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

FEB 14 1995

Barbara E. Duff
EXECUTIVE SECRETARY

41272

8-5

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

January 31, 1995

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

From: General Manager

Subject: Staff Activities to Secure San Joaquin River Exchange Water and Amend Areias Dairy Farms Agreement

Report

During the past year, staff informed your Board of its efforts to gain access to San Joaquin River Exchange Water (Exchange Water). Because Exchange Water deliveries can only be reduced by a maximum of 28 percent, and then only in very dry years, transfers based on this supply are highly reliable and desirable. To date, staff's efforts to gain access to this water supply have focused on both district-to-district transfers with the San Joaquin River Exchange Contractors Water Authority (Authority) and on user-initiated transfers. User-initiated transfers such as the Areias Dairy Farms (ADF) transfer are authorized under the Central Valley Project (CVP) Improvement Act (Title XXXIV of P.L. 102-575). Not unexpectedly, the proposed ADF transfer created substantial controversy in the communities receiving Exchange Water. After extended discussions with the contractors that receive Exchange Water on how to modify the ADF transfer in order to move ahead with a district-to-district transfer, staff in cooperation with ADF, developed the course of action described in this letter. Staff believes this course of action will provide Metropolitan with a more efficient, and less controversial, access to Exchange Water.

Exchange Water came into being when the "Exchange Contractors"--Central California Water District (CCID), San Luis Canal Company, Firebaugh Canal Company and Columbia Canal Company--agreed not to exercise their San Joaquin River water rights in exchange for U.S. Bureau of Reclamation (Reclamation) water from the Sacramento/San Joaquin Delta. In 1993, the Exchange Contractors formed the Authority to pursue the Exchange Contractors' common goals. In 1994, the Authority's Board of Directors formed a team to negotiate water transfers with willing buyers, including Metropolitan. The Authority's negotiating team met with Metropolitan staff to develop principles for an option type water transfer agreement. Under these principles (summarized in the attachment), Metropolitan would purchase water in any five or more years over a 20 year contract term, and the sellers would receive $175 per acre-foot in 1994 dollars. The Authority's negotiators, however, stated that a transfer based on these or any other terms could not move forward until the ADF transfer conformed to CCID's water transfer policy.

As discussed previously with your Board, CCID has vigorously opposed the ADF transfer because it does not comply with its water transfer policy. Among other things, that policy includes a provision which would prevent an individual water user from transferring more than 20 percent of the water user's consumptively used water in any year. Under the CVP Improvement Act, local agency approval is not required when the transfer is less than 20 percent of a water agency's total CVP supply and Reclamation confirms that the transfer would not unreasonably impact the agency's finances, operations or water supplies. As originally formulated, the ADF transfer complies with the transfer provisions of the CVPIA. However, because 100 percent of ADF's consumptively used water would be transferred during years when Metropolitan called the water, the transfer would not comply with CCID's transfer policy.

Because larger district-to-district transfers are inherently more efficient than several smaller transfers with individual water users, Metropolitan and ADF representatives have developed a proposed amendment to the ADF transfer agreement which would bring it into compliance with CCID's transfer guidelines and allow it to become part of the proposed larger district-to-district transfer. Under the original agreement, in years Metropolitan called water, ADF would transfer 100 percent of all of the CVP water it would have consumptively used, about 3,900 acre-feet (AF). Over the contract term, ADF would deliver a maximum of 32,200 AF to Metropolitan. To comply with CCID's transfer policy, the proposed amendment would transfer only 20 percent, or about 780 AF, of the water ADF would have consumptively used each year over a term adequate to provide for a total transfer amount of about 18,000 AF. Under the original agreement, ADF would receive $5,635,000 as follows: (1) a secured in-earnest payment of $563,500, made in July 1994 when the initial agreement was executed; (2) an additional $2,254,000 when all regulatory and environmental approvals are completed and a final transfer agreement is executed; and (3) the remaining $2,817,500 to be paid as water is delivered. Under the proposed amendment, ADF would receive $3,600,000, as follows: (1) the existing secured in-earnest payment that was made in July 1994, would be increased from $563,500 to $800,000 upon execution of an amended agreement between ADF and Metropolitan; (2) a secured payment of $400,000 upon execution of an agreement between Metropolitan and the Authority; (3) a secured payment of $1,600,000 after all regulatory and environmental approvals are obtained; and (4) five equal secured payments totaling $800,000 would be made to ADF over the first five years of the transfer agreement with the Authority. All of these future payments would not be escalated and would be subject to financial security arrangements acceptable to Metropolitan. The proposed amendment would be contingent upon Metropolitan and the Authority entering into a transfer agreement on terms acceptable to your Board.

Reaching agreement with ADF on the proposed amendment will facilitate a course of action which is likely to result in the successful conclusion of negotiations with the Authority. During February 1995, ADF and Metropolitan will jointly withdraw the ADF transfer application from consideration by Reclamation, a step the Authority said was necessary to resume negotiations on the larger district-to-district transfer. Prior to considering this action, staff met with Roger Patterson, Regional Director of Reclamation's Mid-Pacific Region, and received assurances that the ADF transfer application could be withdrawn without prejudice to ADF and Metropolitan's ability to resubmit the application at a later date. Thus, if the negotiations with the Authority do not result in a district-to-district transfer acceptable to Metropolitan, the ADF transfer could be resubmitted with its current status. CCID has agreed that once the ADF transfer application is withdrawn, it will participate with the Authority in good faith negotiations with Metropolitan for a district-to-district water transfer. Staff expects negotiations with the Authority to be concluded within a reasonable time frame. If negotiaions for a district-to-district transfer does not occur, the ADF transfer application will be resubmitted, and Metropolitan will pursue the ADF transfer under the original terms.

Recommendation

It is recommended that the General Manager be authorized to execute an amendment to the existing Areias Dairy Farms transfer agreement consistent with the terms set out in this letter and in a form approved by the General Counsel.

John R. Wodraska
General Manager

Submitted by:

Debra C. Man

Debra C. Man, Chief
Planning and Resources

DSM:cl

Attachment

Concur:

John R. Wodraska
General Manager

DRAFT PRINCIPLES FOR NEGOTIATING A WATER TRANSFER FROM THE SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY (AUTHORITY) TO THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

1. **Term of Transfer** - The transfer period will be for about 20 years.

2. **Right to Call Water** - Metropolitan will have the obligation to call water in five years of the 20 year agreement. In addition, Metropolitan will have the right to call water in any year that State Water Project allocations are below a yet to be negotiated amount.

3. **Amount of the Transfer** - All water users in the Authority's service area will be allowed the opportunity to participate in the transfer. The transfer will be limited to about 50,000 acre-feet of in each of the five years water is delivered to Metropolitan.

4. **Price** - Metropolitan will pay the Authority $175 per acre-foot of water actually delivered to Metropolitan.

5. **Price Adjustment** - The price paid for water, exclusive of any up-front moneys paid, may be adjusted using the Consumers Price Index.

6. **Administrative Charge** - Provide for payment of an administrative charge to the Authority to cover reasonable and foreseeable costs directly related to monitoring and administering the transfer.

7. **Expenses** - Metropolitan will pay for all up-front technical and environmental studies and documentation necessary to gain regulatory approval of the transfer.

8. **Security** - Measures will be incorporated into the agreement to provide Metropolitan with reasonable assurances it will receive those benefits for which it has negotiated or otherwise recover its investments.

9. **Wheeling** - Metropolitan will arrange to wheel transfer water from the point of delivery to Metropolitan's service area.

10. **Sub-agency and Landowner Participation** - The Authority will give assurances to Metropolitan that its sub-agencies and their landholders having contractual rights to exchange water will be obligated to make exchange water available to Metropolitan.

11. **CEQA** - The Authority will act as lead agency under the California Environmental Quality Act.

O:\MM\REPORT\EXPR5BD.BEW