

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

December 12, 2000 Board Meeting

9-3

Subject

Authorize execution of Memorandum of Understanding with the Friant Water Users Authority

Description

Metropolitan and the Friant Water Users Authority (Authority) are ready to take the next step to develop an historic program which could, for the first time, provide higher-quality Sierra water to Metropolitan's water treatment plants. This program contemplates water management projects, including exchanging State Water Project water for Sierra sources available to Authority members, that will result in potentially significant water quality benefits in Metropolitan's service area. The program could also result in the development of infrastructure improvements in the Authority's service area which would improve surface water and groundwater supply reliability and affordability for its members.

Consistent with policy principles adopted by Metropolitan's Board in July 2000, Metropolitan staff, the Authority, and its members have developed a Memorandum of Understanding (MOU) to commence Phase 1 of a work plan for development of the program. The MOU ([Attachment 1](#)) covers the development of a feasibility study that will identify potential projects. Subsequent agreements will be developed for actual implementation of pilot and full-scale projects. The MOU provides for joint Metropolitan-Authority management of the work plan, and specifies that Proposition 13 funds made available to Metropolitan for these purposes will be used to fund Phase 1 work. The MOU authorizes the expenditure of a maximum amount of up to \$1 million for Phase 1 purposes. The Authority plans to consider approval of the MOU at the December 8, 2000 meeting of its Board of Directors.

The MOU provides for development of a feasibility or planning study that will not bind Metropolitan or the Authority to undertake any of the potential programs identified. Consequently, execution of the MOU is exempt from California Environmental Quality Act (CEQA) requirements to prepare a negative declaration or environmental impact report pursuant to 14 Cal Code Regs §15262.

Policy

In July 2000, the Board authorized the General Manager to pursue a partnership with the Authority based on the principles in [Attachment 2](#).

Board Options/Fiscal Impacts

Option #1

Determine that execution of the MOU is exempt under CEQA pursuant to 14 Cal Code Regs §15262 and authorize the General Manager to execute a MOU with the Authority in form approved by the General Counsel based on the principles in [Attachment 2](#).

Fiscal Impact: Authorizing the General Manager to execute a MOU with the Authority will not result in direct fiscal impacts, since Proposition 13 monies will be used to fund MOU activities. However, implementing specific actions to improve Metropolitan's water quality will result in fiscal impacts that will be evaluated on a case-by-case basis. The precise value of these fiscal impacts cannot be quantified at this time, but will be provided to the Board as specific actions are recommended for approval.

Option #2

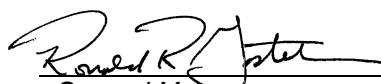
No Action

Fiscal Impact: The precise fiscal impacts of alternative approaches cannot be quantified at this time.

Staff Recommendation

Option #1.

 Stephen N. Arakawa Manager, Water Resource Management	11/28/2000 <i>Date</i>
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 General Manager	11/29/2000 <i>Date</i>
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Attachment 1

Attachment 2

BLA#705

**MEMORANDUM OF UNDERSTANDING REGARDING FEASIBILITY
ANALYSIS OF DEVELOPING JOINT WATER
SUPPLY AND QUALITY MANAGEMENT PROJECTS**

This Memorandum of Understanding (“MOU”) is entered into this 12th day of December, 2000, by and between The Metropolitan Water District of Southern California, a public water district (“MWD”), and the Friant Water Users Authority (“FWUA”), a California Joint Powers Authority. MWD and FWUA are referred to collectively herein as the “Parties.”

RECITALS

A. The Parties to this MOU are committed to meeting the water supply and water quality needs of their respective services areas.

B. MWD’s primary interest in undertaking the MOU is to explore development of water management programs, including water quality exchanges, with the FWUA’s members that will result in a net improvement to the quality of water supplies Metropolitan receives via the California Aqueduct. FWUA’s primary interest in undertaking the MOU is to explore development of infrastructure improvements and/or programs that will improve surface water and groundwater supply reliability and affordability for its members.

C. On June 21, 2000 and July 11, 2000, respectively, the Boards of Directors of FWUA and of MWD authorized their respective General Managers to execute “Principles Regarding A Proposed Water Management Partnership Between the Friant Water Users Authority, On Behalf of its Members, and The Metropolitan Water District of Southern California” (“Principles”).

D. The Principles are intended to establish a basis for developing a cooperative water management partnership between the Parties that will enhance and optimize their respective water supplies and water management capabilities. A copy of the Principles is attached to this MOU as Attachment A. The Parties intend that this MOU and all actions taken thereunder will be consistent with the Principles.

E. The Parties have jointly developed a “Technical Work Plan For a Water Management Partnership” (“Work Plan”). The Work Plan is attached to this MOU as Attachment B. The Parties intend to enter into this MOU to carry out Phase 1 of the Work Plan (Tasks 8-00 to 8-09) only.

F. The Parties intend to pay for carrying out Phase 1 of the Work Plan solely from grants made available to MWD from the Interim Water Supply and Water Quality Infrastructure and Management Subaccount created by Proposition 13 (Division 26, Chapter 9, Article 4 of the Water Code (Commencing with Section 79205.2)) (Proposition 13 Grants). The Parties recognize, however, that it may be necessary to provide a funding source in advance of receipt of Proposition 13 Grants, subject to reimbursement from those funds.

G. The Parties recognize that some members of FWUA will choose not to participate in any programs or projects identified in the Work Plan. Therefore, it is appropriate that FWUA not incur any costs or liabilities to administer this MOU or develop Phase 1 of the Work Plan that would be borne by all of its members. However, as MWD and individual FWUA members agree to pursue programs or projects identified in the Work Plan, the allocation and sharing of costs and liabilities among those parties will be subject to future negotiation.

NOW, THEREFORE, the Parties to this MOU hereby agree as follows:

AGREEMENT

Financial Provisions

1. The sole source of funding to implement this MOU and Phase 1 of the Work Plan shall be Proposition 13 Grants made available to MWD by the Department of Water Resources (DWR). Subject to paragraph 2, neither MWD nor FWUA shall be required to contribute any other funds available to them for the purposes of this MOU. MWD shall take any and all reasonable actions required to obtain Proposition 13 Grants in a timely manner and FWUA shall take all reasonable actions required, if any, to support MWD. The total amount to be expended under this MOU shall be limited by the amount of Proposition 13 Grants obtained by MWD for the purposes of carrying out Phase 1 of the Work Plan tasks, but in no case shall be more than \$1 million.

2. Notwithstanding paragraph 1, MWD may, at its discretion, provide advance funding from its own funds to begin implementation of this MOU and Phase 1 of the Work Plan, subject to complete reimbursement from Proposition 13 Grants. If MWD elects to advance its own funds pursuant to this paragraph 2, it shall be reimbursed from Proposition 13 Grants made available to MWD by DWR before any of those funds are expended for any other purpose, including implementation of this MOU and the Work Plan.

3. This MOU governs the expenditure of Proposition 13 Grants obtained by MWD (and advances, if any, from MWD) and delivered by MWD to FWUA for the purpose of conducting the tasks identified in Phase 1 of the Work Plan. All funds described in paragraphs 1 and 2 are hereinafter referred to as "Relevant Funds."

4. Relevant Funds in the amount required to carry out Phase 1 of the Work Plan tasks, subject to the limit specified in paragraph 1, shall be deposited to, and accounted for in, a separate fund maintained by FWUA solely for the purposes of the implementing the Work Plan and this MOU. Upon any termination of this MOU, any Relevant Funds remaining in the account shall be promptly returned to MWD after payment of all amounts due or committed in accordance with this MOU, including, without limitation, all expenses incurred for Phase I work under this MOU prior to such termination.

5. The Oversight Team established pursuant to paragraph 8(b) will review and approve invoices for payment from Relevant Funds. Approval may be accomplished by both Oversight Team co-chairs initialing invoices or otherwise providing written authorization

approving an invoice. Each month, a list of all Work Plan expenditures will be compiled and presented to the Oversight Team. The Oversight Team co-chairs will evidence the Oversight Team's authorization to release Relevant Funds for payment of the expenditures by each initialing the expenditure report.

6. MWD and FWUA shall jointly develop and manage a budget for the expenditure of Relevant Funds; however, FWUA staff shall have day-to-day administrative responsibility for maintaining the budget. Each party shall receive a statement of receipts, expenditures, budget comparisons and balances of Relevant Funds no less frequently than once a month.

7. (a) The Parties intend that they will jointly select and manage the consultants to conduct Phase 1 of the Work Plan tasks. Accordingly, written approval of both MWD and FWUA shall be required to retain or hire consultants who are compensated with Relevant Funds. Written approval of both MWD and FWUA shall be required to dismiss such consultants or to change the terms of such consultants' contractual arrangement.

(b) Consistent with Recital G, FWUA and MWD may seek Relevant Funds to pay for the reasonable costs of their staff and consultants incurred in the administration of this MOU and in development of Phase 1 of the Work Plan. However, before any such funds are authorized, they shall be requested in a budget specifically providing for such funds and approved by the Oversight Team. Before any funds are expended for these purposes, they shall be supported by detailed, itemized statements of cost for salary, hourly fees, out-of-pocket expenses or any other costs, and approved by the Oversight Team co-chairs. No more than \$100,000 may be expended for these purposes.

Management of Consultant Contract

8. FWUA and MWD have jointly developed the Work Plan, but have decided that FWUA alone should sign the contracts with the consultants who will perform the studies. Nevertheless, FWUA and MWD wish to ensure that, as between themselves, certain rights and risks under those contracts are shared equally between them. Therefore,

(a) FWUA and MWD shall jointly make all decisions concerning the conduct of the tasks in the Work Plan and shall fully and completely share data, documents, and all other materials generated by the Work Plan. All written directions to the consultants performing Work Plan tasks must receive the written approval of both FWUA and MWD before being submitted to the consultants. As provided in paragraph 7 above, MWD's written approval is required before FWUA may enter into contracts for Work Plan tasks. As also provided in paragraph 7 above, written approval of both FWUA and MWD shall be required to dismiss a consultant performing any portion of the Work Plan or to change the terms of such consultant's contractual arrangements.

(b) An Oversight Team shall manage, facilitate and review the development and implementation of Phase 1 of the Work Plan tasks. The Oversight Team shall be comprised of policy and/or technical experts from MWD and FWUA. The Oversight Team shall insure timely policy and technical review of, and input to, management of the consulting agreement and

Work Plan, and shall provide periodic updates to their respective Boards on the progress of the Work Plan. All decisions of the Oversight Team shall be by consensus. The Oversight Team shall be co-chaired by one representative each from MWD and FWUA, who will perform day-to-day management of the Work Plan and the consulting agreement(s). MWD and FWUA shall notify the other in writing of the appointment, or change in appointment, of its co-chair, team members and any alternates.

(c) FWUA and MWD shall each be equally entitled to all work product prepared by the consultant(s) related to the Work Plan or this MOU, and to use the work product for any purposes not adverse to the other Party, so long as the use is otherwise consistent with the Principles and this MOU.

Liability

9. MWD and FWUA will cooperate in reducing, to the greatest extent practicable, the risk from claims arising as the result of the Phase 1 work. However, consistent with Recital G, in the event of claims by third parties relating to the Phase 1 of the Work Plan, MWD will defend, indemnify and hold FWUA and its members, and their respective directors, officers, agents, employees and volunteers, harmless from and against all losses, demands and causes of action asserted by third parties relating to Phase 1 of the Work Plan (collectively, "claims"), and shall assume responsibility for payment of any settlement, judgment, costs and attorneys' fees arising therefrom, except to the extent they arise as the proximate result of an act or omission (including without limitation negligence or misconduct) of FWUA, one of its members, or a party under their sole control. The provisions of this paragraph 9 shall govern claims arising in connection with Phase 1 of the Work Plan only, and the Parties hereby leave to future negotiation the allocation of liability, if any, relating to their activities in connection with the Work Plan following the completion of Phase 1 of the Work Plan.

General Provisions

10. FWUA and MWD agree not to execute any contracts for purposes of conducting any portion of the Work Plan unless the contracting party has (a) obtained workers' compensation and liability insurance in an amount satisfactory to FWUA and MWD, and (b) provided FWUA and MWD (to their satisfaction) with appropriate indemnification.

11. Each person who executes this MOU represents and warrants to each party hereto that he or she has the authority to do so.

12. This MOU may be amended or modified only by a written agreement signed by each of the Parties. No oral amendment or modification of this MOU shall be enforceable even if such oral amendment or modification is claimed to be supported by new consideration therefor.

13. In entering into this MOU, the Parties represent that they have each been represented by counsel who are the attorneys of their own choice in the negotiation and drafting of this MOU. Accordingly, this MOU shall not be strictly construed against any party, and the

rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable. The Parties further represent and warrant that the terms of this MOU have been completely read and explained to them by their attorneys and that those terms are fully understood and voluntarily accepted by them.

14. This MOU shall inure to the benefit of and bind the successors of the Parties thereto.

15. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

16. This MOU may not be assigned, in whole or in part, by either of the Parties without the express written consent of the other party, which consent may be withheld by such other party in its sole and absolute discretion.

17. Nothing in this MOU shall be deemed or construed by any person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any other association between or among the Parties.

18. Each party shall, as often as reasonably requested, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further documents and instruments as may be necessary to carry out the intent and purpose of this MOU.

19. This MOU shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

20. This MOU shall be effective on December 12, 2000 and shall remain in effect until Phase 1 of the Work Plan tasks are completed to the satisfaction of the Parties and payment has been made to the consultant(s); provided that upon termination of the Principles, this MOU shall terminate. Notwithstanding the foregoing, the provisions of paragraphs 2, 4, 8(c) and 9 shall survive any termination of this MOU.

Ronald R. Gastelum
The Metropolitan Water District of
Southern California

Richard M. Moss
Friant Water Users Authority

ATTACHMENT A
PRINCIPLES REGARDING
A PROPOSED WATER MANAGEMENT PARTNERSHIP BETWEEN THE
FRIANT WATER USERS AUTHORITY, ON BEHALF OF ITS MEMBERS,
AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN
CALIFORNIA

MUTUAL GOALS

The attached “Partnership Principles” are agreed to in furtherance of developing a cooperative water management partnership (Partnership) between the Friant Water Users Authority (Authority), on behalf of its members, and the Metropolitan Water District of Southern California (Metropolitan) that will enhance and optimize their respective water supplies and water management capabilities. This mutually advantageous agricultural-urban Partnership will explore water management opportunities that have both short- and long-term benefits and address water supply management issues. Partnership activities will include, but are not necessarily limited to: sharing information; consulting on CALFED activities; preparing feasibility studies; conducting modeling and technical analyses; implementing pilot projects; and designing and constructing water management facilities. The Partnership will be pursued in an open process with full participation of interested parties.

Metropolitan's primary interest in pursuing the Partnership is to develop water management programs, including water quality exchanges, with the Authority’s members, that will result in a net improvement to the quality of water supplies Metropolitan receives via the California Aqueduct. The Authority's primary interest in pursuing the Partnership is to develop infrastructure improvements and/or programs that will improve surface water and groundwater supply reliability and affordability for its members.

Nothing herein reduces the importance of pursuing improvements to water conveyance facilities or other improvements in the Sacramento-San Joaquin River Delta (Delta) that will improve the reliability of water supplies exported from the Delta and will provide higher quality water for Delta exporters. Further, it is the intent of both parties for the Partnership activities to be consistent with the current consensus-based efforts of the Authority to restore environmental values on the San Joaquin River.

By: _____
 Richard M. Moss, General Manager
 Friant Water Users Authority

By: _____
 Ronald R. Gastelum, General Manager
 Metropolitan Water District
 of Southern California

Date: _____

Date: _____

PARTNERSHIP PRINCIPLES

- 1.** The Partnership will enhance water management capabilities of the Authority's members and Metropolitan.
- 2.** The Partnership may explore, evaluate, and develop infrastructure improvements and/or programs that will improve surface water and groundwater supply reliability and affordability for the Authority's members.
- 3.** The Partnership will pursue water management actions, including water quality exchanges, which provide Metropolitan with water quality improvements at the Edmondston Pumping Plant at a cost acceptable to Metropolitan.
- 4.** The Partnership will not negatively impact water supply, operations, or financial condition of the Authority, its members or Metropolitan.
- 5.** The Partnership will not negatively impact the availability, quality or costs of water supplies to other San Joaquin Valley interests, fully recognizing the water rights of members of the Partnership.
- 6.** The Partnership will ensure that any program implemented will result in water quality for each Authority member that is acceptable to that member.
- 7.** The Partnership will sustain long-term groundwater management capabilities for all beneficial uses within the Friant Division service area specifically, and the San Joaquin Valley generally.
- 8.** Metropolitan will assume all risks associated with its State Water Project supplies delivered from the Sacramento-San Joaquin Delta, including without limitation any shortages that may occur.
- 9.** The Partnership will operate in a manner that will not jeopardize the water rights relied upon in order to make water available to the Authority's members, Metropolitan, or any other party in the San Joaquin Valley.
- 10.** The Authority will act as a clearinghouse for all Partnership activities on behalf of its members including but not limited to distributing Partnership-related information received from Metropolitan to its members.
- 11.** Metropolitan will coordinate all Partnership activities, including Partnership activities with individual Authority members, through the Authority, and will not undertake any activities within the scope of the Partnership with any party within the service area of the Friant Division other than as a part of the Partnership.
- 12.** The Partnership's activities will be consistent with the Authority's current consensus-based effort to restore environmental values on the San Joaquin River.

13. The Partnership will not result in any significant unmitigated environmental impacts.
14. Neither the Authority nor Metropolitan will pursue or support groundwater banking or other water management programs that harm the interests of Metropolitan, the Authority or any of the Authority's members, with harm to the interests of Metropolitan determined by Metropolitan, harm to the interests of the Authority determined by the Authority in accordance with internal arrangements among its members and/or Authority board policies and harm to any Authority member determined by that member.
15. The Authority and/or its members, and Metropolitan have the right to terminate the Partnership at any time until such time as the parties enter into a long-term contract.
16. The Partnership will be carried out in an open process that provides for public participation from all interested parties.
17. All activities undertaken in furtherance of the Partnership will be by consensus of the parties and selected based on criteria to be developed by the parties that will include economic considerations, ability to proceed in a timely manner, and any other factors that might contribute to an activity's feasibility.