

MINUTES
SPECIAL MEETING OF THE
BOARD OF DIRECTORS
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AUGUST 10, 1998

43081 The Board of Directors of The Metropolitan Water District of Southern California met in Special Meeting on the third floor of the building located at 350 South Grand Avenue in the City of Los Angeles, State of California, on Monday, August 10, 1998.

The Meeting was called to order by Chairman Foley at 10:35 a.m.

43082 Executive Secretary Chin called the roll. Those answering present were: Directors Abdo, Barbosa, Barker, Blake, Brick, Coughran, Dymally, Foley, Forbes, Frahm, Gilbert, Huntley, King, Krauel, Krieger, Kwan, Lewis, Luddy, Mayér, Miller, Moret, Mylne, O'Neil, Owen, Pace, Parker, Peterson, Rascon, Stanton, Tinker, Wein, Witt and Wright.

Those not answering were: Directors Bannister, Castro (entered 10:53 a.m.), Fellow, Freeman, Gastelum, Grandson, Hansen, Herman (entered 10:38 a.m.), Hill, Kosmont, Mason, McCauley, McMurray, Morris, Murph, Rez, Troxel, and Webster.

The Chair declared a quorum present.

43083 Chairman Foley invited members of the public to address the Board on matters within the Board's jurisdiction.

Dorothy Green, member of the board of Public Officials for Water & Environment Reform (POWER), requested that her comments be delivered after the presentation on the Memorandum of Understanding of Essential Terms of a Contract Between MWD and SDCWA regarding the SDCWA/IID transfer.

43084 Chairman Foley announced that this is a Special Meeting of the Board and discussion, comments, and actions are necessarily confined to the item listed on the Notice of Meeting; that is, the consideration of recommendations concerning a Memorandum of Understanding of Essential Terms of a Contract Between Metropolitan Water District and San Diego County Water Authority (MWD/SDCWA) Regarding the SDCWA and Imperial Irrigation District Transfer.

Chairman Foley stated that this Meeting was an important one and thanked the Directors for their attendance. He announced that Metropolitan is in the midst of rather intensive discussions regarding this proposed transfer and it was eminent that an agreement would be made. The Chair thanked specifically the members of the Negotiating Team--Directors Luddy, Owen, Peterson, and Pace; members of staff who participated in the negotiations; and Paul Cunningham, consultant. Chairman Foley stated the benefits of the agreement would be the transfer of water, bringing back the family together, and fostering a solution to other long-range issues such as the CALFED process and the relationship between Northern and Southern California. By also involving the State into this process helps to address the California 4.4 Plan.

Director Herman took her seat at 10:38 a.m.

43085 General Manager Wodraska gave an update of all the conferences and meetings held with all the parties involved to bring this matter to an agreement. He stated the 200,000 acre-feet of water is an exchange and not a wheeling transaction. One of the breakthroughs in resolving this was the State's willingness to make up the cost differences between what Metropolitan thought was a fair price and what San Diego deemed to be fair.

43086 Paul Cunningham, Metropolitan's lead negotiator, reported that it was in January that Metropolitan's Negotiating Committee was authorized to negotiate a proposed Memorandum of Understanding (MOU) with San Diego County Water Authority (San Diego), working within the framework proposed by Director of Water Resources David Kennedy for an agreement between Metropolitan and San Diego to accommodate the transfer of water between San Diego and Imperial Irrigation District (IID). Mr. Cunningham then briefly reviewed the document entitled "The Proposed MWD-SDCWA Transaction: Summary of Key Terms and Issues" (see attached copy).

Mr. Cunningham stated this MOU, leading up to a contract, would allow San Diego to acquire 200,000 acre-feet per year of water conserved from reasonable and beneficial uses from IID, which San Diego, in turn, would make available to Metropolitan. Then, Metropolitan, in turn, would provide a like amount and quality of water to San Diego from whatever sources through whatever pathway it decided was appropriate. Thus, this becomes an exchange subject to the Rules of the River with respect to the delivery of water and the delivery to Metropolitan.

The delivery of water to San Diego will be subject to an agreement that will provide San Diego with a regular supply of water from Metropolitan coextensive with the supply provided on the river from the IID conserved water. Neither party would be required to perform under the contract if there were an emergency such as a natural catastrophe, or something else beyond their control. San Diego is required to deliver the water to Metropolitan unless San Diego determines that it will transfer in whole or in part the water that it acquires from IID through some other conveyance facility. In so doing, this will not terminate the exchange agreement for purposes of storage or the like, but in the event San Diego finds a way to transfer the water directly to San Diego without utilizing Metropolitan's facilities, and it may do that in whole or in part, and it may do so permanently. Once San Diego has discontinued that portion of the transfer, the contract would be subject to further negotiation.

Mr. Cunningham emphasized that the MOU and the contract resulting from it is the first step in a long and difficult process to make this transfer work, and will take the cooperation of all parties involved in order to make it work. The first step is to overcome the contingencies to this transaction; the first contingency being the promulgation by the Secretary of the Interior--the surplus criteria including the river reoperations that would keep the Colorado River Aqueduct full at least through the year 2015. The second contingency is the establishment of a process to resolve and resolution of disputes relating to agricultural entitlement. The third contingency is the execution of a contract by November 1, 1998. The fourth contingency has two parts: (a) the authorization of the funding that is required to meet the difference between the amount that San Diego wants to pay and the amount that Metropolitan wants to receive as compensation for this transaction; and (b) the resolution of the allocation of the water that is to be produced by the Federal and State expenditures on the All American Canal and the Coachella Branch of the All American Canal. If those contingencies are met and the transaction goes forward, San Diego will compensate Metropolitan as provided in the agreement. That compensation,

together with the value that Metropolitan will receive from the State funding, investments and additional water supplies will be sufficient to leave Metropolitan within the constraints established in January when negotiations were authorized under the "Kennedy framework."

There was a question and answer session in which Directors needed clarification on certain points of the MOU.

Director Castro took his seat at 10:53 a.m.

43087 Director Luddy then offered a motion, seconded by Director Dymally, recommending that the Board approve the terms and conditions in the above-referenced document, "The Proposed MWD-SDCWA Transaction: Summary of Key Terms and Issues," authorizing the execution of a final MOU by the Chairman of the Board containing these terms and conditions with the further condition that any legislative authorizations required to provide the funding anticipated by this MOU to be consistent with the terms and conditions contained in the document.

43088 Following a further question and answer session, the Chair then called on members of the public for comments.

Dorothy Green from Public Officials for Water and Environmental Reform (POWER), found it unconscionable in that the taxpayers of the State are asked to contribute towards the resolution of this agreement when there are so many unresolved contingencies, and that the State Legislature is being asked to place a bond issue on the November ballot to cover the difference in costs required by the agreement. Mrs. Green expressed concern regarding the lining of the All American Canal and what the implications would be for Mexico's water supply. Mexico is dependent upon that water seepage for its water supply, and should that canal be lined, the international implications would be enormous. She again emphasized that before the agreement is consummated, the contingencies should be dealt with first, and that the user or those who benefit should pay instead of the taxpayers of the State of California.

General Manager Wodraska responded that the lining of the All American Canal has gone through the U.S. State Department and the International Boundary Water Commission, and that the design of the All American Canal had to be changed in order to make water available to Mexicali. The State Department who is responsible for maintaining relationships with Mexico has

approved this project and all parties have signed off on the operation.

David Czamanske, member of the Sierra Club, echoed some of the concerns expressed by Mrs. Green. He asked where the moneys would be coming from and who would be the beneficiaries of it. He stated that the other 26 member agencies have strongly argued that there should be no cost shifting to the other agencies as a result of the transaction to move water from IID to San Diego. To him, it appeared that the agreement calls for cost shifting to the general public via either a bond issue or by funds appropriated by the Legislature. Mr. Czamanske also inquired of the ownership of the All American Canal, which was built by the Bureau of Reclamation and paid for by IID, and if IID is one of the main beneficiaries, why should the taxpayers fund a facility to benefit IID who already has subsidies to get its water. He also commented on the environmental planning for this project and the recharge extraction of distribution facilities for groundwater conjunctive use programs necessary to implement the California 4.4 Plan.

Replying to comments by Mrs. Green and Mr. Czamanske, General Manager Wodraska stated that the State of California is being asked to make an investment which would resolve long-standing issues that have divided the Colorado River interests for decades. With this investment, the price for Metropolitan is a full Colorado River Aqueduct through the year 2015 which means less reliance on Northern California for water supplies and would resolve the issues with the San Luis Rey Indians and other California water users.

Both Directors Luddy and Pace clarified that the bond issue was not solely for this arrangement but one which encompasses a multitude of other programs. The State leadership volunteered to try and resolve the issue in order to implement the California 4.4 Plan which provides benefits to the region of Southern California and Northern California through its implementation. Metropolitan did not approach the State with the request for the funds; instead representatives from the Governor's office and the State leadership brought this up because of the regional benefits in the long-standing issues of water and that it was important for the entire State of California to make this commitment.

Marilyn Stout representing Northridge Civic Association, expressed opposition to spending money to sell taxpayers on a general obligation bond measure and agreed with the first two speakers.

Clyde Romney, congressional facilitator for the San Luis Rey Indian Water Rights Settlement, expressed support for the MOU and appreciation on behalf of the San Luis settlement parties for the inclusion of their interests in this agreement.

43089 The Chair then called for a vote on the motion, which carried.

Director Herman requested to be recorded as voting no.

Directors Frahm, Krauel, Lewis, Parker, and Turner requested to be recorded as abstaining.

43090 There being no objection, Chairman Foley adjourned the Meeting at 11:43 a.m.



EXECUTIVE SECRETARY



CHAIRMAN

August 5, 1998 #5

THE PROPOSED MWD-SDCWA TRANSACTION: SUMMARY OF KEY TERMS AND ISSUES

SDCWA has agreed with IID to acquire, in each year for 45 years, up to 200,000 acre feet of water conserved by IID from reasonable and beneficial uses. SDCWA and MWD are negotiating a contract whereby SDCWA would transfer the IID-conserved water to MWD and MWD would deliver, from whatever source as it determines, water to SDCWA of like amount and quality to the water MWD receives from SDCWA. The following summarizes the key terms of the contract that are being contemplated by MWD and SDCWA:

MEMORANDUM OF UNDERSTANDING OF ESSENTIAL TERMS OF A CONTRACT BETWEEN MWD AND SDCWA

As a final and complete settlement and compromise of their respective claims regarding the transportation of up to 200,000 acre feet of conserved water purchased by the San Diego County Water Authority ("SDCWA") from the Imperial Irrigation District ("IID") to San Diego County, SDCWA and the Metropolitan Water District ("MWD") (together "the Parties") agree to execute a contract ("the Contract") for the delivery of up to 200,000 acre feet of water per year by MWD to SDCWA with the following essential terms:

- I. The basic transaction:
 - A. SDCWA has entered into an agreement with IID (the "IID/SDCWA Agreement") to acquire water that will be conserved by IID from reasonable and beneficial uses (the "Conserved Water").
 - B. For each year of the term of the Contract, SDCWA will transfer all of the Conserved Water, up to 200,000 acre feet per year, to MWD and MWD will take the Conserved Water that is made available by SDCWA in a manner consistent with the Department of Interior's operations schedule. SDCWA will report to MWD, prior to March 31 of each year of the Contract, the method by which any Conserved Water that was transferred to MWD in the prior year was conserved.

August 5, 1998 #5

- C. MWD will deliver to SDCWA, from whatever sources and using such facilities as MWD determines, water of like amount and quality to the Conserved Water MWD receives from SDCWA. Those deliveries will be made on a schedule to be agreed upon by the Parties that provides for the regular, proportionate and routine delivery of water as a core SDCWA supply.
 - D. The Parties' duties under the Contract will be subject to force majeure.
 - E. SDCWA shall not terminate the transfer to MWD of any Conserved Water it receives from IID unless SDCWA elects permanently to transport any portion of that water to San Diego County through facilities other than the Colorado River Aqueduct. SDCWA may, in its sole discretion, permanently discontinue any portion of the transfer of Conserved Water to MWD that it continually and regularly transports to San Diego County through facilities other than the Colorado River Aqueduct. The Parties will agree to reasonable procedures whereby SDCWA will notify MWD of its intent permanently and regularly to transport any Conserved Water through such other facilities.
- II. The Contract shall become effective on the fulfillment of the contingencies outlined in section IV or at the beginning of the Initial Term of the IID/SDCWA Agreement (the "Initial Term"), whichever is later (the "Contract Effective Date"), and shall terminate 30 years after the beginning of the Initial Term.
- III. The water to be delivered to SDCWA under the Contract shall be treated for the purposes of all of MWD's ordinances, plan, programs, rules and regulations, including the then-effective MWD Water Surplus and Drought Management Plan (the "Plan") but excluding MWD's Interim Agricultural Water Program, as independently owned local water in the same manner as the independently owned local water supplies of other MWD member agencies. In times of water shortages, subject to the reasonable limitations imposed by the Plan to maintain continued reliability over an extended drought period, MWD shall use storage

August 5, 1998 #5

and any other available MWD water supplies before interrupting firm deliveries to its member agencies.

- IV. The Contract shall not become effective before the following conditions are met:
- A. The promulgation and application by the Secretary of the Interior (the "Secretary") of surplus criteria, including river re-operations, that are sufficient, together with those other water supplies that are under the control of MWD, to assure that the Colorado River Aqueduct ("CRA") is full at least through 2015; and
 - B. The establishment and completion of a process, acceptable to the Secretary and the State of California, in which the Colorado River Board and the California public agencies that hold contracts with the Secretary for delivery of Colorado River water would participate, which quantifies or otherwise resolves Colorado River agricultural water entitlements in a manner that will assure that water conserved from reasonable and beneficial uses can be transferred from an agricultural to an urban agency.
 - C. The execution of the Contract in final written form by November 1, 1998.
 - D. Both of the following:
 - 1. The legal authorization, appropriation and binding commitment of the State funding specified in Paragraphs V.C.3.a. and b.; and
 - 2. The resolution, through one or more written agreements among MWD and the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District and the San Luis Rey settlement parties, reached after consultation with the Director of the California Department of Water Resources (the "Director") and the Secretary, of the allocation of the water to be made available to MWD through the lining of the All American Canal and the

August 5, 1998 #5

Coachella Branch of that canal pursuant to Paragraph V.C.3.a.

V. Contract Payments

- A. The Parties will agree to the following payment terms if and only if the funding specified in Paragraphs V.C.3. a. and b. is authorized and made available.**

- B. The Contract Price .**
 - 1. For the first 20 years of the Contract, the price per acre foot of water delivered to SDCWA shall be \$90 increased by 1.55% for every year after 1998.**

 - 2. For years 21 through 30, the price per acre foot of water delivered to SDCWA shall be equal to \$80 per acre foot increased by 1.44% for every year after 1998.**

- C. Changes to reflect the price of water.**
 - 1. In any year after the 10th year of the Contract, either party can require a change in the Contract Price, to be effective in that year and the nine years thereafter, that is equal to the change in the price of Conserved Water that IID or SDCWA secured or would have been permitted to secure at the most recent prior opportunity to adjust the price of Conserved Water under the IID/SDCWA Agreement. In determining the change in the price of Conserved Water, the average per acre foot value of payments over the previous ten year period (the prior Average Annual Price of Conserved Water), shall be compared to the Average Price of Conserved Water as projected over the next ten years. The difference between the previous Average Annual Price and the projected Average Annual Price shall cause either of the following**

August 5, 1998 #5

changes:

- a. If the permitted change in the price of Conserved Water under the IID/SDCWA Agreement was or could have been positive, the Contract Price shall be reduced by a like amount.
 - b. If the permitted change in the price of Conserved Water under the IID/SDCWA Agreement was or could have been negative, the Contract Price shall be increased by a like amount.
2. After the 20th year of the Contract, the Contract Price shall be adjusted as necessary to reflect reasonable changes in MWD's net costs (excluding any costs of the State Water Project system) due to catastrophes or material changes in relevant governmental regulatory requirements applicable to the conveyance of water to San Diego County at a point near the San Luis Rey River, on a proportionate basis as the water conveyed to San Diego by MWD under the Contract bears to all water delivered by MWD. Any disputes over such adjustments shall be submitted to binding arbitration by the Director.
 3. State funding.

The proposed transaction is a necessary condition of the California 4.4 Plan. The benefits of that plan can only be realized if the State of California recognizes its interest in the transaction as a critical part of the State's water resources and environmental protection efforts. The Contract will not become effective before the State is legally committed to provide the following funding required to support the State's interest in the transaction:

- a. The Director will provide \$200 million of financing for, and

August 5, 1998 #5

arrange for the completion of, by not later than 2006 or such later date as may be required by extraordinary circumstances which could not have been reasonably anticipated, the lining of the All American Canal, and the Coachella Branch of that canal. The allocation of the water conserved from those linings shall be determined by the agreement or agreements required by Paragraph IV.D.2.

- b. The Director will provide \$35 million of financing for, and arrange for the completion of, by not later than 2006 or such later date as may be required by extraordinary circumstances which could not have been reasonably anticipated, the installation of re-charge, extraction and distribution facilities for groundwater conjunctive use programs necessary to implement the California 4.4 Plan and arrange for the transfer of all of the water stored through those projects to MWD for the benefit of its member agencies.
- c. In the event the contingencies for a transfer of Conserved Water to SDCWA under the IID/SDCWA Agreement have not been satisfied in full prior to December 31, 2006, MWD and any other recipient under the agreement or agreements reached pursuant to Paragraph IV. D.2 (other than the San Luis Rey settlement parties) of the water made available through the State funding pursuant to Paragraphs V.C.3. a. and b. will pay to the State of California, at the direction of the Legislature of the State of California, a portion of that State funding to be determined by the Legislature of the State of California.
- d. In the event the contingencies for a transfer of Conserved Water to SDCWA under the IID/SDCWA Agreement have not been satisfied in full prior to December 31, 2006, nothing in this Memorandum will limit the authority of the

August 5, 1998 #5

Legislature of the State of California to allocate or re-allocate water.

- VI. Nothing in the Contract shall be construed to amend the IID/SDCWA Agreement. MWD will not object to SDCWA's assertion that the Contract will facilitate the satisfaction of the transportation contingency in the IID/SDCWA Agreement and MWD agrees that the Contract may be relied upon by SDCWA to support that assertion before the "Effective Date" of the IID/SDCWA Agreement as "Effective Date" is defined in that Agreement. Insofar as the IID/SDCWA Agreement is consistent with and implemented in accordance with state and federal law and the California 4.4 Plan, MWD shall not oppose approval or implementation of that Agreement before the State Water Resources Control Board, the Bureau of Reclamation, the Department of Interior or in any other judicial or administrative proceedings.**
- VII. SDCWA will use reasonable best efforts to support all reasonable efforts by MWD to promote and secure surplus conditions on the Colorado River with the objective of maintaining a full Colorado River Aqueduct.**
- VIII. The Parties shall exercise reasonable best efforts to resolve all disputes arising under this Contract through mediation by the Director. In the event mediation is unsuccessful, then they reserve their respective rights to all legal and equitable remedies except as expressly provided herein.**
- IX. The transaction contemplated by the Contract will be subject to the California Environmental Quality Act and all other applicable law.**
- X. Commencing in 1999, the Parties shall report as requested to the Legislature of the State of California on the implementation of the Contract.**