

Staff Report

TO: Board of Directors
FROM: Dustin Cooper, Legal Counsel
DATE: February 22, 2023
SUBJECT: Water Transfer Workshop

ADMINISTRATION

RECOMMENDATION:

Informational workshop on water transfers. No Board action sought.

BACKGROUND:

During the last Board meeting, members sought additional information on water transfers from staff. Legal counsel and staff will provide an introductory overview of water transfers – what it is, types of water transfers, transfer methods, state law, public process, etc.

This item is informational only.

BUDGETARY IMPACT:

None at this time

Attachments (1):

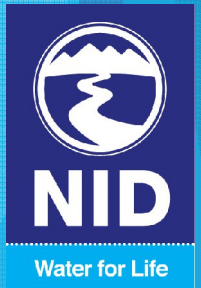
- Introduction to Water Transfers - Power Point Presentation

Introduction to Water Transfers



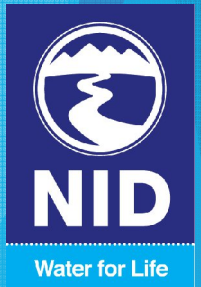
What is a Water Transfer?

- ▶ A voluntary sale of water between a willing seller and willing buyer(s)
- ▶ Seller takes actions within its service area to make water available to buyer(s) that would not be available in the watercourse absent the transfer
 - ▶ Commonly known as the “new water” rule
- ▶ Involves a change to water right terms to implement the transfer
 - ▶ E.g., change in the place of use or purpose of use of the water



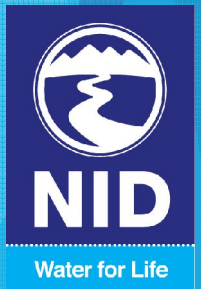
Types of Water Transfers

- ▶ Pre-1914 versus Post-1914 Appropriative Right
- ▶ Post-1914 Appropriative Right Transfers
 - ▶ Under the jurisdiction of the State Water Resources Control Board
 - ▶ “Temporary Changes” = one year or less; CEQA Exemption under Water Code § 1729
 - ▶ Long term Changes = more than one year; subject to CEQA
- ▶ Given nature of right, riparian rights cannot be transferred



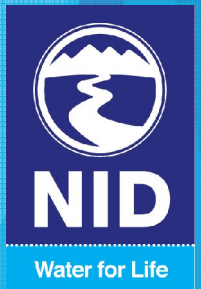
Transfer Methods

1. Groundwater Substitution: transferring reduced surface water diversions that are replaced with groundwater pumping
2. Cropland Idling: idling farmland that would have been planted in the absence of the transfer.
3. Crop Shifting: Shifting from historically planted higher-water intensive crop to lower water using crops
4. Reservoir Reoperation: Seller releases water from their reservoirs in excess of what would be released annually under normal operations



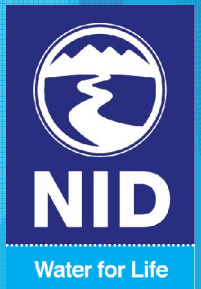
Groundwater Substitution

- ▶ Used by ag and urban agencies in certain Northern Cal. Counties
- ▶ Extensive monitoring plan before during and after transfer to assess effects of transfer
- ▶ Mitigation plan to address any potential injuries to other legal users of water
- ▶ Streamflow Depletion Factor
 - ▶ Historically 13%, but likely to change in 2025



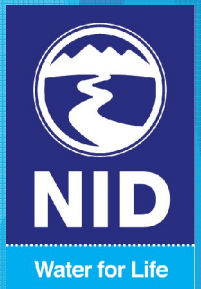
Cropland Idling/Shifting

- ▶ Focus on what would happen in the absence of the transfer
- ▶ Water available for transfer is the evapotranspiration of applied water or “ETAW”
- ▶ Need to keep idled field free of weeds and dry (no surface water or excessive seepage)
- ▶ Limits on amount of acreage idled for transfer (typically no more than 20%)



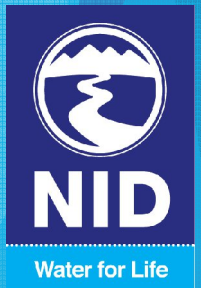
Reservoir Reoperation

- ▶ Detailed information on reservoir operations, including monthly storage levels, end of season low-point, historic releases, instream flow requirements, flood control diagram (if any), etc.
- ▶ Refill Criteria: refilling of storage vacated due to transfer can injure downstream legal users of water if done at a time when downstream users could have utilized reservoir releases
 - ▶ In general, refill of vacated space can occur when refill quantity is in excess to the needs of all legal users downstream



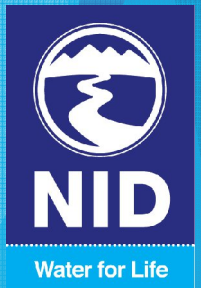
State Law & Policy Favors Transfers

- ▶ Water Code § 475: “The Legislature hereby finds and declares that voluntary water transfers between water users can result in a more efficient use of water, benefiting both the buyer and the seller.”
- ▶ Water Code § 109: “It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import.”
- ▶ 2020 Water Resilience Portfolio, Action 21, “Ease movement of water across state by simplifying water transfers”
- ▶ May 10, 2021 Declaration of Drought Emergency: State agencies directed to “expeditiously consider requests to move water, where appropriate, to areas of need, including requests involving voluntary water transfers, forbearance agreements, water exchanges, or other means.”



Protection of Seller's Water Rights

- ▶ Transfer of water does not confer appropriative, public trust, or other right to water beyond term of agreement to transfer
 - ▶ Water Code § 1011: "Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, ... the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken."
- ▶ Transfer of water cannot be used as evidence of lack of beneficial use
 - ▶ Water Code § 1244: "The sale, lease, exchange, or transfer of water or water rights, in itself, shall not constitute evidence of waste or unreasonable use, unreasonable method of use, or unreasonable method of diversion and shall not affect any determination of forfeiture...."

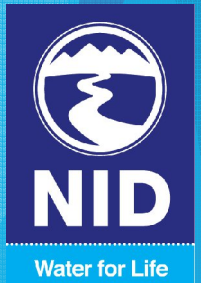


Historical Temporary Transfer Volumes

Year	Volume (in acre- feet)
2008	62,229
2009	74,051
2010	113,960
2011	360
2012	67,712
2013	81,888
2014	118,285
2015	37,074
2016	0
2017	0
2018	161,272
2019	0
2020	150,609
2021	266,084
2022	33,195

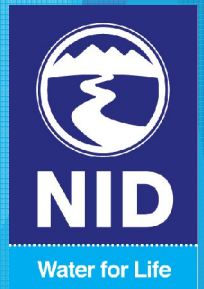
- ▶ Total transfers of neighboring water agencies during the 2008-2022 period:
 - ▶ PCWA = 60,053 AF
 - ▶ SSWD = 59,635 AF
 - ▶ El Dorado ID = 10,110 AF

- ▶ **YWA's Yuba Accord sales not included:
 - ▶ 956,519 AF Reservoir Reoperation
 - ▶ 448,111 AF groundwater substitution



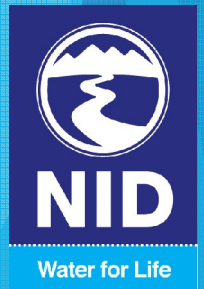
Components of a Reservoir Reoperation Water Transfer

1. NID Declares Surplus Water Conditions: No shortage to in-District customers and traditional surplus water purchasers
 - A. E.g., Nevada City & Grass Valley
2. Secure All Applicable Regulatory & Other Approvals:
 - A. E.g., CEQA, NEPA, SWRCB Change Petition, Biological Opinions, Delta Plan/Delta Stewardship Council, Water Transfer Information System (“WTIMS”), etc.
3. Execute Purchase & Sale Agreement: Establishes business terms between Seller/Buyer
4. Execute Storage and Conveyance Agreement (DWR/Reclamation)
5. Execute Refill Agreement
6. Deliver new water to system (July-August)
7. Post-transfer accounting of refill conditions until refill criteria satisfied



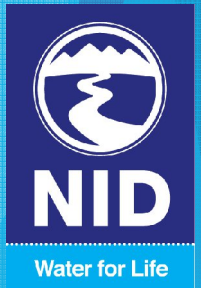
NID Decisionmaking

- ▶ NID has declared surplus water conditions in 2023
- ▶ NID has CEPA/NEPA coverage in 2019 Supplemental/Revised 10-Year Environmental Impact Statement/Environmental Impact Report for Water Transfers
 - ▶ E.g., page 2-17: “Nevada ID could provide water through stored reservoir release... from Rollins Reservoir in the Bear River system. ... A refill agreement would be required for this transfer to avoid affects to downstream water users.”
 - ▶ Table 2-12: NID may transfer up to 15,000 AF “July-Sep Stored Reservoir Release”
- ▶ *Ongoing discussions with potential buyers in 2023, but unique hydrologic conditions make transfer uncertain
- ▶ *Technical discussions ongoing regarding wheeling, refill criteria, storage & conveyance of potential NID transfer water
 - ▶ *Will be discussed, if appropriate and applicable, at future NID Board Meetings with opportunity for public input



Key Policy Decisions for NID Board

- ▶ Whether to Transfer
- ▶ Transfer Volume up to 15,000 AF
- ▶ Use of Transfer Proceeds
 - ▶ 2021 = \$625-\$700 per AF
 - ▶ 2022 = \$800-\$833 per AF
 - ▶ 2023 = ???
- ▶ Understanding and assessing risk of reservoir refill criteria
 - ▶ Criteria can limit NID operations multiple years post-transfer until satisfied



Questions and Thank you

