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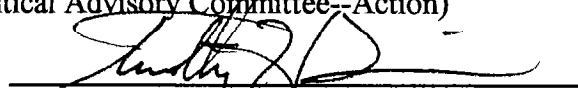
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

January 20, 1998

To: Board of Directors (Water Planning and Resources Committee--Action)
(Bay/Delta Political Advisory Committee--Action)

for **From:** General Manager

Submitted by: Debra Man, Chief
Planning and Resources



Debra Man

Subject: Bay/Delta Settlement Agreement with Yuba County Water Agency

RECOMMENDATION

It is recommended that your Board authorize the General Manager to:

1. Continue negotiation of a Settlement Agreement for resolution of Yuba County water users' responsibilities toward meeting the flow requirements of the 1995 State Water Resources Control Board Bay/Delta Water Quality Control Plan, consistent with the key elements described in this Board letter; and
2. Upon compliance with California Environmental Quality Act, if appropriate, take all necessary actions to enter into and implement the agreement.

EXECUTIVE SUMMARY

In May 1995, the State Water Resources Control Board (SWRCB) adopted a new Water Quality Control Plan (WQCP) that included increased water quality and flow requirements for the Bay/Delta. The SWRCB is currently in the process of scheduling a water rights proceeding during 1998 to determine the allocation of responsibility among water users for meeting the Bay/Delta requirements. The proposed Bay/Delta Settlement Agreement between Yuba County Water Agency (YCWA) and SWP and CVP export water interests is intended to assist the SWRCB in its water rights process by resolving, through mutual agreements between Yuba and SWP/CVP exporters Yuba's obligations toward meeting the Bay/Delta requirements. This and other settlement efforts, such as the Vernalis Adaptive Management Program, are aimed at resolving these highly contentious water rights allocation issues through negotiations rather than protracted litigation. The agreement will require the approval of the SWRCB, and the concurrence of the Department of Water Resources and U.S. Bureau of Reclamation prior to becoming effective.

DETAILED REPORT

Background

The 1994 Bay/Delta Accord established consensus water quality and flow objectives for Bay-Delta protection that were subsequently adopted by the State Water Resources Control Board (SWRCB) in its May, 1995 Water Quality Control Plan (WQCP). Following the Accord, United States Bureau of Reclamation (USBR) and Department of Water Resources (DWR) agreed to operate the Central Valley Project (CVP) and State Water Project (SWP) to meet the standards, on a voluntary basis, until the SWRCB completed its water rights proceedings. These proceedings concern the highly contentious issues surrounding allocation of responsibility among upstream, in-Delta, and export water users for meeting the standards. SWRCB is currently refining the hearing schedule and expects to start the first phase by April 1998 with a targeted completion by the end of 1998.

Determining how the obligation for meeting Bay/Delta standards will be allocated is a disputed matter, with the potential for divisive hearings followed by protracted litigation. Recognizing this risk, the SWRCB has encouraged water users to negotiate settlement agreements to assist the SWRCB in its decision-making process.

In response to the SWRCB process as well as direction from your Board (see attached Board letter 8-4, dated October 1995), Metropolitan staff along with other SWP and CVP interests have been actively pursuing settlement agreements with upstream San Joaquin and Sacramento Valley water users. To date, settlements have been reached with East Bay Municipal Utility District (Board letter 7-6, September 1996) and are nearly completed with San Joaquin interests through the Vernalis Adaptive Management Program (see Board letters 9-16, October 1997; and 8-9, March 1996).

This letter describes proposed principles of agreement for a Bay/Delta Settlement between SWP and CVP export interests and the Yuba County Water Agency (YCWA) (including other smaller water right holders along the Yuba River). YCWA holds water rights for operation of the Yuba River Development Project, which includes New Bullards Bar Reservoir on the North Yuba River.

Key Elements of the Proposed Yuba Settlement

The proposed Settlement Agreement between YCWA and the SWP/CVP export interests is intended to resolve YCWA's obligations to contribute to meeting Bay/Delta WQCP standards. The specific agreement points are consistent with policy principles adopted by your Board in November 1995. The key elements include:

- Parties to Agreement:** The parties would include YCWA, Metropolitan, Kern County Water Agency, Tulare Lake Basin Water Storage District, Santa Clara Valley Water District, State Water Contractors, Westlands Water District, and San Luis and Delta-Mendota Water Authority.

- Settlement Water:** YCWA to supply 19 TAF/year in Dry and Critical years to offset SWP and CVP obligations.
- Water Rights Security:** Fulfillment of the terms of this agreement satisfy YCWA's (and other small water right holders along the Yuba River) share of responsibility for meeting the WQCP standards.
- Price:** Below market cost of \$25 per acre-foot from SWP and CVP contractors.
- Proposition 204 Funds:** Parties support \$1.6 million in grants for YCWA from Proposition 204. (A total of \$25 million is reserved for water rights settlements pursuant to the Sacramento Valley Water Management and Habitat Protection Measures section).
- Term of Agreement:** Until 2035.
- Future In-Stream Flow Requirements:** In the event higher in-stream flow requirements are promulgated on the Yuba River, YCWA will receive credit for these flows toward their Bay/Delta obligations. No payments will be made for such water.
- Banking/Pre-delivery:** Subject to criteria, YCWA allowed to pre-deliver and store settlement water in SWP/CVP facilities until the water is either delivered to SWP/CVP contractors or lost due to spill. Such water may also be used for other settlements, subject to concurrence of the parties.
- Future Transfer Arrangements:** Export parties granted "first-right-of-refusal" for future out-of-county transfers.

Discussion of Benefits of Proposed Settlement

The proposed YCWA settlement is the first of possibly many Sacramento Valley settlements that when completed in aggregate could offset as much as 200-300 TAF of the current SWP and CVP obligations. Discussions with several such entities are underway in various stages of progress. When implemented, the proposed YCWA settlement would provide a number of benefits to the Bay/Delta, Metropolitan, and the other SWP/CVP export interests, including:

- Offsetting SWP and CVP obligations for the Bay/Delta, thereby increasing water supply reliability of the projects above the Bay/Delta Accord baseline.
- Committing another non-SWP/CVP entity to a reasonable share of responsibility for protecting the Bay/Delta environment.
- Sustaining each party's legal arguments regarding its water rights.
- Continuing the consensus approach to resolving Bay/Delta issues outside the courts and regulatory arena during a period critical to the success of CALFED.
- Paves the way for future water transfer opportunities with YCWA, and possibly future settlements in the Sacramento Valley.

Implementation Issues

In addition to SWRCB approval, the following agreements need to be executed before this agreement can become effective:

- An agreement between YCWA and DWR concerning the Proposition 204 grants;
- An agreement between YCWA, DWR and the Export Parties concerning water accounting, operations, and payments;
- An agreement between USBR and DWR covering operational and sharing issues;
- An agreement between USBR and the CVP Export Parties regarding disposition of the federal share of settlement water; and
- An agreement among the State Water Contractors regarding the disposition of the state share of settlement water.

Briefings and discussions have been initiated with SWRCB staff, DWR and USBR to further define issues and begin the process of resolving them. Briefings with urban, agricultural, and environmental interests are also planned to gather as much support as possible and to ensure that this agreement is beneficial to the CALFED process.

Environmental Considerations

YCWA is the lead agency under California Environmental Quality Act (CEQA), responsible for completing the required environmental documentation for this agreement and certifying that it has complied with CEQA. Metropolitan is a CEQA responsible agency. Metropolitan will review YCWA's compliance with CEQA and take appropriate action consistent with this letter at that time.

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Attachment

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Buren E. Duff
EXECUTIVE SECRETARY

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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