

**POLICY FOR THE PERMANENT TRANSFER
OF SWP TABLE A WATER
OUTSIDE OF DUDLEY RIDGE WATER DISTRICT
ADOPTED BY THE BOARD OF DIRECTORS ON 12-8-2010
(for new transfers requested after adoption of a revised policy)**

Introduction

The following policy was adopted by the Dudley Ridge Water District Board of Directors on April 8, 2009 and revised on December 8, 2010 and effective January 1, 2011. It is the intent of this policy to facilitate the voluntary permanent¹ transfers of State Water Project (“SWP”) Table A contract amounts (“Table A water”) by District landowners while protecting non-transferring landowners and water users. Accordingly, it is the express intent of the Board in adopting this policy to allow proposed permanent transfers to the maximum extent permitted by law, provided that such transfers do not create unmitigated material adverse impacts on other District landowners.²

Policy

1. This policy shall apply whether the permanent transfer of Table A water is specifically for the benefit of a District landowner’s lands in another district or to a third party, either of which is referred to as a “third party” herein.³
2. Proposals to transfer Table A water will be brought before the Board whether the District receives unsolicited offers or proposed transfers are brought to the District by individual landowners.
 - a. Third party Table A inquiries received by District: Upon adoption of this policy, the District will mail this policy to all landowners with a District Table A water allocation and request interested landowners to notify the District in writing if they

¹ “Permanent” transfers are defined as transfers of a portion of the District’s Table A contract associated with a transferring landowner’s land within the District to a non-District water purveyor as allowed by Articles 41 & 53 of the District’s Water Supply Contract with the Department of Water Resources (“DWR”) for State Water Project water.

² Such impacts include, without limitation, increased cost of water, decreased water supplies, or adverse impacts to land values caused by transfers governed by this Policy.

³ This transfer policy contemplates that DWR will require that Table A water transferred outside of the District must be to another water entity, even if for the benefit of an individual within the water entity’s service area.

are interested in selling Table A water in accordance with this policy; the District shall maintain a current list of interested landowners and their contact information. Subsequently, if the District receives third party inquiries to purchase Table A water, the District shall simultaneously notify all listed landowners with the name and contact information of the inquiring third party; the District Board will be copied. The District will not be directly involved in negotiation of the basic terms of the transfer proposal developed between landowners and prospective third party buyers of Table A water.

- b. Table A sales offers from landowners: Landowners interested in permanent Table A water transfers shall provide the District a written proposal for transfer, signed by the landowner and prospective third party transferee.
- c. Board review. With the advice of District staff and legal counsel, the Board shall review each transfer proposal and determine if it is consistent with this policy. If deemed by the Board to be consistent with this policy, the Board will direct staff to proceed with the following process: (i) provide current District landowners and other SWP contractors located primarily within Kings County⁴ a 30-day period to review and execute a first right-of-refusal to accept all or a portion of the Table A amount proposed to be transferred on the same terms and conditions as being proposed in the third party transfer⁵, (ii) initiate the applicable environmental review process, (iii) initiate requests for regulatory reviews and approvals, and (iv) subject to the completion of i, ii, and iii, the Board will then promptly consider approval of the proposed for transfer. The Board's approval shall not be unreasonably withheld if the proposed transfer conforms with this policy and has obtained all applicable environmental and regulatory reviews and/or approvals, unless the Board determines that the proposed transfer would result in an unmitigated material adverse impact to the District or to District landowners. The Board may condition approval of any transfer to mitigate any adverse impacts it identifies to the District or District landowners.

⁴ Kings County, Tulare Lake Basin Water Storage District, and Empire West Side Irrigation District.

⁵ If the proposed transfer includes non-monetary consideration (that is, consideration other than cash or indebtedness, or a common landowner transfer to its lands in another district), it may not be possible for District landowner(s) and/or a local SWP contractor(s) to exercise their first rights-of-refusal. Substitution of cash in an amount equal to the fair market value of the Table A water to be transferred or the non-cash consideration being offered will not be permitted. The first right-of-refusal may only be exercised if the landowner(s) and/or a local SWP contractor(s) seeking to exercise this right can provide the same consideration to the selling landowner(s) as is proposed by the intended transferee. In the event both a District landowner(s) and a SWP contractor(s) in Kings County exercise a first right-of-refusal for more than the Table A amount available, first priority will be given to the District landowner(s).

3. Financial requirements for a permanent transfer shall include the following:
 - a. Prior to the transfer, the transferring landowner shall pay the District a lump sum representing the present worth⁶ of the following:
 - i. Any outstanding District bonds or loans and associated administrative costs (Improvement District Charge) associated with the District land that will be stripped of Table A water as a result of the transfer.
 - ii. Estimated District administration costs for the eight-year period following the effective date of the transfer (Standby Charge less line items for Special Studies and Litigation) associated with the land that will be stripped of Table A water as a result of the transfer.
 - b. The money collected by the District shall be placed in an interest bearing restricted account; annual withdrawals will be made to offset the costs to remaining landowners and water users. No other compensation to other District landowners shall be required of the transferring landowner.
4. Except as expressly provided below, a transferring landowner's capacity in the San Gabriel Valley MWD exchange program, the Cawelo Water District conjunctive use program, and other District-wide storage or exchange programs⁷ will be reduced in proportion to the reduction in Table A water.⁸
5. If the transferring landowner is a District participant in the Kern Water Bank, the transferring landowner will also be required to relinquish its Kern Water Bank rights and obligations once the landowner's acreage in the District's Standby Charge area is reduced to less than the acreage originally⁹ removed from the Standby Charge area or the landowner's Table A amount is reduced to less than the Table A amount

⁶ Present worth shall be calculated at an interest rate of 5%; future costs shall be projected based on information available from DWR and a forecasted rate of inflation not less than 5%.

⁷ The Kern Water Bank is not considered a District-wide program for purposes of this policy.

⁸ Per District policy (adopted 9-10-03), capacity in these programs is allocated based on the percentage of a landowner's Table A water. Note that the total District capacity would not be reduced as a result of a Table A water transfer, but the percentage of each water users' capacity in these programs would be adjusted.

⁹ "Original" or "originally" is defined as the landowner's Table A water and/or percentage of Kern Water Bank participation as associated with the landowner's remaining interest in the Kern Water Bank.

originally relinquished by that landowner or its predecessor to participate in the Kern Water Bank.¹⁰

- a. The Kern Water Bank rights and obligations may be relinquished either by:
 - i. Sales to another District landowner(s) or
 - ii. Sales to the District.
 - b. In the event the transferring landowner has stored water remaining in the Kern Water Bank, the inventory may be relinquished either by:
 - i. Sales to another District landowner(s) or
 - ii. Sales to the District.
6. The transferring landowner shall enter into a reimbursement agreement with the District to pay the District for all associated costs in facilitating the permanent transfer of Table A water, including without limitation, conducting special meetings, administration, legal, CEQA, outside counsel or consultants, and/or litigation.
 7. If Table A water is transferred out of the District, the water allocation shall be fully removed from individual parcels to the extent possible. The transferring landowner(s) shall designate which parcels from which the water is to be transferred. These lands will not receive a Table A water allocation; a notice satisfactory to the Board will be recorded on the property to this effect, as a condition to final Board approval of the transfer.
 8. Final Board approval of any transfer under this policy will be further conditioned on the execution and (if appropriate) recordation of an agreement satisfactory to the Board memorializing the terms and conditions of this policy and such other terms as the Board determines to be necessary or appropriate in connection with the transfer. However, such agreement shall include, at a minimum, a binding commitment by the transferring landowner(s) and the transferee to jointly and severally indemnify, defend and hold the District and its directors, officers, landowners, agents and affiliates harmless from and against any and all liabilities, claims, demands, losses, costs, expenses (including reasonable attorneys' fees), damages or recoveries of

¹⁰ As of the date of this policy, the participants in the Kern Water Bank are Paramount Farming Company ("PFC"), Irvine Ranch Water District ("IRWD"), Don Jackson, Hillside Orchards ("Hillside") and Sandridge Partners ("Sandridge"). The acreage originally removed by each participant or its predecessor from the District's Standby Charge area to participate in the Kern Water Bank was 2,201.36 acres (1,984.75 for PFC, 444.85 for IRWD, 57.46 for Don Jackson, 7.15 for Sandridge, and 7.15 for Hillside). The Table A water originally relinquished by each participant or its predecessor to participate in the Kern Water Bank was 4,330 acre-feet (3,904 for PFC, 285 for IRWD, 113 for Don Jackson, 14 for Sandridge, and 14 for Hillside).

any kind arising out of or in any way relating to the transfer or the actions or inactions of the District taken in connection therewith.

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