

Definitions

Water transfers involve changes in the location or type of water use. In California, transfers usually do not involve water rights, only water. Transfers often occur between public or quasi-public agencies, and can take place as market-based transactions, which further the development of water markets, or as non-market reallocations, which may include the cutback of water deliveries against a water user's will. Non-market reallocations take place under government regulation through mechanisms such as the Endangered Species Act and the public trust doctrine, and will not be discussed here.

Water markets facilitate a water rights holder's ability to lease or sell water to users willing to pay for it. The term "water market" refers to the arena in which water sales take place. Water markets do not develop new sources of water; rather, they allow people and agencies to redistribute existing resources according to economic power and demand. As market-based transfers become more common, some believe that government regulators should oversee transfers to protect human and ecological communities from potential negative impacts such as groundwater depletion and the loss of agricultural jobs. Others favor minimal government regulation, which they say interferes with a water market's economic viability.

1.3 EMERGING ENVIRONMENTAL JUSTICE ISSUES IN CALIFORNIA WATER POLICY

Perspectives on Water Transfers

MARKET-BASED WATER TRANSFERS ARE A controversial and growing force in California water policy. Many proponents of water markets argue that market factors—rather than government bureaucracies—can regulate water use most effectively.¹²² They argue that creating a water market in which buyers and sellers can readily transfer water will increase conservation and efficient water distribution. Farmers would have incentives to conserve water because they could sell unused water on the market at a profit. Water districts, large municipal agencies, and many farmers favor water transfers because they stand to benefit economically from the transactions. In theory, the goal of market-based water transfers is to avoid the development of additional water infrastructure through a combination of increased efficiency and voluntary reallocation of water that is already stored and diverted.

Some environmental groups and environmental justice advocates favor water transfers and

some form of water markets. They argue that properly regulated market-based transfers can be a cost-effective way to meet growing urban demand. Many environmental groups, such as Environmental Defense in Los Angeles, think that government regulated, market-based water transfers provide an important means to acquire water for river or wetland restoration projects while avoiding the construction of new dams and aqueducts.¹²³ Voluntary transfers can also bring funds into agricultural communities to address a host of community needs.

Many environmental justice advocates, however, worry that these types of transfers could disguise a reshuffling of the state's public water between powerful corporations and landowners. As noted throughout this report, public and quasi-public agencies have cut out communities of color and low-income communities for decades precisely by creating policies and institutions that favor private and corporate interests. Public Citizen's report *Water Heist* highlights the ways in which private corporations that control water district boards of directors can influence water regulatory agencies in order to create and benefit from water markets. Environmental justice advocates fear that in an improperly or insufficiently regulated market, those who have already been left out would be further unable

to compete against those who have grown rich from decades of unjust water distribution in California.

The development of a California water market amenable to agribusiness and development corporations often requires expansion of infrastructure and at least partial privatization of a public resource. Advocates point to closed-door meetings between powerful landowners and state and federal water officials to re-configure the state's plumbing.¹²⁴ These proposals have included increasing exports from the Sacramento/San Joaquin Delta; raising Shasta Dam; integrating the state and federal water projects; building a peripheral canal around the Delta to transport more Northern California water south; and allowing for water sales between and within the public projects. All of these shifts lead toward the same goal: securing an ever-increasing imported water supply for the state's largest landowners.

Other environmental justice advocates argue that water sales are already occurring in many places, and that the best solution is to ensure government regulation. Their key requirement is the creation of public policies that ensure that potentially negative impacts are fully and fairly assessed, and then mitigated. In the jargon

of water bureaucracies, these impacts, ranging from the loss of jobs to the displacement of entire communities, are referred to as "externalities." An integral part of any mitigation within a transfer agreement is the commitment of resources and community-based programs for transitional assistance, re-training, education, apprenticeship, and job opportunities targeted to those most directly impacted. These policies would have to protect those who have long been underserved by traditional water development and management.

The Perspective from Imperial Valley

One example of a regulated market transaction is the water conservation and transfer program now taking shape within the Imperial Irrigation District (IID). The district uses more water—approximately 3.1 million acre-feet per year of California's 4.4 million acre-foot per year "entitlement" to Colorado River imports—than any other irrigation district in the U.S.¹²⁵ In 1998, IID negotiated a long-term agreement to conserve and transfer a portion of its entitlement to the San Diego County Water Authority (San Diego). In 2003, the IID-San Diego agreement was finalized as part of the complex multi-agency Quantification Settlement Agreement (QSA).¹²⁶ Under the final agreement, San

When agencies like the Imperial Irrigation District and the Metropolitan Water District move all this water between them, it affects the livelihoods of a whole lot of people who aren't involved in the negotiations. The real injustice is that these are the people who have been making all the farms survive and profit with their labor – farm workers, restaurants who supply food, packers, tractor drivers. The districts get to profit from all these people's hard work, and we are saying that they need to share some of that profit.

—Eric Reyes

Institute for Socio-Economic Justice and Progressive Community Development

Diego agreed to pay the district annually for increasing amounts of “conserved water,” which the irrigation district agreed to make available to the water authority. Initially, the water will be provided through voluntary land fallowing, and ultimately through agricultural conservation investments made on farms. This and other

Quantification Settlement Agreements are all integral parts of California’s efforts to reduce its dependency on Colorado River water.¹²⁷

In the midst of these deals between high-powered quasi-public agencies is an economically depressed community of farm workers, im-

migrants and indigenous groups. 23 percent of Imperial County residents live in poverty and the average per capita income is less than 60 percent of the California average. The population is 80 percent people of color and 72 percent Latino; more than three-quarters of the Imperial Valley’s farm labor workforce migrates daily or seasonally from Mexicali and other locations in Mexico. Most initial attention around the IID transaction focused on water loss to the Salton Sea, an important bird sanctuary. However, the transfer will also have huge effects on the many people whose livelihoods depend on the region’s agricultural economy.

As the IID-San Diego agreement was being finalized, farm workers and other community interests organized to request so-called mitigation funds to offset the impacts of transferring water out of agricultural production. They succeeded in securing a minimum commitment of \$20 million for job training, transitional assistance, and other types of community and local economic mitigation. The market-based transfer also includes the creation of a stakeholder advisory group called the Imperial Valley Socio-economic Improvement Committee, commonly referred to as the “Local Entity.” This group is responsible for monitoring how community impacts are calculated and developing the actual

Exclusionary Language

Like much bureaucratic language, words used in negotiating water transfers serve historically dominant interests while ignoring cultural values of traditionally excluded communities.

Externalities is a term used to describe the consequences of decisions or transactions that fall outside of the two groups negotiating a deal. This technical word hides the human and environmental consequences of any decision and makes it easy to keep those impacts out of the decision-making process. In

the case of market-based water transfers, the huge profits agricultural interests and districts stand to make in the face of drastic human and environmental impacts may be overlooked.

Cost-benefit analysis is the mechanism that agencies and districts use to quantify the impacts of a water sale or transfer. A cost-benefit analysis evaluates the relative costs and benefits of a proposed project. This requires placing dollar figures on all aspects of the sale or transfer, from the loss of revenue when an acre of agricultural land is taken out of production to intangible costs such as the loss of cultural

resources related to water. The many workers who provide the engine for California’s multi-million-dollar agricultural industry are reduced to “third parties,” effectively denying their crucial role in the local economy and their right to participate in water reallocation and land retirement decisions on equal footing with farmers and water agencies. Finally, some people question whether assigning a dollar amount for a person’s well-being or cultural values, as is done in cost-benefit analyses, can ever be an effective mechanism for addressing social inequality.

A Rural Northern California Perspective on Water Transfers

[Butte Environmental Council] has warned the public repeatedly about this being a hen house guarded by the vixen, but the brazen arrogance of the water sellers has never been more evident than from the following quote from the April 6, 1999 Butte County Water Commission meeting. The public voiced concern about the ability to mitigate losses to all the domestic well users if water levels dropped following sales, and Les Herringer, [Water Commission appointee] replied, “The intent of the ordinance is not to prevent impacts.”

—Butte Environmental Council¹³²

During the 1991-94 drought, large farmers in Northern California’s Butte County offered up their water to thirsty urban areas. In 1994 alone, rice farmers sold 115,000 acre-feet of water—for \$50 per acre-foot—to the State Drought Water Bank, which transferred it south. The California Department of Water Resources conducted neither public review nor outreach before the market-based transfer went into effect.¹³³

After selling their surface water, large rice farmers began pumping groundwater to irrigate their crops. The water level in local aquifers dropped, leading to a rapid drop in household well level near the water sale area.¹³⁴ During the summer of 1994, many well-dependent families experienced low water pressure and intermittent, unreliable water supply. Some drilled their wells deeper; in other cases, pumps were damaged by the sudden, unpredictable loss of water

A drop in well level causes heavy metals that sink to the bottom of a well to enter the drinking water supply. Families first learned about reduced groundwater supply when their wells went dry, so many people consumed contaminated water without their knowledge. The community of Durham, which depends on three municipal wells, had to close one of its wells and ration its remaining water due to contamination. Some small family farmers were unable to irrigate their crops.¹³⁵



Butte Environmental Council

Giant pumps dump water destined for Southern California into an irrigation canal in Butte County during the drought.

In response to public outcry, the state eventually created a committee of stakeholders—including community members—to examine the possible impacts of water transfers on small, rural areas such as Durham. The water districts refused to participate, until a “special-interest steering committee” was established.¹³⁶

The population of Butte County remains vulnerable to market-based water transfers. Since 1994, community activists have been meeting with Butte County officials to ensure that water sales include protections for environmental and community water uses. Local water districts continue to reject these efforts, and the County Board of Supervisors has failed to adopt any real protections.

mitigation plan. A representative of the United Farm Workers was appointed to the advisory group late in 2003, ensuring that farm workers have a voice and a vote in the Local Entity's deliberations.

Some environmental justice advocates see the Local Entity as one of the first opportunities to quantify the social impacts of market-based water transfers on a low-income community of color. Often called "third-party impacts," effects on communities range from the loss of jobs to the loss of revenues for local governments. According to the Committee on Western Water Management, third parties are "those who stand to be affected by the transfer but are not represented in the negotiations and lack control over or input into the processes by which transfer proposals are evaluated and implemented."¹²⁸ Impacts can also include less tangible losses from the loss of small businesses and economic vitality to the loss of cultural practices tied to an agricultural livelihood.

Martha Guzman, a Legislative Analyst with the California Rural Legal Assistance Foundation, sees the Local Entity process as an opportunity to provide meaningful economic benefits for farm workers and communities impacted by the deal. "Because water transfers and sales are

already taking place, there needs to be some mechanism to address the direct socio-economic impacts on communities," she says. "If the costs of these losses can be properly calculated, and if appropriate mitigation programs can be developed to assist communities in adjusting, the Local Entity process might serve as a model for socioeconomic mitigation and improvement efforts as an integral part of other regulated water transfers in the future."

Community Perspectives in the Westlands District: The Centrality of "Third Party" Impacts

This is going to affect...the entire community in the Fresno area, not just me, and all the other workers that are being impacted that work in the ranches nearby...[we're] having to move...having to relocate. If...there would have been discussions with the county, the government, and Westlands, maybe there wouldn't have been as many people being displaced.

—Testimony of Jose Gonzalez, a farm worker displaced after 28 years of service to one company in the Westlands, at the Senate Committee on Housing and Community Development hearing on November 18, 2004, in Fresno, California.



Courtesy CRLA

The Westlands Water District is made up of about one thousand square miles of land in Fresno and King counties in the western San Joaquin Valley. The district is governed by a board of directors elected solely by landowners, many of who do not reside there. In 2002, Westlands began a massive land retirement program involving approximately 100,000 acres.¹²⁹

Because much of the area's economy depends on active farming, land retirement will have significant impacts on local farm communities.¹³⁰ An estimated 750 farm workers have already been displaced from their jobs.¹³¹ Related industries will be directly impacted and the falling property values will further reduce funding for schools and local services. When these types of losses are termed "third party impacts," water districts such as Westlands are able to mask the profound social and economic losses that such drastic changes initiate.