

AMENDED IN ASSEMBLY MAY 11, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2304

Introduced by Assembly Member Levine

February 18, 2016

An act to add Chapter 7.5 (commencing with Section 485) to Division 1 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2304, as amended, Levine. California Water Market ~~Exchange~~. *Clearinghouse*.

Existing law, the Costa-Isenberg Water Transfer Act of 1986, requires the Department of Water Resources to establish an ongoing program to facilitate the voluntary exchange or transfer of water and implement the various laws that pertain to water transfers. The act requires the department to create and maintain a list of entities seeking to enter into water supply transfers, leases, exchanges, or other similar arrangements and to maintain a list of the physical facilities that may be available to carry out water supply transfers. The act requires the department to prepare a water transfer guide with prescribed components.

~~This bill, on and after July 1, 2018, would establish the California Water Market Exchange, governed by a 5-member board, in Clearinghouse as an independent office within the Natural Resources Agency. Agency for the purpose of making the water transfer and exchange process more transparent and more efficient and to enhance access to voluntary water market transactions, as specified. This bill would require the market exchange, on or before December 31, 2017, clearinghouse, on or before December 31, 2018, to create a centralized water market platform on its Internet Web site that provides ready access~~

to information *that has been provided* about water available for transfer or ~~exchange~~. ~~exchange and information about the process for transferring or exchanging water. The bill would require the Secretary of the Natural Resources Agency to convene a Water Market Clearinghouse Task Force, composed as prescribed, and would require the task force to make recommendations to the clearinghouse, as specified. The bill, on or before December 31, 2018, would require the clearinghouse to consider and act upon the recommendations submitted by the task force in order to establish administrative procedures under which state agencies would more expediently act upon proposed water transfers or exchanges and would prioritize projects that provide environmental and community benefits or have a demonstrated history of minimal potential impact to other legal water users or instream beneficial uses. The bill would require the clearinghouse to work in collaboration with other state agencies to make necessary changes in the rules and regulations governing water transfers and exchanges. This bill, for bill would require all transfers and or exchanges of water occurring on or after January 1, 2018, would require the submission of certain data and information to the market exchange and 2020, that require conveyance across the Sacramento-San Joaquin Delta or result in conveyance of water from one watershed to another to be submitted to the clearinghouse and processed, as specified, and would require the payment of an administrative fee to the market exchange, clearinghouse for this processing, as specified. This bill would require the market exchange to develop specified procedures in consultation with federal, state, and local agencies. The bill, on or before December 31, 2018, would require the agency to create an Office of the Water Transfer Advocate within the clearinghouse and to appoint an advocate.~~

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A more efficient water transfer process and a more
- 4 accessible water market can play important roles in reducing
- 5 uncertainty and water shortage impacts on the state's economy
- 6 now and in the future.

1 ***(b) The California Water Action Plan calls for making***
2 ***improvements to the water transfer process as part of a***
3 ***comprehensive, long-term water management policy.***

4 ***(c) While numerous water agencies and water users currently***
5 ***participate in the water market, water transfer processes are***
6 ***complex and water market information may not be readily***
7 ***available to the public and all potential sellers and buyers.***

8 ***(d) Providing greater transparency in and access to water***
9 ***marketing will provide a needed tool to increase water supplies***
10 ***by leveraging significant local and regional investments made***
11 ***over the past two decades to increase water supply reliability.***

12 ***(e) An enhanced water market, used in conjunction with***
13 ***investments in conveyance, water use efficiency, including water***
14 ***conservation and water recycling, surface and groundwater***
15 ***storage, desalination, and other strategies, will add to the water***
16 ***supplies that are available to help the state weather multiple years***
17 ***of drought and protect economic and environmental uses of water.***

18 ***(f) Voluntary water transfers are a proven and effective way to***
19 ***help meet California's water needs, as evidenced by the landmark***
20 ***1991 Governor's Emergency Drought Water Bank and numerous***
21 ***subsequent water banks, exchanges, and short- and long-term***
22 ***water transfers.***

23 ***(g) Water markets can improve water use efficiency and pricing,***
24 ***which in turn can contribute to increased water supply for***
25 ***consumptive uses, enhanced stream flows, and more water for***
26 ***wetlands and other environmental resources. This benefit would***
27 ***be of particular importance during prolonged drought.***

28 ***(h) Improving the water transfer process and enhancing access***
29 ***to water markets can accomplish all of the following:***

30 ***(1) Protect existing local and regional investments.***

31 ***(2) Improve coordination among water agencies.***

32 ***(3) Incentivize significant investments in water use efficiency***
33 ***projects and programs.***

34 ***(4) Increase water supply and water supply reliability for urban***
35 ***and agricultural water users.***

36 ***(5) Increase the quantities or improve the timing of water***
37 ***available for transfers by providing information to sellers and***
38 ***buyers who might not otherwise have sufficient information to***
39 ***participate in water markets.***

1 (6) *Benefit the environment by enhancing the state's water*
2 *supplies and increasing the amount or improving the timing of*
3 *water available for environmental uses.*

4 (7) *Benefit communities by bolstering water supplies and*
5 *reducing reliance on groundwater resources.*

6 SEC. 2. Chapter 7.5 (commencing with Section 485) is added
7 to Division 1 of the Water Code, to read:

8
9 CHAPTER 7.5. CALIFORNIA WATER MARKET CLEARINGHOUSE

10
11 485. This chapter shall be known, and may be cited, as the
12 California Water Market Clearinghouse Act of 2016.

13 486. It is the intent of the Legislature to create the California
14 Water Market Clearinghouse to do all of the following:

15 (a) Advance water sustainability, resiliency, and adaptability
16 to drought and climate change by promoting efficient water
17 markets.

18 (b) Provide important benefits and opportunities for
19 disadvantaged communities and environmental resources.

20 (c) Increase agency coordination, transparency, and
21 decisionmaking capacity.

22 (d) Facilitate water transfers and water user access to
23 exchanges by the establishment of a centralized market information
24 platform and better coordinated review and approval processes,
25 thereby streamlining the process. This can be achieved without a
26 significant increase in the overall transaction costs or regulatory
27 burdens associated with water transfer processes.

28 (e) Enable and encourage public and private investments in
29 water use efficiency and other water-saving measures through
30 participation in water transfers and exchanges.

31 (f) Promote and enable water transfers and exchanges as
32 effective mechanisms for management of sustainable surface and
33 groundwater resources in the state.

34 (g) Protect environmental resources, including groundwater,
35 consistent with the requirements of the Sustainable Groundwater
36 Management Act (Part 2.74 (commencing with Section 10720) of
37 Division 6).

38 (h) Protect drinking water supplies in areas of origin from
39 cumulative impacts of multiple or long-term water transfers and
40 exchanges.

1 487. (a) On and after July 1, 2018, the California Water
2 Market Clearinghouse shall operate as an independent office
3 within the Natural Resources Agency. The purpose of the California
4 Water Market Clearinghouse is to make the water transfer and
5 exchange process more transparent and more efficient and to
6 enhance access to voluntary water market transactions, in
7 particular those that provide environmental or social benefits.

8 (b) The director of the California Water Market Clearinghouse
9 shall be appointed by the Secretary of the Natural Resources
10 Agency.

11 488. (a) On or before December 31, 2018, the California
12 Water Market Clearinghouse shall create a centralized water
13 market platform on its Internet Web site that provides ready access
14 to information that has been provided about water available for
15 transfer or exchange and information about the process for
16 transferring or exchanging water. The platform shall be readily
17 available to the public and contain all water transfer or exchange
18 data and information collected by the California Water Market
19 Clearinghouse.

20 (b) On or before December 31, 2018, the California Water
21 Market Clearinghouse shall consider and act upon the
22 recommendations submitted by the Water Market Clearinghouse
23 Task Force and shall establish administrative procedures under
24 which state agencies shall more expediently act upon proposed
25 water transfers or exchanges. Those procedures shall require state
26 agencies to prioritize projects that provide environmental and
27 community benefits or have a demonstrated history of minimal
28 potential impact to other legal water users or instream beneficial
29 uses. The California Water Market Clearinghouse shall act
30 consistent with rulemaking procedures of the state and shall work
31 in collaboration with other state agencies to make necessary
32 changes in the rules and regulations governing water transfers
33 and exchanges.

34 (c) On and after January 1, 2020, all transfers or exchanges
35 that require conveyance across the Sacramento-San Joaquin Delta
36 or result in conveyance of water from one watershed to another
37 shall be submitted to the California Water Market Clearinghouse
38 and processed according to the procedures and standards
39 established, pursuant to subdivision (b), by the California Water

1 *Market Clearinghouse in coordination with other state and federal*
2 *agencies.*

3 *(d) On or before December 31, 2018, the Natural Resources*
4 *Agency shall create within the California Water Market*
5 *Clearinghouse an Office of the Water Transfer Advocate and*
6 *appoint a Water Transfer Advocate.*

7 *(e) Nothing in this chapter provides authority to the California*
8 *Water Market Clearinghouse to approve or disapprove water*
9 *transfers or exchanges.*

10 489. *(a) In order to provide the California Water Market*
11 *Clearinghouse with appropriate recommendations to improve the*
12 *water transfer process and increase access to the water market as*
13 *part of a comprehensive, long-term water management policy, the*
14 *Secretary of the Natural Resources Agency shall convene a task*
15 *force, to be known as the Water Market Clearinghouse Task Force.*

16 *(b) The Water Market Clearinghouse Task Force shall make*
17 *recommendations, based upon the best available science, to the*
18 *California Water Market Clearinghouse regarding all of the*
19 *following:*

20 *(1) How to aggregate and disclose in a publicly accessible*
21 *manner the information required to be submitted in support of an*
22 *application to transfer water pursuant to Section 1725 or any other*
23 *law. The information should include, but not be limited to, all of*
24 *the following:*

25 *(A) The names of the water buyer and seller.*

26 *(B) The quantity of water to be transferred or exchanged.*

27 *(C) The price to be paid for the water transfer or exchange.*

28 *(D) The time and duration of the water transfer or exchange.*

29 *(E) The nature of the underlying right to the water proposed to*
30 *be transferred or exchanged.*

31 *(F) The origin and proposed point of use, place of use, and*
32 *purpose of use of the transferred or exchanged water.*

33 *(G) A description of the conveyance and storage facilities*
34 *necessary to complete the transfer or exchange.*

35 *(H) An identification of any third-party impacts including, but*
36 *not limited to, water quality impacts.*

37 *(2) The information required for water users and the public to*
38 *readily track the progress of a proposed transfer through agency*
39 *review to ensure expedient approval whenever possible.*

1 (3) *The type of information that the California Water Market*
2 *Clearinghouse should require to be submitted to it by state or local*
3 *agencies that approve a water transfer or exchange after the*
4 *transfer or exchange is completed. The information should include,*
5 *but not be limited to, all of the following:*

6 (A) *The quantity of water transferred or exchanged.*

7 (B) *The new place of use for the transferred or exchanged water.*

8 (C) *The new point of redirection for the transferred or*
9 *exchanged water.*

10 (D) *The parties to the water transfer or exchange.*

11 (E) *The conveyance and storage facilities used to complete the*
12 *water transfer or exchange.*

13 (F) *The time and duration of the water transfer or exchange.*

14 (4) *Procedures and standards designed to provide for all of the*
15 *following:*

16 (A) *Better coordinated review of and action upon applications*
17 *or proposals to transfer or exchange water, or both.*

18 (B) *Priority for projects that provide environmental and*
19 *community benefits or have demonstrated a history of minimal*
20 *potential impact to other legal water users or instream beneficial*
21 *uses.*

22 (C) *Reduced transaction costs of water transfers and exchanges.*

23 (D) *Comprehensive evaluation of transfers that should be*
24 *eligible for expedited review, with consideration of drinking water*
25 *supply, environmental quality, and groundwater sustainability*
26 *benefits and impacts.*

27 (E) *Assurance that transfers and exchanges protect*
28 *environmental and community resources in areas of origin and in*
29 *recipient areas.*

30 (F) *Demonstration that a transfer will not adversely affect*
31 *groundwater conditions in any areas involved in the transfer.*

32 (c) *In addition to the recommendations required pursuant to*
33 *subdivision (b), the Water Market Clearinghouse Task Force may*
34 *consider and make recommendations, based upon the best*
35 *available science, to the California Water Market Clearinghouse*
36 *regarding any or all of the following:*

37 (1) *Consolidating places of use.*

38 (2) *Incentivizing and facilitating water use efficiency-related*
39 *water transfers, as well as transfers between environmental uses.*

1 (3) *Developing and facilitating pilot transfers based on crop*
2 *fallowing and other practices to quantify and validate consumptive*
3 *water use rates and incorporating findings into water transfer*
4 *guidelines.*

5 (4) *Providing transparency regarding Delta carriage water loss*
6 *analysis.*

7 (5) *Establishing or documenting conveyance access protocols.*

8 (6) *Creating market mechanisms for access to capital.*

9 (d) (1) *The Water Market Clearinghouse Task Force shall be*
10 *composed of the following members:*

11 (A) *One representative from each of the following state*
12 *agencies:*

13 (i) *The Natural Resources Agency. This representative shall*
14 *serve as the chair of the Water Market Clearinghouse Task Force.*

15 (ii) *The department.*

16 (iii) *The Department of Fish and Wildlife.*

17 (iv) *The Department of Food and Agriculture.*

18 (v) *The Office of Planning and Research.*

19 (vi) *The board.*

20 (B) *Representatives from academia, agricultural water suppliers,*
21 *municipal water suppliers, disadvantaged communities,*
22 *environmental and conservation organizations, and groundwater*
23 *management entities.*

24 (C) *Representatives from entities that have participated in water*
25 *transfers as sellers and buyers of water.*

26 (2) *The federal water and resources agencies shall be invited*
27 *to have representatives participate in the Water Market*
28 *Clearinghouse Task Force.*

29 (e) *The Water Market Clearinghouse Task Force shall conduct*
30 *three public meetings to consider public comments on draft*
31 *recommendations to the California Water Market Clearinghouse.*
32 *The Water Market Clearinghouse Task Force shall publish draft*
33 *recommendations at least 30 days before the public meetings. One*
34 *public meeting shall be conducted at a location in northern*
35 *California, one public meeting shall be conducted at a location in*
36 *the central valley of California, and one public meeting shall be*
37 *conducted at a location in southern California. The Water Market*
38 *Clearinghouse Task Force shall invite California Native American*
39 *tribes, environmental justice organizations, cities, counties, and*

1 *local production agricultural organizations to participate in the*
2 *public meetings.*

3 *(f) On or before January 1, 2018, the Water Market*
4 *Clearinghouse Task Force shall submit its recommendations to*
5 *the California Water Market Clearinghouse.*

6 490. *(a) Anyone submitting information pursuant to subdivision*
7 *(c) of Section 488 shall pay an administrative fee, established by*
8 *the California Water Market Clearinghouse, to recover the*
9 *reasonable costs of the California Water Market Clearinghouse*
10 *in administering this chapter.*

11 *(b) Fees imposed pursuant to subdivision (a) shall be deposited*
12 *in the California Water Market Clearinghouse Fund, which is*
13 *hereby created in the State Treasury. Moneys in the fund shall be*
14 *available, upon appropriation by the Legislature, to the California*
15 *Water Market Clearinghouse for the purposes of this chapter.*

16 491. *This chapter applies in addition to any other law relating*
17 *to water transfers and exchanges.*

18 ~~SECTION 1. It is the intent of the Legislature in creating the~~
19 ~~California Water Market Exchange that the market exchange do~~
20 ~~all of the following:~~

21 ~~(a) Create water sustainability, resiliency, and adaptability to~~
22 ~~drought and climate change.~~

23 ~~(b) Provide important benefits and opportunities for~~
24 ~~disadvantaged communities and environmental resources.~~

25 ~~(c) Increase transparency and decisionmaking capacity by better~~
26 ~~integrating data collection and reporting.~~

27 ~~(d) Facilitate water transfers and exchanges by the establishment~~
28 ~~of a centralized exchange platform and streamline review and~~
29 ~~approval processes.~~

30 ~~(e) Enable and encourage public and private investments in~~
31 ~~water use efficiency measures through participation in water~~
32 ~~transfers and exchanges.~~

33 ~~(f) Provide water transfers and exchanges as an effective~~
34 ~~mechanism for sustainable management of surface and groundwater~~
35 ~~resources in the state.~~

36 ~~SEC. 2. Chapter 7.5 (commencing with Section 485) is added~~
37 ~~to Division 1 of the Water Code, to read:~~

1 ~~CHAPTER 7.5. CALIFORNIA WATER MARKET EXCHANGE~~

2
3 ~~485. This chapter shall be known, and may be cited, as the~~
4 ~~California Water Market Exchange Act of 2016.~~

5 ~~486. The following definitions govern the construction of this~~
6 ~~chapter:~~

7 ~~(a) “Disadvantaged community” has the same meaning as~~
8 ~~defined in Section 79505.5.~~

9 ~~(b) “Market exchange” means the California Water Market~~
10 ~~Exchange established in Section 487.~~

11 ~~(c) “Small community water system” has the same meaning as~~
12 ~~defined in Section 116275 of the Health and Safety Code.~~

13 ~~487. (a) The California Water Market Exchange is hereby~~
14 ~~established in the Natural Resources Agency.~~

15 ~~(b) The market exchange shall be governed by a five-member~~
16 ~~board, composed as follows:~~

17 ~~(1) The Secretary of the Natural Resources Agency.~~

18 ~~(2) Four individuals appointed by the Governor.~~

19 ~~(c) Each board member appointed by the Governor shall hold~~
20 ~~office for a term of four years. The Governor shall stagger the~~
21 ~~terms of the initial members appointed. A vacancy shall be filled~~
22 ~~by the Governor by appointing a member to serve the remainder~~
23 ~~of the term.~~

24 ~~488. (a) On or before December 31, 2017, the market exchange~~
25 ~~shall create a centralized water market platform on its Internet~~
26 ~~Web site that provides ready access to information about water~~
27 ~~available for transfer or exchange. The platform shall be readily~~
28 ~~available to the public and contain all data and information~~
29 ~~collected by the market exchange in order to ensure transparency~~
30 ~~of information regarding the quantities of water available for~~
31 ~~transfer or exchange and the prices paid for transferred or~~
32 ~~exchanged water.~~

33 ~~(b) Before a transfer or exchange of water, the market exchange~~
34 ~~shall require the submission of data and information that includes,~~
35 ~~but is not limited to, all of the following:~~

36 ~~(1) The names of the water buyer and seller.~~

37 ~~(2) The quantity of water to be transferred or exchanged.~~

38 ~~(3) The price to be paid for the water transfer or exchange.~~

39 ~~(4) The time and duration of the water transfer or exchange.~~

1 ~~(5) The nature of the underlying right to the water proposed to~~
2 ~~be transferred or exchanged.~~

3 ~~(6) The origin location and proposed place of use of the~~
4 ~~transferred or exchanged water.~~

5 ~~(7) A description of the conveyance and storage facilities~~
6 ~~necessary to complete the transfer or exchange.~~

7 ~~(8) An identification of any third-party impacts that may result~~
8 ~~from the transfer or exchange.~~

9 ~~(e) After a transfer or exchange of water, the market exchange~~
10 ~~shall require the submission of data and information that includes,~~
11 ~~but is not limited to, all of the following:~~

12 ~~(1) The quantity of water transferred or exchanged.~~

13 ~~(2) The conveyance and storage facilities used to complete the~~
14 ~~water transfer or exchange.~~

15 ~~(3) The time and duration of the water transfer or exchange.~~

16 489. The Legislature intends that water transfers and exchanges
17 protect and enhance environmental and community benefits that
18 include the following:

19 ~~(a) Instream flows and ecosystem water supply.~~

20 ~~(b) Improved water monitoring and data networks.~~

21 ~~(c) Ecosystem restoration projects benefitting aquatic and~~
22 ~~riparian species.~~

23 ~~(d) Improved drinking water supply and quality projects.~~

24 ~~(e) Development of needed technical, managerial, and financial~~
25 ~~capacity for disadvantaged communities.~~

26 ~~(f) Acquisition through the market exchange of needed water~~
27 ~~supplies for small community water systems.~~

28 490. On or before December 31, 2017, the market exchange
29 shall do both of the following:

30 ~~(a) Develop procedures, in consultation with federal, state, and~~
31 ~~local agencies with jurisdiction over water transfers or exchanges,~~
32 ~~to streamline and expedite review and action upon applications to~~
33 ~~transfer or exchange water and to prioritize projects that provide~~
34 ~~environmental and community benefits as described in Section~~
35 ~~489. The procedures shall recommend types of transfers and~~
36 ~~exchanges that could be more routinely approved.~~

37 ~~(b) Establish standards and procedures to ensure that transfers~~
38 ~~and exchanges protect environmental and community benefits~~
39 ~~consistent with Section 489 and to encourage projects that improve~~

1 environmental conditions, provide safe drinking water, and provide
2 other community benefits:

3 491. ~~(a) Anyone submitting information pursuant to~~
4 ~~subdivision (b) or (c) of Section 488 shall pay an administrative~~
5 ~~fee, established by the market exchange, to recover the reasonable~~
6 ~~costs of the market exchange in administering this chapter.~~

7 ~~(b) Fees imposed pursuant to subdivision (a) shall be deposited~~
8 ~~in the California Water Market Exchange Fund that is hereby~~
9 ~~created in the State Treasury. Moneys in the fund shall be available,~~
10 ~~upon appropriation by the Legislature, to the market exchange for~~
11 ~~the purposes of this chapter.~~

12 492. ~~(a) This chapter applies in addition to any other law~~
13 ~~relating to water transfers and exchanges.~~

14 ~~(b) This chapter applies to all transfers and exchanges of water~~
15 ~~occurring on or after January 1, 2018.~~