferee and transferor, in writing, why the transfer does not comply with the terms and conditions of this subsection and what alternatives, if any, could be included so that the transfer would reasonably comply with the requirements of this subsection.

(D) If the contracting district or agency or the Secretary fails to approve or disapprove a proposed transfer within ninety days of receiving a complete written proposal from the transferee or transferor, then the transfer shall be deemed approved.

(3) Transfers executed after September 30, 1999 shall only be governed by the provisions of subparagraphs 3405(a) (1) (A) -(C), (E), (G), (H), (I), (L), and (M) of this title, and by State law.

(b) Metering of Water Use Required.--All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so equipped. The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.

(c) State and Federal water Quality Standards.--All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall be responsible for compliance with all applicable State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated within its boundaries. This subsection shall not affect or alter any legal obligation of the Secretary to provide drainage services.

(d) Water Pricing Reform.--All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water

pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:

- (1) the first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall not be less than the applicable contract rate;
- (2) the second rate tier shall apply to that quantity of water over 80 percent and under 90 percent of the contract total and shall be at a level halfway between the rates established under paragraphs (1) and (3) of this subsection;
- (3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and
- (4) the Secretary shall charge contractors only for water actually delivered. The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for water fowl in fields where the water is used and the crops are produced; Provided, That such waiver shall apply only if such habitat values can be assured consistent with the goals and objectives of this title through binding agreements executed with or approved by the Secretary.

(e) Water Conservation Standards.--The Secretary shall establish and administer an office on Central Valley Project water conservation best management practices that shall, in consultation with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.

- (1) Criteria developed pursuant to this subsection shall be established within six months following enactment of this title and shall be reviewed periodically thereafter, but no less than every three years, with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices. The criteria shall include, but not be limited to agricultural water suppliers' efficient water management practices developed pursuant to California State law or reasonable alternatives.
- (2) The Secretary, through the office established under this subsection, shall review and evaluate within 18 months following enactment of this title all existing conservation plans submitted by project contractors to determine whether they meet the conservation and efficiency criteria established pursuant to this subsection.
- (3) In developing the water conservation best management practice criteria required by this subsection, the Secretary shall take into account and grant substantial deference to the recommendations for action specific to water conservation and drainage source reduction proposed in the Final Report of the San Joaquin Valley Drainage Program, entitled A Management Plan for Agricultural Subsurface Drainage and Related Problems on the Westside San Joaquin Valley (September 1990).

(f) Increased Revenues.--All revenues received by the Secretary as a result of the increased repayment rates applicable to water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund.