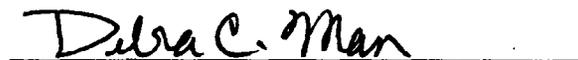


**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 23, 1996

To: Board of Directors -- (Information)**From:** General Manager

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

Subject: Proposed Revisions to Policy Principles on Interstate Water Transfers

RECOMMENDATION

For information only.

EXECUTIVE SUMMARY

At the April 9, 1996 Board meeting, your Board adopted five policy principles on interstate water transfers (Attachment A). During consideration of these policy principles in the Water Planning and Resources Committee and the Committee on Legislation, an additional policy principle on interstate water transfers concerning the right of first refusal and a revision to principle No. 5 were proposed by members of your Board. This letter presents the proposed revisions to the interstate water transfer policy principles for your information, and includes a discussion of the potential advantages and disadvantages associated with the proposed additional policy principle.

DETAILED REPORT

At the April 9, 1996 Board meeting, your Board adopted five policy principles on interstate water transfers (Attachment A). During consideration and discussion of these policy principles in the Water Planning and Resources Committee and the Committee on Legislation, an additional policy principle on interstate water transfers concerning the right of first refusal and a revision to principle No. 5 were proposed by members of your Board. At the time it was decided to continue discussion of the proposed policy principle revisions to the special Board meeting scheduled for April 30 to address Colorado River water issues.

The additional policy principle on interstate water transfers proposed at the April Board committee meetings reads as follows:

"Any interstate transfer of water should be subject to a right of first refusal for users within the transferring state to acquire and use said water on equivalent terms."

The legislation related to the proposed policy principle focuses on the institutional process for reviewing interstate water transfers and not on the substance of transfer-related policies. Attempts to include specific policies in this legislation regarding interstate transfers could unnecessarily restrict Metropolitan's discretion and contractual rights in resolving Colorado River matters. For these reasons, it does not appear to be appropriate to resolve issues such as a right of first refusal as part of pending legislation. Reasons supporting this conclusion are as follows:

- Effect on continuing Colorado River facilitated discussions. Interstate water transfer policies are being addressed as part of the ongoing Colorado River facilitated discussions. Should Metropolitan adopt the proposed policy principle concerning the right of first refusal, it may restrict Metropolitan's flexibility in the negotiations.
- Lost opportunities for California agencies to transfer Colorado River water from outside the state into California. Water transfers may occur from outside California to parties within the state. If this proposed principle is adopted by the U.S. Bureau of Reclamation, for example, and imposed on all Colorado River water contractors, it may allow other entities in the transferring state to prevent use of the water by the transferee. This may limit the availability and/or increase the price of transferred water.
- Unspecified conditions for exercising the right of first refusal. The proposed policy principle does not indicate that the right of first refusal must be exercised on the same conditions as the proposed transfer. Additionally, compensation for costs incurred in developing the water transfer proposal are not addressed, which could lead to negative impacts on those agencies who have invested time and resources in initiating an interstate water transfer agreement.
- Unspecified time limit for exercising right of first refusal. In situations where no time limit exists for exercising the right of first refusal, approved and ongoing interstate water transfers could be interrupted.
- Undefined term "users". The term "users" is not defined in the proposed policy principle and may lead to confusion as to which entities have the right of first refusal (i.e., does "user" refer to the entity holding the water contract, the entity that retails water but may not hold a contract with the U.S. Department of the Interior, or individual water users?)

Arguments which could be asserted contrary to this recommendation are:

- Water transfer opportunities for Metropolitan. Should other California Colorado River water contractors wish to transfer water to entities outside California, Metropolitan could benefit by exercising the right of first refusal for the transferred water.

- Efficient allocation of transferable supplies. The proposed policy principle would ensure that another California user of Colorado River water could gain equal or greater economic benefit from the transferred water, provided that such user was willing to pay the costs associated with the transfer.

On balance, it appears that the points supporting the recommendation outweigh the contrary considerations.

In addition, members of your Board suggested that the fifth policy principle on interstate water transfers (see Attachment A) be amended as follows:

5. Interstate water transfers should involve the transfer of "wet water" ~~that is water conserved by extraordinary demand reduction measures or water saved pursuant to a land fallowing program.~~

Deleting the definition of "wet water" from this policy principle would raise questions as to what the term means, sending a confusing signal regarding Metropolitan's policy position. For example, it could be interpreted by some as permitting the transfer of federally reserved water rights which have never been used, or water which has historically not been used every year in the past due to the varying demand for water. More specifically, Metropolitan has the right to utilize Colorado River water which is unused by Indian tribes and the agricultural agencies in California.

LAS:jpa

Attachment

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Metropolitan Water District of Southern California

Policy Principles on Interstate Water Transfers

Adopted April 9, 1996

1. **Implementation of interstate water transfers involving Colorado River water should be on a State-to State basis, consistent with the law of the river.**
2. **Interstate water transfers regarding Colorado River water must respect the existing contractual or decreed rights of Metropolitan and other Colorado River water users.**
3. **The Colorado River Board of California should be the agency in the State's review of interstate water transfers, recognizing the unique nature of Colorado River rights and the expertise acquired by the Colorado River Board in dealing with such matters.**
4. **Veto power should not be given, regarding Colorado River interstate water transfers or water-banking arrangements, to an agency that does not have existing authority over Metropolitan.**
5. **Interstate water transfers should involve the transfer of "wet water", that is water conserved by extraordinary demand reduction measures or water saved pursuant to a land fallowing program.**