

April 23, 1999

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

From: General Manager _____

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

Subject: Principles for Participation in the Development of a Procedure for Introduction of Non-Project Water into the California Aqueduct

RECOMMENDATION

It is recommended that the Board consider and adopt the following principles to guide staff’s participation in efforts to develop a procedure for introduction of non-project water into the California Aqueduct.

EXECUTIVE SUMMARY

In January 1999, Metropolitan entered into the Mendota Pool FEIR Agreement (Agreement) with Westlands Water District (Westlands) to protect Metropolitan’s interests related to Westlands’ Final Environmental Impact Report entitled “Conveyance of Nonproject Groundwater from the Mendota Pool Area Using the California Aqueduct.” One condition of the existing Agreement between Metropolitan and Westlands calls for a cooperative effort, with other interested entities, to develop a procedure for the protection of water quality in conjunction with any future introduction of non-project water into the California Aqueduct. The goal of this effort is to develop a procedure intended to guide the Department of Water Resources (Department) in evaluating future programs by January 1, 2000.

Currently the Department does not allow individual projects to introduce and convey non-project water if such an action would degrade water quality in the California Aqueduct. Westlands and Metropolitan staff believe developing a procedure which would encourage the development of a portfolio of projects could promote significant water quality improvements and enhance water supply reliability for both agencies.

Metropolitan staff have been working with the member agencies to develop principles that would guide the development of a procedure for introducing non-project water into the California Aqueduct. The Detailed Report contains the proposed principles that are the result of such efforts for the Board’s consideration and adoption.

DETAILED REPORT

BACKGROUND. Beginning in 1990, the Department of Water Resources (Department) allowed introduction and conveyance of non-project water into the California Aqueduct on an emergency drought management basis. Often water high in total dissolved solids was introduced, causing water quality impacts to downstream users including Metropolitan.

In an effort to address ongoing and past-drought water shortage conditions, Westlands Water District (Westlands) desires to use the California Aqueduct to convey groundwater in all but the wettest years. In response to Westlands' proposal for long-term pump-in programs, the Department required Westlands to comply with the California Environmental Quality Act through the preparation of environmental documentation. The Mendota Pool FEIR Agreement (Agreement), Attachment 1, outlines the chronology of the environmental review process Westlands pursued.

On January 12, 1999, Westlands and Metropolitan entered into the Agreement following Board authorization (Attachment 2). One condition of the Agreement calls for Westlands and Metropolitan to work cooperatively with other interested entities to develop a procedure for the protection of water quality in conjunction with any future introduction of non-project water into the California Aqueduct.

PRINCIPLES. Currently the Department does not allow individual projects to introduce and convey non-project water if such an action would degrade water quality in the California Aqueduct. Westlands and Metropolitan staff believe developing a program and procedure which would analyze water quality in the context of an entire portfolio of transfers and water quality exchange projects could promote significant water quality improvements and enhance water supply reliability. To achieve such benefits, Metropolitan, Westlands, and other entities need to work together to develop a recommended procedure for the Department to implement governing the introduction of non-project water. This ongoing process is consistent with implementation of the Salinity Management Action Plan adopted by the Board in April 1999. The following are principles to guide Metropolitan's staff in negotiating such a procedure.

1. Consistent with Continuous Water Quality Improvement Requirements: The portfolio of projects implemented under the proposed procedure shall enhance CALFED's efforts to achieve significant improvements in water quality. The portfolio of projects shall meet current and future public health requirements and be consistent with CALFED water quality milestones.
2. Enhance Water Supply Reliability: The portfolio of projects implemented under the proposed procedure shall provide opportunities for water transfers and exchanges to enhance the water quality and water supply reliability that Metropolitan would receive.
3. No Adverse Impacts to Downstream Users: Specifically, the portfolio of projects implemented under the proposed procedure shall not:

- Impact the ability to meet current and future drinking water standards or regulations.
 - Cause additional cost to Metropolitan’s service area without a commensurate benefit. For example, downstream State Water Project (SWP) contractors may choose to accept a minor water quality impact (increased concentration of one constituent) if it results in a greater overall water quality improvement (decreased concentration of another constituent);
 - Impact local water management activities. For example, actions under the projects shall not diminish the ability to maintain blending operations, water recycling, and groundwater production;
 - Impact the ability to meet federal and State wastewater discharge regulations; or
 - Cause additional reporting requirements. For instance, introduction of non-project water shall not increase constituent levels such that downstream agencies have to add constituents to their list required for notification in Consumer Confidence Reports.
4. No Damage to SWP Facilities or Liability to the Department and SWP Contractors: The procedure would preclude the introduction of non-project water into the California Aqueduct if groundwater pumping would cause subsidence that could impact the California Aqueduct or created an unacceptable liability for the Department and the SWP contractors.
 5. Must Have Broad Stakeholder Support: To successfully develop the proposed procedure, the following entities shall be consulted: SWP contractors, Central Valley Project contractors, the Department, the United States Bureau of Reclamation, and the Department of Health Services.
 6. Modify in Case of Future Regulatory and Resource Change: The proposed procedure shall be sufficiently flexible that a portfolio of projects implemented under the proposed procedure may be supplemented or modified to meet future water quality standards or regulatory requirements. For example, if primary drinking water standards or operating permit regulations become more strict, then the existing portfolio of projects would be reopened for negotiations.
 7. Reasonable to Implement, Administer, and Enforce: A portfolio of projects implemented under the proposed procedure shall incorporate sufficient means to ensure they are reasonable to implement, monitor, administer, and enforce. These attributes are critical to achieving water quality protection in connection with the introduction of non-project water into the California Aqueduct.

RLU:bvf

Attachment 11-3A

Attachment 11-3B

Attachment 11-3A



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Office of the General Manager

January 12, 1999

Mr. David L. Orth
General Manager
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, California 93703-6056

Dear David:

Mendota Pool FEIR Agreement

Metropolitan's Board of Directors has authorized the General Manager to execute the Agreement between Westlands Water District and The Metropolitan Water District of Southern California. We look forward to working with Westlands to accomplish our mutual objective of developing standards dealing with the introduction of non-project water into the California Aqueduct.

Enclosed for your files is a copy executed on behalf of both Westlands and Metropolitan.

Very truly yours,

Timothy. H. Quinn
Deputy General Manager

JO:gm
#12913

Enclosure

bcc: G. Taylor
D. Man
D. Marks
Mike Remy, Esq.

MENDOTA POOL FEIR AGREEMENT

THIS MENDOTA POOL FEIR AGREEMENT ("Mendota Agreement"), is made this 12th day of January, 1999, by and between WESTLANDS WATER DISTRICT ("Westlands") and METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("Metropolitan"), collectively referred to herein as the "Parties".

RECITALS

This Mendota Agreement is entered into with reference to the following facts:

A. In October of 1995, Westlands released a Draft Environmental Impact Report (DEIR) which analyzed the impacts resulting from the proposed "Conveyance of Nonproject Groundwater from the Mendota Pool Area Using the California Aqueduct"(hereinafter "Project") for comments and review.

B. On January 2, 1996, Metropolitan submitted more than 133 comments on the DEIR analysis of the project.

C. On October 7, 1998, Westlands issued a proposed Final Environmental Impact Report (FEIR) on the project which attempted to respond to the questions and issues raised by Metropolitan and other agencies and the public.

D. On November 2, 1998, Metropolitan submitted an 11 page letter detailing its concerns with the responses to comments, analysis and characterization of environmental impacts as set forth in the FEIR.

E. On December 2, 1998, Westlands released a revised FEIR which was prepared to analyze impacts resulting from the project. Westlands had received numerous comments on the previously released FEIR from Metropolitan and other agencies. After considering those comments, Westlands decided to withdraw the FEIR released on October 7, 1998.

F. Under the terms of the December 2, 1998, FEIR Westlands has indicated that the project proponents will not introduce nonproject groundwater into the California Aqueduct and

that this prohibition will eliminate any potential impact on water quality in the California Aqueduct.

G. On December 14, 1998, Westlands may certify the FEIR with the addition of three mitigation measures: 1) decrease annual Project pumpage to an average of 31,000 acre-feet per year, 2) maintain average annual water quality at the Exchange Contractors' intake at a level that is at least as good as it would be in the absence of the Project, and 3) eliminate the introduction of nonproject groundwater from the Project into the California Aqueduct; and approve the Project.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS MENDOTA AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. Metropolitan agrees not to file a court action under CEQA challenging the Project.
2. Westlands agrees not to introduce, or permit the introduction of nonproject groundwater into the California Aqueduct as a result of the approval of this Project.
3. Westlands agrees to make findings on the approval of the Project which set forth that the introduction of nonproject groundwater into the California Aqueduct has the potential for a significant impact upon the environment which potential impact shall be fully mitigated by the adoption of a mitigation measure that prohibits the introduction of nonproject groundwater into the California Aqueduct.
4. Westlands and Metropolitan will work cooperatively with other interested parties to develop proposed standards for the protection of water quality and other parameters in connection with the introduction of non-project water into the California Aqueduct. This cooperative effort shall strive to develop such standards for submission to the California Department of Water Resources by January 1, 2000. In the event such standards are not submitted to the California Department of Water Resources by January 1, 2000, either party may terminate such cooperative efforts by providing 30 day written notice to the other party.

5. Westlands agrees that it will not use the FEIR as the basis for environmental review of subsequent projects in order to comply with CEQA without recirculation of the document for public review and comment.

6. Nothing in this agreement shall impair or affect the parties' existing contract rights.

7. The parties agree that any breach of this Mendota Agreement cannot be translated into economic values or monetary damages. Therefore, as consideration for entering into this Mendota Agreement, the parties, hereby also agree that a court of competent jurisdiction shall grant specific performance as the remedy for enforcement of this Mendota Agreement. In any such judicial proceeding the prevailing party shall recover all costs and attorneys' fees.

8. Notices under this agreement shall be provided to the following representatives or their designees:

Timothy H. Quinn
Deputy General Manager
The Metropolitan Water District
of Southern California
700 North Alameda Street
Los Angeles, California 90012-2944
P.O. Box 54153
Los Angeles, CA 90054-0153

David L. Orth
General Manager
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, California 93703-6056

9. This Mendota Agreement may be executed and delivered in counterparts.

THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA

WESTLANDS WATER DISTRICT

By _____
Timothy H. Quinn
Deputy General Manager

By _____
David L. Orth
General Manager

Attachment 11-3B

8-11

December 15, 1998

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

From: General Manager _____
General Counsel _____

Subject: Westlands Water District Mendota Pool Environmental Impact Report
(Conference with Legal Counsel--Pending Litigation; may be heard in closed session pursuant to Government Code Section 54956.9(c))

RECOMMENDATION(S)

That the Board authorize the General Manager to execute the Agreement with Westlands Water District described in this letter.

DETAILED REPORT

In November, the Board authorized the General Manager and General Counsel to take all steps deemed necessary, including the filing of litigation, to protect Metropolitan’s interests related to Westlands Water District’s Conveyance of Nonproject Groundwater from the Mendota Pool Area Using the California Aqueduct. Subsequent to that action Westlands withdrew and then reissued the final environmental impact report for the project. Although the title of the environmental impact report for this groundwater pumping and conveyance project has not been changed, usage of the California Aqueduct to transport nonproject groundwater has been eliminated in conjunction with a downsizing of the project. These changes in of themselves do not prevent Westlands from potentially using the environmental impact report for future modification of the project entailing usage of the California Aqueduct. Deputy General Manager Quinn, the General Counsel and other staff members met with the Westlands interests to express these concerns. As a result of the meeting an agreement has been arrived at including the following elements: (1) Westlands agrees not to introduce nonproject groundwater into the California Aqueduct as a result of Project approval; (2) Westlands agrees to make findings that the introduction of nonproject water into the California Aqueduct has the potential for a significant environmental effect; (3) Westlands agrees not to use the environmental impact report in the future without recirculating for public review and comment; and (4) Metropolitan agrees not to challenge the Project under CEQA.

Additionally, at Westlands request, the agreement will provide for a cooperative effort between Westlands and Metropolitan in conjunction with other interested parties to develop proposed standards for the protection of water quality in conjunction with any future introduction of nonproject water in to the California Aqueduct. The goal of this effort would be to strive to develop standards for submission to the California Department of Water Resources by January 1, 2000. We anticipate coordinating these efforts with Metropolitan's member agencies. The Board will be advised of the progress of the cooperative effort.

The Westlands Board has authorized its General Manager to execute the proposed agreement. Authorization by the Board to execute the agreement on behalf of Metropolitan will eliminate any need to file litigation against Westlands and will establish a basis for productive discussions with the Westlands interests in regard to this issue.

JO:gm
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