

AMENDED IN ASSEMBLY AUGUST 28, 2002

SENATE BILL

No. 621

Introduced by Senator Costa
(Principal coauthor: Assembly Member Florez)

February 22, 2001

~~An act to amend Sections 1810, 1811, 1812, 1813, and 1814 of the Water Code, relating to water. An act relating to water, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 621, as amended, Costa. ~~Water transfers~~ bonds.

Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs. The Costa-Machado Water Act of 2000 authorizes, for the purposes of financing a safe drinking water, water quality, watershed protection, and flood protection program, the issuance of bonds in the amount of \$1,970,000,000, of which \$60,000,000, upon appropriation by the Legislature to the Department of Water Resources, is required to be expended by the department for grants for infrastructure rehabilitation projects.

This bill would appropriate \$3,900,000 from bond funds made available to the department for infrastructure rehabilitation projects for allocation to the Tulare County Water Works District No. 1 and the Alpaugh Irrigation District for the repair and replacement of domestic water supply and treatment systems owned and maintained by those districts.

~~Existing law prohibits the state or a regional or local public agency from denying a bona fide transferor of water, as defined, from using a water conveyance facility that has unused capacity, as defined, for the~~

period of time for which that capacity is available, if fair compensation is paid for that use and other requirements are met. Existing law requires the owner of the water conveyance facility to determine, in a timely manner, the amount and availability of unused capacity and the terms and conditions for use of the facility, as specified.

~~This bill would prohibit the state, or a regional or local public agency, from denying a bona fide transferor of water the use of a water conveyance facility, that has unused capacity, for the period of time for which that capacity is available, if fair compensation is paid for that use and other determinations are made by the water conveyance facility owner, including that the use of the facility does not affect the tax exempt status of the facility owner and the bona fide transferor agrees, in writing, to hold harmless, defend, and indemnify the facility owner from prescribed claims, except as otherwise specified.~~

~~The bill, in accordance with a prescribed timetable and specified procedures, would require the water conveyance facility owner to make specified determinations relating to unused capacity and the terms and conditions of the transfer.~~

~~The bill would prohibit a bona fide transferor from conveying water pursuant to these provisions into a public or private retail service territory, as defined, for use by a transferee who is a customer of the retail entity without the prior written consent of the retail entity.~~

~~The bill would revise the definition of “unused capacity” and define other terms for the purposes of these provisions.~~

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

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

1 ~~SECTION 1.—Section 1810 of the Water Code is amended to~~
 2 ~~SECTION 1. (a) Of the funds made available pursuant to~~
 3 ~~subdivision (a) of Section 79162 of the Water Code, the sum of~~
 4 ~~three million nine hundred thousand dollars (\$3,900,000) is~~
 5 ~~hereby appropriated to the Department of Water Resources, of~~
 6 ~~which amount 50 percent shall be allocated to the Tulare County~~
 7 ~~Water Works District No. 1 and 50 percent shall be allocated to the~~
 8 ~~Alpaugh Irrigation District, for the purposes of working~~
 9 ~~cooperatively on feasibility studies, or on the design, repair,~~
 10 ~~replacement, or construction of the domestic water supply and~~



1 *treatment systems and ancillary facilities operated and*
2 *maintained by those districts.*

3 read:

4 1810.— Notwithstanding any other provision of law, neither the
5 state, nor any regional or local public agency, may deny a bona fide
6 transferor of water the use of a water conveyance facility that has
7 unused capacity, for the period of time for which that capacity is
8 available, if fair compensation is paid for that use, subject to the
9 following:

10 (a) ~~Any person or public agency that has a long-term water~~
11 ~~service contract with or the right to receive water from the owner~~
12 ~~of the water conveyance facility shall have the right to use any~~
13 ~~unused capacity prior to any bona fide transferor.~~

14 (b) ~~The commingling of transferred water does not result in a~~
15 ~~diminution of the beneficial uses or quality of the water in the~~
16 ~~facility, except that, if agreed to buy the water conveyance facility~~
17 ~~owner, the transferor may, at the transferor's own expense, provide~~
18 ~~for treatment to prevent the diminution, and the transferred water~~
19 ~~is of substantially the same quality as the water in the water~~
20 ~~conveyance facility.~~

21 (c) ~~Any person or public agency that has a water service~~
22 ~~contract with or the right to receive water from the water~~
23 ~~conveyance facility who has an emergency need may utilize the~~
24 ~~unused capacity that was made available pursuant to this section~~
25 ~~for the duration of the emergency.~~

26 (d) ~~This use of a water conveyance facility is to be made~~
27 ~~without injuring any legal user of water and without unreasonably~~
28 ~~affecting fish, wildlife, or other instream beneficial uses and~~
29 ~~without unreasonably affecting the overall economy or the~~
30 ~~environment of the county from which the water is being~~
31 ~~transferred.~~

32 (e) ~~The use of the water conveyance facility or other services~~
33 ~~necessary to facilitate a transfer does not affect the tax exempt~~
34 ~~status of the owner of the facility and does not require the owner~~
35 ~~of the facility to take any action that would cause the income from~~
36 ~~an existing or pending planned debt financing issue to be declared~~
37 ~~to be taxable.~~

38 (f) ~~The bona fide transferor using the water conveyance facility~~
39 ~~agrees, in writing, to hold harmless, defend, and indemnify the~~
40 ~~facility owner from any and all claims, damages, regulatory~~



1 actions, and lawsuits arising from the bona fide transferor's
2 transfer or use of the water conveyance facility, except to the extent
3 liabilities are caused by the negligence or willful misconduct of the
4 facility owner.

5 (g) Notwithstanding any other provision of this article, no bona
6 fide transferor shall convey water pursuant to this article into a
7 public or private retail service territory for use by a transferee who
8 is a customer of the retail entity, without the prior written consent
9 of the retail entity.

10 SEC. 2. Section 1811 of the Water Code is amended to read:

11 1811. As used in this article, the following terms shall have the
12 following meanings:

13 (a) "Bona fide transferor" means a person or public agency as
14 defined in Section 20009 of the Government Code with a contract
15 for sale of water that may be conditioned upon the acquisition of
16 conveyance facility capacity to convey the water that is the subject
17 of the contract.

18 (b) "Emergency" means an unexpected occurrence such as a
19 storm, flood, fire, equipment outage, or a judicial or regulatory
20 action, impairing the ability of a person or public agency to make
21 water deliveries.

22 (c) "Fair compensation" means the reasonable charges
23 incurred by the owner of the conveyance system, including capital,
24 operation, maintenance, and replacement costs, increased costs
25 from any necessitated purchase of supplemental power, and
26 including reasonable credit for any offsetting benefits for the use
27 of the conveyance system.

28 (d) "Replacement costs" mean the reasonable portion of costs
29 associated with material acquisition for the correction of
30 irreparable wear or other deterioration of conveyance facility parts
31 that have an anticipated life that is less than the conveyance facility
32 repayment period and which costs are attributable to the proposed
33 use.

34 (e) "Unused capacity" means space that is available within the
35 operational limits of the conveyance system, except space
36 necessary for flood control purposes, and that the owner is not
37 using during the period for which the transfer is proposed.

38 (f) "Retail entity" means a publicly or privately owned utility
39 providing water service for end use customers for agricultural,



1 domestic, commercial, industrial, municipal, or recreational
2 purposes.

3 (g) “Retail service territory” means an area served by a retail
4 entity in which the entity’s facilities have been dedicated to a
5 public use.

6 SEC. 3.—Section 1812 of the Water Code is amended to read:

7 1812.—(a) The state, regional, or local public agency owning
8 the water conveyance facility, upon the receipt of a written request
9 from a bona fide transferor submitted in accordance with this
10 section, shall determine the following:

11 (1) The amount and availability of unused capacity.

12 (2) The terms and conditions, including operation and
13 maintenance requirements and scheduling, quality requirements,
14 term or use, priorities, and fair compensation.

15 (b) An initial determination of the water conveyance facility
16 owner pursuant to subdivision (a) shall be made not later than 30
17 days from the date of the receipt of a written request submitted by
18 a bona fide transferor in accordance with subdivision (c), and a
19 final determination shall be made not later than 60 days from the
20 date of the receipt of that written request, unless additional
21 information is required by the facility owner. In that case, a final
22 determination shall be made on a timely basis to avoid, if possible,
23 adversely impacting the proposed transfer. The determination
24 shall be in writing, and shall set forth with reasonable specificity
25 the basis for the determination.

26 (c) In making the determination, the facility owner shall
27 consider any information submitted by the bona fide transferor or
28 transferee and shall make available to the public any information
29 used to make the determination.

30 (d) Any determination made with regard to a request for the use
31 of the water conveyance facility for a period that exceeds one year
32 shall be subject to annual review and modification by the facility
33 owner in a manner that is consistent with the requirements of this
34 article.

35 SEC. 4.—Section 1813 of the Water Code is amended to read:

36 1813.—In making the determinations required by this article,
37 the respective public agency shall act in a reasonable manner
38 consistent with the requirements of law to facilitate the voluntary
39 sale, lease, or exchange of water between a bona fide transferor
40 and transferee and shall support its determinations by written



1 ~~findings. In any judicial action challenging any determination~~
2 ~~made under this article the court shall consider all relevant~~
3 ~~evidence, and the court shall give due consideration to the~~
4 ~~purposes and policies of this article. In any such case the court shall~~
5 ~~sustain the determination of the public agency if it finds that the~~
6 ~~determination is supported by substantial evidence.~~
7 ~~SEC. 5.—Section 1814 of the Water Code is amended to read:~~
8 ~~1814.—This article shall apply to only 70 percent of the unused~~
9 ~~capacity that would exist in the absence of any use of the facility~~
10 ~~by bona fide transferors pursuant to this article.~~

