



# CALIFORNIA FARM BUREAU FEDERATION

DEPARTMENT OF ENVIRONMENTAL ADVOCACY  
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**VIA FACSIMILE (916) 657-0932**  
**AND REGULAR MAIL**

Arthur G. Baggett, Jr., Acting Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: **Policy Statement of the California Farm Bureau Federation**  
**Workshop Regarding Water Transfers and the "Guide to**  
**Water Transfers" Reference Materials**

Dear Mr. Baggett:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose it is to work for the protection of agriculture and the rural environment in the State of California. The Farm Bureau seeks solutions to the problems of the farm, the farm home, and the rural community within the State. Its members consist of 53 County Farm Bureaus and through them, more than 40,000 farming and ranching families and 35,000 other interested persons located throughout the State of California who support the preservation of agriculture in the State of California and its rural communities.

The Farm Bureau supports the voluntary movement of water in California, subject to certain conditions and considerations, on a willing seller/willing buyer basis. Clear policy and guidance from the State Water Resources Control Board (SWRCB) could foster a successful water transfer network. Where market forces drive voluntary water conservation efforts, users can optimize allocation of our State's limited water supply. Moreover, a water transfer market could provide the necessary financing to fund improvements in irrigation and diversion infrastructure, so California's farms can remain viable without fallowing valuable agricultural lands.

A voluntary water transfer market could be a valuable asset to California farmers and ranchers. The ability to contract for short-term transfers of water would provide the

added flexibility needed to manage successful farms in the face of various uncertainties. For example, there might be fewer farmland conversions to urban sprawl because farmers and ranchers would be better able to survive the down market cycles of volatile commodity markets. As a further example, in years of late season frost, hail or flood, a grower could elect to transfer unused water to help stabilize farm income and save it from an otherwise disastrous year.

Previously, the primary motivation for reallocation of farm water supplies was to support new urban growth and supply reliability during drought periods. While these purposes remain, environmental projects have begun to dominate the field as the CALFED Ecosystem Restoration Program and the Central Valley Improvement Act programs seek millions of acre feet of water supply. All of these reallocations reduce agricultural water supply, with attendant losses of farm viability and productivity, further exacerbating the rate of farmland loss.

There are a number of water transfer issues that remain unanswered. These concerns fall into three general categories: (1) third party impacts; (2) the level of statistical substantiation required by the SWRCB to justify the amount available for transfer; and (3) how the water rights of the transferor will be protected. These outstanding issues inject uncertainty into the system and hinder efforts to encourage water transfers.

The recent Natomas decision, for example, left us with many questions regarding the level of detail required to prove specific water conservation practices resulted in the amount of water a farmer may seek to transfer. Currently, in many situations, the use of technology and appropriate measurement techniques for water conservation are unclear. If the feasibility of providing data requested by the SWRCB is low because the tools are not available or the costs are too high, water may not be utilized to the maximum extent feasible. There will be little incentive to conserve and trade water if the whole process is too complex and too expensive.

It is true the SWRCB has approved temporary water transfers in the past, but these permits are often contentious. Long-term transfers will be even more problematic. The current water transfer policies will not serve the state well as transfers become more prevalent. The Farm Bureau is raising the following concerns with the hope the SWRCB will resolve these outstanding issues and take a firm leadership role in simplifying the water transfer marketplace. We believe early resolution and discussion of water transfer issues will reduce future conflicts and litigation costs.

#### **A. THIRD PARTY IMPACTS MUST BE ADDRESSED**

There is no such thing as a two-party transfer. Therefore, the following factors should be considered in any transfer, whether it is for urban, agricultural or environmental use. These factors should be applied even when the transfer is for an in-

stream environmental use as landowners downstream may experience unusually high flows and possible flooding.

1. Notice to potentially affected parties and regions where the water is being transferred.
2. Inclusion of a proposal to provide protection for the water rights of third parties and, where relevant, areas of origin with respect to quantity and quality of the water supply; a legal proposal to ensure the water transferred is not forfeited by the seller voluntarily.
3. The restrictions of reasonable and beneficial use must be honored.
4. Where transferred water is commingled with other water, third party water quality and quantity should not be adversely affected.

Proponents of a water transfer should be required to provide the same assurances enumerated above as well as comply with state water law requirements. Potentially affected entities and individuals should be broadly defined for purposes of providing notice of a proposed transaction and evaluating its potential effects on third parties. A community from which the water will be transferred, particularly where the transfer involves an out-of-basin use, should be provided with extensive analysis of cumulative impacts of the transfer in relation to other activities in the area, given the potential economic consequences for agricultural communities.

**B. THE LEVEL OF STATISTICAL SUBSTANTIATION REQUIRED TO SUPPORT A WATER TRANSFER APPLICATION MUST BE BASED ON FEASIBILITY AND COMMON SENSE**

The State of California has chosen to support water use efficiency by enacting laws that clearly provide reduced use will not result in a forfeiture of water rights and shall constitute beneficial use when water is conserved. (See Water Code sec. 1011(a).) Pursuant to Water Code section 1011, subdivision (b), water, or the right to the use of water, the use of which has ceased or been reduced due to conservation, may be transferred pursuant to any provision of law relating to transfers. Temporary transfers may be made pursuant to Water Code sections 1725, *et seq.*, as administered by the SWRCB. Now, the SWRCB must resolve the inherent conflict between conserving water and permitting reliance on inefficient use of water to enhance return flows, among other water policy conflicts.

The following are specific examples of issues that warrant further discussion and resolution:

1. At what point do we measure conserved water for transfer purposes, the upper limits of the water permit (or other basis for the right) or historic use?

Drought conditions restrict water deliveries, thereby influencing "historic use." The SWRCB should not unjustly restrict a permittee's wet year allocation because of dry weather or water project deliveries restricted to serve fishery needs that may reduce water use for several years.

2. "Carriage Water" is not a legal concept.

The Farm Bureau questions the appropriateness of the "carriage water" charge. We are unconvinced that a "carriage water" concept is necessary. Either a water right holder is already required to contribute to Bay-Delta water quality standards or not. These assessments by the state and federal projects arguably amount to a facilitation fee that exceeds the reasonable application of the no injury rule.

3. There are many conservation practices with benefits that are difficult to measure. How will applicants know when they have provided sufficient substantiation to support a water transfer permit application?

There are many valuable conservation practices whose benefits are difficult to quantify. Examples include: laser land leveling, changes in cropping patterns, switches in irrigation practices, and use of cover crops. The SWRCB needs to provide guidance on how to properly quantify water savings from these and other commonly utilized conservation practices. If the proof in Natomas was not sufficient, it is difficult to imagine what will satisfy the SWRCB.

4. When water users switch to recycled wastewater, they should be permitted to sell the fresh water that is being replaced and their right to the fresh water should be unaffected.

The use of recycled wastewater is an important conservation option, and those who agree to utilize it should not be penalized. This situation is analogous to a conjunctive use program where the surface water users switch to groundwater and sell a portion of their surface water allotment. Recycled wastewater users should be able to transfer the unused surface water rights when they switch to wastewater use. Water Code section 1010 currently allows this type of transaction.

5. Tail-water and flow-through water should not be subsequently allocated to a downstream user unless the initial water right holder is being credited for the downstream use.

A controversy surrounding the use of tail-water, or drainage water, and flow-through water is brewing as water users begin water conservation measures. As farmers reduce return flows, in some circumstances there may be less water available downstream. We believe the SWRCB has given the water permits for downstream use of upstream return flows, which means the same water is being counted twice. The SWRCB should not allocate the same water to more than one person as it reduces the amount of water available for transfer and it reduces operational flexibility of the upstream user. If water users are going to be precluded from transferring their return flows, they should be credited for the downstream use.

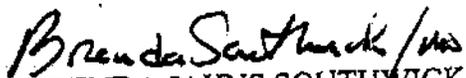
### C. Protection of Transferor Water Rights

Our chief concerns with the protection of transferor water rights primarily arise in long-term transactions. These concerns include whether the price paid for the water truly reflects the market value of the water subject to transfer, particularly considering the costs of the conservation measures, environmental reviews, mitigation measures, and any other costs of compliance; whether there is equitable treatment of who bears the burden of shortages; whether under a long-term contract the transferor may legally and practically anticipate affirmation of a right to receive the water back from the transferee; whether there is equitable distribution of the burden of changed circumstances; and whether the preservation of a right to terminate the transaction reflects the sale of the right to use the water, not the sale of the water right.

The Farm Bureau believes all water transfers must be evaluated on their own merits on a case-by-case basis. The issues raised briefly herein are common issues that must be evaluated anew in each transaction.

We appreciate the SWRCB's willingness to convene this workshop to allow broad input on water transfer issues. The Farm Bureau stands ready to assist the SWRCB in any way it can to facilitate a truly viable water transfer market, particularly one that does not result in widespread fallowing of farmland.

Sincerely,

  
BRENDA JAHNS SOUTHWICK

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