

Inyo County Code

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Chapter 18.77 REGULATION OF WATER TRANSFERS UNDERTAKEN PURSUANT TO WATER CODE SECTION 1810, SALES OF SURFACE WATER OR GROUNDWATER BY THE CITY OF LOS ANGELES, AND THE TRANSFER OR TRANSPORT OF WATER FROM GROUNDWATER BASINS LOCATED IN WHOLE OR IN PART WITHIN

18.77.000 Declarations and findings.

A. Importance of Water. Adequate supplies of water are vital to the economy and environment of Inyo County and the health, safety and welfare of its citizens.

B. Water Exports. The city of Los Angeles, with significant environmental, economic and social consequences, has exported substantial amounts of surface water and groundwater from Inyo County.

C. Proposed Water Transfers. In addition to water exports by Los Angeles, proposals have been made that involve the export of groundwater from Inyo County via the Los Angeles Aqueduct under Water Code Section 1810, the sale of groundwater extracted from Inyo County to the city of Los Angeles, the extraction and export of groundwater from a groundwater basin located in whole or in part in Inyo County, and the transfer or transport of groundwater extracted from within Inyo County from a groundwater basin located in part in Inyo County for use in an area within the same basin, but outside the boundaries of the county.

D. Importance of Groundwater. Groundwater underlying Inyo County has been and will continue to be an important source of water for agricultural, domestic, municipal, environmental and other purposes.

E. Water Code Section 1810 Transfers. It is the policy of the state of California to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import. Under California Water Code (hereafter Water Code) Section 1810 et seq., neither the state, nor any regional or local public agency may deny a bona fide transferor of water, as defined, the use of a water conveyance facility which has unused capacity, as defined, for the period of time for which that capacity is available, if fair compensation as specified, is paid for that use, subject to conditions specified in Water Code Section 1810 (a), (b), (c), and (d). Water Code Section 1810(d) provides that such a transfer of water may be denied if the use of a water conveyance facility will injure any legal user of water, or will unreasonably affect fish, wildlife, or other instream beneficial uses or will unreasonably affect the overall economy or the environment of the county from which the water is being transferred. Transfers of water from Inyo County undertaken pursuant to Water Code Section 1810 et seq., have the potential to affect the overall economy and/or the environment of Inyo County.

F. Inyo County/Los Angeles Water Agreement. In 1997, an agreement between the county and the city of Los Angeles, which provides for management of the city of Los Angeles' water gathering activities (including groundwater extraction and surface water diversion) within Inyo County, was entered as a final order in Inyo County superior court, Case Number 12908. (Hereinafter, "Inyo/Los Angeles Water Agreement.") The Inyo/Los Angeles Water Agreement provides for cooperative management of Los Angeles' water gathering activities by the county of Inyo and the city of Los Angeles in a manner that protects the environment of Inyo County.

G. Water Sales to Los Angeles. In January 1998, the city of Los Angeles and the county of Inyo (through the Inyo County/Los Angeles Standing Committee) agreed that "[T]he City of Los Angeles will not enter into any agreement to purchase or otherwise acquire water extracted or diverted from within Inyo County unless it has been first informed by the county that the county and the seller have entered into an agreement which provides for the management of the extraction or diversion of the water in a manner that insures the protection of the county's environment and economy, If after such notification, the city of Los Angeles enters into an agreement with the seller to purchase water, the purchase agreement will specifically require, as a continuing condition of

the purchase of any water, that the seller be in full compliance with the provisions of the agreement with the county.

H. Groundwater Transfers. A transfer or transport of groundwater from a groundwater basin located in whole or in part within Inyo County to an area outside of the groundwater basin, and a transfer or transport of groundwater extracted from within Inyo County from a groundwater basin located partially within Inyo County for use in an area within the same basin, but outside the boundaries of Inyo County, have the potential to adversely affect the economy and environment of Inyo County.

I. Authority to Regulate. Existing law provides the county with authority to protect the health, safety and welfare of its citizens, through the regulation of the extraction of groundwater from groundwater basins within Inyo County.

J. Need for Regulation. It is essential for the protection of the health, safety and welfare of the citizens of Inyo County, and the public benefit of the state, that a transfer of water undertaken pursuant to Water Code 1810, a sale of surface or groundwater to the city of Los Angeles, a transfer or transport of groundwater extracted and exported from a groundwater basin located in whole or in part within the boundaries of Inyo County, and a transfer or transport of groundwater extracted from within Inyo County from a groundwater basin partially located within Inyo County, for use in an area within the same basin, but outside the boundaries of Inyo County be regulated in a manner that provides for the protection of the overall environment and economy of Inyo County. (Ord. 1004 § 2, 1998.)

18.77.005 Purpose and intent.

It is the purpose and intent of this chapter to establish an effective county policy that will assure that the overall economy and the environment of Inyo County are protected from the impacts of:

A. A water transfer from the unincorporated area of Inyo County undertaken pursuant to Water Code Section 1810 et seq.;

B. A sale to the city of Los Angeles, or an acquisition by the city of Los Angeles by means other than a sale, of surface water or groundwater extracted or diverted from within Inyo County;

C. A transfer or transport of groundwater extracted from a groundwater basin located in whole or in part within the boundaries of Inyo County, for use in an area outside of the groundwater basin; and

D. A transfer or transport of groundwater extracted from within Inyo County from a groundwater basin partially located within Inyo County, for use in an area within the same basin, but outside the boundaries of Inyo County. (Ord. 1004 § 3, 1998; Ord. 943 § 4 (part), 1994.)

18.77.010 Scope.

A. Application. Any person who proposes a transfer or transport of water described in subsections (A)(1) through (4) of this section shall be subject to the provisions of this chapter:

1. A water transfer from the unincorporated area of Inyo County undertaken pursuant to Water Code Section 1810 et seq.

2. As set forth in the agreement described in Section 18.77.000 (G) a sale to the city of Los Angeles, or an acquisition by the city of Los Angeles by means other than a sale, of surface water or groundwater extracted or diverted from within Inyo County.

3. A transfer or transport of groundwater extracted from a groundwater basin located in whole or in part within the boundaries of Inyo County, for use in an area outside of the groundwater basin.

4. A transfer or transport of groundwater extracted from within Inyo County from a groundwater basin

partially located within Inyo County, for use in an area within the same basin, but outside the boundaries of Inyo County.

B. Exemptions. Water transferred or transported as described below shall be exempt from the application of this chapter (Chapter 18.77):

1. A transfer or transport of water by the city of Los Angeles from Inyo County, and an extraction of groundwater or a diversion of surface water from within Inyo County by the city of Los Angeles, that is not a purchase or acquisition of water subject to the agreement described in Section 18.77.000(G).
2. A transfer or transport of water during periods of emergency declared pursuant to California Government Code Section 8558 that is directly related to the reason or basis for the declaration of the emergency, and that is undertaken in order to prevent or mitigate injury to people, or the flooding or damaging of property.
3. A transfer or transport of water in the form of manufactured or processed goods or products, agricultural products, or in bottles or any other portable containers including tanker trucks, provided the total transfer or transport via tanker track or tracks does not exceed one acre foot during a one-year period.
4. A transfer or transport of water over which the county lacks the legal authority or jurisdiction to regulate, including a transfer or transport of water extracted or diverted from outside of the boundaries of Inyo County.

C. Nonconforming Uses. A transfer or transport of water which occurs after the effective date of the ordinance codified in this chapter shall be considered a nonconforming use as set forth in Section 18.78.230 to 18.78.300 of this code if the transfer or transport meets all of the following criteria:

1. The transfer or transport is substantially similar to a transfer or transport that occurred during the one year period immediately prior to the effective date of said ordinance;
2. The transfer or transport is accomplished by means of substantially the same conveyance facility as was used during the one-year period immediately prior to the effective date of said ordinance;
3. The transfer or transport is from substantially the same geographical area of the groundwater basin as during the one-year period immediately prior to the effective date of said ordinance;
4. The transfer or transport does not exceed either the highest instantaneous rate, or the highest annual total quantity, of water that was transferred or transported within the twenty-year period immediately prior to the effective date of said ordinance; and
5. The transfer or transport will result in the use of the transferred or transported water in substantially the same manner and in substantially the same area as it was used during the one-year period immediately prior to the effective date of said ordinance.

A transfer or transport of water which does not meet all of the criteria described in subsections (C)(1) through (4) of this section (including a water transfer or transport which once met, but no longer meets all of the criteria) shall not be considered a nonconforming use, and shall be subject to the provisions of this chapter. (Ord. 1004 § 4, 1998; Ord. 943 § 4 (part), 1994.)

18.77.011 Definition of terms used in this chapter.

- A. "Extraction" means the process of withdrawing groundwater by pumping or other controlled means.
- B. "Groundwater" means all water below the surface of the earth within the zone below the water table, in which the soil is completely saturated with water, excluding subsurface water that flows in known and definite channels.
- C. "Groundwater basin" means a groundwater reservoir, defined on the basis of geological and hydrological conditions.
- D. "Groundwater basin located in whole or in part within Inyo County" means the following groundwater basins identified in California Department of Water Resources Bulletin 118-80, "Ground Water Basins in

California”:

Name of Basin	Number of Basin
Owens Valley	6-12
Black Springs Valley	6-13
Fish Lake Valley	6-14
Deep Springs Valley	6-15
Eureka Valley	6-16
Saline Valley	6-17
Death Valley	6-18
Wingate Valley	6-19
Middle Amargosa Valley	6-20
Pahrump Valley	6-28
Mesquite Valley	6-29
Searles Valley	6-52
Indian Wells Valley	6-54
Coso Valley	6-55
Rose Valley	6-56
Darwin Valley	6-57
Panamint Valley	6-58
Fish Slough Valley	6-60
Cameo Area	6-61
Race Track Valley	6-62
Hidden Valley	6-63
Marble Canyon Area	6-64
Cottonwood Spring Area	6-65
Lee Flat	6-66
Santa Rosa Flat	6-68
Cactus Flat	6-70
Coles Flat	6-72
Wild Horse Mesa Area	6-73
Harrisburg Flats	6-74
Wildrose Canyon	6-75
California Valley	6-79
Middle Park Canyon Valley	6-80
Butte Valley	6-81
Spring Canyon Valley	6-82
Furnace Creek Area	6-83
Greenwater Valley	6-84
Gold Valley	6-85
Rhodes Hill Area	6-86

E. “Overdraft” means the withdrawal of groundwater from a groundwater basin in an amount in excess of the amount of water that recharges the basin over a period of years during which water supply conditions approximate average, and which, if continued over time, could eventually cause the groundwater supply to be exhausted, cause subsidence, cause the water table to drop to a level below where groundwater pumping is no longer economically feasible, or cause a detrimental change in water quality.

F. "Person" means any natural person, and any corporation, partnership, association, public entity, municipality, and any other entity with legal existence under California law.

G. "Recharge" means flow of water to groundwater storage from precipitation, infiltration from streams, irrigation, spreading basins, and other sources.

H. "Surface water" means water in lakes, streams, ponds, rivers or reservoirs.

I. "Water table" means the surface or interface between the zone where the soil is completely saturated with water and the zone where the soil is not completely saturated with water.

J. "Water transfer or transport" means the conveyance of water via aqueduct, ditch, pipeline, flume, natural water course or tanker truck from one area to another: (1) pursuant to Water Code Section 1810 et seq., or (2) pursuant to a sale to the city of Los Angeles, or an acquisition by the city of Los Angeles by means other than a sale, of surface water or groundwater extracted or diverted from within Inyo County, or (3) that involves movement of groundwater extracted from a groundwater basin located in whole or in part within the boundaries of Inyo County for use in an area outside of the groundwater basin, or (4) that involves movement of groundwater extracted from within Inyo County from a groundwater basin partially located within Inyo County for use in an area within the same basin, but outside the boundaries of Inyo County. (Ord. 1004 § 5, 1998.)

18.77.015 Conditional use permit requirement.

Any person who proposes a transfer or transport of water described in Section 18.77.010. A. shall, prior to the commencement of the water transfer or transport, first apply for and obtain from the county planning commission a conditional use permit as provided in Chapter 18.81 of this Code. (Ord. 1004 § 6, 1998: Ord. 943 § 4 (part), 1994.)

18.77.020 Applications.

An application for a conditional use permit shall be made on forms provided by the county planning department. The application shall be filed in accord with this Chapter, Chapter 18.81, other relevant chapters of this code, and with procedures established by the county planning commission. (Ord. 943 § 4 (part), 1994.)

18.77.025 Application processing and fees.

A. Applications. An application for a conditional use permit for a water transfer described in Section 18.77.010(A) shall be processed in the same manner as other conditional use permit applications submitted to the county; however, the Inyo County water department and the Inyo County water commission (water commission) shall evaluate the hydrogeological and related environmental impacts, and based on its evaluation, shall identify and develop associated mitigation measures, proposed project conditions, the monitoring, groundwater management and/or reporting program, and proposed findings. The water commission shall submit its recommendations to the county planning commission.

B. Fees. At the time of the filing of the application for a water transfer pursuant to this chapter, a fee, as established by Section 18.81.190 of this code, shall be paid to the county planning department. (Ord. 1004 § 8, 1998: Ord. 943 § 4 (part), 1994.)

18.77.030 Required findings.

A. Findings. A conditional use permit for a transfer or transport of water described in Section 18.77.010(A) shall be approved only if the county planning commission, in consideration of the recommendations submitted

by the water commission, finds that the proposed water transfer to be undertaken (subject to proposed conditions to be placed upon the transfer) will not unreasonably affect the overall economy of Inyo County and will not unreasonably affect the environment of Inyo County.

B. Adverse Effect on the Economy or Environment. A proposed water transfer shall be found by the planning commission to unreasonably affect the overall economy of Inyo County or to unreasonably affect the environment of Inyo County if the commission finds, based on the relevant recommendations submitted by the water commission, that the proposed water transfer including all proposed conditions and mitigation measures, will cause a significant adverse effect or effects on the overall economy or the environment of the county. A determination of whether or not the proposed water transfer will have a significant adverse effect, or whether a mitigation measure or measures will reduce such a significant effect to a less than a significant level, shall be made by reference to the analytical model of the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), its guidelines and relevant case law.

C. Economy. In determining whether a proposed water transfer will unreasonably affect the overall economy of Inyo County, all relevant factors shall be considered, including, but not limited to, potential injuries to legal users of water in the groundwater basin and the county, direct or indirect economic impacts to suppliers, service providers and others in the county, impacts to the tax base of the county, and the cumulative effects of the proposed water transfer when considered together with the effects of past water transfers, past surface and groundwater exports, proposed economic mitigation measures, as well as the effects of approved or anticipated future water transfers and exports, on the county's overall economy.

D. Environment. In determining whether a proposed water transfer will unreasonably affect the environment of Inyo County, all relevant factors shall be considered, including, but not limited to, effects on fish, wildlife, and other instream uses, effects on water levels in wells, effects on springs and seeps, effects on riparian and groundwater dependent vegetation, effects on rare or endangered plant or animal species, effects on surface water features, recharge to the groundwater basin, effects on the groundwater storage capacity of the basin, potential for overdraft, potential for subsidence, effects on water quality, the capability of the proposed monitoring, groundwater management and/or reporting program to detect and avoid significant adverse impacts and the cumulative effects of the proposed water transfer within the affected groundwater basin, when considered together with the effects of past water transfers, past transfers and water exports, as well as approved and anticipated future water transfers, and water exports from the affected groundwater basin, on the environment.

E. Evidence. Each finding required to be made by the county planning commission pursuant to this chapter shall be based upon substantial evidence and shall contain a description of the evidence that supports the finding. (Ord. 1004 § 9, 1998: Ord. 943 § 4 (part), 1994.)

18.77.035 Monitoring, groundwater management and reporting.

The county planning commission, in consideration of the relevant recommendations submitted by the water commission, shall approve and incorporate, as appropriate, a monitoring, groundwater management and/or reporting program into each conditional use permit it grants for a transfer or transport of water described in Section 18.77.010(A). The monitoring, groundwater management and/or reporting program shall be of such scope and extent as the commission finds to be necessary to ensure that the proposed water transfer will not unreasonably affect the overall economy or the environment of the county. In determining the scope of a monitoring, groundwater management and/or reporting program, the ability of the proposed program to detect and avoid potential significant adverse effects before such effects occur shall be considered. The monitoring and/or reporting portion of the program shall be in compliance with Chapter 15.44 of this code. The groundwater management and/or reporting program may include, but shall not be limited to, instream flow measurements, reports of the amounts of surface water diverted and/or amounts of groundwater pumped, monitoring of wells,

monitoring of groundwater levels, monitoring of spring and seeps, monitoring of vegetation, wildlife, fish and economic effects and thresholds and/or trigger points which, if reached, will control the extraction of groundwater. (Ord. 1004 § 10, 1998: Ord. 943 § 4 (part), 1994.)

18.77.040 Procedures.

Upon completion of the environmental review process and the filing of all required documents, a noticed public hearing will be scheduled and conducted by the county planning commission to consider issuance of any conditional use permit for a water transfer or transport described in Section 18.77.010(A). Such a hearing will be scheduled and conducted in accordance with this chapter and Chapter 18.81 of this code. (Ord. 1004 § 11, 1998: Ord. 943 § 4 (part), 1994.)

18.77.045 Modifications and revocation.

A. Modification by Request. Any person who has been granted a conditional use permit for a water transfer or transport pursuant to this chapter may submit an application for a modification of the permit. Any such application shall be submitted and processed as provided in Section 18.81.140 et seq. of this code.

B. Modification for Cause. In the event that evidence obtained through the monitoring and/or reporting program, or other evidence, indicates that a water transfer subject to a conditional use permit has unreasonably affected, or has the potential to unreasonably affect, the overall economy or the environment of the county, or that there has been a failure to comply with the provisions of the permit, the county planning commission shall conduct a noticed public hearing into the matter. If at the conclusion of the hearing, the commission finds that an existing water transfer, if continued, would cause an unreasonable effect on the overall economy or the environment of the county, the commission shall modify the provisions of the conditional use permit to the extent that it finds to be necessary to avoid the occurrence of such an effect. If the commission finds that a water transfer, subject to a conditional use permit has unreasonably affected the overall economy or the environment of the county, the commission shall order the implementation of such mitigation measures as it finds to be necessary to reduce the level of the effect to less than significant; in addition, the commission may modify the conditional use permit to the extent that it finds to be necessary to avoid the occurrence of such unreasonable effects in the future.

C. Revocation. At the conclusion of the public hearing described in subsection (B) of this section, the commission may revoke a conditional use permit granted pursuant to this chapter if it finds that the water transfer cannot be continued without causing an unreasonable effect on the overall economy or environment of Inyo County, or if the commission finds that there has been a failure to reasonably comply with the terms of the permit. In the event that the commission revokes a permit, the commission may order the former permittee to implement such work as the commission finds is necessary to mitigate any significant adverse effects caused by the water transfer or transport undertaken by the former permittee. (Ord. 1004 § 12, 1998: Ord. 943 § 4 (part), 1994.)

18.77.050 Term of permit.

Each applicant for a conditional use permit pursuant to this chapter shall specify in the application the duration or term of the permit requested. The county planning commission, in consideration of the relationship of the term of the permit to the potential for the water transfer to unreasonably affect the overall economy or environment of Inyo County, shall, in accordance with Section 18.81.130 of this code, determine the term of the permit. (Ord. 1004 § 13, 1998.)

18.77.055 Challenge to water transfers and transport.

A. Existing Conditional Use Permit. Any interested party may challenge the ongoing transfer or transport of water subject to an approved permit during the term of the permit based on allegations that one or more of the following circumstances exists:

1. There has been or is an ongoing violation of one or more conditions of an approved permit; or
2. The transfer or transport of water pursuant subject to a conditional use permit has unreasonably affected the overall economy or the environment of the county.

B. No Existing Conditional Use Permit. Any interested party may challenge a transfer or transport of water that is not being undertaken pursuant to an approved conditional use permit based on an allegation that a conditional use permit for the transfer or transport of water is required pursuant to this chapter.

C. Process. A challenge pursuant to this section shall be commenced by filing with the planning commission a signed written statement setting forth the challenge on a form prescribed by the commission. The statement shall allege circumstances specified in subsections (A) or (B) of this section, and shall generally describe facts in support of those alleged circumstances. Within ten days of receipt of a challenge in compliance with the foregoing requirements, the planning department shall give notice of the challenge to the person undertaking the transfer or transport of water, the challenging party, all affected agencies, and any interested party that has requested such notice. Within forty-five days of the receipt of the challenge, the planning department shall complete a review of the facts alleged in the challenge, and based upon this review, shall make a determination whether sufficient evidence has been presented to warrant a hearing by the commission on the challenge. A notice of this determination, together with the date and time of public hearing by the commission on the challenge, if applicable, shall be provided to the person undertaking the transfer or transport of water, the challenging party, all affected agencies, and any interested party that has requested such notice. Any public hearing on the challenge shall be conducted as provided in this title.

1. If the challenge pertains to a transfer or transport of water undertaken pursuant to a conditional use permit, the commission's review shall be as set forth in Section 18.77.045.

2. If the challenge pertains to a transfer or transport of water that is not undertaken pursuant to this chapter, the commission shall determine whether such a permit is required. If the commission finds that the transfer or transport requires, and/or previously required, a conditional use permit, and if the commission finds that the transfer or transport of water caused an unreasonable effect on the overall economy or environment of Inyo County, in addition to any other penalties that may be imposed for violation of this code, the commission may order the person who undertook the transfer or transport to implement such work as the commission finds is necessary to mitigate any significant adverse effects caused by the water transfer or transport undertaken by the person.

D. Standard of Proof. The standard for proof in any such challenge proceeding shall be substantial evidence. The burden of proof shall be upon the person undertaking the transfer or transport of water.

E. Appeals. Appeals of a determination by the planning department or of a planning commission decision may be made as provided in this title. (Ord. 1004 § 14, 1998.)