

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

August 20, 2001 Board Meeting

9-8

Subject

Authorize entering into an agreement with U.S. Bureau of Reclamation and San Diego County Water Authority establishing a funding mechanism and allocating responsibilities for implementation of conservation and mitigation measures for lower Colorado River water transfers

Description

Background

California's draft Colorado River Water Use Plan (California Plan) contains four interrelated linchpin components. These are:

1. core cooperative water conservation/transfers from agricultural use to urban use (addressed in this letter),
2. further quantification of the third priority of the 1931 Seven-Party Agreement, which allocates California's Colorado River apportionment,
3. improved Colorado River and related reservoir management and operations, and
4. water storage and conjunctive-use programs.

Prior to implementation, project components of the California Plan are subject to environmental assessment under state and federal laws as appropriate. Environmental impacts to sensitive biological resources on the lower Colorado River main stem will generally be addressed through the Lower Colorado River Multi-Species Conservation Program (LCR MSCP). The purpose of the LCR MSCP is to conserve habitat and work toward the recovery of state and federal threatened and endangered species along the river, providing for ongoing and future operation of federal and non-federal water and power activities. The LCR MSCP will provide the endangered species act compliance for 57 listed and unlisted species along the mainstream of the lower Colorado River from below Glen Canyon Dam to the southerly international boundary with Mexico for a period of 50 years.

Because the LCR MSCP may not be completed prior to the implementation of the transfers, an agreement is needed that would facilitate implementing major core transfers of up to 400,000 acre-feet per year (AFY) of Colorado River water involving changing the point of delivery from Imperial Dam, or a point between Imperial Dam and Lake Havasu, to Lake Havasu. These transfers are anticipated under both the proposed Quantification Settlement Agreement (QSA) and the California Plan.

The U.S. Fish and Wildlife Service (Service) requires that U.S. Bureau of Reclamation (Reclamation) implement certain conservation measures, mitigation measures, and Reasonable and Prudent Measures (Environmental Measures) in order to offset impacts of the proposed changes in point of delivery and diversion of up to 400,000 AFY of Colorado River water. The Reasonable and Prudent Measures are designed to minimize impacts of incidental take of razorback sucker, bonytail chub, and southwestern willow flycatcher.

Agreement Terms and Conditions

Reclamation, Metropolitan, and San Diego County Water Authority (SDCWA) have negotiated agreement terms to determine their responsibilities for the cost and implementation of the Environmental Measures. The agreement would establish the funding mechanism for, and vest Reclamation with the responsibility of implementing the Environmental Measures. Entering into such an agreement would provide certainty to Metropolitan as to the costs associated with offsetting impacts to federally protected sensitive species from the

proposed point-of-delivery and diversion changes. Furthermore, through this agreement, Reclamation has committed to implement Environmental Measures to the greatest extent possible to satisfy mitigation obligations of SDCWA and Metropolitan for impacts to sensitive species under the California Endangered Species Act (ESA). However, negotiations have not been concluded yet with the California Department of Fish and Game.

Metropolitan, SDCWA, and the United States on behalf of the San Luis Rey Indian Water Rights Settlement Parties would share the cost of implementing Environmental Measures. SDCWA and Metropolitan would each provide \$3 million to Reclamation for implementing the Environmental Measures. The diverted water covered in the proposed agreement for the purposes of compliance with the federal ESA would be allocated 200,000 AFY to SDCWA and 200,000 AFY to Metropolitan.

Reclamation would implement a number of Environmental Measures from the following categories: occupied southwestern willow flycatcher habitat monitoring, restoration and enhancement; backwater construction/restoration; razorback sucker re-introduction below Parker Dam; Lake Mead razorback sucker study; and, bonytail chub broodstock capture. These Environmental Measures effectively mitigate the impacts to Colorado River species from the proposed changes in point of delivery and diversion of 400,000 AFY. Reclamation would implement the Environmental Measures upon satisfaction of the conditions precedent in the proposed QSA, or implementation of programs identified in the California Plan that result in changes in point of Colorado River diversion and delivery.

SDCWA and Metropolitan would place their funds into separate accounts under their respective control. Only after all conditions precedent to the QSA have been satisfied, or a program identified in the California Plan is implemented, would the funds be transferred to an account from which Reclamation would be given withdrawal authority. Significant delays in implementation of the Environmental Measures may result in loss of state funding for canal lining projects and the benefits of the Interim Surplus Guidelines.

Policy

By Minute Item 43767, dated October 18, 1999, the Board approved the use of the *Key Terms for Quantification Settlement Among the State of California, IID, CVWD, and MWD* (Key Terms) as the basis for completing a new QSA among the parties to the Key Terms. The diversion of up to 400,000 AFY of Colorado River water from Lake Havasu, which is currently diverted from Imperial Dam or a point between the dam and Lake Havasu, is an integral Key Terms component.

CEQA

The agreement establishes a funding mechanism in advance to provide mitigation for proposed projects. That funding cannot be accessed for the Environmental Measures until all conditions precedent to the proposed QSA, or a program identified in the California Plan is implemented. Furthermore, compliance with all applicable environmental laws and regulations must be completed prior to initiation of water transfers that are accomplished through a change in point of delivery and diversion of up to 400,000 AFY.

Option #1

The proposed action is not defined as a project under the California Environmental Quality Act (CEQA) because it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378 (b)(4) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination for Option #1 is: Determine that the proposed action is not subject to CEQA per Sections 15378(b)(4) and 15061(b)(3) of the State CEQA Guidelines.

Option #2

Directing the Chief Executive Officer to renegotiate the terms of the agreement is not defined as a project under CEQA, because the proposed action involves continuing administrative policies, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines).

The CEQA determination for Option #2 is: Determine that the proposed action is not subject to CEQA per Section 15378(b)(2) of the State CEQA Guidelines.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the Chief Executive Officer to enter into an agreement with Reclamation and SDCWA which establishes a funding mechanism and allocates responsibilities to Reclamation to implement the Environmental Measures described in this letter.

Fiscal Impact: \$3 million.

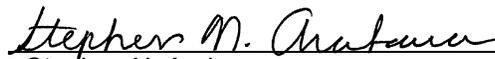
Option #2

Adopt the CEQA determination and direct the Chief Executive Officer to renegotiate the terms of the agreement.

Fiscal Impact: Deferral of \$3 million in expense; and additional cost for staff time to renegotiate the agreement.

Staff Recommendation

Option #1

	8/6/2001
Stephen N. Arakawa	Date
Manager, Water Resource Management	

	8/6/2001
Ronald R. Gastelum	Date
Chief Executive Officer	