

- **Water Planning and Resources**

June 25, 1999

9-3

Subject

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

Description

Introducing non-project water into the California Aqueduct can provide supply reliability benefits, but may cause water quality impacts. Water quality concerns result from the fact that water introduced in the past was sometimes high in total dissolved solids, thus causing water quality impacts downstream.

To bolster its supply reliability and to address drought-related water shortage conditions, the Westlands Water District (Westlands) wants to use the California Aqueduct to move groundwater and surface water from the Mendota Pool in all but the wettest years (Attachments 1 and 2).

In January 1999, to protect its interests, Metropolitan entered into an agreement with Westlands. Among other things, this agreement calls for a cooperative effort to develop a procedure for ensuring the quality of the water being introduced into the California Aqueduct. This procedure could help Metropolitan promote significant water quality improvement and enhance water supply reliability.

On May 10, 1999, Metropolitan's staff presented these principles, which are summarized below (Attachment 3).

1. The procedure shall not allow actions to hinder CALFED's efforts to improve water quality.
2. The procedure shall not allow actions that would cause adverse impacts to downstream users.
3. The procedure shall not allow actions that would cause damage to State Water Project (SWP) facilities or liability to the Department of Water Resources (Department) and SWP contractors.
4. The procedure must have broad stakeholder support.
5. The procedure shall be sufficiently flexible so it can be modified in case of future regulatory and resource changes.
6. The procedure shall be consistent with state law.
7. The procedure would apply equally to all water users, including SWP contractors, their member agencies or subagencies.
8. The procedure shall be reasonable to implement, administer, and enforce.

Policy

New

Board Options/Fiscal Impacts

Option #1

Adopt principles as written. **Fiscal Impact:** Might lower costs in dry years.

Option #2

Modify the principles before adoption. **Fiscal Impact:** Might lower costs in dry years.

Option #3

Reject the principles and rely instead on the Department to ensure the quality of non-project water introduced into the California Aqueduct. This action would require reopening the Mendota Pool FEIR Agreement. **Fiscal Impact:** No change from current conditions.

Staff Recommendation

Option 1

Stephen N. Arakawa, Acting Chief Planning and Resources Division	Date
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General Manager	Date
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[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

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.

Board of Directors

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December 15, 1998

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
#12796

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

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DISCUSSION AND DESCRIPTION OF PRINCIPLES

Clarifications. At the Water Planning and Resources Committee meeting held on May 10, 1999, staff gave a presentation on Principles for Participation in the Development of a Procedure for Introduction of Non-Project Water into the California Aqueduct (pending Board Letter 11-3). In response to the following questions and comments, the associated clarifications are made:

- Do these principles apply just to developing a procedure for introducing non-project water into the California Aqueduct? Yes. To meet the terms of the Mendota Pool FEIR Agreement, the intent is for these principles to apply to only a procedure for introducing non-project water into the California Aqueduct.
- Would a procedure require water actions to balance one another so there is a uniform application in Metropolitan's service area? Metropolitan staff have discussed this issue with the member agencies and there is general agreement that under such a procedure adverse impacts must be mitigated before reaching Metropolitan's service area. With regard to water quality improvements, it was recommended that the procedure not address issues of allocating benefits within Metropolitan's service area. This allocation issue needs to be addressed separately from the development of the procedure.
- Does the procedure apply only to Westlands? No. The procedure would apply to any entity proposing to introduce non-project water into the California Aqueduct.
- Would the procedure be more stringent than the State law regarding water wheeling? No. The principles are intended to guide the development of a procedure that would be consistent with State law.
- A comment was made that Principle 4 (must have broad stakeholder support) and Principle 8 (reasonable to implement, administer, and enforce) are overly broad and may not provide adequate direction for staff. Proposed Principle 4 is revised to clarify that stakeholder support is needed to develop the proposed procedure, but would not be needed for individual actions that introduce non-project water. Proposed Principle 8 is revised to clarify that the procedure needs to be reasonable to implement, administer, and enforce to provide consistent water quality protection.

Objectives. Currently, the Department of Water Resources (Department) does not allow individual projects to introduce and convey non-project water into the California Aqueduct if such an action would degrade the water quality. To provide greater flexibility during droughts, water users may choose not to oppose the introduction of lesser quality non-project water rather than experiencing shortfalls in supply. Developing a proposed procedure, which would analyze a portfolio of projects, could provide flexibility to achieve the following objectives:

- Promote significant water quality improvement, and
- Enhance water supply reliability by facilitating the ability to transfer and exchange water using the State Water Project (SWP) facilities without adversely impacting downstream users.

To achieve these objectives, Metropolitan and other entities need to work together to develop a recommended procedure governing the introduction of non-project water into the California Aqueduct. This ongoing process is consistent with implementation of the Salinity Management Action Plan adopted by the Board in April 1999.

Principles. The following are principles to guide Metropolitan's staff in negotiating such a procedure.

1. The procedure shall not allow actions to hinder CALFED's efforts to improve water quality: Metropolitan requires a safe drinking water supply from the Bay-Delta to meet current and future regulatory requirements and to protect public health. In addition, Metropolitan requires source water from the Bay-Delta that is consistently low in salinity to implement local water recycling and groundwater programs (for demand management) and to minimize economic impacts on residential and industrial users.
2. No adverse impacts to downstream users: Specifically, the procedure shall not allow actions to:
 - a. Adversely impact the ability to meet drinking water standards or regulations;
 - b. Cause additional cost (when considering water treatment, operations, and other costs) to Metropolitan's service area without a commensurate benefit. For example:
 - Potentially impacted downstream agencies may choose to accept a minor water quality impact, such as increased concentration of one constituent, if such an action results in a greater overall water quality improvement, such as decreased concentration of another constituent;
 - During times of drought, downstream agencies may prefer having water of relatively lesser quality to experiencing shortfalls in supply; or
 - Downstream agencies may choose to not oppose the introduction of lesser quality water, provided there are water reliability or other commensurate benefits as determined by downstream users;
 - c. Diminish downstream agencies' water management and operational activities such as, but not limited to, maintaining blending operations, water recycling, and groundwater production;
 - d. Impact the ability to meet federal, State, and local wastewater discharge regulations or receiving water quality objectives; or
 - e. 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.
3. No damage to SWP facilities or liability to the Department and SWP contractors: For example, the procedure should preclude the introduction of non-project water into the California Aqueduct if groundwater pumping would cause subsidence that could impact the California Aqueduct or create an unacceptable liability for the Department and the SWP contractors.

4. Must have broad stakeholder support: To successfully develop the proposed procedure (not individual actions), 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.
5. Modify in case of future regulatory and resource changes: The proposed procedure shall be sufficiently flexible so that it can be 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 procedure would be reopened for negotiations.
6. The procedure must be consistent with State law;
7. The procedure would apply equally to all water users, including SWP contractors, their member agencies or subagencies, and
8. Reasonable to implement, administer, and enforce: The goal of this effort is to develop a procedure that will be consistently used in evaluating introduction of non-project water into the California Aqueduct. To ensure that the appropriate entities provide consistent water quality protection in connection with the introduction of non-project water into the California Aqueduct, the procedure needs to be reasonable to implement, administer, and enforce. Potential enforcement mechanisms include agreements with Westlands and other entities, amendment of the SWP contract, legislation, or other stakeholder decision-making processes. Enforcement mechanisms will be selected as the procedure is developed.

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