



# San Diego County Water Authority

A Public Agency

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May 9, 1996

**TO:** Board of Directors

**VIA:** Water Policy Committee

**FROM:** Maureen A. Stapleton, General Manager

**RE:** Proposed Agreement to Facilitate Implementation of the San Luis Rey Indian Water Rights Settlement Act (Action)

## SUMMARY

Parties to the San Luis Rey Indian Water Rights Settlement have submitted a revised settlement agreement proposal to the Authority and other California Colorado River Contractors for review and endorsement. In the agreement the Metropolitan Water District (MWD) seeks to obtain permission to bank conserved water supplies in Lake Mead, in exchange for an annual payment to several Indian Bands located in northern San Diego County. The agreement would help to settle a long standing water rights dispute between several Indian Bands and both the City of Escondido and Vista Irrigation District. It would also obligate MWD to provide water for use on the reservations, whether located within or outside MWD's service area, in perpetuity.

The parties desire to have the Colorado River Board of California support the agreement so that it may be forwarded with the Board's endorsement to the Secretary of Interior for environmental review. The Settlement Parties wish to begin that process immediately so that final approval of the agreement can occur before November. Authority staff have raised a number of concerns regarding the agreement from the perspective of an agency potentially affected by the agreement, as a member agency of MWD, and as a member of the Colorado River Board of California.

## FISCAL IMPACT

There is no immediate fiscal impact on the Authority. However if the agreement is approved by the settlement parties, the Metropolitan Water District and the Secretary of Interior, the Authority would be responsible as a member of MWD for a portion of the estimated \$333.5 to \$563.5 million cost over the 115 year term of the agreement. The present value of MWD's cost obligation is estimated to be about \$70 million.

### MEMBER AGENCIES

**CITIES**  
• Del Mar • Escondido • National City  
• Oceanside • Poway • San Diego

**COUNTY**  
• San Diego  
• Imperial

**IRRIGATION DISTRICTS**  
• Central • South Bay  
• Vista

**PUBLIC UTILITY DISTRICT**  
• Fairbrook

**WATER DISTRICTS**  
• Hemet • Oray  
• San Diego's  
• Waterfall

**FEDERAL AGENCY**  
• Penetation Military Reservation

**MUNICIPAL WATER DISTRICTS**  
• Carlsbad • Ramona  
• Chula Vista • Rincon del Diablo  
• Escondido • Valley Center  
• Imperial • Vista

## **STRATEGIC PLAN**

This recommendation is consistent with the Board's adopted action plan for Metropolitan Water District issues.

## **ENVIRONMENTAL COMPLIANCE**

The Board's action regarding this agreement is not subject to CEQA compliance, however the proposed agreement is subject to CEQA and NEPA requirements.

## **STAFF RECOMMENDATION**

Staff recommends that the Board withhold support for the agreement in its current form, request that MWD work through the Colorado River mediation process to resolve banking issues per a California position, and support a settlement as part of a California position in the tri-state process.

## **ALTERNATIVES**

The Board could take no position on the agreement, or could support all or a portion of the agreement.

## **DETAIL**

The Metropolitan Water District (MWD) and the parties to the San Luis Rey Indian Water litigation ("the parties") have submitted a revised settlement agreement (attached) to the Authority and other California Colorado River Contractors for review and endorsement. The parties are seeking to settle a long standing water rights dispute between five Bands of Mission Indians, the City of Escondido, and the Vista Irrigation District. The Metropolitan Water District (MWD) is attempting to use the agreement as a vehicle to obtain a right to bank unused Colorado River supplies in Lake Mead for use at a later time when unused apportionments from other states, or surplus supplies now available to MWD are reduced or no longer available. The parties desire to have the Colorado River Board of California support the agreement so that it may be forwarded with the Board's endorsement to the Secretary of Interior. The Settlement Parties wish the Secretary to begin an environmental review process immediately so that final approval of the agreement can occur before November.

The agreement would obligate MWD to deliver up to 16,000 acre feet of water per year in perpetuity to the Indian Bands regardless of whether or not MWD is able to bank water supplies in Lake Mead. The latest draft agreement is different from previous drafts in several areas, most notably lining of the All-American Canal by MWD is no longer a part of the agreement.

In summary the latest draft agreement provides for:

- Water sales by MWD of up to an average of 16,000 acre feet annually to the Indian Bands at MWD's non-interruptible rate plus other charges (Readiness-to Serve etc.) on a unit cost basis. The water must only be used on the Indian Reservations, either inside or outside of the MWD service area. The right of the Indian Bands to purchase supplies from MWD is in perpetuity, regardless of whether MWD is able to bank water as desired.
- Allowances for the Indian Bands to develop alternative water and power supplies in the future, with the terms to be determined by "mutual consent."
- Annual payments by MWD to the Indian Bands for 115 years, estimated to begin at about \$2.9 million and escalating to \$4.9 million or more. Payments are contingent on MWD securing permission to bank in Lake Mead specifically defined conserved and "salinity control" water. Should MWD be enjoined from banking such supplies, payments to the Indian Bands would be reduced by specifically defined percentages.

Significant differences between the latest draft and previous drafts exist. These include:

- Removal of MWD participation in lining of the All-American Canal (AAC). Now, rather than resulting in increased MWD "system" water supplies, supplies otherwise available to MWD agencies in shortage conditions are reduced.
- A reduced quantity of water proposed to be banked by MWD on an annual basis, because the agreement no longer includes MWD participation in the AAC lining.
- An extended time period (115 years) in which payments to the Indian Bands will be made. Previously payments were linked to the period of time that MWD received benefit from the AAC lining (55 years with a possible renewal period).

The Authority has previously raised a number of concerns with regard to prior drafts of the agreement. While some of its concerns have been addressed, many have not and the changes made in the latest draft raise additional concerns. These concerns are from the perspective of an agency potentially affected by the agreement, as a member agency of MWD, as a member of the Colorado River Board of California. These concerns are as follows:

### **Potential Authority Impacts**

- Possible adverse impact on an Authority member agency, from increased surface water sales or groundwater use by the Indian Bands outside the San Luis Rey River watershed or groundwater basin. Increased use of groundwater could occur without participation by the Indian Bands in an AB 3030 basin plan.
- Risk of demands by the parties for future deliveries through the Authority and member agencies' systems, should the agreement be modified by the parties and MWD.
- Risk of involvement in litigation from failure to hold the Authority harmless in the agreement.
- Without Pipeline 6, MWD's obligation to serve the parties could impact MWD's ability to deliver supplies to the Authority.

### **Concerns as a MWD Agency**

- The agreement provides for a 115 year payment schedule to the Indian Bands, however MWD is entitled to receive for only 29 more years the majority of the water it is likely to bank.
- Banking of supplies is likely to be a short term solution to increase Colorado River reliability, however payments for banking are long term.
- Cost/Benefit of the agreement. Previously the costs and benefits were evaluated based upon MWD receiving greater banking benefits with a shorter period of payments to the Indian Bands. The additional water supply of 67,000 acre feet per year from the All-American Canal project has also been eliminated.
- Implications of selling non-interruptible supplies to areas outside of the MWD service area while continuing to notice all agricultural customers of the interruptibility of their supplies.
- MWD's need to pay to receive banking rights which it maintains it already has, when others may achieve the same objective without such payments.
- MWD's obligation to serve the Indian Bands with the possibility of receiving no ability to bank supplies.

### **Concerns as a Colorado River Contractor**

- The proposed banking provisions are not consistent with the California position on banking.
- Potential for litigation by other states, thus jeopardizing MWD's desire to obtain re-operation of the River.
- Frustrating efforts to resolve issues in the current negotiation process, by seeking a unilateral solution to one party's issues.

### **Solutions**

The Authority and California's Colorado River contractors have expressed support for a solution to the San Luis Rey Indian issues, and staff feels there are solutions to many of the concerns raised. The Authority's concerns can be addressed by changes to the agreement so that member agency issues regarding the use of groundwater and surface supplies are dealt with in a manner which is beneficial to all interested parties. Participation by the Indian Bands in an AB 3030 groundwater management plan would be one way to address this concern. The issue of using the Authority's and other member agencies' distribution systems in the future could be addressed in the agreement, and thus alleviate some of staff's concerns and narrow the scope of any hold harmless provision for the Authority. Having the Authority as signatory to the agreement would further address concerns that the agreement could be modified in the future to impact the Authority without its consent. The agreement could also be modified to address reliability concerns.

Staff believes that in order to resolve issues affecting other Colorado River contractors such as banking, applicable provisions of the agreement should be resolved in the ongoing Colorado River mediation process. The process appears to offer the best opportunity to arrive at a lasting solution through consensus efforts to advance the California position in the tri-state mediation.

Some of the policy issues relating to concerns as a member agency of MWD can be addressed by changes in the structure of the agreement. However the key "deal points" are policy questions to be discussed and resolved by the MWD and Authority Boards. Alternative solutions have been offered by others to resolve the San Luis Rey issues without a linkage to banking. For example, the Imperial Irrigation District proposed a solution whereby water seepage from the All-American Canal could be recovered through pumping and made available to the Indian Bands. Solutions which follow the settlement legislation by meeting the Indian's water needs as a part of the

All-American Canal lining project need to be given careful consideration and may offer a greater chance of success than the solution currently proposed.

**DOCUMENTATION:**

Board Presentation Date

Board Memorandum Title

October 5, 1995

Status Report on the All American Canal Lining Project and the San Luis Rey Indian Water Rights Settlement

May 11, 1995

Status Report on the San Luis Rey Indian Water Settlement

December 8, 1994

San Luis Rey Indian Water Rights Settlement

September 1, 1994

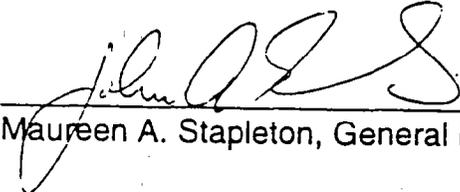
San Luis Rey Indian Water Rights Settlement

Prepared By:



Gordon A. Hess, Imported Water Manager

Concur:

*for* 

Maureen A. Stapleton, General Manager

GAH:AA

Attachment