

- **Board of Directors**  
**Water Planning and Resources Committee**  
**Legal and Claims Committee**

September 12, 2000 Board Meeting

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**9-10**

## **Subject**

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Staff Analysis of the CALFED Final Programmatic Environmental Impact Statement/Environmental Impact Report and Authorize the General Counsel to File Litigation Regarding Compliance with Environmental Laws, if Appropriate [**Conference with Legal Counsel – Anticipated Litigation**. Any discussion regarding initiation of litigation will be heard in closed session pursuant to Government Code § 54956.9(c).]

## **Description**

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Last month staff reported on the June 9, 2000 release of the Framework for Action (Framework) plan for the Bay-Delta Program and the July 21, 2000 release of the Final Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR). Since this last report, the state and federal CALFED agencies signed the Record of Decision and Certification (ROD) for the Final PEIS/EIR on August 28, 2000, concluding the environmental review and approval process for the Bay-Delta Program.

As reported last month, the Framework provides a workable solution to long-standing Bay-Delta issues that is consistent with most of the Board's Bay-Delta policy principles. Based on staff's analysis to date, it appears that much of the Framework has been incorporated into the final approved plan. However, certain actions of the Framework, such as water quality exchanges for improving water quality, have been separated from the Program. Further, inconsistencies in the various documents that comprise the final approved plan present risks that some elements of the Program may be subject to re-interpretation at the time of implementation.

Staff is reviewing the Final PEIS/EIR and ROD and will present its analysis at the September Board meeting. Staff is also identifying strategies to ensure that the state and federal governments are committed to a plan that equally benefits water users and the environment, consistent with the Framework and the Board's adopted policy position regarding the CALFED program.

Depending on the outcome of review of the Final PEIS/EIR and ROD, one potential course of action is litigation challenging those documents. Pending additional review of the documents, staff is not at this time recommending such action. However, if it is ultimately determined that litigation is appropriate, the statute of limitations for filing an action under the California Environmental Quality Act (CEQA) is 30 days; or in this instance as early as September 27, 2000. In order to protect Metropolitan's litigation options, and because of the short statute of limitations, it is recommended that the Board authorize the General Counsel to file litigation, if appropriate, at its September, 2000 meeting.

The potential action of filing litigation is exempt from CEQA because such action is not a project [State CEQA Guidelines §15378(b)(5)].

## **Policy**

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The Board adopted a Statement of Needs for the CALFED Bay-Delta Program which provided direction to staff on the main items needed from the CALFED Bay-Delta Program, and identified critical components of a successful CALFED solution (Board Letter 9-3, July 23, 1999).

**Board Options/Fiscal Impacts**

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**Option #1**

Authorize the General Counsel to take all actions necessary to protect Metropolitan's interests with respect to the Final PEIS/EIR and ROD, including filing litigation if appropriate.

**Fiscal Impact:** If litigation is filed it will be necessary to dedicate staff resources, and potential additional costs may be incurred if it is deemed appropriate to retain technical consultants and outside counsel to assist in the litigation.

**Option #2**

Do not authorize the General Counsel to file litigation regarding the Final PEIS/EIR and ROD

**Fiscal Impact:** No direct fiscal impact. Potential indeterminate fiscal impact due to water supply and quality costs if inadequate Final PEIS/EIR and ROD are allowed to remain in effect.

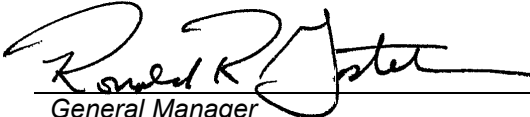
**Staff Recommendation**

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Option #1.

  
\_\_\_\_\_  
Stephen N. Arakawa  
Manager, Water Resource Management

9/5/2000  
Date

  
\_\_\_\_\_  
Ronald R. Jester  
General Manager

9/6/2000  
Date

  
\_\_\_\_\_  
Kathleen S. Halston  
General Counsel

9/5/2000  
Date

## BOARD LETTER ROUTING SLIP

Board Meeting Date SEPTEMBER 12, 2000

Board Letter Subject **WRM: Staff Analysis of the CALFED Final Programmatic Environmental Impact Statement/Environmental Impact Report and Authorize the General Counsel to File Litigation Regarding Compliance with Environmental Laws, if Appropriate**

### *Required Approvals*

<b>Author</b>	<u>Adam Kear</u>	
	Name	Signature
	<u>Water Resource Management</u>	<u>4-250-6057</u>
	Group Name	MetNet Number
<b>FOR CONTENT REVIEW:</b>		
<b>ROUTE TO</b>	<b>DATE SIGNED</b>	<b>COMMENTS</b>
1. <u>G. L. Chan</u>	_____	_____
2. <u>J. Roberts</u>	_____	_____
3. <u>S. N. Arakawa</u>	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
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<b>SUBMIT BOARD LETTERS FOR REVIEW TO THE OUTLOOK FOLDER IN THE FOLLOWING ORDER:</b>	
<b>Outreach (Editorial)</b>	<b>Carla Cross</b>
<b>Legal (Legal)</b>	<b>J. Roberts</b>
<b>Publishing Services (Formatting)</b>	<b>Arlene Wong</b>

<b>Group Manager</b>	<u>Stephen N. Arakawa</u>	
	Name	Signature
<input type="checkbox"/> Audit Review		



<b>Audit</b>		
	Name	Signature

<b>Board Letter Coordinator</b>	<u>Carmen Yañez/Gail Naylor</u>	<u>4-250-6670 / 4-250-6095</u>
	Name	MetNet Number