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

APR - 9 1996

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

for EXECUTIVE SECRETARY

March 26, 1996

To: Board of Directors (Water Planning and Resources Committee--Action)

From: General Manager

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

Subject: Bay-Delta Settlement Negotiations Regarding San Joaquin River Tributary Issues

RECOMMENDATION

It is recommended that your Board authorize the General Manager to sign a Letter of Intent regarding principles for a negotiated settlement for resolution of San Joaquin River Tributary water users responsibility for meeting Bay-Delta water quality and flow standards.

EXECUTIVE SUMMARY

On November 14, 1995, your Board approved policy principles regarding Metropolitan's participation in Bay-Delta water rights settlement discussions with upstream water users and other Bay-Delta water users as cited in Board letter No. 8-4 dated October 31, 1995. Since the signing of the December 15, 1994 Bay-Delta Accord (Accord) and the subsequent State Water Resources Control Board (SWRCB) adoption of a Water Quality Control Plan (WQCP), the State Water Project (SWP) and the Central Valley Project (CVP) have voluntarily committed to meet the specified flow and water quality standards until obligations for meeting the standards by other users are established by the SWRCB. The SWRCB has encouraged Bay-Delta water users to negotiate a settlement to assist with its water rights hearing process to formally allocate responsibilities for meeting the WQCP standards.

Since early 1995, Urban and Agricultural Export Interests (Export Interests) have been meeting regularly with representatives of the major upstream water interests to explore the potential for a negotiated resolution of water rights allocation issues associated with implementing SWRCB's standards. To facilitate this process, the Export Interests have pursued parallel discussions, one with San Joaquin River interests and one with Sacramento Valley interests.

The Export Interests and the San Joaquin interests have reached tentative agreement on a Letter of Intent containing principles to settle disputes regarding responsibility for meeting Bay-Delta water quality and flow standards as described in the detailed report below.

These principles represent the recommendations of a broad-based group and are intended to avoid litigation and contested proceedings before the SWRCB. The Letter of Intent furthers the consensus model of the Accord by committing six major San Joaquin River entities to protecting the Bay-Delta. These provisions would provide partial implementation of the WQCP San Joaquin River (Vernalis) flow standard along with other measures that would enable significant environmental improvements over historical conditions.

Negotiations with the Sacramento Valley users have not progressed as far because of the diversity of interests involved. Metropolitan, in coordination with other Export Interests, will continue to strive for mutually acceptable agreement principles to bring before your Board prior to commencement of the water rights proceedings.

This letter presents the proposed principles for settlement among Export Interests and the San Joaquin River Interests.

DETAILED REPORT

Background

The December 15, 1994 Bay-Delta Accord (Accord) endorsed water quality and flow standards and committed the Central Valley Project (CVP) and State Water Project (SWP) to meet those standards, on a voluntary basis for three years or until the State Water Resources Control Board (SWRCB) promulgates a water rights allocation decision to assign responsibility among Bay-Delta watershed users. On May 22, 1995, the SWRCB adopted a new Bay-Delta Water Quality Control Plan (WQCP) which included the environmental protections outlined in the Accord. Currently, the SWRCB is conducting a series of scoping workshops prior to commencement of formal water rights hearings in early 1997 to allocate responsibility for meeting the new standards. In its initial notice, the SWRCB has included nearly all of the significant water users upstream and within the Bay-Delta, including export users as parties to the proceedings.

Determining how the responsibility for meeting Bay-Delta standards will be allocated is a disputed matter. The SWRCB has therefore encouraged Bay-Delta water users to negotiate a water rights allocation settlement to assist the SWRCB with its decision-making process. Divisive and contentious water rights hearings would likely be followed by litigation. This could polarize California's water user community and divert attention and resources from the task of solving long-term Bay-Delta water management problems. The 1995 WQCP already has been challenged in litigation entitled San Joaquin Tributaries Association (SJTA) v. SWRCB. The SJTA asserts that the SWRCB's adoption of the WQCP could adversely impact their water rights. Since early 1995, parallel discussions have been ongoing between Urban and Agricultural Export Interests (Export Interests) and San Joaquin River interests and between Export Interests and Sacramento Valley interests regarding Bay-Delta obligations.

Substantial progress has been made with the San Joaquin River interests, as described below. Negotiations with the Sacramento Valley users have not progressed as far because of the diversity of interests and issues involved. Metropolitan in coordination with Export Interests will continue to strive for mutually acceptable agreement principles to bring before your board prior to commencement of the water right proceedings.

The Export Interests and the San Joaquin River interests have reached agreement on a draft set of principles to resolve the San Joaquin River obligation issues. These principles, if enacted would provide an incremental benefit for the Bay-Delta environment above historical conditions, commit San Joaquin River interests to protecting the Bay-Delta under the Accord, and resolve the litigation entitled SJTA v. SWRCB.

Proposed San Joaquin Settlement Principles

The draft Letter of Intent represents the culmination of several months of discussions to resolve San Joaquin River obligation issues. The specific provisions are consistent with policy principles adopted by your Board in November, 1995 (see Board letter 8-4, October 31, 1995). The key elements of agreement include the following:

1. **Parties:** The parties to the agreement are the Metropolitan Water District of Southern California, Kern County Water Agency, Westlands Water District, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, (parties referred to as Export Interests), and Modesto Irrigation District, Turlock Irrigation District, Merced Irrigation District, Oakdale Irrigation District, South San Joaquin Irrigation District (collectively "SJTA"), San Joaquin River Exchange Contractors Water Authority ("Exchange Contractors") and Friant Water Users Authority ("Friant").

2. **Vernalis Flows:** The San Joaquin interests agree to provide specified increased flows in the San Joaquin River (measured at Vernalis) over and above historical levels. These flow levels represent partial implementation of the high flows contained in SWRCB's WQCP, and are supported by the best available science. These increased flows should also help meet Bay-Delta outflow requirements.

3. **Stanislaus River Flows:** Water provided by the San Joaquin River interests is based on the condition that a specified schedule of flows for fish and water quality protection will be provided by the United States Bureau of Reclamation below Goodwin Dam on the Stanislaus River.

4. **River Barriers**: The parties agree that a permanent, operable Old River Fish Barrier must be constructed to protect migrating San Joaquin Chinook salmon smolts. Until the permanent structure is in place, continuance of the temporary barrier installation program is to be maintained. The Old River Fish Barrier is an identified element in the December 15, 1994 Bay-Delta Accord.

5. **Payment:** In recognition of the cost to develop necessary water supplies and the obligation for meeting the Vernalis Standards, the San Joaquin River interests will receive $3.75 million annually from the Friant Surcharge portion of the Central Valley Project Improvement Act (CVPIA) Restoration Fund. The Friant surcharge was established in the CVPIA to provide alternate means for Friant water users to meet environmental obligations established in that law other than through flow downstream of Friant Dam. One million dollars per year of these payments shall be set aside for implementation of non-flow fish improvement measures, environmental monitoring and administration.

6. **Litigation Dismissed:** Litigation entitled San Joaquin Tributaries Association (SJTA) v. SWRCB shall be stayed pending implementation, and the action shall be dismissed when the agreement is fully implemented.

Key Issues

To implement this agreement, several issues and preconditions must be overcome, as listed below:

1. **Partial Implementation of Vernalis Standards:** The WQCP Vernalis flow standard is higher than the flows provided in this agreement. This could be an issue with environmental and regulatory entities. It is recognized, however, that the Accord was signed with weaker scientific justification on the San Joaquin River requirements than other provisions of the Accord. Moreover, additional flows could be available from other San Joaquin River users who are not parties to the agreement and the opportunity continues to exist to purchase more water with CVPIA restoration funds. Finally, new Vernalis flows resulting from this agreement could be adopted as new long-term flow standards at Vernalis by the SWRCB at the next triennial review of the WQCP, after careful scientific review.

2. **Payment:** Payment to the San Joaquin River parties will come from the Friant surcharge of the CVPIA Restoration Fund. While use of this fund for the purchase of increased flows is consistent with the fund's purpose, some may dispute the source or amount of money from the fund.

3. **USBR New Melones Operation:** As a precondition, a specific operation schedule for the Stanislaus River for fish and water quality must be maintained. USBR water contractors, such as Stockton East Water District, will take issue with any higher instream requirements, if it does not increase their ability to obtain supplies.

4. **City and County of San Francisco:** The City and County of San Francisco is also a party to in the litigation entitled San Joaquin Tributaries Association (SJTA) v. SWRCB, but have not yet decided to sign the Letter of Intent. It is important to

its success that all parties to the litigation join in the settlement agreement, and the Export Interests will continue to strive to bring San Francisco into this settlement.

The Parties along with the SWRCB and other State and Federal regulatory agencies will participate in a series of open and public workshops to achieve resolution of these issues with broad support. In particular, scientifically based technical information regarding proposed flows and other provisions will be discussed and analyzed with all interested participants.

Key Benefits

The proposed agreement would provide several key benefits to the Bay-Delta Estuary. The consensus model of the Accord would continue by committing San Joaquin River interests to the protection of the Bay-Delta. For the first time, non-CVP and SWP parties would be required to meet SWRCB requirements. It would provide an incremental benefit for the Bay-Delta environment above historical conditions that is implementable in the near term. The agreement will also settle the litigation entitled SJTA v. SWRCB in which Metropolitan, as a user of export supplies, has an interest.

Summary

It is recommended that your Board authorize the General Manager to sign a Letter of Intent regarding principles for a negotiated settlement for resolution of San Joaquin River Tributary interests responsibility for meeting Bay-Delta water quality and flow standards. This agreement represents a significant step towards successfully implementing the Bay-Delta Accord and is in keeping with the consensus spirit of the Accord as well as previously adopted Board principles. The successful outcome of both the San Joaquin River and Sacramento River settlement discussions is critical to implementing the Accord and making progress on long-term Bay-Delta solutions.

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Attachment

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ATTACHMENT

MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

8-4

October 31, 1995

To: Board of Directors (Water Planning and Resources Committee--Action)

From: John R. Wodraska
General Manager Wiley Horne

Debra C. Man, Chief
Planning and Resources Debra C. Man

Subject: Proposed Principles for Bay-Delta Water Rights Settlement Resolution and Category III Implementation

Recommendations:

It is recommended that your Board review and approve proposed principles for: (1) a negotiated settlement agreement for resolution of upstream water users responsibility for meeting Bay-Delta Standards; and (2) Category III implementation.

Executive Summary:

The December 15, 1994 Bay-Delta Accord (Accord) endorsed water quality and flow standards and committed the Central Valley Project (CVP) and the State Water Project (SWP) to meet those standards, on a voluntary basis, until the State Water Resources Control Board (SWRCB) promulgates a water rights decision. The SWRCB has encouraged Bay-Delta water users to negotiate a water rights settlement to assist the SWRCB with its decision-making process. In addition, the Accord committed the State and federal governments and agricultural, urban and environmental interests to implement and finance Category III (non-flow) measures as an essential part of a comprehensive Bay-Delta ecosystem protection plan. Category III activities focus on restoring habitat conditions through implementation of non-flow improvement measures.

This letter presents recommended principles for Metropolitan's participation in the Bay-Delta water rights settlement negotiations and Category III implementation.

Detailed Report:

Bay-Delta Water Rights Settlement Negotiations. The December 15, 1994 Bay-Delta Accord (Accord) endorsed water quality and flow standards and committed the Central Valley Project (CVP) and State Water Project (SWP) to meet those standards, on a

voluntary basis, until the State Water Resources Control Board (SWRCB) promulgates a water rights decision. On May 22, 1995, the SWRCB adopted a new Bay-Delta Water Quality Control Plan (WQCP) which included the principles of the Accord. Currently, the SWRCB has begun a water rights proceeding to allocate responsibility to meet the new standards. In its initial notice, the SWRCB has included nearly all the significant water users upstream and within the Delta as parties to the proceedings. The SWRCB has encouraged Bay-Delta water users to negotiate a water rights settlement to assist the SWRCB with its decision-making process.

Determining how the obligation for meeting the Bay-Delta standards will be allocated is a disputed matter. Since late last year, the California Urban Water Agencies, the SWP and CVP agricultural contractors (CUWA/AG), and representatives of the major upstream water users have been meeting regularly to explore the potential for a negotiated resolution of the water rights issues associated with implementing SWRCB's standards. Both parties to these discussions believe that California's economy and environment would be best served by a negotiated agreement of these issues. This approach would avoid divisive and protracted water rights hearings that would likely be followed by litigation, thus polarizing California's water user community and diverting attention and resources from the task of solving long-term Bay-Delta water management problems.

These discussions are extraordinarily complex from a technical, institutional and legal standpoint. To facilitate this process, the parties have pursued parallel discussions through two subgroups, one composed of San Joaquin Valley tributary agencies and one composed of Sacramento Valley agencies. The groups are striving to develop the framework of an agreement by the end of 1995, and a detailed contractual agreement resolving allocation responsibility by mid-1996. Following are staff's proposed principles to guide efforts during the negotiations.

Proposed Principles for a Negotiated Water Rights Settlement

1. Equitable Apportionment: All water users, within and upstream of the Delta, should bear a fair portion of the responsibility for meeting WQCP standards.

2. Legal Position: Administration of water rights must occur within the context of reasonable use and public trust principles.

3. Negotiate: A negotiated settlement is preferable to a protracted water rights dispute.

4. Leadership Role: Metropolitan should play a leadership role in the negotiations as a member of the CUWA/AG. Coordination with the Department of Water Resources and the U.S. Bureau of Reclamation should be maintained.

5. Market-Based Approach: Negotiations should proceed on a market-based approach to achieve the environmental water requirements of the WQCP standards. For example, upstream users could agree to provide a large "block"

of below--market priced water in exchange for others meeting their portion of obligation towards Bay-Delta standards.

6. Funding: Broad funding mechanisms should be pursued. For example, upstream users could agree to provide money to satisfy their obligation towards meeting Bay-Delta standards.

7. Regulatory Approval: Metropolitan, in coordination with CUWA/AG, will strive to have any agreement reached in these negotiations validated or adopted by the SWRCB and/or other appropriate regulatory agencies.

8. Long-Term: Negotiations should strive to achieve an agreement for the long-term resolution of water rights issues.

9. CALFED Consistency: Any agreement reached should enhance long-term stability and be consistent with the CALFED process to reach a long-term Bay-Delta solution.

10. Involvement: Continue to involve all affected groups.

Unlike the outflow requirements that create the Sacramento River issues, the San Joaquin (Vernalis) inflow requirements contained in the WQCP are subject to SWRCB reconsideration during the water rights process. The SWRCB's WQCP states:

> "These flows are interim flows and will be reevaluated as to timing and magnitude, up or down, within the next three years. During the three-year period decisions by the FERC [Federal Energy Regulatory Commission] or other regulatory orders may increase flows to the Estuary required of upstream water users. These flows will be considered by the SWRCB in its allocation of responsibility among the water rights holders in the watershed during the water rights proceeding."

The San Joaquin Tributaries Association has filed a lawsuit in Sacramento County Superior Court against the SWRCB asserting, among other things, that SWRCB's adoption of the WQCP could adversely impact their water rights. Following are additional principles proposed specifically to guide staff's efforts during the San Joaquin River negotiations.

Additional Proposed Principles for San Joaquin River Negotiations

1. Tributary Requirements: Any agreement reached should take into account other regulatory orders that may increase inflow to the Delta from tributary streams.

2. Scientific Basis: Metropolitan, in coordination with CUWA/AG and the San Joaquin tributary interests, should participate in the reevaluation of the scientific basis for the San Joaquin inflow requirement to the Delta.

3. Old River Barrier: Metropolitan supports the construction of a permanent, operable barrier at the head of Old River for the protection of fish. This facility is endorsed by the Central Valley Project Improvement Act, the Governor's 1992 water policy and the Accord.

Category III Implementation. The Accord committed the State and federal governments and agricultural, urban and environmental interests to implement and finance Category III (non-flow) measures as an essential part of a comprehensive Bay-Delta ecosystem protection plan. Category III activities focus on restoring habitat conditions through implementation of non-flow measures.

To date, Category III implementation has focused on identifying and approving projects that would result in significant benefits to Bay-Delta resources in the near-term. Progress achieved since the Accord includes: finalizing a Category III Implementation Plan; finalizing a Memorandum of Understanding Regarding Short-Term Category III Activities; and approving nine Category III projects for funding and implementation in 1995-96.

Critical issues need to be addressed to ensure that Category III transitions into a long-term stable program. Such issues include: resolving funding obligations; securing crediting mechanisms and assurances from CALFED that create incentives to participate in Category III; and determining Category III's relationship with CALFED. Following are staff's proposed principles to guide efforts for Category III implementation.

Proposed Principles for Category III Implementation

1. Permanence: Proactively pursue a permanent Category III program that addresses non-flow factors affecting Bay-Delta environmental resources.

2. CALFED Integration: Support the establishment of a credible Category III decision-making process that has CALFED buy-in.

3. Across-the-Board Participation: Ensure that other Accord signatories, including the State and federal governments, are equally committed/obligated to ensure Category III success.

4. Bay-Delta Credit: Secure CALFED approval of crediting mechanisms providing water users with incentives to participate.

5. Shelf-Life: Secure regulatory assurances providing water users with incentives to participate.

6. Leverage other Funding: Ensure that Category III monies are expended in a manner that leverages other funding sources to the greatest extent possible.

7. Consolidate Funding: Support a flexible Category III institution that allows integration of existing State and federal restoration funding and environmental initiatives.

Achieving successful outcomes in both of the above areas is critical to implementing the Accord and making progress on long-term Bay-Delta solutions. Staff will keep your Board informed on progress made in these two important areas.

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