Testimony of Byron M. Buck, Interim Executive Director, State and Federal Contractors Water Agency before the Little Hoover Commission, January 28, 2010

Good Morning. My name is Byron Buck and I am the interim Executive Director for the State and Federal Contractors Water Agency. Prior to this position I operated a consulting firm that, among other water resource and environmental services, helped water agencies arrange and process regulatory approvals for water transfers and develop long range, integrated water development and management plans. In addition to this background, I have a 30 year career in water resources and environmental planning, with executive positions with the California Urban Water Agencies, California Urban Water Conservation Council and San Diego County Water Authority.

In this testimony I restate the Commission's suggested questions and provide my responses.

1. What steps could the state initiate to overhaul the water transfer application and approval process? How could efficiencies be gained to provide a reliable process for clients needing water?

1. The state needs to focus on impediments to water transfers. Current obstacles are primarily:

a) A CEQA process that is too vulnerable to merit-less lawsuits which when filed essentially eliminates one-year transfers and results in decade long lawsuits for permanent transfers; in recent years lawsuits have been filed or threatened on one-year transfers with the knowledge simply that the time it takes to dismiss a merit-less case is enough to halt the transfer, which is very time sensitive in terms of approval and execution. Needs for one year transfers are generally not known until late winter and contracts must be in place generally by May and any lawsuit can cripple this timetable.

b) Even if a transfer is permitted, the lack of reliable conveyance through the Delta eliminates the ability to move water on a timely and reliable basis and greatly limits the source areas for transfers (primarily the Sacramento Valley) from the demand areas south and west of the Delta**. This is lack of conveyance capacity is the number one water problem for California and affects transfers as well as basic provision for water needs every year it goes unresolved**.

c) To a lesser degree, but still important is that groundwater substitution transfers where farmers forgo surface water which is transferred and rely in the short term on groundwater, are largely limited due to air quality effects of groundwater pumping, which are usually diesel powered pumps. If wells become electrified, this impediment is essentially eliminated.

d) Terrestrial and aquatic species impacts are also often a concern where transfer contract economics cannot justify mitigation for temporary impacts. A strategy that creates long term mitigation projects to cover short term but occasionally recurring impacts is necessary.

e) Place of use restrictions in water rights permits from the SWRCB on water for the State vs. CVP can also add to regulatory delay in approving transfers when there are transfers between the system.

f) Both state and federal permit processes are required when water is transferred from a CVP user to someone on the SWP system. Overall, regulatory requirements are daunting, expensive, lengthy and sometimes insurmountable.

g) Local county ordinances such as in Butte County require permits for any transfer involving groundwater (substitution). This ordinance requires Butte County to be the lead agency on a 24-month CEQA process to receive a permit valid only for 3 years. This has effectively ended groundwater substitution transfers from areas within Butte County.

The State could help remedy the CEQA situation to some degree by adopting a program Environmental Impact Report for Sacramento Valley and San Joaquin Valley transfers which individual multi year, or single year transfers proposals can use to "tier off of" addressing only unique project specific impacts. This could help resolve recurring mitigation issues relative to impacts to terrestrial and aquatic species through one-time mitigation efforts. This however, would not solve the problem that for single-year transfers, a CEQA suit, regardless of merit, can block such transfers because of the inability to resolve the litigation in a timely manner when contracts for transfers must be executed in a 2-3 month window with water moving shortly thereafter. A legislative remedy expanding one-year transfer exemptions from CEQA requirements could be considered. The SWRCB could also assist in lifting regulatory burdens for certain transfers by consolidating the place of use of the CVP and the SWP systems. However, this would require an application by the Projects, a lengthy regulatory approval process, likely be controversial and subject to challenges by parties seeking to block water transfers and other water supply reliability improvements within the CVP and SWP service areas. The legislature could also address overly burdensome local ordinances which, in effect, eliminate transfers.

2. What are the implications associated with greater coordination among the state and federal water projects, beyond the existing Cooperative Operating Agreement, such as reservoir reoperation plans for Oroville and Folsom reservoirs?

First, one should recognize that two separate backbone water systems existing in the state is a historical artifact, and was not part of the original vision, which was to have a single statewide system. But for the Great Depression, the CVP facilities would not have been built by or continue to be owned by the Federal government. Greater cooperation, which could involve agreements with third parties such as a joint state and federal Joint Powers Authority or other special purpose entity authorized by law and made up of the public entities contracting for water supply. Ultimate consolidation and divestiture of state and federal facilities to a utility-type organization, could bring more efficient operations, allow the projects to be more nimble and effective in mitigating environmental effects, allow for water and facility use efficiencies, minimizing the need for additional

infrastructure, and lower administrative, operational and maintenance costs of water supply. It could also improve flood control operations and more easily optimize benefits for the state as a whole. Such a consolidation or divestiture involves many complex operational and governance issues and would require an objective study of the opportunities, consequences and best design for a new operating and governance structure.

2. *What type of opportunities and constraints are associated with transferring the maintenance and operation of state and federal water project facilities to local water agencies and purveyors?*

There are vast opportunities to transfer maintenance, operation and indeed, ownership of state and federal water facilities to local agencies and purveyors. There are numerous examples of parts of the federal CVP system which have been turned over to local entities (San Luis and Delta Mendota Water Authority, Contra Costa Water District and others). The impediments to doing this are primarily institutional capability and inertia biased towards the status quo. Until recently, there was no central organization from which the State and Federal water contractors could operate. Development of a joint powers authority, the State and Federal Contractors Water Agency in 2009, now provides a vehicle to provide services to both the CVP and SWP customers, which could include a wide variety of activities in the future, including operations and maintenance of both water systems if analysis found that to be in the public interest. Divesting full state and federal operations responsibility would likely be difficult without divesting ownership as well, as each of these facilities operates under licenses and permits for which substantial liability exposure exists. Carving off individual operational units has been done, but a full divestiture would be a substantial undertaking involving years of planning and execution. In the long run, however, great efficiencies could be gained by moving to a regulated utility model, much as other utility services, and indeed, many water services such as the SFPUC, EBMUD and others which are fully integrated publicly owned source-to-user systems have proven that this utility model can be successful and efficient.

4. How could a well managed, transparent and effective environmental water banking system work in the Central Valley?

Key to making a well managed and transparent environmental water banking system work in the Central Valley is resolution of water conveyance constraints in the Delta. A water banking system fundamentally operates on the notion that there is excess water available in certain time periods which if stored for later use, can relieve environmental burdens at other times when water is less available. The current system is so fundamentally constrained that access to excess water is effectively eliminated. Once this conveyance capacity issue is resolved then a functional water bank would require access to a certain portion of that capacity. A stable source of funding for the "public benefit" of an environmental water bank would need to be secured. This would allow the bank to be a player in the water market, and to some degree, allow it to buy and sell water, use storage assets and other tools to create additional environmental enhancement.

A water bank that also had the rights to acquire, sell and trade water, lease capacity in storage, and otherwise act much as other water supply entities in the state would enhance its capabilities and effectiveness.