

August 20, 1999

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

**From:** General Manager \_\_\_\_\_

**Submitted by:** Stephen N. Arakawa, \_\_\_\_\_  
Acting Manager for the Water  
Resource Management Group

**Subject:** Authorization to enter into tolling agreement and update on negotiations  
regarding Santa Ana Watershed Project Authority's Arlington Desalter Project

### RECOMMENDATION

Authorize General Manager to execute memorandum of understanding with Santa Ana Watershed Project Authority and Western Municipal Water District of Riverside County to negotiate modifications to financial incentives for Arlington Desalter Project and to toll applicable limitation periods.

### EXECUTIVE SUMMARY

Staff seeks the Board's authorization to enter into a memorandum of understanding with Santa Ana Watershed Project Authority and Western Municipal Water District of Riverside County to re-negotiate the terms of Metropolitan's participation in the Arlington Desalter Project and to toll applicable limitation periods in order to resolve a potential dispute over repayment obligations associated with the Arlington Desalter Project.

### DETAILED REPORT

In 1988 Metropolitan entered into an agreement with Western Municipal Water District of Riverside County (Western) and the Santa Ana Watershed Project Authority (SAWPA) to provide financial incentives for the Arlington Desalter Project (Project) in Riverside County.

Since its inception, the parties have identified areas for improving operation of the Project. Potential areas of improvement include shifting use of desalted water from groundwater recharge to potable use, improving integrated water resource management within the Santa Ana Watershed, clarifying the applicability of financial "carry-over" provisions, and increasing the effectiveness of financial incentives.

In June 1998 the Auditor reported to Metropolitan's Special Audit Committee that Metropolitan's actual payments to the Project for fiscal year 1996-97 exceeded its required financial contribution for that year by \$631,411.00, thus creating a repayment obligation by

Western to Metropolitan in that amount. This finding was based on a single-year cost accounting method. SAWPA and Western have disputed this finding, contending that the agreement provided for cost accounting with a 5-year carry-over of excess costs to later years.

The Special Audit Committee directed staff to attempt to resolve this matter through discussions with the affected parties and suggested referral of the matter to the jurisdiction of the Water Planning and Resources Committee.

For these reasons, the parties have proposed entry into a memorandum of understanding which (1) tolls applicable limitations periods in order to resolve the repayment dispute without the threat of immediate litigation; and (2) begins a process for re-negotiating the terms of the original agreement to improve overall operation of the project.

If the negotiating parties reach consensus on modifications to the program, staff will bring the re-negotiated program to the Board for its consideration under the criteria of the Local Resources Program.

PVH:pms