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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

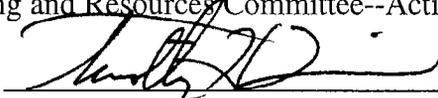
7-6

September 24, 1996

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

From: *for* General Manager

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



Debra C. Man

Subject: Approval to Sign a Memorandum of Understanding Between the East Bay Municipal Utility District and CUWA/Ag Exporters Regarding Bay-Delta Flow Obligations from the Mokelumne River

RECOMMENDATION

It is recommended that your Board authorize the General Manager to sign a Memorandum of Understanding between the East Bay Municipal Utility District and the California Urban Water Agencies/agricultural export water agencies regarding flow obligations from the Mokelumne River to meet Bay-Delta requirements contained in the 1995 State Water Resources Control Board Water Quality Control Plan.

EXECUTIVE SUMMARY

On May 22, 1995, the State Water Resources Control Board (SWRCB) adopted a new Bay-Delta Water Quality Control Plan (WQCP) that included increased water quality and flow requirements for the San Francisco Bay-Delta Estuary. The SWRCB has indicated that it will initiate water rights proceedings in 1997 to begin the process of allocating flow obligations to meet the Bay-Delta requirements. The proposed Memorandum of Understanding (MOU) between the East Bay Municipal Utility District (EBMUD) and the California Urban Water Agencies/agricultural export water agencies (CUWA/Ag) is intended to assist the SWRCB in its water rights process through the development of a settlement agreement specifying EBMUD's proportional share of responsibility toward meeting Bay-Delta requirements from the Mokelumne River. The parties are currently in the process of gathering broader support for the proposed MOU. The MOU will require the concurrence of the Department of Water Resources and U.S. Bureau of Reclamation, and the approval of the SWRCB to be binding.

DETAILED REPORT

Background

In December 1994, State and Federal agencies, and urban, agricultural, and environmental interests signed the December 15, 1994 Federal/State Bay-Delta Accord (Accord). Among other things, the Accord included water quality and flow objectives for the Bay-Delta that would be in effect for at least three years. On May 22, 1995, the SWRCB adopted a new Bay-Delta WQCP consistent with the Accord. The SWRCB also indicated that it would initiate water rights proceedings in 1997 to allocate responsibility toward meeting Bay-Delta water quality and flow requirements.

Since the Accord, the California Department of Water Resources and the U.S. Bureau of Reclamation have voluntarily agreed to operate the State Water Project (SWP) and the Central Valley Project (CVP) to meet the water quality standards until the SWRCB completes its water rights proceedings to allocate responsibility.

In order to assist the SWRCB in their water rights allocation proceedings, Sacramento and San Joaquin river interests, and EBMUD have entered into separate settlement negotiations with CUWA/Ag export interests to resolve flow obligations through settlement agreements. This process is supported by the SWRCB as a way of alleviating prolonged, contentious water right hearings that have taken place in the past that could potentially take place in the next proceeding.

Discussions in June 1996 between CUWA/Ag export interests and San Joaquin interests led to consensus and the signing of a letter of intent (see Board letter 8-9, dated March 26, 1996). The parties are now in the process of gathering further support. Discussions with Sacramento Valley interests are progressing at a slower pace due to the diversity of issues and parties involved.

Key Elements of the Proposed MOU With EBMUD

The proposed MOU between EBMUD and CUWA/Ag is intended to resolve the flow obligations required from the Mokelumne River for meeting Bay-Delta requirements. The specific provisions are consistent with policy principles adopted by your Board in November 1995 (see attached Board letter 8-4, dated October 1995). The key elements of this agreement include:

- Parties to the Settlement Negotiations: The parties to the MOU would include: Metropolitan Water District of Southern California, Kern County Water Agency, Tulare Lake Basin Water Storage District, State Water Contractors, Westlands Water District, San Luis/Delta-Mendota Water Authority, and Santa Clara Valley

Water District (collectively "CUWA/AG exporters"), and East Bay Municipal Utility District;

- Increased Flow Requirements: It is estimated that releases in the Mokelumne River will result in increased annual Delta inflow of up to 50,000 acre-feet, depending on the type of water year. These Mokelumne River flows are consistent with the requirements contained in the 1996 Principles of Agreement between EBMUD, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game;
- Water Rights Security: The parties would agree that fulfillment of the terms of this MOU will be sufficient to satisfy EBMUD's responsibility for meeting their share of the Bay-Delta standards;
- Term of the Agreement: The MOU shall be in effect through the year 2031;
- Reopener Clause: In the event of changes to the SWRCB's 1995 WQCP or other relevant changes in circumstances, the parties may renegotiate this MOU or confer to resolve issues.

Key Benefits of the Proposed MOU

The proposed settlement agreement would provide the following benefits to the Bay-Delta Estuary and the CUWA/Ag exporters, including Metropolitan. These benefits include:

- assisting in the protection of anadromous fisheries and public trust resources in the Mokelumne River;
- providing a significant increase in flows to the Delta during dry periods;
- committing non-SWP/CVP contractors to protecting the Bay-Delta through contributing a reasonable share of their tributary's responsibility to meeting the SWRCB's standards;
- sustaining each party's legal arguments regarding its water right priority, while providing a consensus solution; and
- continuing the consensus approach to resolving Bay-Delta water supply and environmental issues outside the courts in a period critical to the success of the CALFED process.

Implementation Issues

To implement this proposed MOU, the parties need to continue gathering further support from other urban, agricultural, environmental, and regulatory interests. Further technical discussions are also needed regarding coordination and scheduling of monthly releases from the Mokelumne River to meet both the instream flow requirements for EBMUD's flow agreement with U.S. Fish and Wildlife Service and the California Department of Fish and Game, and the SWRCB's Bay-Delta water quality and flow requirements. Lastly, the MOU will require SWRCB approval to be binding, as well as the concurrence of the DWR & USBR.

Environmental Considerations

The SWRCB acting as Lead Agency under the provisions of the California Environmental Quality Act (CEQA) has determined that the WQCP is a Certified Regulatory Program as provided for in Section 21080.5 of the California Environmental Quality Act (CEQA) statutes. No further environmental documentation is required for your Board to sign the proposed MOU.

GVT:cl

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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