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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Karen E. Duff
EXECUTIVE SECRETARY

April 18, 1994

To: Board of Directors (Committee on Legislation--Information)

From: General Manager

Subject: Description of Impact of Assembly Bill 3035 Upon Metropolitan
for Possible Board Position (Katz--Panorama City)

Report

On February 22, 1994, Assembly member Katz introduced AB 3035 (attached), which was significantly amended on April 5, 1994. Among other provisions, this bill would significantly consolidate and amend existing Water Code provisions relating to transfers and water rights permitting procedures. Although the bill contains various features attractive to Metropolitan's interests, it includes objectionable provisions such as restricting the existing ability of districts to transfer water which users are willing to forego through conservation or fallowing efforts (proposed Wat. Code, § 1747.2, replacing Wat. Code, § 382) and failing to adequately protect individual user transfers from arbitrary action by their districts. Some provisions may be objectionable to other interests. An example is one striking an existing provision authorizing holders of appropriative rights acquired prior to 1914 to transfer water without State Water Resources Control Board approval. (Existing Wat. Code, § 1706.)

Strenuous efforts previously made by Metropolitan and various other urban and agricultural interests to arrive at a consensus on water transfer legislation have not yet arrived at a collectively acceptable approach. As a result of this and the time being spent to resolve Bay/Delta issues, the interests have agreed that further efforts to attain a common ground on water transfer legislation should be postponed and that efforts to secure passage of such legislation should not be made during this session.

Consequently, Metropolitan joined with various of the other interests in the attached letter requesting Assembly member Katz to put AB 3035 over for interim study to provide time for efforts to arrive at a common ground. Mr. Katz subsequently requested that the bill not be heard

before the Assembly Committee on Water, Parks and Wildlife on April 12. Under legislative rules, this bill was required to be passed by the Assembly Committee on Water, Parks and Wildlife no later than April 15, 1994 for passage to occur in this session. It is unknown whether a waiver of the time rules will be requested.

Efforts will continue with the other interested groups and, as appropriate, Assembly members Cortese (author of the other major water transfer bill, AB 97) and Katz to arrive at water transfer legislation collectively acceptable to the various interest groups.

Board Committee Assignment

This letter is referred for information to the Committee on Legislation because it involves legislation which may affect the District, pursuant to Administrative Code Section 2491, subdivision (a).

Recommendation

For information only.


John R. Wodraska

JO:gm
bdltr\AB3035.doc

Attachments

AMENDED IN ASSEMBLY APRIL 5, 1994

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL**No. 3035**

Introduced by Assembly Member Katz

February 22, 1994

An act to amend Section 1011 of the Water Code, relating to water transfers, and to repeal Sections 1005.1, 1005.2, 1005.4, 1010, 1011, and 1011.5 of, to repeal Chapter 3.6 (commencing with Section 380) and Chapter 7 (commencing with Section 470) of Division 1 of, to repeal Chapter 1.5 (commencing with Section 1020) of Part 1 of, Chapter 6.6 (commencing with Section 1435) of, Chapter 10.5 (commencing with Section 1725) of, and Article 4 (commencing with Section 1810) of Chapter 11 of, Part 2 of, Division 2 of, and to repeal and add Chapter 10 (commencing with Section 1700) of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 3035, as amended, Katz. Water ~~transfers~~ resources.

(1) Existing law authorizes every local or regional public agency authorized by law to serve water to persons or entities within the service area of the agency to sell, lease, exchange, or transfer, for use outside the agency, water that is surplus to the needs of the water users of the agency or water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.

This bill would require the price of water transferred pursuant to these provisions to be determined by the transferor and the transferee.

(2) Existing law defines "surplus water" for the purposes of the provisions described in (1).

This bill would revise that definition.

(3) Existing law prohibits a water transfer pursuant to the provisions described in (1) for use within the boundaries of a local or regional public agency that furnishes the same water service to the transferee without the prior consent of that agency. Existing law authorizes the State Water Resources Control Board to approve a change associated with a transfer undertaken pursuant to those provisions only if the state board makes a prescribed determination. Existing law prohibits a water transfer agreement entered into pursuant to those provisions from exceeding 7 years, unless a longer time period is otherwise agreed to.

This bill would delete those provisions.

(4) Existing law requires the Department of Water Resources to prepare a water transfer guide.

This bill would require the department to update the water transfer guide not later than January 1, 1996, and every 3 years thereafter.

(5) Existing law provides that a cessation or reduction in the extraction of groundwater by an owner of a right to extract, as the result of the use of an alternative supply of water from a noncontributing source of water, or a cessation or reduction in the use of water as the result of the use of reclaimed water, desalinated water, or water polluted by waste, the conjunctive use of surface water and groundwater, or water conservation, constitutes a reasonable and beneficial use of water, declares that no loss of any water right shall occur as the result of such cessation or reduction, and prescribes related matters. Existing law requires water users who seek the benefit of these provisions to file specified reports with the state board.

This bill would revise and recast these provisions.

(6) Existing law authorizes applicants, permittees, and licensees to request a change in the point of diversion, place of use, or purpose of use from that described in the application, permit, or license, and requires the state board to approve or deny that request in accordance with prescribed procedures. Existing law authorizes a permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of use from that described in the permit or license to request the change and requires the state board to

approve or deny that request in accordance with prescribed procedures. Existing law authorizes a permittee or licensee to request a change in the point of diversion, place of use, or purpose of use from that described in the permit or license, for the purpose of a short-term or long-term water transfer, and requires the state board to approve or deny that request in accordance with prescribed procedures. Existing law authorizes a person entitled to the use of water, whether based on an appropriative, riparian, or other right, to request a change for the purposes of preserving or enhancing wetlands habitat, fish and wildlife resources, or recreation in, or on, the water and requires the state board to approve or deny the request in accordance with prescribed procedures.

This bill would revise and recast the provisions pursuant to which those change requests are submitted and approved or denied by the state board.

(7) Existing law authorizes persons or entities to enter into prescribed lease agreements.

This bill would delete those provisions.

(8) Existing law authorizes a water supplier to contract with persons entitled to service within the supplier's service area to reduce or eliminate for a specified period of time their use of water supplied by the water supplier. Existing law authorizes a water supplier to contract with a state drought water bank or state or local water supplier or user inside or outside the service area of the water supplier to transfer water if certain requirements are met.

This bill would, instead, authorize a water district, as defined, to contract with water users within the district to permit the district to transfer water to persons or entities outside the district for the period of time specified in the contract if other water users within the district will not be adversely affected, as prescribed.

~~*Existing law authorizes the transfer of water, or the right to the use of water, the use of which has ceased or been reduced as the result of prescribed water conservation efforts, pursuant to provisions of law relating to the transfer of water or water rights.*~~

~~*This bill would declare that, upon the completion of the term of an agreement to transfer water, or the right to the use*~~

of water, that is available as a result of those water conservation efforts; the right to the use of that water shall revert to the possessor of the water right as if no change in the point of diversion, place of use, or purpose of use had occurred.

Vote: majority. Appropriation: no. Fiscal committee: no yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.~~ Section 1011 of the Water Code is
 2 SECTION 1. Chapter 3.6 (commencing with Section
 3 380) of Division 1 of the Water Code is repealed.
 4 SEC. 2. Chapter 7 (commencing with Section 470) of
 5 Division 1 of the Water Code is repealed.
 6 SEC. 3. Section 1005.1 of the Water Code is repealed.
 7 1005.1. Cessation of or reduction in the extraction of
 8 ground water by the owner of a right to extract, as the
 9 result of the use of an alternate supply of water from a
 10 nontributary source, shall be and is deemed equivalent
 11 to, and for purposes of establishing and maintaining any
 12 right to extract the ground water shall be construed to
 13 constitute, a reasonable beneficial use of the ground
 14 water to the extent and in the amount that water from
 15 the alternate source is applied to reasonable beneficial
 16 use, not exceeding, however, the amount of such
 17 reduction. Any such user of water from an alternate
 18 nontributary source who seeks the benefit of this section,
 19 shall file with the board, on or before December 31st of
 20 each calendar year, a statement of the amount of water
 21 from such source so applied to reasonable beneficial use
 22 pursuant to the provisions of this section during the next
 23 preceding water year (November 1st to October 31st);
 24 and such user cannot claim the benefit of this section for
 25 any water year for which such statement is not so filed.
 26 “Ground water,” for the purpose of this section and of
 27 Sections 1005.2 and 1005.4, means water beneath the
 28 surface of the ground, whether or not flowing through
 29 known and definite channels.
 30 The term “nontributary source,” as used in this section,

1 shall be deemed to include water imported from another
2 watershed, or water conserved and saved in the
3 watershed by a water conservation plan or works without
4 which such water of the same watershed would have
5 wasted, or would not have reached the underground
6 source of supply of the owner relying upon this section.

7 *SEC. 4. Section 1005.2 of the Water Code is repealed.*

8 ~~1005.2.~~ Cessation of or reduction in the extraction of
9 ground water, to permit the replenishment of such
10 ground water by the use of water from an alternate
11 nontributary source, is hereby declared to be a
12 reasonable beneficial use of the ground water to the
13 extent and in the amount that water from such alternate
14 source is applied to beneficial use, not exceeding,
15 however, the amount of such reduction. No lapse,
16 reduction or loss of any right in ground water, shall occur
17 under such conditions. Any such user of water from an
18 alternate source who seeks the benefit of this Section
19 ~~1005.2~~ with respect to the use of such water occurring
20 prior to the effective date of this section, shall file with
21 the board, within ninety ~~(90)~~ days from said effective
22 date, a statement of the amounts of reduction in the
23 extraction of ground water as the result of water from
24 said alternate source having been so applied to
25 reasonable beneficial use prior to said effective date to
26 permit the replenishment of such ground water and said
27 amounts shall be segregated and shown for each water
28 year ~~(November 1st to October 31st)~~ during which such
29 use occurred prior to the effective date of this section.
30 Any such user of water from an alternate source who
31 seeks the benefit of this Section ~~1005.2~~ with respect to the
32 use of such water occurring subsequent to the effective
33 date of this section, shall file with the board, on or before
34 December 31st of each calendar year, a statement of the
35 amount of reduction in the extraction of ground water as
36 the result of water from said alternate source having been
37 so applied to reasonable beneficial use during the next
38 preceding water year ~~(November 1st to October 31st)~~ to
39 permit the replenishment of such ground water. Such
40 user cannot claim the benefit of this section for any water

1 year for which such statement is not so filed.

2 The provisions of this section apply only as to the
3 cessation of, or reduction in, the extraction of ground
4 water within that area in this state defined by the exterior
5 boundaries of the Counties of San Luis Obispo, Santa
6 Barbara, Ventura, Los Angeles, Orange, San Diego,
7 Imperial, Riverside, and San Bernardino.

8 The term "nontributary source" as used in this section
9 shall be deemed to include water imported from another
10 watershed or water conserved and saved in the
11 watershed by a water conservation plan or works without
12 which such water of the same watershed would have
13 wasted, or would not have reached the underground
14 source of supply of the owner relying upon this section.

15 *SEC. 5. Section 1005.4 of the Water Code is repealed.*

16 1005.4. (a) Cessation of or reduction in the extraction
17 of ground water, to permit the replenishment of such
18 ground water by the use of water from an alternate
19 nontributary source, is hereby declared to be a
20 reasonable beneficial use of the ground water to the
21 extent and in the amount that water from such alternate
22 source is applied to beneficial use, not exceeding,
23 however, the amount of such reduction. No lapse,
24 reduction or loss of any right in ground water, shall occur
25 under such conditions.

26 (b) Any such user of water from an alternative source
27 may file with the board, on or before December 31st of
28 each calendar year, a statement of the amount of
29 reduction in the extraction of groundwater as a result of
30 water from the alternative source having been so applied
31 to reasonable beneficial use during the next preceding
32 water year (October 1st to September 30th) to permit
33 replenishment of such groundwater. However, failure to
34 file such a statement shall in no way affect the right of a
35 user to claim the benefit of this section.

36 (c) The provisions of this section apply only as to the
37 cessation of, or reduction in, the extraction of ground
38 water within that area in this state defined by the exterior
39 boundaries of every county, except the Counties of San
40 Luis Obispo, Santa Barbara, Ventura, Los Angeles,

1 Orange, San Diego, Imperial, Riverside, and San
2 Bernardino.

3 ~~(d)~~ The term "nontributary source," as used in this
4 section, shall be deemed to include water imported from
5 another watershed or water conserved and saved in the
6 watershed by a water conservation plan or works without
7 which such water of the same watershed would have
8 wasted, or would not have reached the underground
9 source of supply of the owner relying upon this section.

10 *SEC. 6. Section 1010 of the Water Code is repealed.*

11 ~~1010. (a) (1)~~ The cessation of, or reduction in, the
12 use of water under any existing right regardless of the
13 basis of right, as the result of the use of reclaimed water,
14 desalinated water, or water polluted by waste to a degree
15 which unreasonably affects the water for other beneficial
16 uses, is deemed equivalent to, and for purposes of
17 maintaining any right shall be construed to constitute, a
18 reasonable beneficial use of water to the extent and in the
19 amount that the reclaimed, desalinated, or polluted
20 water is being used not exceeding, however, the amount
21 of such reduction.

22 ~~(2)~~ No lapse, reduction, or loss of any existing right
23 shall occur under a cessation of, or reduction in, the use
24 of water pursuant to this subdivision, and, to the extent
25 and in the amount that reclaimed, desalinated, or
26 polluted water is used in lieu of water appropriated by a
27 permittee pursuant to Chapter 6 ~~(commencing with~~
28 ~~Section 1375)~~ of Part 2, the board shall not reduce the
29 appropriation authorized in the user's permit.

30 ~~(3)~~ The use of reclaimed, desalinated, or polluted
31 water constitutes good cause under Section 1398 to
32 extend the period specified in a permit for application of
33 appropriated water to beneficial use to the extent and in
34 the amount that reclaimed, desalinated, or polluted
35 water is used. The extension by the board shall be granted
36 upon the same terms as are set forth in the user's permit,
37 and for a period sufficient to enable the permittee to
38 perfect his appropriation, while continuing to use
39 reclaimed, desalinated, or polluted water.

40 ~~(4)~~ The board, in issuing a license pursuant to Article

1 ~~3~~ (commencing with Section 1610) of Chapter 9 of Part
2 ~~2~~; shall not reduce the appropriation authorized by
3 permit, to the extent and in the amount that reduction in
4 a permittee's use, during the perfection period, including
5 any extension as provided in this section, has resulted
6 from the use of reclaimed, desalinated, or polluted water
7 in lieu of the permittee's authorized appropriation.

8 (5) The board may require any user of water who
9 seeks the benefit of this section to file periodic reports
10 describing the extent and amount of the use of reclaimed,
11 desalinated, or polluted water. To the maximum extent
12 possible, the reports shall be made a part of other reports
13 required by the board relating to the use of water.

14 (6) For purposes of this section, the term "reclaimed
15 water" has the same meaning as in Division 7
16 (commencing with Section 13000).

17 (b) Water, or the right to the use of water, the use of
18 which has ceased or been reduced as the result of the use
19 of reclaimed, desalinated, or polluted water as described
20 in subdivision (a), may be sold, leased, exchanged, or
21 otherwise transferred pursuant to any provision of law
22 relating to the transfer of water or water rights,
23 including, but not limited to, provisions of law governing
24 any change in point of diversion, place of use, and
25 purpose of use due to the transfer.

26 *SEC. 7. Section 1011 of the Water Code is repealed.*

27 1011. (a) When any person entitled to the use of
28 water under an appropriative right fails to use all or any
29 part of the water because of water conservation efforts,
30 any cessation or reduction in the use of such appropriated
31 water shall be deemed equivalent to a reasonable
32 beneficial use of water to the extent of such cessation or
33 reduction in use. No forfeiture of the appropriative right
34 to the water conserved shall occur upon the lapse of the
35 forfeiture period applicable to water appropriated
36 pursuant to the Water Commission Act or this code or the
37 forfeiture period applicable to water appropriated prior
38 to December 19, 1914.

39 The board may require that any user of water who
40 seeks the benefit of this section file periodic reports

1 describing the extent and amount of the reduction in
2 water use due to water conservation efforts. To the
3 maximum extent possible, the reports shall be made a
4 part of other reports required by the board relating to the
5 use of water. Failure to file the reports shall deprive the
6 user of water of the benefits of this section.

7 For purposes of this section, the term "water
8 conservation" shall mean the use of less water to
9 accomplish the same purpose or purposes of use allowed
10 under the existing appropriative right. Where water
11 appropriated for irrigation purposes is not used by reason
12 of land fallowing or crop rotation, the reduced usage shall
13 be deemed water conservation for purposes of this
14 section.

15 (b) Water, or the right to the use of water, the use of
16 which has ceased or been reduced as the result of water
17 conservation efforts as described in subdivision (a), may
18 be sold, leased, exchanged, or otherwise transferred
19 pursuant to any provision of law relating to the transfer
20 of water or water rights, including, but not limited to,
21 provisions of law governing any change in point of
22 diversion, place of use, and purpose of use due to the
23 transfer.

24 *SEC. 8. Section 1011.5 of the Water Code, as added by*
25 *Section 1 of Chapter 779 of the Statutes of 1992, is*
26 *repealed.*

27 1011.5. (a) The Legislature hereby finds and declares
28 that the growing water needs of the state require the use
29 of water in an efficient manner and that the efficient use
30 of water requires certainty in the definition of property
31 rights to the use of water. The Legislature further
32 declares that it is the policy of this state to encourage
33 conjunctive use of surface water and groundwater
34 supplies and to make surface water available for other
35 beneficial uses. The Legislature recognizes that the
36 substantial investments that may be necessary to
37 implement and maintain a conjunctive use program
38 require certainty in the continued right to the use of
39 alternate water supplies.

40 (b) When any holder of an appropriative right fails to

1 use all or any part of the water as a result of conjunctive
2 use of surface water and groundwater involving the
3 substitution of an alternate supply for the unused portion
4 of the surface water, any cessation of, or reduction in, the
5 use of the appropriated water shall be deemed equivalent
6 to a reasonable and beneficial use of water to the extent
7 of the cessation of, or reduction in, use, and to the same
8 extent as the appropriated water was put to reasonable
9 and beneficial use by that person. No forfeiture of the
10 appropriative right to the water for which an alternate
11 supply is substituted shall occur upon the lapse of the
12 forfeiture period applicable to water appropriated
13 pursuant to the Water Commission Act or this code or the
14 forfeiture period applicable to water appropriated prior
15 to December 19, 1914.

16 The state board may require any holder of an
17 appropriative right who seeks the benefit of this section
18 to file periodic reports describing the extent and amount
19 of the reduction in water use due to substitution of an
20 alternate supply. To the maximum extent possible, the
21 reports shall be made a part of other reports required by
22 the state board relating to the use of water. Failure to file
23 the reports shall deprive the user of water of the benefits
24 of this section.

25 (e) Substitution of an alternate supply may be made
26 only if the extraction of the alternate supply conforms to
27 all requirements imposed pursuant to an adjudication of
28 the groundwater basin, if applicable, and meets one of
29 the following conditions:

30 (1) Except as specified in paragraph (2), is from a
31 groundwater basin for which the operating safe yield is
32 not exceeded prior to the extraction of the alternate
33 supply and does not cause the operating safe yield of the
34 groundwater basin from which the alternate supply is
35 obtained to be exceeded.

36 (2) Is from the Eastern San Joaquin County Basin, as
37 described on pages 38 and 39 of the Department of Water
38 Resources Bulletin No. 118/80, for which the operating
39 safe yield is exceeded prior to the extraction of the
40 alternative supply, if all of the following requirements are

1 met:

2 ~~(A)~~ The conjunctive use program is operated in
3 accordance with a local groundwater management
4 program that complies with the requirements of this
5 section:

6 ~~(B)~~ The groundwater management program
7 establishes requirements for the extraction of
8 groundwater and is approved by a joint powers authority
9 that meets the requirements of subparagraph ~~(C)~~:

10 ~~(C)~~ The joint powers authority includes each water
11 agency overlying the contemplated points of
12 groundwater extraction and each water agency that will
13 share in the benefits to be derived from the local
14 groundwater management program:

15 ~~(D)~~ By either of the following methods, the overdraft
16 of the groundwater basin underlying the point of
17 extraction has been reduced prior to the commencement
18 of extraction:

19 ~~(i)~~ Elimination of a volume of existing groundwater
20 extractions in excess of the proposed new extraction:

21 ~~(ii)~~ Recharge of the groundwater basin with a volume
22 of water in excess of the proposed new extraction:

23 ~~(E)~~ The operation of that conjunctive use program
24 ensures that the overdraft of the groundwater basin
25 continues to be reduced:

26 ~~(d)~~ Water, or the right to the use of water, the use of
27 which has ceased or been reduced as the result of
28 conjunctive use of surface water and groundwater
29 involving substitution of an alternate supply, as described
30 in subdivisions ~~(b)~~ and ~~(e)~~, may be sold, leased,
31 exchanged, or otherwise transferred pursuant to any
32 provision of law relating to the transfer of water or water
33 rights, including, but not limited to, provisions of law
34 governing any change in point of diversion, place of use,
35 and purpose of use due to the transfer:

36 ~~(e)~~ As used in this section, "substitution of an alternate
37 supply" means replacement of water diverted under an
38 appropriative right by the substitution of an equivalent
39 amount of groundwater:

40 ~~(f)~~ This section does not apply to the Santa Ana River

1 watershed.

2 (g) This section does not apply in any area where
3 groundwater pumping causes, or threatens to cause, a
4 violation of water quality objectives or an unreasonable
5 effect on beneficial uses established in a water quality
6 control plan adopted or approved by the state board
7 pursuant to, and to the extent authorized by, Section
8 13170 or 13245, which designates areas where
9 groundwater pumping causes, or threatens to cause, a
10 violation of water quality objectives or an unreasonable
11 effect on beneficial uses.

12 (h) This section shall not be construed to increase or
13 decrease the jurisdiction of the state board over
14 groundwater resources, or to confer on the state board
15 jurisdiction over groundwater basins over which it does
16 not have jurisdiction pursuant to other provisions of law.

17 (i) This section shall remain in effect only until
18 January 1, 2007, and as of that date is repealed, unless a
19 later enacted statute, which is enacted before January 1,
20 2007, deletes or extends that date.

21 *SEC. 9. Section 1011.5 of the Water Code, as added by*
22 *Section 2 of Chapter 779 of the Statutes of 1992, is*
23 *repealed.*

24 1011.5. (a) The Legislature hereby finds and declares
25 that the growing water needs of the state require the use
26 of water in an efficient manner and that the efficient use
27 of water requires certainty in the definition of property
28 rights to the use of water. The Legislature further
29 declares that it is the policy of this state to encourage
30 conjunctive use of surface water and groundwater
31 supplies and to make surface water available for other
32 beneficial uses. The Legislature recognizes that the
33 substantial investments that may be necessary to
34 implement and maintain a conjunctive use program
35 require certainty in the continued right to the use of
36 alternate water supplies.

37 (b) When any holder of an appropriative right fails to
38 use all or any part of the water as a result of conjunctive
39 use of surface water and groundwater involving the
40 substitution of an alternate supply for the unused portion

1 of the surface water, any cessation of, or reduction in, the
2 use of the appropriated water shall be deemed equivalent
3 to a reasonable and beneficial use of water to the extent
4 of the cessation of, or reduction in, use, and to the same
5 extent as the appropriated water was put to reasonable
6 and beneficial use by that person. No forfeiture of the
7 appropriative right to the water for which an alternate
8 supply is substituted shall occur upon the lapse of the
9 forfeiture period applicable to water appropriated
10 pursuant to the Water Commission Act or this code or the
11 forfeiture period applicable to water appropriated prior
12 to December 19, 1914.

13 The state board may require any holder of an
14 appropriative right who seeks the benefit of this section
15 to file periodic reports describing the extent and amount
16 of the reduction in water use due to substitution of an
17 alternate supply. To the maximum extent possible, the
18 reports shall be made a part of other reports required by
19 the state board relating to the use of water. Failure to file
20 the reports shall deprive the user of water of the benefits
21 of this section.

22 (c) Substitution of an alternate supply may be made
23 only if the extraction of the alternate supply meets all of
24 the following conditions:

25 (1) Is from a groundwater basin for which the
26 operating safe yield is not exceeded prior to the
27 extraction of the alternate supply.

28 (2) Does not cause the operating safe yield of the
29 groundwater basin from which the alternate supply is
30 obtained to be exceeded.

31 (3) Conforms to all requirements imposed pursuant to
32 any adjudication of the groundwater basin.

33 (4) Is consistent with any applicable groundwater
34 management plan.

35 (5) Is approved by the water supplier whose service
36 area the water is to be transferred from, if the
37 groundwater basin has not been adjudicated or if a
38 groundwater management plan has not been adopted.

39 (d) Water, or the right to the use of water, the use of
40 which has ceased or been reduced as the result of

1 conjunctive use of surface water and groundwater
2 involving substitution of an alternate supply, as described
3 in subdivisions (b) and (c), may be sold, leased,
4 exchanged, or otherwise transferred pursuant to any
5 provision of law relating to the transfer of water or water
6 rights, including, but not limited to, provisions of law
7 governing any change in point of diversion, place of use,
8 and purpose of use due to the transfer.

9 (e) As used in this section, "substitution of an alternate
10 supply" means replacement of water diverted under an
11 appropriative right by the substitution of an equivalent
12 amount of groundwater.

13 (f) This section does not apply to the Santa Ana River
14 watershed.

15 (g) This section does not apply in any area where
16 groundwater pumping causes, or threatens to cause, a
17 violation of water quality objectives or an unreasonable
18 effect on beneficial uses established in a water quality
19 control plan adopted or approved by the state board
20 pursuant to, and to the extent authorized by, Section
21 13170 or 13245, which designates areas where
22 groundwater pumping causes, or threatens to cause, a
23 violation of water quality objectives or an unreasonable
24 effect on beneficial uses.

25 (h) This section shall not be construed to increase or
26 decrease the jurisdiction of the state board over
27 groundwater resources, or to confer on the state board
28 jurisdiction over groundwater basins over which it does
29 not have jurisdiction pursuant to other provisions of law.

30 (i) This section shall become operative on January 1,
31 2007.

32 *SEC. 10. Chapter 1.5 (commencing with Section*
33 *1020) of Part 1 of Division 2 of the Water Code is*
34 *repealed.*

35 *SEC. 11. Chapter 6.6 (commencing with Section*
36 *1435) of Part 2 of Division 2 of the Water Code is*
37 *repealed.*

38 *SEC. 12. Chapter 10 (commencing with Section 1700)*
39 *of Part 2 of Division 2 of the Water Code is repealed.*

40 *SEC. 13. Chapter 10 (commencing with Section 1700)*

1 *is added to Part 2 of Division 2 of the Water Code, to read:*
2

3 CHAPTER 10. CHANGES, TRANSFERS, AND THE
4 PROTECTION OF RIGHTS
5

6
7 Article 1. Findings and Declarations
8

9 1700. *The Legislature hereby finds and declares all of*
10 *the following:*

11 (a) *The various regions of the state differ widely in the*
12 *availability of water supplies and in the demand for water*
13 *to meet beneficial needs. Decisions regarding operations*
14 *to meet water needs can best be made at the local or*
15 *regional level.*

16 (b) *The growing water needs of the state require the*
17 *efficient use of water. Voluntary water transfers between*
18 *water users can result in a more efficient use of water*
19 *benefitting both buyers and sellers.*

20 (c) *Underlying water rights must be preserved and*
21 *protected in order to realize the potential for voluntary*
22 *water transfers, reclamation, conjunctive use programs,*
23 *conservation, water banking, and other water efficient*
24 *programs.*

25 (d) *In addition, many agricultural operations and*
26 *public agencies experiencing financial difficulties or*
27 *facing default may desire to sell, lease, or exchange water*
28 *as a means of obtaining financial relief or augmenting*
29 *their income.*

30 (e) *Since the sale, lease, or exchange of conserved*
31 *water does not result in the forfeiture of an appropriative*
32 *right to water, the marketing of water may provide*
33 *financial relief or supplemental income during periods of*
34 *economic hardship.*

35 (f) *It is the policy of the state to facilitate water*
36 *transfers to allow more intensive use of developed water*
37 *resources in a manner that fully protects the interests of*
38 *other entities which have rights to, or rely on, the water*
39 *that is the subject of a proposed transfer.*

1 transferred is already developed and being diverted from
2 a stream for a beneficial use or has been conserved.

3 1712. The department shall create and maintain a list
4 of entities seeking to enter into water supply transfers,
5 leases, exchanges, or other similar arrangements. In
6 addition, the department shall maintain a list of the
7 physical facilities which may be available to carry out
8 water supply transfers.

9 1713. (a) The department shall prepare a water
10 transfer guide which shall include, but not be limited to,
11 all of the following:

12 (1) A review of state and federal laws that pertain to
13 water transfers, water markets, or water rights.

14 (2) A list of persons or public agencies throughout the
15 state involved in water management who could be
16 helpful to those seeking assistance to transfer water.

17 (3) Information and resources which could be used to
18 identify potential third-party impacts and mitigation
19 alternatives, including economic, environmental, and
20 legal issues related to the transfer of water.

21 (4) A description of the services available to water
22 users from the department.

23 (b) The department shall update the water transfer
24 guide required by this section not later than January 1,
25 1996, and every three years thereafter.

26 1714. The department shall consult and coordinate its
27 activities with other state boards, departments, agencies,
28 or offices whose assistance may be desirable or necessary
29 in carrying out the purpose of this article.

30

31 Article 5. Beneficial Uses of Water

32

33 1715. This article applies to all of the following:

34 (a) A reduction in the extraction of groundwater by an
35 owner of a right to extract as the result of the use of an
36 alternative supply of water from a nontributory source.

37 (b) A reduction in the use of water under any existing
38 right as the result of the use of reclaimed water as defined
39 in subdivision (n) of Section 13050.

40 (c) A reduction in the use of water under any existing

1 right as the result of the use of desalinated water.

2 (d) A reduction in the use of water under any existing
3 right as the result of the use of water polluted by waste
4 to a degree which unreasonably affects the use of water
5 for beneficial purposes.

6 (e) A reduction in the use of water appropriated
7 under the Water Commission Act or this code as the
8 result of conjunctive use of surface water and
9 groundwater involving the substitution of an alternative
10 groundwater supply, subject to the limitations described
11 in Sections 1722 and 1723.

12 (f) A reduction in the use of water under an
13 appropriated right as the result of water conservation.

14 1716. For the purposes of this article, the following
15 terms have the following meanings:

16 (a) "Groundwater" means water beneath the surface
17 of the ground, whether or not flowing through known
18 and definite channels.

19 (b) "Nontributary source" includes water imported
20 from another watershed, or water conserved and saved in
21 the watershed by a water conservation plan or works
22 without which the water of the same watershed would
23 have wasted, or would not have reached the
24 underground source of supply of the owner relying on
25 this article.

26 (c) "Substitution of an alternative supply" means the
27 replacement of water diverted under an appropriative
28 right by the substitution of an equivalent amount of
29 groundwater.

30 (d) "Water conservation" means the use of less water
31 to accomplish the same purpose or purposes of use.

32 1717. (a) A reduction described in subdivisions (a) to
33 (e), inclusive, of Section 1715 constitutes a reasonable
34 and beneficial use of water to the extent and in the
35 amount that water from the alternative source is applied
36 to a reasonable and beneficial use, not exceeding the
37 amount of the reduction.

38 (b) No loss of any water right shall occur as the result
39 of a reduction described in subdivisions (a) to (e),
40 inclusive, of Section 1715 for which an alternative supply

1 *is substituted and beneficially used.*

2 1718. (a) A reduction described in subdivision (f) of
3 Section 1715 constitutes a reasonable and beneficial use of
4 water.

5 (b) No loss of any water right shall occur as the result
6 of a reduction described in subdivision (f) of Section 1715.

7 1719. Any user of water who seeks the benefit of this
8 article shall file with the state board, on or before
9 December 31st of each calendar year, a statement of the
10 reduction made in the prior water year, extending from
11 October 1 to September 30, inclusive. The state board
12 shall determine the information required in the
13 statement. Failure to file the reports shall deprive the
14 user of the benefit of this article.

15 1720. The state board shall not reduce the amount of
16 water authorized in a permit because of a reduction
17 described in Section 1715. The reduction constitutes good
18 cause under Section 1398 to extend the period specified
19 in a permit for application of appropriated water to
20 beneficial use. The extension by the state board shall be
21 granted under the same terms and conditions as are set
22 forth in the user's permit and for a period sufficient to
23 enable the permittee to perfect his or her appropriation.

24 1721. Water, or the right to the use of water, the use
25 of which has been reduced as the result of the use of a
26 reduction described in Section 1715 may be sold, leased,
27 exchanged, or otherwise transferred pursuant to any
28 provision of law relating to the transfer of water or water
29 rights, including, but not limited to, provisions of law
30 governing any change in point of diversion, place of use,
31 and purpose of use due to the transfer.

32 1722. (a) A groundwater supply may be used to
33 replace a surface water supply, for the purpose of
34 subdivision (e) of Section 1715, if the extraction of the
35 alternative supply meets all requirements imposed
36 pursuant to an adjudication of the groundwater basin, if
37 applicable, and meets one of the following conditions:

38 (1) Except as specified in paragraph (2), is from a
39 groundwater basin for which the operating safe yield is
40 not exceeded prior to the extraction of the alternative

1 supply and does not cause the operating safe yield of the
2 groundwater basin from which the alternative supply is
3 obtained to be exceeded.

4 (2) Is from the Eastern San Joaquin County Basin, as
5 described on pages 38 and 39 of the Department of Water
6 Resources Bulletin No. 118-80, for which the operating
7 safe yield is exceeded prior to the extraction of the
8 alternative supply, if all of the following requirements are
9 met:

10 (A) The conjunctive use program is operated in
11 accordance with a local groundwater management
12 program that complies with the requirements of this
13 section.

14 (B) The groundwater management program
15 establishes requirements for the extraction of
16 groundwater and is approved by a joint powers authority
17 that meets the requirements of subparagraph (C).

18 (C) The joint powers authority includes each water
19 agency overlying the contemplated points of
20 groundwater extraction and each water agency that will
21 share in the benefits to be derived from the local
22 groundwater management program.

23 (D) By either of the following methods, the overdraft
24 of the groundwater basin underlying the point of
25 extraction has been reduced prior to the commencement
26 of extraction:

27 (i) Elimination of a volume of existing groundwater
28 extractions in excess of the proposed new extraction.

29 (ii) Recharge of the groundwater basin with a volume
30 of water in excess of the proposed new extraction.

31 (E) The operation of that conjunctive use program
32 ensures that the overdraft of the groundwater basin
33 continues to be reduced.

34 (b) This section does not apply to the Santa Ana River
35 watershed.

36 (c) This section does not apply in any area where
37 groundwater pumping causes, or threatens to cause, a
38 violation of water quality objectives or an unreasonable
39 effect on beneficial uses established in a water quality
40 control plan adopted or approved by the state board

1 pursuant to, and to the extent authorized by, Section
2 13170 or 13245, which designates areas where
3 groundwater pumping causes, or threatens to cause, a
4 violation of water quality objectives or an unreasonable
5 effect on beneficial uses.

6 (d) This section shall not be construed to increase or
7 decrease the jurisdiction of the state board over
8 groundwater resources, or to confer on the state board
9 jurisdiction over groundwater basins over which it does
10 not have jurisdiction pursuant to other provisions of law.

11 (e) This section shall remain in effect only until
12 January 1, 2007, and as of that date is repealed, unless a
13 later enacted statute, which is enacted before January 1,
14 2007, deletes or extends that date.

15 1723. (a) A groundwater supply may be used to
16 replace a surface water supply, for the purpose of
17 subdivision (e) of Section 1715, if the extraction of the
18 alternative supply meets all of the following
19 requirements:

20 (1) Is from a groundwater basin for which the
21 operating safe yield is not exceeded prior to the
22 extraction of the alternate supply.

23 (2) Does not cause the operating safe yield of the
24 groundwater basin from which the alternate supply is
25 obtained to be exceeded.

26 (3) Conforms to all requirements imposed pursuant to
27 any adjudication of the groundwater basin.

28 (4) Is consistent with any applicable groundwater
29 management plan.

30 (5) Is approved by the water supplier whose service
31 area the water is to be transferred from, if the
32 groundwater basin has not been adjudicated or if a
33 groundwater management plan has not been adopted.

34 (b) This section does not apply to the Santa Ana River
35 watershed.

36 (c) This section does not apply in any area where
37 groundwater pumping causes, or threatens to cause, a
38 violation of water quality objectives or an unreasonable
39 effect on beneficial uses established in a water quality
40 control plan adopted or approved by the state board

1 pursuant to, and to the extent authorized by, Section
2 13170 or 13245, which designates areas where
3 groundwater pumping causes, or threatens to cause, a
4 violation of water quality objectives or an unreasonable
5 effect on beneficial uses.

6 (d) This section shall not be construed to increase or
7 decrease the jurisdiction of the state board over
8 groundwater resources, or to confer on the state board
9 jurisdiction over groundwater basins over which it does
10 not have jurisdiction pursuant to other provisions of law.

11 (e) This section shall become operative on January 1,
12 2007.

13

14 Article 6. Changes in Point of Diversion, Place of
15 Use, or Purpose of Use

16

17 1725. Water appropriated under the Water
18 Commission Act or this code is limited to the place of use,
19 purpose of use, and point of diversion described in the
20 permit or license, except as permitted in this article.

21 1726. A person may petition the state board to change
22 the point of diversion, place of use, or purpose of use
23 pursuant to this article if the water meets one of the
24 following requirements:

25 (1) The water was appropriated under the Water
26 Commission Act or this code.

27 (2) The water right was determined in accordance
28 with a court decree issued pursuant to Chapter 3
29 (commencing with Section 2500) of Part 3, after January
30 1, 1981, and the purpose of the change is for a water
31 transfer. The court having the appropriate jurisdiction
32 over the decreed rights may enter a supplemental decree
33 modifying the rights involved upon motion of the board
34 or any party with a vested water right.

35 (3) The water right is based upon an appropriative,
36 riparian, or other right and the purpose of the change is
37 to restore, preserve, or enhance wetlands habitat, fish
38 and wildlife resources, or recreation in, or on, the water.
39 The state board shall not require that the proposed
40 change involve a diversion of water.

1 (4) *The water right is an appropriative right obtained*
2 *prior to December 19, 1914.*

3 1727. *The purposes for which a person may petition*
4 *for a change pursuant to this article include a water*
5 *transfer.*

6 1728. *The petition submitted to the state board*
7 *pursuant to Section 1726, for the purposes of a water*
8 *transfer, may include two copies of a report that includes*
9 *all of the following:*

10 (a) *A description of the proposed water transfer.*

11 (b) *A description of the water right, including the*
12 *permit or license number if applicable.*

13 (c) *A description of the impacts on other legal users of*
14 *water and any proposed efforts to limit those impacts.*

15 (d) *A description of the impacts on fish, wildlife and*
16 *other instream uses and any proposed efforts to limit*
17 *those impacts.*

18 (e) *A description of how the transfer will affect the*
19 *terms and conditions in the permit or license.*

20 1729. *Upon receipt of a petition for a change, the state*
21 *board shall provide a copy of the petition and the report,*
22 *if provided pursuant to Section 1728, to the Department*
23 *of Fish and Game.*

24 1730. *Any person may request in writing to be*
25 *notified when a petition is received by the state board.*

26 1731. *The state board shall publish notice of the*
27 *receipt of the petition in the manner prescribed by the*
28 *state board.*

29 1732. *Any person may protest a petition by notifying*
30 *the state board as follows:*

31 (a) *Not later than 15 days from the date of the receipt*
32 *of the petition by the state board if the change is*
33 *proposed for one year or less.*

34 (b) *Not later than 60 days from the date of the receipt*
35 *of the petition by the state board if the change is*
36 *proposed for more than one year.*

37 1733. *The staff of the state board's Division of Water*
38 *Rights shall prepare an analysis relating to any protested*
39 *petition. A copy of the analysis shall be sent to the*
40 *petitioner and the protestant.*

1 1734. The state board shall approve a petition for a
2 change if the state board determines that the proposed
3 change meets both of the following requirements:

4 (1) Will not have an adverse effect on the water
5 quantity available to other legal users of water and will
6 not have significant adverse impacts upon other aspects
7 of the legal user's use of water.

8 (2) Will not have an unreasonable impact on fish,
9 wildlife, or other instream beneficial uses.

10 1735. (a) The state board shall approve or deny a
11 petition for a change not later than 60 days from the date
12 of the receipt of the petition if the change is proposed for
13 one year or less and the petitioner has submitted a report
14 pursuant to Section 1728.

15 (b) The state board shall approve or deny a petition
16 for a change not described in subdivision (a) not later
17 than 180 days from the date of the receipt of the petition.

18 1736. The state board shall notify the petitioner and
19 any protestants of the state board's decision by registered
20 mail.

21 1737. A proposed change for a period of one year or
22 less is exempt from the requirements of Division 13
23 (commencing with Section 21000) of the Public
24 Resources Code.

25 1737.2. A proposed change for a period of one year or
26 less for the purpose of a water transfer is limited to the
27 amount of water that is consumptively used.

28 1738. (a) In approving a petition for a change for the
29 purpose of a water transfer, the state board shall not
30 subject the proposed change to requirements that
31 mitigate effects on fish, wildlife, or other instream
32 beneficial uses that are not the result of the proposed
33 change.

34 (b) This section does not affect the authority of the
35 state board to regulate permittees and licensees.

36 1739. (a) Notwithstanding other provisions of this
37 article, the state board may approve a petition for an
38 emergency change in accordance with requirements to
39 be determined by the state board.

40 (b) For purposes of approval, the state shall

1 determine, at a minimum, that the water user has an
2 urgent need for a change and that the requirements
3 prescribed in Section 1734 are met. The state board may
4 delegate to any member or employee of the state board
5 the authority to act for the state board, provided that the
6 state board shall review and validate the delegated
7 action.

8 (c) The state board shall promptly hold a public
9 hearing on any protest.

10 1740. Upon approving a petition for a change for the
11 purpose of a water transfer which is not permanent, the
12 state board shall issue a certificate to the water right
13 holder describing the nature of the water right, the
14 change, the date or terms of the termination of the
15 transfer, and a statement that the water right holder will
16 not lose any water right because of the transfer.

17 1741. Upon the termination of an agreement to
18 transfer water entered into in connection with a change
19 approved pursuant to this article, the use of water shall
20 automatically revert to the water right holder without
21 any action by the state.

22 1742. Participation in a water transfer in connection
23 with a change approved pursuant to this article is
24 deemed to be a public service generally provided by
25 water districts, water companies, or mutual water
26 companies for the purposes of paragraph (3) of
27 subdivision (a) of Section 1090.5 of the Government
28 Code.

29 1743. Any change involving the movement of water
30 from or through the Sacramento-San Joaquin Delta shall
31 provide both of the following:

32 (a) Outflow consistent with the carriage water
33 requirements determined by the department to be
34 necessary to maintain the water quality that would exist
35 in the delta without the change.

36 (b) An amount of water for delta salt water repulsion
37 and environmental purposes as administratively
38 prescribed by the state board in proportion to all similar
39 requirements for delta exports.

40 1744. The state board may establish a fee schedule to

1 pay for the costs it incurs in carrying out this article.
2 1745. (a) Any petition for a writ of mandate to
3 inquire into the validity of an order of the state board to
4 grant, condition, or refuse to grant a petition for change
5 shall be filed not later than 30 days from the service of a
6 copy of the order on the parties. Service shall be by
7 personal delivery or registered mail. The right to petition
8 shall not be affected by the failure to seek reconsideration
9 before the state board.

10 (b) The evidence to be considered by the court in the
11 writ of mandate proceeding shall be limited to the
12 documents and materials in the administrative record
13 before the state board prior to making the finding or
14 order. However, where the court finds there is relevant
15 evidence which, in the exercise of due diligence could
16 not have been produced or which was improperly
17 excluded from the administrative record by the state
18 board, the court may admit the evidence at the hearing
19 of the writ.

20 1746. If the state board or a court determines that a
21 water transferee has used water unreasonably, in
22 connection with a water transfer undertaken as a result
23 of a change approved pursuant to this article, that
24 determination shall not result in the loss or diminution of
25 the water right of the water transferor.

26

27 Article 7. Water District Transfers

28

29 1747. For the purposes of this article, the following
30 terms have the following meanings:

31 (a) "District" means a public agency that supplies
32 water, a water company, or a mutual water district.

33 (b) "Water" means any of the following:

34 (1) Water stored or conserved by a water user within
35 the district.

36 (2) Water made available by a water user within the
37 district through the use of alternative water supplies.

38 (3) Water made available by a water user within the
39 district by reducing or forgoing water use.

40 1747.2. A district may contract with water users

1 *within the district to permit the district to transfer water*
2 *to persons or entities outside the district for the period of*
3 *time specified in the contract if other water users within*
4 *the district will not be adversely affected.*

5 *1747.4. The net proceeds of a transfer of water*
6 *undertaken pursuant to this article shall be distributed to*
7 *participating water users in the manner specified in the*
8 *contract.*

9 *1747.6. The amount of water made available in any*
10 *calendar year by fallowing irrigated land may not exceed*
11 *20 percent of the water that would have been used for*
12 *irrigation within the district in the absence of any*
13 *contract entered into pursuant to this article, unless the*
14 *district approves a higher percentage following*
15 *reasonable notice and a public hearing.*

16 *1747.8. This article is in addition to, and not a*
17 *limitation on, the authority of any public agency under*
18 *any other provision of law.*

19 *1747.10. A water user that contracts to transfer water*
20 *pursuant to this article may not replace transferred*
21 *surface water with groundwater unless the groundwater*
22 *use is consistent with a groundwater management plan*
23 *adopted pursuant to state law for the affected area, or*
24 *approved by the district from whose service area the*
25 *water is to be transferred after the district has*
26 *determined that the transfer will not create or contribute*
27 *to long-term overdraft in the affected groundwater basin.*

28 *1747.12. Nothing in this article prohibits the transfer*
29 *of recharged groundwater from an overdrafted*
30 *groundwater basin or the replacement of transferred*
31 *surface water within groundwater recharged into an*
32 *overdrafted groundwater basin if the recharge was part*
33 *of a water banking program.*

34

35 *Article 8. Water Conveyance Facilities*

36

37 *1747.20. Notwithstanding any other provision of law,*
38 *neither the state, nor any regional or local public agency*
39 *may deny a bona fide transferor of water the use of a*
40 *water conveyance facility which has unused capacity, for*

1 *the period of time for which that capacity is available, if*
2 *fair compensation is paid for that use, subject to the*
3 *following:*

4 (a) *Any person or public agency that has a long-term*
5 *water service contract with, or the right to receive water*
6 *from, the owner of the conveyance facility shall have the*
7 *right to use any unused capacity prior to any bona fide*
8 *transferor.*

9 (b) *The commingling of transferred water does not*
10 *result in a diminution of the beneficial uses or quality of*
11 *the water in the facility, except that the transferor may,*
12 *at the transferor's own expense, provide for treatment to*
13 *prevent the diminution, and the transferred water is of*
14 *substantially the same quality as the water in the facility.*

15 (c) *Any person or public agency that has a water*
16 *service contract with, or the right to receive water from,*
17 *the owner of the conveyance facility who has an*
18 *emergency need may utilize the unused capacity that*
19 *was made available pursuant to this section for the*
20 *duration of the emergency.*

21 (d) *This use of a water conveyance facility is to be*
22 *made without injuring any legal user of water and*
23 *without unreasonably affecting fish, wildlife, or other*
24 *instream beneficial uses and without unreasonably*
25 *affecting the overall economy or the environment of the*
26 *county from which the water is being transferred.*

27 *1747.22. As used in this article, the following terms*
28 *shall have the following meanings:*

29 (a) *"Bona fide transferor" means a person or public*
30 *agency as defined in Section 20009 of the Government*
31 *Code with a contract for sale of water which may be*
32 *conditioned upon the acquisition of conveyance facility*
33 *capacity to convey the water that is the subject of the*
34 *contract.*

35 (b) *"Emergency" means a sudden occurrence such as*
36 *a storm, flood, fire, or an unexpected equipment outage*
37 *impairing the ability of a person or public agency to make*
38 *water deliveries.*

39 (c) *"Fair compensation" means the reasonable*
40 *charges incurred by the owner of the conveyance system,*

1 including capital, operation, maintenance, and
2 replacement costs, increased costs from any necessitated
3 purchase of supplemental power, and including
4 reasonable credit for any offsetting benefits for the use of
5 the conveyance system.

6 (d) "Replacement costs" mean the reasonable portion
7 of costs associated with material acquisition for the
8 correction of unrepairable wear or other deterioration of
9 conveyance facility parts which have an anticipated life
10 which is less than the conveyance facility repayment
11 period and which costs are attributed to the proposed
12 use.

13 (e) "Unused capacity" means space that is available
14 within the operational limits of the conveyance system
15 and which the owner is not using during the period for
16 which the transfer is proposed and which space is
17 sufficient to convey the quantity of water proposed to be
18 transferred.

19 1747.24. The state, regional, or local public agency
20 owning the water conveyance facility shall in a timely
21 manner determine the following:

22 (a) The amount and availability of unused capacity.

23 (b) The terms and conditions, including operation and
24 maintenance requirements and scheduling, quality
25 requirements, term or use, priorities, and fair
26 compensation.

27 1747.26. In making the determinations required by
28 this article, the respective public agency shall act in a
29 reasonable manner consistent with the requirements of
30 law to facilitate the voluntary sale, lease, or exchange of
31 water and shall support its determinations by written
32 findings. In any judicial action challenging any
33 determination made under this article the court shall
34 consider all relevant evidence, and the court shall give
35 due consideration to the purposes and policies of this
36 article. In any such case the court shall sustain the
37 determination of the public agency if it finds that the
38 determination is supported by substantial evidence.

39 1747.28. This article shall apply to only 70 percent of
40 the unused capacity.

1 *SEC. 14. Chapter 10.5 (commencing with Section*
2 *1725) of Part 2 of Division 2 of the Water Code is*
3 *repealed.*

4 *SEC. 15. Article 4 (commencing with Section 1810) of*
5 *Chapter 11 of Part 2 of Division 2 of the Water Code is*
6 *repealed.*

7 amended to read:

8 **1011. (a) When any person entitled to the use of**
9 **water under an appropriative right fails to use all or any**
10 **part of the water because of water conservation efforts,**
11 **any cessation or reduction in the use of such appropriated**
12 **water shall be deemed equivalent to a reasonable**
13 **beneficial use of water to the extent of such cessation or**
14 **reduction in use. No forfeiture of the appropriative right**
15 **to the water conserved shall occur upon the lapse of the**
16 **forfeiture period applicable to water appropriated**
17 **pursuant to the Water Commission Act or this code or the**
18 **forfeiture period applicable to water appropriated prior**
19 **to December 19, 1914.**

20 **The board may require that any user of water who**
21 **seeks the benefit of this section file periodic reports**
22 **describing the extent and amount of the reduction in**
23 **water use due to water conservation efforts. To the**
24 **maximum extent possible, the reports shall be made a**
25 **part of other reports required by the board relating to the**
26 **use of water. Failure to file the reports shall deprive the**
27 **user of water of the benefits of this section.**

28 **For purposes of this section, the term "water**
29 **conservation" shall mean the use of less water to**
30 **accomplish the same purpose or purposes of use allowed**
31 **under the existing appropriative right. Where water**
32 **appropriated for irrigation purposes is not used by reason**
33 **of land fallowing or crop rotation, the reduced usage shall**
34 **be deemed water conservation for purposes of this**
35 **section.**

36 **(b) Water, or the right to the use of water, the use of**
37 **which has ceased or been reduced as the result of water**
38 **conservation efforts as described in subdivision (a), may**
39 **be sold, leased, exchanged, or otherwise transferred**
40 **pursuant to any provision of law relating to the transfer**

1 of water or water rights, including, but not limited to,
2 provisions of law governing any change in point of
3 diversion, place of use, and purpose of use due to the
4 transfer.

5 (e) Notwithstanding any other provision of law, upon
6 the completion of the term of an agreement to transfer
7 water, or the right to the use of water, that is available as
8 a result of water conservation efforts described in
9 subdivision (a), the right to the use of the water shall
10 revert to the possessor of the water right as if no change
11 in the point of diversion, place of use, or purpose of use
12 had occurred.

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April 11, 1994

ACWA

ASSOCIATION OF
CALIFORNIA
WATER AGENCIES

*a non profit corporation
since 1910*

The Honorable Richard Katz
California State Assembly
State Capitol
Sacramento, California 95814

SUBJECT: Assembly Bill 3035

Dear Assemblyman Katz:

AB 3035 has recently raised a number of issues regarding water transfer laws.

As you know, there have been substantial efforts by the water community to reach consensus on water transfer legislation. Assembly Water, Parks and Wildlife Chairman Dominic Cortese last year authored AB 97 which became the vehicle for that consensus effort. While these efforts have been postponed this year, the water agencies involved in that process are devoting considerable resources to resolving long-standing issues in the Bay-Delta.

We believe AB 3035 should be put over for interim study along with AB 97 to allow for the consensus process to work. We urge you to join us in this effort and request that AB 3035 be put over for that reason.

Sincerely,

Association of California Water Agencies
California Chamber of Commerce
California Farm Bureau Federation
Imperial Irrigation District
Kern County Water Agency
Metropolitan Water District of Southern California
Modesto Irrigation District
San Diego County Water Authority
Western Growers Association

910 K STREET, SUITE 250
SACRAMENTO, CA 95814-3577
(916) 441-4545
FAX - (916) 441-7893

HALL OF THE STATES
444 N. CAPITOL ST., N.W.
SUITE 326 NORTH
WASHINGTON, D.C. 20001-1512cc: Assemblyman Dominic Cortese
(202) 434-4760
FAX - (202) 434-4763