FILED
by the Board of Directors of
The Metropolitan Water District
of Southern California
at its meeting held

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EXECUTIVE SECRETARY

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

June 27, 1994

To: Board of Directors (Water Problems Committee--Information)
(Executive Committee--Information)

From: General Manger

Subject: Execution of Initial Agreement for the Areias Dairy Farms Water Transfer

Report

Metropolitan has taken a significant step in making Central Valley Project (CVP) transfer water available to our service area by executing an "initial agreement" with Areias Dairy Farms (ADF). Once implemented, this almost certainly will be the first transfer of CVP water outside of the CVP service area accomplished under the CVP Improvement Act (Title XXXIV of P.L. 102-575) (CVPIA). Gaining access to some portion of the 7 million acre-feet of CVP supplies is vital to reliably meeting the water needs of Metropolitan's service area.

The initial agreement provides for execution of the "final agreement" under which the water will be transferred, and for an up-front payment of $563,500 to ADF upon receipt by Metropolitan of a letter of credit securing that payment. The letter of credit is expected to be received by mid-July 1994. The final agreement is expected to be submitted to your Board in November 1994 after receipt of all necessary approvals. Both the initial agreement and final agreement for the ADF transfer are consistent with the principles approved by your Board in October 1993.

Under the final agreement, ADF's highly reliable San Joaquin River Exchange Water would be available to Metropolitan during years when Metropolitan desires the supply. The final agreement has a basic term of 15 years, during which Metropolitan would purchase, in any seven years of its choice, about 4,600 acre-feet of ADF's CVP water supply. During years when ADF makes water available, ADF will limit its groundwater usage to historic levels to avoid impacts on the groundwater basin. The base price paid to ADF for the transfer water will be $175 per acre-foot of water delivered to Metropolitan. The total amount of transfer water expected to be delivered by ADF is 32,200 acre-feet which would result in ADF receiving about $5,635,000. This amount would vary depending upon the U. S.

Bureau of Reclamation's (Reclamation) final determination of the quantity of ADF's CVP supply which is transferable and the hydrology of the years when Metropolitan calls for this water. The payments to ADF will include: 1) the $563,500 up-front payment discussed above; 2) an additional 40 percent upon execution of the final agreement; and 3) the remaining 50 percent ($87.50 per acre-foot adjusted for inflation using the Consumer Price Index) in the year the transfer water is delivered. A more detailed description of the ADF transfer is included in the attached Board letters from September and October of 1993.

Execution of the final agreement and implementation of the transfer is contingent on: 1) approval of the transfer application submitted to Reclamation by the Secretary of Interior; 2) approval of a wheeling agreement by the Director of the Department of Water Resources; 3) approval of a change in place of use by the State Water Resources Control Board; 4) compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA); and 5) approval of the final agreement by your Board. Staff's recent efforts in these areas have focused on preparing the transfer application package for submittal to Reclamation. Significant efforts are being expended to coordinate with Reclamation as its transfer guidelines have not yet been completed and many new procedures are being established as a result of this transfer. Specifically, staff prepared and submitted a draft of the transfer application package to Reclamation for informal review. Staff incorporated Reclamation's comments, and submitted the application package to Reclamation. A copy has also been submitted to ADF's water district, the Central California Water District (CCID), for its information and review.

Metropolitan will be the CEQA lead agency for the transfer. Reclamation will be the NEPA lead agency. Staff has been closely coordinating preparation of environmental documentation with Reclamation and the U.S. Fish and Wildlife Service. Required State and federal environmental documentation will be prepared concurrent with Reclamation's review of the transfer package. Staff will also work closely with Reclamation to support its efforts to obtain a change in place of use permit from the State Water Resources Control Board.

As discussed with your Board at its May 1994 Water Problems Committee meeting, Metropolitan staff and the General Counsel, with assistance from our legal consultants, O'Melveny and Myers, have been negotiating with ADF and ADF's primary lender to enable ADF to provide sufficient security to secure the up-front payment (security package). The security package provides for a present conveyance to Metropolitan of its right to the delivery of ADF's CVP water under the final agreement. The package also includes a second trust deed to certain ADF properties securing Metropolitan's right to the return of its up-front payments if the water transfer is not completed. Further, the security package includes an agreement by ADF's primary lender that subordinates its security interest to Metropolitan's right to receive the water. All parties have agreed to a package which is legally optimal for securing Metropolitan's right to receive the transferred water from ADF under all foreseeable conditions. However, should ADF become insolvent, there is some risk that a judge in a bankruptcy action could reject the transfer agreement, requiring Metropolitan to rely on its security package for any recovery of its advance payments. If for any reason the security package proves inadequate, some portion of the advance payments could remain unrecovered.

Finalizing negotiations for the transfer agreements and financial security package, and working with Reclamation through the regulatory process, has provided staff with a greater appreciation for the complexities associated with implementing water transfers. The experience gained with the ADF transfer will help staff to more efficiently implement other transfers.

Staff will continue to inform your Board on developments related to the ADF transfer.

Board Committee Assignments

This letter is referred for information to:

The Executive Committee because of its authority to study, advise, and make recommendations with regard to policies and procedures to be considered by the Board, pursuant to Administrative Code Section 2417 (e).

The Water Problems Committee because of its authority to study, advise and make recommendations with regard to policies, sources, and means of importing water required by the District, pursuant to Administrative Code Section 2481 (a).

Recommendation

For information only.

John R. Wodraska
General Manager

By Debra C. Man
Debra C. Man
Chief of Planning/Resources

Concur:

JRWodraska
John R. Wodraska
General Manager

DSM:cl

Attachments

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

October 20, 1993

To: Board of Directors (Water Problems Committee--Action) (Executive Committee--Action)

From: General Manager

Subject: Proposed Option Agreement to Transfer Central Valley Project Water

Report

Staff has been actively pursuing several water transfer proposals including transfers authorized by the Central Valley Project (CVP) Improvement Act (Title XXXIV of P.L. 102-575)(CVPIA). As approved by your Board last month, negotiations continued and have now been finalized with a CVP water user, Areias Dairy Farms (ADF) for such a transfer. The transfer would be accomplished under two agreements, hereafter referred to as "initial agreement" and "final agreement." The initial agreement would provide for a refundable (with interest) "earnest money" payment to ADF. The proposed final agreement would provide for the transfer of highly reliable CVP San Joaquin River Exchange Water during years when Metropolitan would desire this supply. The proposed final agreement would provide for a 15-year transfer period, during which Metropolitan would purchase in any seven years of its choice, about 4,600 acre-feet (AF) of ADF's CVP water supply for a total purchase during the 15-year period of about 32,200 AF.

There are no major changes in the basic transfer concept included in the principles submitted to your Board at its meeting last month. However, during negotiations, two uncertainties that had to be resolved were identified. The uncertainties were: (1) that the U.S. Bureau of Reclamation (Reclamation) could reduce the amount of water that could be transferred; and (2) the transfer water would be subject to the "M&I Cost of Service" rate as is currently proposed by Reclamation. To deal with these uncertainties, the principles submitted to your Board for the transfer were modified in two ways.

First, it is possible that Reclamation, during its review and approval process, may reduce the amount of water estimated to be available for transfer to Metropolitan. Should Reclamation reduce the amount of water to be transferred, the contract terms would be extended so that Metropolitan would purchase water from ADF, a maximum of nine years out of 20 years. This would assure that the total amount of water purchased by Metropolitan would remain as close as possible to the amount included in the principles previously submitted to your Board. This change would retain the overall value of the proposed agreement to Metropolitan and ADF.

Second, Reclamation has stated that it plans to charge the M&I Cost of Service Rate on water transferred outside the CVP service area for municipal and industrial uses. This cost is estimated by Reclamation to be $42 per acre-foot. Metropolitan and ADF have agreed to split this charge, each paying $21 per acre-foot to Reclamation. However, there are a number of reasons why Metropolitan's staff and others believe this charge should not be assessed against Exchange Water. Should Metropolitan not be successful in arguing against imposition of this change, ADF has agreed to act as plaintiff in bringing suit against Reclamation's imposition of the charge. In the negotiation, staff has agreed to pay the legal expenses of this suit. If imposition of this charge is not overturned, Metropolitan would agree to purchase water from ADF in eight out of 17 years, again to retain the overall value of the proposed agreement to Metropolitan and ADF. Under no circumstances would Metropolitan be obligated to purchase water more than nine out of 20 years.

Assuming that Reclamation does not impose the M&I Cost of Service, the estimated unit cost of acquiring this supply is $200 per acre-foot (1993 dollars). Components of this cost include payments of $175 per acre-foot to ADF for the water supply, and $25 per acre-foot to Reclamation for the Environmental Restoration Fund (Restoration Fund) created by the CVPIA.

Based upon a total purchase of 32,200 AF of water payments to ADF for this supply would total approximately $5.635 million (1993 dollars). The potential additional cost would be about $1.693 million, including payment of $25 per acre-foot to the Restoration Fund and the potential $21 per acre-foot for the M&I cost of service.

Payments to ADF would be made in the following three components. First, an initial payment of $563,500 would be due upon execution of the initial agreement which would provide the terms for the final agreement to be executed when necessary regulatory and environmental approvals are accomplished. This payment is within the $12 million in the 1993-94 fiscal year budget for exchanges and transfers. ADF would provide financial protection for this payment in a form acceptable to

Metropolitan and agree to return this payment with interest should the final agreement not be executed.

Second, a payment estimated to be $2,254,000 would be made after approvals are accomplished, including approval by your Board, and upon execution of the final agreement. To provide Metropolitan with financial protection, ADF would agree to provide security acceptable to Metropolitan equal to this payment.

Third, the remaining purchase price would be paid in the years when the water is delivered at a rate of $87.50 per acre-foot with adjustments for inflation.

The Agreement provides for an increase in transfer water up to a total of 5,500 AF per year because ADF may include additional lands in the transfer. Although the CVPIA provided a right of first refusal to CVP contractors for CVP water to be transferred outside the CVP service area, Metropolitan would have a right of first refusal above all others to purchase water during additional years if ADF decided to sell such water. Therefore, the actual amounts paid to ADF discussed in this letter may change based upon the actual amount of water transferred. Early discussions regarding the transfer included the possibility of substituting groundwater. However, under the terms of the final agreement no groundwater will be substituted for the transfer water.

There are a number of approvals which must be obtained before this water can be transferred including; approvals by your Board, the Secretary of the Interior, the Department of Water Resources and the State Water Resources Control Board. Staff also intends to seek the concurrence of the Central California Irrigation District, the District that serves ADF, regarding the quantity of water to be transferred and other issues. Compliance with the National Environmental Policy Act and the California Environmental Quality Act (CEQA) is also required prior to implementing the transfer. It should be possible to expeditiously obtain the necessary approvals as this transfer would be accomplished under the CVP Improvement Act and the water involved in this transfer is currently being exported from the Delta.

As the initial agreement does not constitute a project as defined under CEQA, consideration by your Board of CEQA requirements is not required at this time. Prior to authorizing the General Manager to execute any agreement transferring water, appropriate environmental documentation will be prepared for your Board to review and certify.

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 policies and procedures to be considered by the Board, pursuant to Administrative Code Section 2917(e); and

The Water Problems Committee because of its authority to study, advise, and make recommendations with regard to policies, sources, and means of importing water required by the District, pursuant to Administrative Code Section 2481(a).

Recommendations

EXECUTIVE AND WATER PROBLEMS COMMITTEES FOR ACTION.

It is recommended that your Board authorize the General Manager to: (1) execute an initial agreement with Areias Dairy Farms, in a form acceptable to the General Council, which would provide for execution of the final agreement consistent with this letter; and (2) make a payment of $563,500 to Areias Dairy Farms consistent with this letter.

JRWodraska

John R. Wodraska

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-21

September 7, 1993

To: Board of Directors (Water Problems Committee--Action)
(Executive Committee--Action)

From: General Manager

Subject: Proposed Option Agreement to Transfer Central Valley Project Water

Report

Staff has been actively pursuing several water transfer proposals including transfers authorized by the Central Valley Project (CVP) Improvement Act (Title XXXIV of P.L. 102-575). Negotiations with a CVP water user, Areias Dairy Farms (Seller), have progressed to the point where it is appropriate for Metropolitan to make a formal proposal for the transfer of up to 5,000 acre-feet (AF) per year of CVP San Joaquin River Exchange Water to Metropolitan during years when Metropolitan would desire this supply. This proposed transfer agreement is described in more detail in the attached principles.

The Seller is located in Central California Irrigation District (CCID). Under the terms of a contract with the U.S. Bureau of Reclamation (Reclamation), CCID, on behalf of its landowners, exchanged its San Joaquin River water rights for Sacramento/San Joaquin Delta (Delta) water deliveries through the CVP's Delta-Mendota Canal. This exchange contract requires Reclamation to provide full deliveries to CCID except under very dry conditions when deliveries may be reduced by a maximum of 28 percent. This highly reliable water supply makes transfer agreements with the CVP San Joaquin River Exchange Contractors' water users very desirable.

Negotiations between the Seller and Metropolitan have resulted in the attached set of principles. Under the proposed 15-year transfer, Metropolitan would purchase in any seven years of its choice, up to 5,000 AF of the Seller's CVP water supply for a total purchase of up to 35,000 AF. Metropolitan would also have an option to purchase additional water as described in the principles.

The estimated cost of acquiring this supply is about $200 per AF (1993 dollars). Components of this cost include: payments of $175 per AF for the water supply and $25 per AF for the Environmental Restoration Fund (Restoration Fund) created by the CVP Improvement Act. The transfer would be accomplished under two agreements, hereafter referred to as "initial agreement" and "final agreement". Both of these agreements would entail expenditures requiring Board approval.

Based upon a total purchase of 35,000 AF of water, payments to Seller for this water supply would total approximately $6.125 million (1993 dollars). This total excludes Metropolitan's payment of $25 per AF for the Restoration Fund. The payments would be made in three components. First, a 10 percent down payment due upon execution of the initial agreement which would provide the terms for the final agreement to be executed when necessary regulatory and environmental approvals are accomplished. This payment is within the $12 million proposed in the 1993-1994 fiscal year budget for exchanges and transfers. The Seller would agree to deliver an equivalent amount of water or refund this money, with interest, should the final agreement not be executed. Second, a payment of $2.45 million would be made after approvals are accomplished and upon execution of the final agreement. The remaining purchase price would be paid in the years when the water is delivered at a rate of $87.50 per AF with adjustments for inflation. To provide Metropolitan with further protection, the Seller would agree to provide security, such as a lien on the Seller's property, equal to the up-front payments made by Metropolitan.

As discussed in greater detail in the attached principles, there are a number of approvals which must be obtained before this water can be transferred including: approvals by your Board, the Secretary of the Interior, the Department of Water Resources and the State Water Resources Control Board. Staff also intends to obtain concurrence of CCID regarding the quantity of water to be transferred and other conditions necessary for the effective operation of the transfer. Compliance with the National Environmental Policy Act and the California Environmental Quality Act (CEQA) is also required prior to implementing the transfer.

9. **Buyer Security.** To protect Buyer from non-compliance by Seller, upon execution of the initial agreement, security such as a lien on Seller's property in favor of Buyer, in an amount equal to all initial payments shall be furnished by Seller. Security shall be acceptable to Buyer. The security shall be reduced proportionately as water is received by Buyer and shall be removed upon delivery of 35,000 AF or the full contract amount.

10. **Approvals.** Execution of the final agreement is contingent upon the satisfactory completion of the following requirements:

- Approval by the Buyer's Board of Directors;
- Completion of all applicable legal requirements including compliance with the California Environmental Quality Act and the National Environmental Policy Act;
- Approval of necessary changes in place and purpose of use by the State Water Resources Control Board;
- Approval by the Secretary of the Interior pursuant to the CVPIA;
- Approval of wheeling arrangements by the Department of Water Resources;
- Concurrence from CCID regarding the amount of water to be transferred and other conditions necessary for the effective operation of the transfer.

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PRINCIPLES FOR AN OPTION AGREEMENT TO TRANSFER CVP WATER

1. **General.** Areias Dairy Farms (Seller) will agree to transfer CVP water it now receives from the Central California Irrigation District (CCID) for use by The Metropolitan Water District of Southern California (Buyer) pursuant to The Central Valley Project Improvement Act (CVPIA, Title XXXIV of P.L. 102-575). The transfer is to be accomplished under two agreements, hereafter referred to as "initial agreement" and "final agreement".

2. **Price.** Consistent with Paragraph 7 of these principles, Seller will receive $175 for each acre-foot (AF) of "wet" water received by Buyer. All references to dollar amounts expressed as "1993 dollars" will be adjusted for inflation using the Consumers Price Index (CPI).

3. **Quantity.** The final agreement shall provide for the transfer of up to a total of 35,000 AF of CVP water in annual amounts of up to 5,000 AF consistent with Paragraph 6 of these principles.

4. **Fees and Expenses.**

a. **Federal Fees.** Buyer will agree to pay any transfer fees required by the U.S. Bureau of Reclamation (Reclamation) under Sections 3405(a) and 3407 of the CVPIA in an amount not to exceed $25 (1992 dollars per the CVPIA) for each AF transferred. Seller will agree to pay Reclamation any federal fees in excess of this amount, provided that if such fees are unacceptable to Seller, Seller may at no cost to the Buyer, choose not to proceed to a final agreement.

b. **CCID Water Charges.** Seller will agree to pay all CCID water charges and other fees related to the CVP water transferred. If Seller fails to make such payments, Buyer may make such payments and deduct said amount from payments to Seller.

c. **Other Expenses.** Seller will agree to pay all necessary expenses related to public relations activities required to gain public acceptance of this transfer. Buyer will agree to pay engineering, legal, and other development costs.

5. **Duration.** The final agreement shall be in force for a period of 15 years commencing upon its execution.

6. **Annual Options.**

a. **Minimum Transfer Amounts.** Buyer will agree to purchase up to 5,000 AF of water per year during at least seven of fifteen years. Seller will agree to make available a cumulative total of up to 35,000 AF of CVP water. The precise amount of water subject to the final agreement shall be determined in studies mutually agreeable to the Buyer and Seller.

b. **Notice.** Buyer will agree to notify Seller and CCID on or before March 15 of any calendar year during which Buyer intends to receive water pursuant to the final agreement.

c. **Additional Water.** After 35,000 AF of water have been transferred pursuant to the final agreement, Buyer shall have the option to purchase additional CVP water from Seller in annual amounts of up to 5,000 AF consistent with the terms and conditions of that agreement, except that Buyer agrees to pay $175 per AF (1993 dollars).

7. **Payments For Water Supply.** Based on a cumulative transfer amount of 35,000 AF, the Buyer will agree to pay Seller amounts consistent with the following payment schedule:

- $612,500 (35,000 AF X $175 per AF X 0.10) upon approval by Buyer's Board of Directors of these principles and execution of the initial transfer agreement by Buyer and Seller. Seller will either deliver an equivalent amount of water (3,500 AF) or will refund this money with interest should the final agreement not be executed for any reason, whether foreseeable or not.

- $2,450,000 (35,000 AF X $175 per AF X 0.40) upon completion of all approvals and execution of the final agreement by Buyer and Seller.

- $87.50 per AF (1993 dollars) of water delivered to Metropolitan. Assuming total deliveries of 35,000 AF, Metropolitan's total payment would be $3,062,500 (35,000 AF X $87.50 per AF).

8. **Successors in Interest.** The initial and final agreements shall be binding upon all successors in interest to the Seller.

It should be possible to expeditiously obtain the necessary approvals as this transfer would be accomplished under the CVP Improvement Act and the water involved in this transfer is currently being exported from the Delta. Upon gaining approvals and preparing environmental documentation, your Board would be requested to review and consider such documentation and authorize the General Manager to enter into the final agreement. CEQA compliance is not required until such time as negotiations are completed and necessary approvals are obtained for this transfer.

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 policies and procedures to be considered by the Board, pursuant to Administrative Code Section 2917(e).

The Water Problems Committee because of its authority to study, advise, and make recommendations with regard to policies, sources, and means of importing water required by the District, pursuant to Administrative Code Section 2481(a).

Recommendation

EXECUTIVE AND WATER PROBLEMS COMMITTEES FOR ACTION.

It is recommended that your Board authorize the General Manager to finalize negotiations with Areias Dairy Farms for the initial agreement which would provide the terms of the final agreement consistent with this letter and the attached principles.

D L Georgeson
for John R. Wodraska

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Attachment