APPROVED
By the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

EXECUTIVE SECRETARY

January 30, 1996

**To:** Board of Directors (Committee on Legislation--Action)
(Water Planning and Resources Committee--Information)

**From:** General Manager

**Submitted by:** Debra C. Man, Chief
Planning and Resources

**Subject:** Adopt Legislative Policy Principles Regarding the Potential Transfer of the Central Valley Project from Federal Ownership

## RECOMMENDATION(S)

It is recommended that your Board: (1) review and approve the proposed legislative policy principles for developing an urban position on the potential transfer of the Central Valley Project from federal ownership; and (2) authorize the General Manager to jointly work with the Bay-Delta Urban Coalition to develop a common position and pursue administrative and legislative actions to the extent they are consistent with these principles.

## EXECUTIVE SUMMARY

In August 1995, the Central Valley Project Authority (CVPA) proposed legislation to buy and operate the federal water project as part of the 1995-96 budget reconciliation process to help balance the federal budget within seven years. The CVPA is a joint powers authority formed in February 1995 for the purpose of pursuing private ownership and management of the CVP.

As proposed, the legislation included a purchase price of $826 million representing the present value of the amount owed on the project through the year 2030. The legislation was withdrawn in September 1995 when issues internal to the CVPA could not be resolved in time to include it in the 1995 budget reconciliation bill. It is possible that similar legislation may be reintroduced by the CVPA in 1996.

Staff has analyzed the legislation as it was introduced by the CVPA and has discussed various aspects of the proposed transfer with members of agricultural, environmental and urban groups. As a result, staff has developed proposed legislative policy principles regarding the potential transfer of the CVP from federal ownership based upon an analysis of key issues. Staff recommends that your Board review and approve the proposed legislative policy principles

and authorize staff to work with the Bay-Delta Urban Coalition to develop a common position and pursue administrative and legislative actions that are consistent with the recommended principles.

**DETAILED REPORT**

Transfer of Central Valley Project (CVP) has been a recurring consideration since the early 1950's. The CVP was originally planned as a State water supply facility, however, the project was taken over by the federal government when the State was unable to market revenue bonds during the height of the Great Depression. Most recently, transfer of the CVP was studied and negotiated for several months without conclusion during and following the development and passage of the Central Valley Project Improvement Act of 1992 (CVPIA).

In August 1995, the Central Valley Project Authority (CVPA) proposed legislation to buy and operate the federal water project as part of the 1995-96 budget reconciliation process to help balance the federal budget within seven years. The CVPA is a joint powers authority composed of the Tehama-Colusa Canal Authority, San Luis Delta Mendota Water Authority, and the Friant Water Users Association, each themselves a joint powers authority organized for the purpose of operating and maintaining portions of the CVP which serve their respective regions.

Staff anticipates that the CVPA may reintroduce similar legislation in 1996. The purposes of this legislation likely will be: (1) to provide for local ownership and management of CVP facilities, (2) to contribute toward balancing the federal budget through the proceeds, (3) to convey fee title to the CVP facilities and water rights excluding CVP related lands or interest in lands included in the National Wildlife Refuge System, National Forest System, Shasta National Recreation Area, and elements authorized but not included as CVP facilities, and (4) to define and distinguish ongoing federal liabilities and obligations.

Transfer of the CVP to a non-federal entity such as the CVPA could impact water management in California in general, and Southern California in particular, in several ways. To the State as a whole, these impacts could involve financial, water rights, environmental protection, and water planning elements. To Southern California, these potential impacts include; shifts in obligations, the viability of water transfers, and the operational and physical integrity of the State Water Project (SWP) as operated in coordination with the CVP.

Since withdrawal of the legislation in late 1995 staff has continued to analyze the issues raised by the proposed legislation. These issues fall into three broad categories: (1) process, (2) operations, and (3) obligations. Following is a brief summary of the key issues in each category. A more comprehensive discussion of the issues is included as Attachment A.

**Process:** The process surrounding the potential transfer of the CVP raises the three main issues. They include: input by other stakeholders, advancement of the CALFED process, and protection of SWP interests. Each of these issues discussed below is the subject of a proposed legislative policy principle and is more fully discussed in Attachment A.

As proposed, the legislation would have been included in the federal budget reconciliation bill which was on a fast track and did not provide for full consideration and debate of the issues or inclusion of other stakeholder's interests.

In addition, the process leading to transfer of the CVP must address how CALFED could be impacted. Efforts to transfer the CVP could adversely affect CALFED's recent progress in solving long-term water supply, quality, and environmental issues in the Bay-Delta through withdrawal of federal agency participation and resources in current CALFED efforts.

Lastly, SWP contractors may have an interest in future modifications to management for the SWP which could be limited if the process used to transfer the CVP sets a precedent that limits possible changes in future SWP management. Contractor ownership and management of either the SWP or a joint SWP/CVP may provide a beneficial alternative in the future.

**Operations:** There are three operational issues which were not adequately addressed in the proposed legislation. They are: how physical operation of the CVP will impact other users including the SWP, how water transfers of CVP water will be impacted, and how the governance structure may impact operation of the project in a manner that is responsive to non-CVP stakeholders. Each of these issues discussed below is the subject of a proposed legislative policy principle and is more fully discussed in Attachment A.

The CVP is currently operated in a coordinated manner with the SWP through implementation of the Coordinated Operations Agreement (COA) and through shared operation of facilities jointly owned by the SWP and the CVP. The continued adherence to the COA, and provisions for continued joint operations of shared facilities is not explicitly addressed in the CVPA's proposal.

Another operational issue is the effect of transferring the CVP on water transfers. A stated benefit by the proponents of the purchase includes the increased ability to develop water transfer agreements. However, the transfer of ownership does not guarantee greater ease in developing water transfers.

Upon sale of the CVP, the attached water rights also transfer to the new owner. However, under the 1902 Reclamation Law, the State retains primacy in matters concerning water allocation and issuance or conditioning of water rights permits or licenses. Although transfer of the project will likely include the CVP's water rights permits and licenses, the new owner will remain subject to the authority of the State Water Resources Control Board.

Perhaps most importantly, the proposed legislation did not adequately address how the CVPA would govern the CVP if it owned the project. Under existing federal governance, opportunities exist for input from stakeholders such as environmental, tribal, state, or other non-CVP interests. This may not be true of CVPA governance. Environmental groups and others are concerned that such input be part of any transfer from federal ownership.

**Obligations:** Transfer of the CVP from federal ownership may affect the various obligations of the CVP in three key ways. They are: the CVP's environmental obligations under applicable State and federal law, the financial obligations of the CVP to its contractors and the federal taxpayer, and the CVP's obligation to operate within State law. Each of these issues discussed below is the subject of a proposed legislative policy principle and is more fully discussed in Attachment A.

The proposed legislation stated that it was the purpose of the CVPA to operate the CVP subject to all relevant State and federal environmental laws and regulations. However, the legislation was unclear as to how these obligations would be met without shifting them to other California water interests.

Additionally, the project's financial obligations were addressed by the proposed legislation in the form of a purchase price for the CVP facilities of $826 million. This price is the subject of considerable debate and may or may not adequately reflect the appropriate market price of the CVP. Other CVP values being discussed include the net present value of the facilities ($1.9 billion) and the replacement cost of the entire project ($7.1 billion). There is also some question as to the ability of member agencies and districts within the purchasing agency to repay debt and maintain the project and its obligations without shifting those obligations to others.

Finally, the legislation does not adequately address how the CVPA would comply with obligations of State law including the provisions of the CEQA and applicable sections of the California Public Resources Code. It is important that such details are addressed prior to transfer from federal ownership.

Staff analyzed the proposed legislation introduced in 1995 as a basis to develop legislative policy principles for any future legislation that seeks to transfer the CVP from federal ownership. Staff recommends that your Board review and approve the following proposed legislative policy principles and authorize staff to work with the Bay-Delta Urban Coalition within these principles to develop a common position and pursue administrative and legislative actions regarding transfer of the CVP. Staff will continue to keep your Board informed of any future activities regarding transfer of the CVP from federal ownership and development of an urban position by the Bay-Delta Urban Coalition.

## PROPOSED LEGISLATIVE POLICY PRINCIPLES FOR TRANSFER OF THE CENTRAL VALLEY PROJECT FROM FEDERAL OWNERSHIP

With activity on legislation for purchase and operation of the CVP anticipated to resume in 1996, staff recommends the legislative policy principles identified below be considered for adoption by your Board to direct staff activities. These proposed legislative policy principles were developed to address each of the issues identified and analyzed in Attachment A, with the specific intent of identifying ways of protecting urban coalition interests, including Metropolitan's interests. It is proposed that Metropolitan's staff work with other members of the Bay-Delta Urban Coalition to develop analyses and positions regarding any future legislation to transfer CVP assets and management.

**PROCESS:** Provide for the proper legislative process of fully acknowledging and addressing the legitimate concerns and issues of all Californians including urban, environmental and other agricultural water users.

**FINANCIAL:** Ensure that any transfer of CVP assets is financed in a manner that is equitable to all users affected by CVP actions. Operations of the CVP must not have a negative effect on non-CVP users.

**ENVIRONMENTAL OBLIGATIONS:** Maintain the environmental obligations of the CVP, including the financial obligation through the Restoration Fund.

**WATER TRANSFERS:** Protect, maintain and facilitate the transfer provisions provided in existing law.

**OPERATIONS:** Protect the interests of SWP users regarding operational issues between the CVP and SWP such as the Coordinated Operations Agreement and protection of shared infrastructure and quality of water conveyed through shared facilities.

**GOVERNANCE:** Provide for an effective and proper governing entity which acknowledges and addresses the legitimate interests of all water users and the State affected by CVP actions.

**SWP INTERESTS:** Assure that any potential transfer of federal CVP assets is completed in a manner that does not preclude future alternatives for management of the SWP that may better protect the interests of its contractors.

**STATE LAW:** Assure that any action to purchase and manage the project is consistent with State law.

**CALFED PROCESS:** Assure that transfer and management of CVP assets is provided in a manner that allows for continuation and successful completion of the CALFED process to resolve water supply and environmental issues in the Bay/Delta.

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Attachments

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# ATTACHMENT A
## Central Valley Project Transfer
## Proposed Legislative Policy Principles

| Topic | CVPA Position | Anticipated Urban Position | Anticipated Environmental Position | Anticipated State Interest | Proposed Legislative Policy Principle |
|---|---|---|---|---|---|
| PROCESS | Proposal would have provided for the purchase through the federal budget reconciliation process. | Process does not provide for full consideration and debate of the issues and does not give stakeholders an opportunity to testify regarding their positions. | Same concerns as urban. | Solving the State's water supply problems is an ongoing and evolving process that has been facilitated in recent years by the active involvement of all stakeholders. The State has a strong interest in continuing that involvement by requiring a CVP transfer process that allows for full discussion of issues related to the transfer. | Provide for the proper legislative process of fully acknowledging and addressing the legitimate concerns and issues of all Californians including urban, environmental and other agricultural water users. |
| FINANCIAL | Proposal to purchase facilities for $826M. Would allow local control of budget and operating decisions. May allow for reduction or elimination of significant waste. | Transfer does not guarantee more efficient operation and management. Near term considerations may negatively affect long-term decisions. Concern regarding ability of purchasing agency to repay debt and maintain facilities. | Bottom line fiscal operation may negatively affect response to environmental considerations. Proposed price is a highly subsidized value. | The State has a fundamental interest in eliminating the possibility that financial obligations assumed by the purchaser are not ultimately shifted to the State. Under the CVP's authorizing legislation the State does not have a preferred right to purchase the CVP. | Ensure that any transfer of CVP assets is financed in a manner that is equitable to all users affected by CVP actions. Operations of the CVP must not have a negative effect on non-CVP users. |
| ENVIRONMENTAL OBLIGATIONS | Proposed language provides for the operation of the CVP to remain subject to all relevant State and Federal environmental laws and regulations. | Same concerns as environmentalists. Also concerned that environmental obligations not met by CVPA may be placed on other users by SWRCB. May be a result of efforts to cut CVP costs. | No specific details were included as to how the obligations of the CVPIA and other federal laws will be accomplished. No protection against unilateral actions with environmental consequences. | The State interest in protecting the environment requires the CVP transfer to include provisions to meet all CEQA requirements and State obligations under the Clean Water Act and other federal environmental regulations. | Maintain the environmental obligations of the CVP, including the financial obligation through the Restoration Fund. |
| WATER TRANSFERS | Proposal assumes an increased ability to develop water transfer agreements. | Transfer does not guarantee greater ease in developing water transfers. | | The State has an interest in ensuring that the CVP transfer continues to facilitate the State's goal of promoting water transfers. | Protect, maintain and facilitate the transfer provisions provided in existing law. |
| OPERATIONS | Continued adherence to the Coordinated Operations Agreement is not explicit. Issues include facilities jointly owned by the CVP and SWP. CVPA has stated an intent to meet all applicable environmental obligations. | It is in the interest of those who contract for SWP supplies that the CVP continue to be operated in a manner consistent with the sharing formulas in the COA. SWP contractors have an interest that joint facilities be properly operated and maintained and assure that the federal portions of the facilities are not allowed to fall into disrepair. | | The State has an interest in maintaining the CVP / SWP partnership through the COA to meet environmental and water quality standards. | Protect the interests of SWP users regarding operational issues between the CVP and SWP such as the Coordinated Operations Agreement and protection of shared infrastructure and quality of water conveyed through shared facilities. |
| GOVERNANCE | CVP users organized as a joint-powers authority for the purpose of owning and managing CVP facilities. | | There was no provision for meaningful or substantive participation by environmental, tribal, state, or other non-CVP interests. | The State has an interest in ensuring that governance of the CVP continues to recognize the State's primacy in water allocation through the CVP's continuing subordination to SWRCB authority. | Provide for an effective and proper governing entity which acknowledges and addresses the legitimate interests of all water users and the State affected by CVP actions. |
| SWP INTERESTS | No direct reference. | SWP users may have an interest in the future for a modified or different management arrangement for SWP. Therefore SWP users do not want to support any position that may set an undesirable precedent which may preclude future alternatives. Contractor ownership and management of either the SWP or a joint SWP/CVP may provide a beneficial alternative in the future. | | As the owner and operator of the SWP the State has an interest in ensuring that the CVP transfer does not preclude the State from modifying future SWP operations, management, or ownership. The State potentially has an interest in seeing the transfer develop in a way that leaves open to the possibility of a joint project owned and operated by the State. | Assure that any potential transfer of federal CVP assets is completed in a manner that does not preclude future alternatives for management of the SWP that may better protect the interests of its contractors. |
| STATE LAW | Proposal includes the intent that all relevant State environmental laws and regulations be complied with following any purchase. | Such details must be addressed in any process leading up to a future action. | | Any new owner of the CVP must operate the facility in a manner consistent with state water law and policy. | Assure that any action to purchase and manage the project is consistent with State law. |
| CALFED PROCESS | CVPA has stated its intent to remain committed to helping solve Bay/Delta water quality issues. CVP acquisition by California agencies advances local control of allocation and management and helps make California's economy less susceptible to upset by decisions from Washington, D.C. | Water management actions in the Bay/Delta could still be affected by federal action without a commensurate commitment of adequate resources to solve problems. | | It is in the State's interest that the CVP be operated in a manner consistent with any adopted CALFED recommendations. Additionally, the State has an interest in the continued ability of the federal government to contribute resources to the CALFED process. | Assure that transfer and management of CVP assets is provided in a manner that allows for continuation and successful completion of the CALFED process to resolve water supply and environmental issues in the Bay/Delta. |