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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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January 13, 1998

To: Board of Directors (Legal and Claims Committee--Information)
(Water Planning and Resources Committee--Information)

From: *for* General Manager *Charles L. Meacham III*
General Counsel *H. Gregory Taylor*

Subject: State Water Resources Control Board Water Rights Hearings to Implement Water Quality Control Plan (Conference with Legal Counsel--Existing Litigation; [one case pending] to be heard in closed session pursuant to Government Code Section 54956.9(a))

RECOMMENDATION(S)

For information only.

EXECUTIVE SUMMARY

The State Water Resources Control Board (State Board) has issued its draft environmental impact report and notified interested parties of a water rights proceeding to consider alternatives for implementing its water quality objectives for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta). State Board adopted flow, salinity and other requirements for the Bay/Delta in its 1995 Water Quality Control Plan. The upcoming hearings, held under the State Board's water rights administration authority, are for the purpose of allocating responsibility for meeting the flow and salinity requirements among the State Water Project (SWP), federal Central Valley Project (CVP) and other water users who impact flow and salinity in the Bay/Delta. The SWP and CVP currently are voluntarily meeting all of these requirements through the end of 1998, pursuant to the 1994 Bay/Delta Accord.

Depending on the alternative adopted by the State Board, water deliveries to Southern California through the SWP could be reduced compared to deliveries possible under D-1485, State Board's existing operating requirements for the SWP adopted in 1978. However, requirements in addition to D-1485 have since been imposed on the SWP and CVP under the federal Endangered Species Act which already have reduced D-1485 delivery capability. It is possible that SWP delivery capability will be increased compared to all existing regulatory requirements, since other water users may be required to contribute to the WQCP flow requirements.

Metropolitan has filed its notice of intent to appear in the hearings independently and as part of the State Water Contractors. State Board's initial notice scheduled hearings in March and April of 1998. Subsequently, however, Department of Water Resources (DWR), the United States Bureau of Reclamation (USBR) and several stakeholders urged that the hearings should be restructured to consider negotiated agreements first, and save more contentious issues for later

stages. Consequently, State Board has notified interested parties that a revised hearing notice will be issued shortly.

DETAILED REPORT

The State Water Resources Control Board (State Board) has issued a draft environmental impact report (EIR) and published a Notice of Public Hearing for a water rights hearing to consider alternatives to implement its water quality objectives for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay/Delta).

The State Board previously established flow, salinity and other environmental requirements in its May 1995 Water Quality Control Plan (WQCP) for the Bay/Delta. The WQCP flow and salinity requirements are not self-implementing and require further State Board action under its water rights administration authority. In a landmark case known as the "Racanelli decision" (United States v. State Water Resources Control Board (1986) 182 Cal.App.3d 82), the court held that the State Board must consider implementation actions against the range of water users in the Bay/Delta watershed, and not just against the State Water Project (SWP) and federal Central Valley Project (CVP). The water rights hearing just noticed by the State Board is intended to allocate responsibility for meeting Bay/Delta requirements among the SWP, CVP and other water users. In the meantime, as part of the 1994 Bay/Delta Accord, the SWP and CVP agreed to voluntarily meet the flow and salinity requirements, pending the outcome of the State Board's water rights hearings. That commitment runs through the end of 1998.

Implementation Alternatives

The State Board EIR identifies seven alternatives for implementing the flow-dependent objectives of the WQCP, including:

- A "no action" alternative requiring only the SWP and CVP to meet the requirements of D-1485, a 1978 State Board water rights decision imposing environmental requirements on the projects' water rights which are not as stringent as the 1995 WQCP;
- Two alternatives which would require only the SWP and CVP to meet the flow requirements of the 1995 WQCP (as the projects currently are doing voluntarily);
- Two alternatives which would require other water users in the Bay/Delta watershed to reduce their use of water on a water rights priority basis during those times of the year when the state and federal projects are releasing stored water for instream flow purposes. As junior priority water rights holders, the projects would still meet the bulk of requirements, but their responsibility would be reduced by the inclusion of other water users;
- An alternative which would allocate responsibility for each major tributary to the Delta based on the tributary's proportion of Delta inflow. Within each tributary, responsibility

would be based on each responsible water user's percentage of the total depletion from the tributary; and

- An alternative requiring the SWP and CVP to meet the 1995 WQCP requirements, but with a contribution by San Joaquin River users who agreed to supply flows in the "Letter of Intent among Export Interests and San Joaquin River Interests to Resolve San Joaquin River Issues Related to Protection of Bay/Delta Environmental Resources." This agreement is the basis for the "Vernalis Adaptive Management Plan" (VAMP), which is currently being negotiated by the state and federal projects, their contractors, regulatory agencies and environmental interest groups.

Potential Water Supply Reductions

According to the EIR, *average* water delivery reductions to Southern California State Water Contractors *compared to deliveries available under D-1485* would range from approximately 55,000 acre-feet per year (AFY) to 65,000 AFY depending on the alternative adopted; reductions in *dry periods* would range from 290,000 to 310,000 AFY. An exception to this range of impacts is the alternative which would allocate responsibility by tributary. Under this alternative, average delivery reductions in Southern California would virtually disappear and dry year impacts would be about 38,000 AFY. It should be noted that these numbers overstate the impacts *compared to deliveries under current regulatory requirements* because a number of regulatory requirements affecting state and federal project operations have been added since D-1485 (such as Endangered Species Act protections for the Delta smelt and winter run salmon). These additional requirements already have reduced D-1485 delivery capability. It is possible that SWP delivery capability will be increased compared to all existing regulatory requirements, since other water users may be required to contribute to WQCP flow requirements.

Settlement Agreements

Metropolitan, together with other state and federal water contractors, has been attempting to negotiate "settlement agreements" with upstream water users in which upstream users would voluntarily meet a portion of the flow requirements, some times in return for nominal compensation. Sources of funds for these agreements are the Central Valley Project Improvement Act, last year's Proposition 204 and the contractors themselves. Certain of the agreements also will provide export contractors with a first right of refusal for market based water transfers. Agreements have been reached or are near on the VAMP, fully resolving the San Joaquin River interests' obligation; with the East Bay Municipal Utility District; and with the Yuba County Water Agency. Promising discussions continue with other major Sacramento Valley water users. To the extent upstream responsibilities are resolved through these agreements, potentially prolonged and bitter State Board and judicial proceedings can be avoided allowing the stakeholders to channel more resources toward a successful CALFED solution.

Joint Point of Diversion

The State Board hearing also will consider a request by the SWP and CVP to allow them to use each other's diversion points. If project operators were able to use each other's diversion facilities, operational flexibility would be increased substantially; in some years as much as 250,000 acre-feet of additional export capability. The two projects would be able to shift pumping between their facilities to minimize the impact on aquatic resources and to recover water lost through actions taken to benefit fish and wildlife. This joint point of diversion is one of the "tools" which water users are urging the Department of Interior to adopt as part of its program to implement fish and wildlife actions required under the Central Valley Project Improvement Act (CVPIA) in a way that minimizes or avoids water supply impacts.

Hearing Preparation

State Board's initial Notice required submission of comments on the EIR by January 31 and testimony and exhibits by February 6, with hearing dates in March and April. However at the urging of DWR, USBR and many of the parties interested in the hearings, including Metropolitan, the State Board has notified the parties that it will issue a revised notice providing more structure to the hearing process. The new schedule will establish a series of workshops and hearings which will focus first on negotiated settlements -- such as the proposed "Vernalis Adaptive Management Plan" and negotiated agreements with Sacramento Valley water users. Subsequent proceedings will address project operational issues and, to the extent necessary, will consider allocating flow responsibility to non-settling Sacramento Valley parties. It is anticipated that a final State Board order can be issued by the beginning of 1999. The SWP and CVP have agreed to voluntarily continue to meet the flow requirements through the end of 1998.

Metropolitan filed its notice of intent to appear in the hearings on January 6. The State Water Contractors also filed its notice of intent to appear. Metropolitan's primary participation will be as part of the State Water Contractors overall presentation. However, we anticipate submitting evidence on issues of specific interest or application to our service area.

Staff will keep your Board informed of any developments in the State Board's process.

JFR:mg