

CALIFORNIA CODES

WATER CODE

SECTION 1810-1814

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

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

(b) The commingling of transferred **water** does not result in a diminution of the beneficial uses or quality of the **water** in the facility, except that the transferor may, at the transferor's own expense, provide for treatment to prevent the diminution, and the transferred **water** is of substantially the same quality as the **water** in the facility.

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

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

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

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

(b) "Emergency" means a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage impairing the ability of a person or public agency to make **water** deliveries.

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

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

(e) "Unused capacity" means space that is available within the operational limits of the conveyance system and that the owner is not using during the period for which the transfer is proposed and which space is sufficient to convey the quantity of **water** proposed to be transferred.

1812. The state, regional, or local public agency owning the **water** conveyance facility shall in a timely manner determine the following:

(a) The amount and availability of unused capacity.

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

1813. In making the determinations required by this article, the respective public agency shall act in a reasonable manner consistent with the requirements of law to facilitate the voluntary sale, lease, or exchange of **water** and shall support its determinations by written findings. In any judicial action challenging any determination made under this article the court shall consider all relevant evidence, and the court shall give due consideration to the purposes and policies of this article. In any such case the court shall sustain the determination of the public agency if it finds that the determination is supported by substantial evidence.

1814. This article shall apply to only 70 percent of the unused capacity.