

January 5, 1999

To: Board of Directors (Legal & Claims Committee--Action)
(Water Planning & Resources Committee--Action)

From: General Manager _____
General Counsel _____

Subject: Transfer of Santa Ana River Basin Native Groundwater Into Metropolitan's Service Area

RECOMMENDATION(S)

1. Adopt Policy Principles Governing Proposed Transfers of Water from or through the Santa Ana River Basin Into the Metropolitan Water District of Southern California Service Area (Attachment A).
2. That Board finds that the proposed transfer transaction is consistent with the policy principles set forth in this letter and authorizes the General Manager, with the approval of the General Counsel, to execute appropriate documents providing Metropolitan's consent to the transfer of up to 10,000 acre-feet of excess native groundwater from the Bunker Hill Basin (a Santa Ana River Groundwater Basin) by San Bernardino Valley Municipal Water District (San Bernardino) for delivery to the Orange County Water District (OCWD).
3. That the Board review and consider the attached Negative Declaration (Attachment B) prepared by San Bernardino following an initial study analyzing an interim program for groundwater extraction from the Bunker Hill Basin.

DETAILED REPORT

San Bernardino is proposing to enter into an agreement with OCWD to transfer up to 10,000 acre-feet of water pumped from the San Bernardino Basin into the Santa Ana River. An equivalent amount of water would be made available to OCWD, within Metropolitan's service area, and OCWD would pay San Bernardino \$150 for such water. Before the agreement is implemented various approvals, including approval by the Riverside Superior Court under continuing jurisdiction maintained in a case relating to the Santa Ana River will be sought. Included in the package of documents relating to the proposed transaction is one indicating Metropolitan's consent to the transfer of water into Metropolitan's service area. Authorization for Metropolitan to indicate its approval is sought by this Board Letter.

Before turning to the specifics of the transaction, it is important to consider the policy issues raised by such a proposal. Adoption of policy principles will guide the staff in its review of such

matters and insure uniformity of approach. It should also expedite the work of the Board in not having to revisit the same issues in each case.

The headwaters of the Santa Ana River are located in San Bernardino and Riverside Counties outside the Metropolitan Service Area. The river runs into and through Metropolitan's service area to the Pacific Ocean.

Natural flows of the Santa Ana River replenish adjacent groundwater basins in San Bernardino and Riverside Counties. Entities both within and without Metropolitan have rights to extract groundwater from these basins pursuant to various superior court judgments. These judgments also impose obligations to maintain prescribed annual flows at downstream reaches for the benefit of groundwater users in Orange County. These flows are maintained by a mixture of native flow, irrigation returns and reclaimed water discharges. Also, pursuant to various stipulations and agreements, native groundwater may, from time to time, be pumped and released into the river for delivery to others.

San Bernardino, which is a State Water Contractor (as is Metropolitan), on occasion stores State Water Project water in groundwater basins underlying the Santa Ana River. San Bernardino has in the past indicated a desire to sell the stored State Water Project water by delivering such project water either directly to State Water Project facilities or into the river bed for delivery to other water agencies. San Bernardino is in a position to sell state project water more cheaply than Metropolitan because it purchases such water using property taxes while Metropolitan recovers significantly more of its costs through its water rate.

The Santa Ana River presents unique issues for Metropolitan justifying a set of policy principles because of the presence of both native and water imported through State Water Project facilities, the various rights of water users along the river and the fact that it provides a conduit for entities outside Metropolitan's service area to supply water to Metropolitan's customers at a reduced rate potentially threatening Metropolitan's and its customers' financial structures.

San Bernardino and Metropolitan have had ongoing disputes regarding the extent of San Bernardino's ability to sell water into Metropolitan's service area. Presently, Metropolitan is suing San Bernardino to prevent such a sale of State Water Project water to the Rancho Santa Marguerita Water District in Orange County.

The basis of Metropolitan's objections to San Bernardino's proposed transfer is the California Constitution and provisions in the State Water Project Contract.

Article XI, Section 9(a) of the Constitution provides that:

“A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.” (Emphasis added.)

Metropolitan, as a municipal corporation, must consent to other municipal corporations furnishing such services within Metropolitan's service area.

Additionally, in 1972, Metropolitan's State Water Contract was amended to forbid the Department of Water Resources from approving sales of state project water into Metropolitan's

service area without Metropolitan's permission. This provision is considered applicable to all water originally imported through State Water Project facilities.

San Bernardino filed a lawsuit challenging the legality of such prohibitions against Metropolitan, the Department of Water Resources and the Municipal Water District of Orange County (which intervened in the litigation). Metropolitan, the Department, and MWDOC were successful at the Superior Court in upholding the validity of Metropolitan's contract provision. During the appeal process, the parties agreed to have the judgment vacated while they made efforts to arrive at a resolution of the issues. Resolution was not arrived at. The terms of the agreement permitted San Bernardino to refile its lawsuit which it did in 1980. The parties subsequently agreed not to proceed with the refiled lawsuit until notice was given by a party to do so.

In 1997, Metropolitan filed a lawsuit against San Bernardino as a result of San Bernardino's efforts to serve water into Metropolitan's service area through Western Water Company which was proposing to provide such water to Santa Margarita Water District and in 1998 reactivated the refiled lawsuit. Both cases are now before the Sacramento Superior Court. No service of water related to these lawsuits has taken place.

Two proposed policies set forth in Attachment A are presented for Board approval and relate solely to usage of the Santa Ana River to deliver water into Metropolitan's service area.

The first policy requires Metropolitan's approval for all individual transfers of water originally imported through State Project facilities into Metropolitan's service area. This is based upon both the State Constitutional provision requiring such approval and the provisions of Metropolitan's State Water Contract.

The second policy would also require Metropolitan's consent but would permit transfers of native Santa Ana River water where it is shown that no State Water Project water is involved and no significant additional cost is imposed upon Metropolitan member agencies as described in the attached Policy Principles. Certain transfers are exempted. This is required both because of the Constitutional provision and the need to insure that State Water Project water stored in the ground is not by such a transaction funneled into Metropolitan service area.

Under both proposed policies, the General Manager, in concurrence with the General Counsel, would be authorized to give the specified staff approvals and, in appropriate cases, to initiate or participate in litigation in the eventuality approval is not given by Metropolitan.

The argument in support of the proposed policies is the protection of the financial integrity of Metropolitan. The provisions in the Constitution and the State Water Contract were intended to protect the financial integrity of such water districts from practices of neighboring water agencies which would undermine that security.

Contrary arguments have been presented by San Bernardino. It has unsuccessfully argued that the constitutional provisions apply only to retail service and that Metropolitan and San Bernardino are not municipal corporations. It has also unsuccessfully argued that Metropolitan's state water contract provisions dealing with such service violates a provision in its contract which it interprets as requiring San Bernardino's own consent for such an amendment to Metropolitan's contract.

During the past year and a half, the Santa Ana River Basin has experienced record amounts of rain fall. Ground water levels are approaching record highs and the safety of structures and to

human occupants on lands overlying the basin are threatened. Lowering of the ground water levels is a goal of the proposed transfer. Under the instant proposal San Bernardino is proposing to pump up to 10,000 acre feet of this excess groundwater into the Santa Ana River for purchase by Orange County Water District. It has been demonstrated to the satisfaction of Metropolitan's staff that due to the extraordinary amounts of rainfall and small amount of water involved that only native ground water is included in this transaction. Additional confirmation of this fact is the similar conclusion of the other agencies under the jurisdiction of the watermaster for this area who must approve this transaction. There does not appear to be a significant financial effect upon Metropolitan member agencies as a result of this transaction. Additionally, the proposal provides an opportunity for better future management of Santa Ana River Basin Resources. Consequently, the criteria under the proposed policy are met for Metropolitan's consent to the proposed transfer.

A copy of the Negative Declaration prepared by San Bernardino is attached as Attachment B. A copy of the Initial Study supporting the Negative Declaration, as well as comments and responses to comments on the Negative Declaration, is on file with the Executive Secretary.

JO:DM:gm

Attachment 8-15A

Attachment 8-15B

Attachment 8-15A

**POLICY PRINCIPLES REGARDING TRANSFERS OF WATER
FROM OR THROUGH THE SANTA ANA RIVER BASIN
INTO THE METROPOLITAN SERVICE AREA**

POLICY 1 -- Metropolitan's approval must be individually obtained for all transfers of water originally furnished to another state water contractor through state project facilities ("State Project Water"), when the Santa Ana River or its underlying groundwater basins are utilized. Such approval shall only be given in those instances where it is determined that revenues to Metropolitan will neither be significantly decreased nor water management programs adversely impacted.

POLICY 2 -- Metropolitan's approval must be individually obtained for transfers by entities outside of Metropolitan's service area of native Santa Ana River Basin water into Metropolitan's service area. Such approval shall only be given when it is determined that no State Project Water is involved; that such transfer will neither significantly increase the costs to other Metropolitan Member Agencies beyond what would have been the situation had the transfer not occurred nor adversely impact water management programs. This policy does not apply to normal Santa Ana River flows, rights presently perfected by agencies within Metropolitan's service area to receive such ground water and is applicable only to transfers subject to California Constitution Article XI, Section 9(a).

The General Manager, with the concurrence of the General Counsel, is authorized to give the approvals specified in the above policies. The General Counsel, with the concurrence of the General Manager, is authorized to initiate or participate in litigation in the eventuality approval required under either Policy is not given.

Attachment 8-15B

NEGATIVE DECLARATION for
San Bernardino Valley Municipal Water District
Pilot Dewatering Program

1. Brief description of project:

The proposed program would pump groundwater from eighteen existing and one new production well within the City of San Bernardino and discharge the groundwater into the Santa Ana River at one of two discharge points depending upon the quality of the groundwater. One point would be located approximately where Interstate 215 crosses the river. The second discharge point would be further downstream in the City of Riverside. Short segments of pipeline would be construction to connect the wells to the existing conveyance facilities. The proposed improvements are in furtherance of the cooperative, long-term goal of the District, and the San Bernardino Valley Water Conservation District to alleviate safety hazards and property damage related to the historical and ongoing condition of exceptionally high groundwater levels in the project area.

2. Location:

The proposed improvements are located nearly entirely within the City of San Bernardino, San Bernardino County, California. A limited portion of the improvement area is located within the City of Colton, San Bernardino County, California and the City of Riverside, Riverside County, California.

3. Entity or person undertaking project:

San Bernardino Valley Municipal Water District.

4. Declaration:

The Board of Directors, having reviewed the initial study of this proposed project, having considered the written comments received, and having considered the recommendation of the District's staff, does hereby find and declare that the proposed project will not have a significant effect on the environment. The reasons supporting the Board of Directors' findings are briefly summarized as follows:

The proposed project has been analyzed for possible impacts it may have on the environment. The proposed project involves limited potential for substantial environmental impacts. The initial study recognizes project features, standard construction practices, and established permitting procedures as contributing to avoidance or minimization of potential impacts related to land use, geologic problems, water resources, air quality, hazards, noise, and utilities. Mitigation measures are identified for potential impacts to water resources.

The Board of Directors hereby finds that the negative declaration reflects its independent judgment. The record of proceedings upon which the Board's decision is based is maintained at the District's office in custody of the District Engineer.

The location and custodian of the documents and any other material which constitute the record of proceedings upon which the District based its decision to adopt this negative declaration are as follows:

San Bernardino Valley Municipal Water District
1350 South "E" Street
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Phone: (909) 387-9200


G. Louis Fletcher, General Manager

12/1/98
Date adopted by the Board of Directors