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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 4, 1993

To: Board of Directors (Executive Committee--Action)
 (Special Committee on Legislation--Action)
From: General Manager
Subject: Consideration of Existing and Newly Proposed Clean Water Act
 Policy Principles

Report

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is expected to be reauthorized by Congress in late 1993 or 1994. On June 15, 1993, Senators Baucus and Chafee introduced S.1114, the Water Pollution Prevention and Control Act of 1993, which is a comprehensive bipartisan CWA reauthorization bill. The House expects to make available a draft comprehensive CWA reauthorization bill in late October of this year. Other issue-specific CWA bills have been introduced in both the House and the Senate addressing such topics as nonpoint source control, lakes protection, coastal protection, funding, research, and wetlands. Subcommittees in both the House and Senate have held CWA hearings.

Clean Water Act legislation and accompanying regulatory programs impact Metropolitan in a number of areas including: 1) control of pollutant discharges to surface waters serving as public drinking water supplies, 2) water supply activities such as diversion, storage and transportation of public water supplies, 3) wetlands protection, and 4) compliance with discharge limitations and other water quality control programs.

In preparation for the CWA reauthorization, Metropolitan staff previously prepared CWA policy principles which were submitted to and approved by your Board in October 1992 (see attached Board letter). Metropolitan staff have been coordinating with regional and national water utility organizations and with Congressional and Senate staff to gain support for our CWA issues and suggested CWA amendments. Negotiations are on-going with representatives of water utility organizations and wastewater organizations to determine the most effective means to incorporate our issues into CWA reauthorization legislation that is agreeable to all interested parties.

Since mark-up of S.1114 is expected to start in late October, and both the House and the Senate have been focusing on the CWA reauthorization, indicating they want to pass a CWA reauthorization bill this year, it is necessary to review Metropolitan's CWA policy principles. First, Metropolitan's previously adopted CWA policy principles are presented (Issues 1-4 below), and continued support for these policy principles is recommended. In addition, several new CWA issues have received increased attention in Congress (Issues 5 and 6 below), and we are seeking further direction. Please note that the wetlands policy principles which are reviewed in a separate letter to your Board also provide guidance for the CWA.

Consideration of Existing Clean Water Act Policy Principles:

Issue 1: State regulation and allocation of water resources.

Policy Adopted: Support as a policy the States' primary authority under the CWA to allocate and regulate quantities of water within their jurisdiction.

Issue 2: Protection of public drinking supplies under the CWA.

Policy Adopted: Support CWA amendments to explicitly include protection of public drinking water supplies as a goal of the CWA.

Issue 3: Additional monitoring requirements for point source and agricultural discharges to surface water drinking water supplies.

Policy Adopted: Support CWA amendments requiring representative monitoring of point source and agricultural discharges to surface waters serving as direct sources of drinking water.

Issue 4: Beneficial use of reclaimed water.

Policy Adopted: Support CWA amendments authorizing site-specific water quality standards to facilitate the beneficial use of reclaimed water and discharge of reclaimed water to ephemeral and/or effluent-dominated streams.

Recommendation: Staff recommends that the Board continue to support the above CWA policy principles as previously adopted.

Consideration of Additional Clean Water Act Policy Principles:

Issue 5: Antidegradation requirements and designation of "outstanding national resource waters." Section 202(c) of S.1114 would expressly add a requirement to section 303 of the CWA that each State must adopt an "antidegradation" policy. The U. S. Environmental Protection Agency (USEPA) would have the authority to approve/disapprove the State antidegradation policies and adopt policies for those States which have not submitted an approved policy within three years of enactment. This amendment to the CWA would essentially codify the existing antidegradation requirements contained in USEPA regulations and continue the USEPA regulatory requirement that States designate "outstanding national resource waters," which "shall be maintained and protected by the State." However, the bill would additionally require that all water bodies supporting threatened or endangered species must be designated as outstanding national resource waters; this requirement is not included in USEPA's existing regulations.

Under the existing outstanding national resource water regulations, the State of California has only designated Lake Tahoe as an outstanding national resource water. The proposed S.1114 language could potentially result in designation of significantly more waters, such as the entire San Francisco Bay/Delta system, the Colorado River, and most major rivers in Southern California. These proposed amendments to section 303 of the CWA are a concern to Metropolitan due to potential impacts on Metropolitan's water supply, affecting both operations and development of facilities, and on the State's ability to exercise its public interest obligations to allocate water resources. Putting the antidegradation program in the statute itself could limit the ability of USEPA and the State to accommodate USEPA's legitimate water quality interests and the State's water quality and water resources allocation interests.

Policy Options:

1. Support amendments to the CWA which codify and enhance the existing antidegradation requirements and outstanding national resource waters program addressed in USEPA regulations.
2. Oppose amendments to the CWA which codify antidegradation requirements, including outstanding national resource waters designation criteria, since existing USEPA regulations contain antidegradation requirements and out-

standing national resource waters designation criteria and allow USEPA flexibility in implementation of these requirements.

3. Support amendments to the CWA which codify the existing antidegradation requirements and outstanding national resource waters program, if amendment language is consistent with existing USEPA regulations, and so long as the fundamental policy that water quality regulation shall not interfere with State water rights and water allocation authority is recognized.

Recommendation: Adopt policy option 2.

Issue 6: Water Conservation and Integrated Resource Planning. Section 403 of S.1114 authorizes the U.S. Army Corps of Engineers to provide technical and financial assistance on water conservation to communities and businesses, and also authorizes the USEPA to establish a national clearinghouse on water conservation technologies. Furthermore, section 205 of the bill requires that businesses preparing pollution prevention plans also include consideration of water use efficiency as part of that planning and implementation process. This is a new provision which will require many businesses to consider water conservation for the first time as a "pollution prevention" strategy. Staff are supportive of these CWA amendments concerning water conservation requirements.

Additional draft amendments to the CWA concerning water conservation requirements have been circulated by the Clean Water Network, a coalition of environmental organizations working on CWA reauthorization issues. The amendments proposed by the Clean Water Network could eventually be incorporated into S.1114 or a subsequent House CWA reauthorization bill. One amendment proposed by the Clean Water Network would require minimum conservation standards for any utility seeking CWA section 402 or 404 permits for additions to water supply or wastewater treatment capacity. The standards would be specifically prescribed and federally-mandated, rather than a "menu" approach where a utility could choose conservation strategies that were most appropriate for its individual needs. A second proposed amendment would further mandate implementation of integrated resource planning by all applicants for federal funds, including state revolving loan funds for wastewater treatment facilities, and all applicants for Section 404 permits for water supply projects of 20 MGD or greater. Unfortunately, water agencies nationwide have had very little experience with integrated resource planning, and most smaller agencies will experience

significant difficulty meeting this requirement, particularly in the absence of defined guidelines as to what constitutes an acceptable integrated resource plan to the regulators.

Policy Options:

1. Support amendments to the CWA concerning water conservation which mandate minimum conservation standards and implementation of integrated resource planning for all utilities applying for CWA section 402 or 404 permits, for expansion of water supply or wastewater treatment facilities.
2. Support amendments to the CWA which 1) establish a national clearing house on water conservation technologies, 2) require evaluation of water use efficiency in pollution prevention plans; 3) require water conservation strategies as part of an optional "menu" of choices; and 4) encourage voluntary integrated resource planning.
3. Oppose amendments to the CWA which establish voluntary or federally-mandated water conservation requirements as part of CWA programs, and which mandate integrated resource planning for water supply and wastewater treatment facility expansions.

Recommendation: Adopt policy option 2.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its authority to study, advise, and make recommendations with regard to legislation affecting Metropolitan, pursuant to Administrative Code Section 2417 (a); and

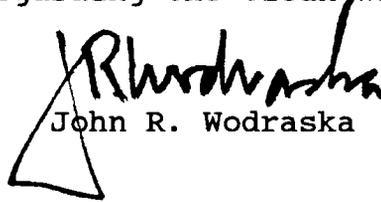
The Special Committee on Legislation because of its responsibility to review staff's recommendations for positions on legislation, pursuant to Administrative Code Section 2581 (b).

Recommendation

EXECUTIVE COMMITTEE AND SPECIAL COMMITTEE ON LEGISLATION FOR ACTION.

It is recommended that your Board adopt the Clean Water Act policy principles recommended above and authorize

the General Manager to observe these principles in all Metropolitan's activities regarding the Clean Water Act.



John R. Wodraska

LAS:sdf
Attachment

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 16, 1992

Board of Directors (Executive Committee--Action)

General Manager

Support for the Clean Water Act Policy Principles

Report

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is expected to be reauthorized by Congress in 1993. Metropolitan staff, in preparation for the reauthorization, have developed the attached CWA policy principles document, in which CWA reauthorization issues of concern to Metropolitan are presented. Initial drafts of Metropolitan's CWA reauthorization position were prepared in early 1991, and staff have coordinated with water utility organizations and regulators to continue to refine the CWA policy. Specific issues from Metropolitan's CWA policy paper have been incorporated into positions adopted by the American Water Works Association and the Association of California Water Agencies.

Following is a summary of the Metropolitan CWA policy principles which are detailed in the attached document.

1. State regulation and allocation of water resources.

Support as a general policy the States' primary authority under the CWA to allocate and regulate quantities of water within their jurisdiction, and work with water utility organizations that are actively pursuing legislation to reaffirm and strengthen the Congressional policy stated in Section 101(g) of the CWA, which establishes that the authority of the States to allocate quantities of water within their jurisdiction is not abrogated or otherwise impaired by the CWA.

2. Protection of public drinking water supplies.

Support amendments to the CWA to explicitly include the protection of public drinking water supplies as a goal of the CWA and to incorporate drinking water supply protection into CWA programs, in order for the CWA to provide the same status for human health needs as it does for protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water.

3. Monitoring point source discharges. Support amendments to the CWA requiring representative monitoring of point source discharges to surface waters serving as direct sources of drinking water, for contaminants currently unregulated by the CWA, but which are of human health concern and may adversely impact beneficial uses. The monitoring program will provide information which is necessary to understand the relative contribution of different pollutant sources and devise control measures.

4. Monitoring agricultural return flows. Support amendments to the CWA requiring the States to develop programs for the selective monitoring of pollutants in representative agricultural return flows, which may impact designated uses including public drinking water supplies. The monitoring program will provide information which is necessary to understand the impact of agricultural discharges on surface water quality and devise control measures.

5. Reuse of reclaimed water. Support amendments to the CWA to explicitly authorize the States to adopt site-specific water quality standards that facilitate the use of reclaimed water in arid regions of the U.S. and the discharge of reclaimed water to effluent-dominated and/or ephemeral streams.

6. Protection of Wetlands and Municipal Water Supplies. Support amendments to the CWA which facilitate the ability to integrate the protection of wetlands with the development of water resources projects. Such CWA amendments would include an authorization for the development of wetlands mitigation banks, a section 404 permit exemption for emergency water supply projects, and an authorization to merge National Environmental Policy Act requirements with similar state requirements, for concurrent Federal and State alternatives review of municipal water supply projects.

The Special Committee on Legislation has previously reviewed and supports the CWA policy principles summarized above.

This action is exempt from provisions of the California Environmental Quality Act in that there is no possibility that it may have a significant effect on the environment.

Board Committee Assignments

This letter is referred for action to:

The Executive Committee because of its authority to study, advise, and make recommendations with regard to legislation affecting Metropolitan, pursuant to Administrative Code Section 2417 (a).

Recommendation

EXECUTIVE COMMITTEE FOR ACTION.

It is recommended that the Board support the Clean Water Act policy principles summarized above and authorize the General Manager to observe these principles in all Metropolitan's activities regarding the Clean Water Act.



Carl Boronkay

LAS:ra
BOARD/AM9

Attachments

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

CLEAN WATER ACT POLICY PRINCIPLES

Issue

Water pollution control programs implemented pursuant to the Federal Clean Water Act (CWA), have resulted in water quality improvements for the navigable waters of the Nation; however, the CWA programs do not sufficiently address the specific needs of municipal water supplies. The CWA is scheduled for reauthorization in 1992, and several CWA bills have been introduced in Congress. Should Metropolitan pursue legislation to amend the CWA to: (1) reaffirm the States' authority to allocate quantities of water within their jurisdiction; (2) explicitly include protection of public drinking water supplies; (3) require additional monitoring for discharges to surface waters serving as direct sources of drinking water; (4) authorize site-specific water quality standards to facilitate reclaimed water discharges; and (5) facilitate the ability of municipal water suppliers to integrate protection of wetlands with safe drinking water?

Status

The Federal Water Pollution Control Act, commonly referred to as the CWA, was last amended in 1987. The CWA is scheduled to be reauthorized by Congress in 1992; however, due to a short legislative session, competing legislative priorities, and the current controversy over wetlands protection, it is expected there will be no action on the CWA reauthorization until 1993. To date, the Senate Environment and Public Works Committee introduced a comprehensive clean water bill in May 1991 (S.1081), and the majority staff issued a draft substitute for the bill in December 1991. It is expected that the Senate Environment and Public Works Committee minority staff will introduce a scaled down CWA reauthorization bill in September 1992. The House Public Works and Transportation water resources subcommittee has yet to decide whether to introduce CWA legislation in 1992.

State Regulation and Allocation of Water Resources

Specific Issue: Should Metropolitan pursue legislation to amend the CWA to reaffirm and strengthen the States' primary authority under the CWA to allocate and regulate quantities of water within their jurisdiction?

Background: The primary focus of the CWA has been the regulation and control of point and nonpoint source discharges of

pollutants which impair the nation's waters. Regulation of water diversion, storage and use for public water supplies, and the provision of instream flows for environmental purposes has traditionally been dealt with at the State level. The Congressional policy that allocation of water resources be achieved at the State level is stated in Section 101(g) of the CWA. Regulation of water resources allocation at the state level allows balancing of consumptive and instream uses of water considering local needs and conditions. Recently, however, there have been attempts to expand the Federal role under the CWA for regulating the allocation of water resources. The U.S. Environmental Protection Agency (USEPA) has proposed issuing Federal guidance requiring States to adopt instream flow standards to protect instream designated uses, and recently, the USEPA rejected the California State Water Resources Control Board's Water Quality Control Plan for Salinity in the Bay/Delta estuary because it did not contain instream flow standards.

Policy Options:

1. Support Federal involvement in the development and approval of instream flow standards adopted at the State level, in order to ensure necessary protection for instream beneficial uses, including fish and wildlife. Environmental organizations and the USEPA support this position.
2. Aggressively pursue legislation to amend the CWA to reaffirm and strengthen the Congressional policy stated in Section 101(g) throughout the CWA, and to establish that any programs of the CWA shall not directly or indirectly create a Federal water quality law which supersedes, abrogates, or impairs State water allocation systems. The National Water Resources Association (NWRA) supports this position.
3. Support as a general policy the States' primary authority under the CWA to allocate and regulate quantities of water within their jurisdiction and to provide a proper balance between consumptive and instream uses of water. This support includes working with water utility organizations which are actively pursuing legislation to retain and strengthen the States' authority to regulate streamflows. This policy option is different from number 2 in that it involves a backseat role rather than a highly visible role in pursuing CWA amendments.

Recommendation: Staff recommends that Metropolitan adopt policy option 3, as this position is consistent with Metropolitan's water supply and reliability and environmental goals and objectives, to provide a reliable supply of water to its member agencies and consider the environmental effects of its actions.

Protection of Public Drinking Water Supplies

Specific Issue: Should Metropolitan pursue legislation to amend the CWA to explicitly include the protection of public drinking water supplies?

Background: Traditionally, CWA programs have focused on protecting water quality for fish and wildlife, and recreational needs, and the Congressional Declaration of Goals and Policy of the CWA states that it is a national goal to achieve water quality that provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water. Regardless of improvements in water pollution control through implementation of the CWA, some contaminants regulated in drinking water in order to protect public health according to the Safe Drinking Water Act (SDWA), occur in surface waters designated as public drinking water supplies at levels which exceed drinking water standards. Regulations adopted under the SDWA regulate the quality of drinking water which is delivered to consumers after treatment, and encourage public drinking water suppliers to use drinking water sources of the highest quality; however, the SDWA has no authority to enforce the protection of water quality for public drinking water supply sources.

Policy Options:

1. No amendments to the CWA to include the protection of public drinking water supplies. The SDWA already regulates the quality of drinking water, and establishes drinking water treatment requirements to ensure removal of drinking water contaminants. Furthermore, inclusion of public drinking water supply protection in the CWA will place an increased burden on Publicly Owned Treatment Works (POTWs) and other point source dischargers, and they may seek to shift some of that burden to water suppliers. POTW operators and sewerage agency organizations would support this position, and the USEPA may support this position.
2. Support amendments to the CWA where appropriate, to explicitly include the protection of public drinking water supplies as a goal of the CWA and to incorporate drinking water supply protection into CWA programs, in order for the CWA to provide the same status for human health needs as it does for protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. Most drinking water utilities would support this position.
3. Support amendments to the CWA to prohibit the discharge of all pollutants of human health concern to all bodies of water designated as public drinking water supplies. This discharge prohibition would require more stringent wastewater treatment requirements and effluent limitations for point source discharges, and enforceable best management

practices and treatment requirements for nonpoint source discharges to water bodies serving as public drinking water supplies. It is not known if any group would support this position.

Recommendation: Staff recommends that Metropolitan adopt policy option 2, as this position is consistent with Metropolitan's water quality goal to supply safe water that meets or exceeds State and Federal drinking water standards.

Additional Monitoring Requirements for Discharges to Surface Waters

Specific Issue: Should Metropolitan pursue legislation to amend the CWA to establish additional monitoring requirements for point source discharges and agricultural return flows?

Background: Despite significant progress in water pollution control over the past twenty years, serious water quality problems persist, especially in navigable waters which serve as sources of drinking water for 65 percent of the Nation's population. Contaminants regulated pursuant to the SDWA are found in surface waters designated as drinking water sources in excess of drinking water standard levels. Such contaminants include pesticides, inorganic chemicals, pathogens, and disinfection by-product precursors (e.g., total organic carbon). These contaminants may originate from point source discharges (e.g., POTWs) and/or nonpoint source discharges (e.g., agricultural return flows) to surface water drinking water supplies, and additional information is necessary to understand the relative contribution of different pollutant sources.

The CWA and National Pollutant Discharge Elimination System (NPDES) regulations developed pursuant to the CWA require monitoring of point source discharges for designated lists of toxic and conventional pollutants. However, the current regulations for point source discharges do not require monitoring for all pollutants which threaten human health by degrading the quality of public drinking water supplies. Furthermore, agricultural return flows are exempt from monitoring requirements.

Policy Options:

1. No amendments to the CWA to establish additional monitoring requirements for point source discharges and agricultural return flows. Point source discharges are already monitored for a number of toxic and conventional pollutants, and additional monitoring requirements for point source discharges and agricultural return flows would be financially burdensome. Business, sewerage agencies, and agriculture would support this position.

2. Support amendments to the CWA to require representative monitoring of point source discharges and agricultural return flow discharges to surface waters serving as direct sources of drinking water, for pollutants of human health concern, to improve the quality of information on water quality trends and conditions. This information will ultimately be used to develop control strategies where needed.
3. Support amendments to the CWA establishing extensive monitoring programs for all point and nonpoint source discharges, and establishing increased treatment requirements and more stringent effluent limitations to ensure compliance with all water quality standards. Environmental organizations would most likely support this position.

Recommendation: Staff recommends that Metropolitan adopt policy option 2, as this position is consistent with Metropolitan's water quality goal to supply safe water that meets or exceeds State and Federal drinking water standards.

Beneficial Use of Reclaimed Water

Specific Issue: Should Metropolitan pursue legislation to amend the CWA to explicitly authorize the States to develop site-specific water quality standards to facilitate the discharge of reclaimed water to effluent-dominated and ephemeral water bodies?

Background: The CWA requires the USEPA to develop water quality criteria, and the States to adopt enforceable water quality standards based on the USEPA criteria, which provide protection for the designated uses of the Nation's surface waters. Enforcement of these strict water quality standards in effluent-dominated or ephemeral streams, where the availability of dilution water is limited, may preclude the discharge of reclaimed water to the streams because the required treatment may be technically difficult or prohibitively expensive. States may develop site-specific water quality standards for specific water bodies; however, this action requires the completion of a costly use attainability analysis and the USEPA approval. The use of ephemeral or effluent-dominated water bodies for the transport of reclaimed water can provide opportunities for the beneficial reuse of reclaimed water which would not otherwise exist, both for consumptive uses and for aquatic habitat.

Policy Options:

1. No amendments to the CWA to specifically authorize States to adopt site-specific water quality standards for the discharge of reclaimed water to effluent-dominated or

ephemeral streams. Existing flexibility within current CWA regulations allows States to tailor standards to site-specific water quality considerations. The USEPA supports this position.

2. Support amendment of the CWA to explicitly authorize the States to adopt site-specific water quality standards that facilitate the use of reclaimed water in arid regions of the U.S. and the discharge of reclaimed water to effluent-dominated and/or ephemeral streams. Water and wastewater agencies in the western U.S. would support this position.
3. Support strict enforcement of water quality standards based on the USEPA criteria in all categories of navigable waters in the Nation, regardless of the costs associated with the requisite treatment of wastewater discharges or the required best management practices and treatment requirements for nonpoint source discharges. Environmental organizations may support this position.

Recommendation: Staff recommends that Metropolitan adopt policy option 2, as this position is consistent with Metropolitan's water supply and water resource goals and objectives to provide a reliable supply of water to its member agencies and seek additional water resources.

Protection of Wetlands and Municipal Water Supplies

Specific Issue: Should Metropolitan pursue legislation to amend the CWA to establish the integration of programs to protect wetlands with programs to develop water resources projects and safe sources of drinking water?

Background: Currently, Section 404 of the CWA outlines procedures for issuing permits for the discharge of dredged or fill material into navigable waters of the Nation, and provides the primary legislative authority behind Federal efforts to regulate activities in and affecting wetlands. The Secretary of the Army is charged with administering a regulatory program pursuant to Section 404. The Administrator of the USEPA has oversight of the Secretary's regulatory program, and has authority to prohibit the discharge of such material to a defined area when it is determined that the discharge will adversely impact municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational uses. The CWA Section 404 programs and implementing regulations do not include measures to integrate protection of wetlands with development of water resources projects.

Policy Options:

1. Support amendments to the CWA to adopt a broad definition

for wetlands consistent with current Federal regulations and guidance documents, to establish as policy that all wetlands are treated as if of equal value, and to establish as a policy goal the "net increase of wetlands". Environmental organizations would support this position.

2. Adopt as policy the practice of building water resources projects in an environmentally responsible manner, taking all necessary measures to comply with wetlands protection laws and regulations. In addition, work to amend the CWA to facilitate the ability to integrate the protection of wetlands with the development of water resources projects. Such CWA amendments would include an authorization for the development of wetlands mitigation banks, a Section 404 permit exemption for emergency water supply projects, and an authorization to merge National Environmental Policy Act requirements with similar State requirements, for concurrent Federal and State alternatives review of municipal water supply projects.
3. Support amendments to the CWA to adopt a narrow wetlands definition and a wetlands classification system, which will permit more development of wetland areas. Business and agricultural groups would support this position.

Recommendation: Staff recommends that Metropolitan adopt policy option 2, as this position is consistent with Metropolitan's water supply and reliability and environmental goals and objectives, to provide a reliable supply of water to its member agencies in an environmentally responsible manner.

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