



September 26, 1997

To: Board of Directors (Executive Committee--Information)
(Water Planning and Resources Committee--Information)
(Legal and Claims Committee--Information)

From: *for* General Manager
General Counsel

Subject: Amendment 12 to Metropolitan's State Water Contract

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

Amendment 12 added Article 15(d) to Metropolitan's State Water Contract to expressly require the Department of Water Resources to obtain Metropolitan's consent before authorizing other state water contractors to supply water for use outside of their boundaries but within Metropolitan's boundaries. Amendment 12 is based upon Article 11, Section 9 of the California Constitution which permits municipal corporations to provide water, power and transportation services outside their boundaries except within the boundaries of other municipal corporations which do not consent. Thus, Metropolitan, as a municipal corporation, has both a constitutional and contractual right to require consent before such water services can be furnished within its service area.

DETAILED REPORT

The Water Planning and Resources Committee has requested a report on background relating to Amendment 12 to the State Water Contract.

Commencing on November 4, 1960 with Metropolitan's contract, the Department of Water Resources started to execute State Water Project ("SWP") water supply contracts. The contracts all require Department consent before a state water contractor can sell or dispose of project water into another state water contractor's service area. Six of the state water contracts with Northern California contractors contained provisions requiring contractor consent before the Department could enter into other contracts or arrangements to supply water into the contractor's service area. At the request of Metropolitan, its state water contract was amended in 1972 to add a similar provision to its contract. Amendment 12 added Article 15(d) to provide:

“The State shall make no other contract to supply project water for use within the boundaries of the District without the consent of the District, and shall not authorize any other contractor to supply project water for use outside such other contractor’s boundaries and within the boundaries of the District without the consent of the District.”

Amendment 12 was based not only upon the contractual precedents but upon Article XI, Section 9 of the California Constitution which states, in pertinent part:

“A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.”

Both the provisions of the California Constitution and the State Water Contract require Metropolitan’s consent before agencies such as San Bernardino Valley Municipal Water District (“SBVMWD”) attempt to initiate water service into its service area. As municipal corporations, Metropolitan’s member agencies also have the protections provided by the California Constitution. This requirement of consent provides the opportunity to ensure that both water supply harm and economic harm are avoided as a result of such transactions.

These issues have been previously litigated. On November 13, 1972, SBVMWD filed an action against Metropolitan and the Department of Water Resources seeking a declaration as to its rights to sell state project water outside of its service area and within the boundaries of Metropolitan. Among other points, it contended that Amendment 12 cannot prevent it from selling and delivering water into its service area. The lawsuit was initiated because of SBVMWD’s desire to sell water to the Orange County Water District. In reporting on this lawsuit to Metropolitan’s Board, General Counsel John Lauten pointed out the potential for significant revenue losses to Metropolitan.

Municipal Water District of Orange County (“MWDOC”) intervened on behalf of Metropolitan and the Department. On September 8, 1976, the Superior Court determined that SBVMWD failed to state a cause of action and ordered that it not furnish water within the territory or limits of either Metropolitan or MWDOC without their respective consents. SBVMWD appealed. On February 12, 1977, the parties stipulated to a dismissal of the Superior Court judgment and agreed that any of the parties may bring another action within three years. Shortly after the stipulation was executed, the general managers of Metropolitan and San Bernardino exchanged letters committing their agencies to work toward an agreement which would address water quality issues in the Santa Ana River watershed and provide regional water supply benefits.

In March of 1979, your Board authorized the General Manager to enter into an agreement which would have provided that Metropolitan purchase certain quantities of SWP water from SBVMWD and sell that water to Metropolitan member agencies. This agreement was not finalized. Although it did not effectuate service upon Metropolitan until April 16, 1982, SBVMWD refiled its complaint on February 11, 1980 against the Department and Metropolitan. Neither the Department nor Metropolitan answered the complaint because the parties stipulated that defendants need not respond to the complaint until 60 days after SBVMWD gives notice to respond.

Subsequent efforts to address SBVMWD's concerns have not been successful. These include a February, 1994 meeting between SBVMWD and Metropolitan's Board Chairman and General Manager.

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