

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

April 25, 1996

To: Board of Directors -- Information

From: General Manager Edward L. Meers

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

Subject: Facilitation of Implementation of San Luis Rey Indian Water Rights Settlement

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

At its December 12, 1995 meeting, your Board approved in principle the terms and conditions of the Agreement for the Delivery and Sale of Water to the United States Acting on Behalf of the San Luis Rey River Indian Water Authority (Agreement). The terms and conditions of the agreement were to be finalized and brought back to your Board for final approval no earlier than January 31, 1996. The following week, Imperial Irrigation District's (Imperial) Board of Directors chose not to extend the Metropolitan-Imperial February 3, 1995 "Agreement Relating to the Construction of a Concrete Lined Canal Parallel to the Existing All-American Canal". Implementation of the All American Canal Lining Project and the San Luis Rey Indian Water Rights Settlement have been subjects of discussion at the facilitated discussions among California agencies with interests in the Colorado River which is being conducted under the auspices of the Colorado River Board of California (CRB). A number of changes were made in January to the draft Agreement, consistent with the principles which were accepted by your Board and it was distributed to the settlement parties and San Diego County Water Authority (County Water Authority) for review.

On March 13, the Congressional facilitator for settlement implementation appeared before the CRB. He requested that the CRB's Executive Director inform the Secretary of the Interior (Secretary) that the CRB does not object to the Secretary having the Bureau of Reclamation (Reclamation) move forward with federal environmental documentation regarding the proposed Agreement, without any party waiving its right to object to either the environmental documentation or the Agreement. This action was requested to permit Reclamation to evaluate the environmental effects of the proposed Agreement in a timely manner. Revised language for the banking section of the Agreement and a draft letter to the Secretary were prepared by

Metropolitan and the settlement parties in response to a request made at the CRB meeting. The documents were transmitted to the CRB on April 9. With execution of an Agreement with that language, any other Colorado River contractor would be able to bank water it makes available by implementing extraordinary conservation measures, including land fallowing, subject to the Secretary's approval.

In light of Imperial's action in December, reference to the All American Canal Lining Project (Lining Project) has been deleted from the revised draft Agreement. The Water Supply Development component to be used in the determination of the payment due the Indian Water Authority for foregoing delivery of Metropolitan water would be \$133 per acre-foot, the estimated cost of the Lining Project. Water sales to the United States would begin no earlier than the year 2002. The United States would pay the connection maintenance charge, the noninterruptible rate for either untreated or treated water--for sale of untreated and treated water, respectively, and other applicable charges (e.g. readiness-to-serve charge, new demand charge, treated water peaking charge, or their equivalent), excluding ad valorem taxes and annexation charges. Payments to the Indian Water Authority for foregoing use of Metropolitan water would terminate 115 years following the initial payment. The changes proposed would not increase the Metropolitan cost associated with the Agreement which was discussed in a confidential letter to your Board dated December 4, 1995. Staff has transmitted the revised draft Agreement to the Congressional facilitator for review. Staff will return to your Board for final approval to enter into an Agreement to Facilitate Implementation of the San Luis Rey Indian Water Rights Settlement at an appropriate time.

DETAILED REPORT

At its December 12, 1995 meeting, your Board approved in principle the terms and conditions of the Agreement for the Delivery and Sale of Water to the United States Acting on Behalf of the San Luis Rey River Indian Water Authority (Agreement). The agreement would be with the U.S. Department of the Interior, City of Escondido (Escondido), Vista Irrigation District (Vista), San Luis Rey River Indian Water Authority (Indian Water Authority), and the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians (Indian Bands). The terms and conditions of the agreement are to be finalized and brought back to your Board for final approval after January 31, 1996.

On December 19, 1995, Imperial Irrigation District's (Imperial) Board of Directors chose not to extend the Metropolitan-Imperial February 3, 1995 "Agreement Relating to the Construction of a Concrete Lined Canal Parallel to the Existing All-American Canal". Based on that action, a reference to the February 3, 1995 Agreement was removed from the draft Agreement and changes to which Metropolitan staff and the settlement parties (Escondido, Vista, the Indian Water Authority, and the Indian Bands) agreed in January 1996 were included. These changes were:

- A recognition that a construction funding agreement with the Department of the Interior (Interior) would be necessary to construct a concrete-lined canal parallel to the existing All American Canal and the addition of a description of the Lining Project. This provision was misinterpreted by some to mean that Metropolitan intended to enter into such an agreement with Interior shortly. No negotiations on a construction funding agreement have taken place with the Bureau of Reclamation (Reclamation).
- A requirement that a reduction in Metropolitan's financial obligation due to a court-imposed reduction in Metropolitan's ability to bank water in Lake Mead be proportionate to the reduction in Metropolitan's ability to bank the types of water specified. The previous draft of the Agreement had addressed a court action that would result in elimination of the ability to bank.
- A requirement that the Indian Water Authority leave on deposit with Metropolitan sufficient funds to pay any amounts due Metropolitan if the banking ability were reduced or lost.
- A requirement that a deferred payment interest adjustment be included in determining the quantity of funds due the Indian Water Authority for the amount of water deliveries foregone by the Indian Water Authority considering that payments would not be made until April 10 of the following year.
- Editorial in nature to clarify various provisions of the draft Agreement.

These changes were consistent with the principles which were accepted by your Board. This January 29, 1996 revised draft Agreement was distributed to the settlement parties and San Diego County Water Authority (County Water Authority) for review. Implementation of the All American Canal Lining Project (Lining Project) and the San Luis Rey Indian Water Rights Settlement have been two of the subjects of the facilitated discussions among California agencies with interests in the Colorado River. These discussions are being conducted under the auspices of the Colorado River Board of California (CRB). In a February 12 letter to Metropolitan, the County Water Authority questioned how Metropolitan could finalize the Agreement when it includes lining of the All American Canal as Imperial declined to extend the February 3, 1995 Agreement with Metropolitan. The County Water Authority indicated that other options for resolving the San Luis Rey Indian Water Rights issue should be given more consideration.

On January 29, 1996, the County Water Authority and Imperial proposed an alternative arrangement for facilitating implementation of the settlement. The settlement parties informed the County Water Authority and Imperial on February 14 that there was no interest on their part in pursuing the proposal any further and that they preferred the arrangement negotiated with Metropolitan. Imperial and the County Water Authority have revised their alternative arrangement for further consideration by the settlement parties.

On March 13, the Congressional facilitator for settlement implementation appeared before the CRB. He requested that the CRB's Executive Director inform the Secretary of the Interior (Secretary) that the CRB does not object to the Bureau of Reclamation (Reclamation) moving forward with federal environmental documentation regarding the proposed Agreement, without any party waiving its right to object to either the environmental documentation or the Agreement. This action was requested to permit Reclamation to evaluate the environmental effects of the proposed Agreement in a timely manner. Representatives of other parties participating in the facilitated discussions requested at that time that they be provided the ability to bank water in Lake Mead through a provision of the Agreement to be drafted. It was agreed that the banking section of the draft Agreement would be revised to address this request and that a draft letter to the Secretary would be prepared for the CRB's consideration. Revised language for that section of the Agreement and a draft letter to the Secretary were prepared by Metropolitan and the settlement parties and the documents were transmitted by the attorney for Vista Irrigation District to the CRB on April 9. Also, copies of the documents were provided to Imperial, Palo Verde Irrigation District (Palo Verde), Coachella Valley Water District (Coachella), the County Water Authority, the Los Angeles Department of Water and Power, the Congressional facilitator for settlement implementation, and the facilitator for the discussions being conducted under the auspices of the CRB.

Imperial wishes to have a groundwater pumping alternative to the Lining Project investigated again and it is unclear when a project to recover seepage from the All American Canal will be implemented. Therefore, references to the Lining Project have been deleted from the revised draft Agreement. The Water Supply Development component to be used in the determination of the payment due the Indian Water Authority for foregoing delivery of Metropolitan water would be \$133 per acre-foot, the estimated cost of the Lining Project. In order to address comments received regarding the January 29 revised draft Agreement, the following changes are being proposed following discussions with the settlement parties:

- The requirement that water sales to the United States begin no earlier than the year 2002.
- The requirement that the United States pay the connection maintenance charge, the noninterruptible rate for either untreated or treated water--for sale of untreated and treated water, respectively, and other applicable charges (e.g. readiness-to-serve charge, new demand charge, treated water peaking charge, or their equivalent), excluding ad valorem taxes and annexation charges.
- A provision that any other Colorado River contractor be able to bank water it makes available by implementing extraordinary conservation measures, including land fallowing, subject to the Secretary of the Interior's approval as a substitute for a previous provision. That provision permitted Metropolitan to enter into agreements with third parties for their use of Metropolitan's banking rights upon terms and conditions approved by the Secretary. This provision was proposed as

other parties participating in the facilitated discussions have requested the ability to bank water in Lake Mead.

- The requirement that payments to the Indian Water Authority for foregoing use of Metropolitan water terminate 115 years following the initial payment.
- Revisions editorial in nature to clarify various provisions of the draft Agreement.

The changes proposed would not increase the Metropolitan cost associated with the Agreement which was discussed in a confidential letter to your Board dated December 4, 1995. Staff has transmitted the revised draft Agreement to the Congressional facilitator for review. Staff will return to your Board for final approval to enter into an Agreement to Facilitate Implementation of the San Luis Rey Indian Water Rights Settlement at an appropriate time.

JPM:hah

jpmslrr/board