

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

October 16, 2001 Board Meeting

8-8

Subject

Authorize the execution of a Memorandum of Understanding with the Kings River Water Association

Description

Metropolitan's Board authorized the Chief Executive Officer (CEO) to pursue water management activities with the Kings River Water Association (Association) consistent with specified principles at its August 2001 meeting. Approval is now requested to authorize the CEO to execute a Memorandum of Understanding (MOU) (**Attachment 1**) with the Association to develop and implement a work plan that will evaluate the feasibility of potential water management activities. Such activities include exchanging Metropolitan's State Water Project water supplies for Sierra sources available to Association members, which could result in potentially significant water quality benefits in Metropolitan's service area. The activities could also include developing infrastructure improvements in the Association's service area, which would improve surface water and groundwater supply reliability and affordability for its members. The MOU does not provide for implementing any specific program or project. Subsequent agreements will be developed for actual implementation of pilot and full-scale projects identified in the work plan. The MOU provides for joint Metropolitan-Association management of the work plan, and specifies that Proposition 13 funds made available to Metropolitan for these purposes will be used to develop and implement the work plan. In order to allow expeditious development of the work plan, the MOU provides for Metropolitan, at its option, to advance funds to commence work, subject to reimbursement from Proposition 13 funds once obtained from the Department of Water Resources. The MOU authorizes the expenditure of a maximum amount of up to \$1 million. The Association plans to consider approval of the MOU at the October 16, 2001 meeting of its Executive Committee.

Policy

In August 2001, the Board authorized the CEO to pursue cooperative water management activities with the Association based on the principles referenced in **Attachment 1**.

CEQA

The proposed project is categorically exempt under the provisions of CEQA. Studies to be performed as part of the MOU's work plan will consist of basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which a public agency has not yet approved, adopted, or funded. As such, the proposed project qualifies under a Class 6 Categorical Exemption (Section 15306 of the State CEQA Guidelines).

The CEQA determination is: Determine that pursuant to CEQA, the proposed project qualifies under a Categorical Exemption (Class 6, Section 15306 of the State CEQA Guidelines).

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the CEO to execute a MOU with the Association in form approved by the General Counsel based on the principles in **Attachment 1**.

Fiscal Impact: Authorizing the CEO to execute a MOU with the Association 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

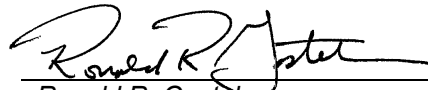
Do not authorize the CEO to execute a MOU with the Association in form approved by the General Counsel based on the principles in **Attachment 1**.

Fiscal Impact: None.

Staff Recommendation

Option #1

	9/21/2001
Stephen N. Arakawa Manager, Water Resource Management	<i>Date</i>

	9/25/2001
Ronald R. Gastelum Chief Executive Officer	<i>Date</i>

Attachment 1 – Memorandum Of Understanding Regarding Feasibility Analysis Of Developing Joint Water Supply And Quality Management Projects

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

This Memorandum of Understanding (“MOU”) is entered into this 17th day of October 2001 by and between The Metropolitan Water District of Southern California, a public water district (“MWD”), and the Kings River Water Association (“ASSOCIATION”), an unincorporated association. MWD and the ASSOCIATION 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 service areas.

B. MWD’s primary interest in undertaking the MOU is to develop water management programs, including water quality exchanges, with the ASSOCIATION and/or its member units that could result in a net improvement to the quality of water supplies MWD receives via the California Aqueduct. The primary interest of the ASSOCIATION and/or its member units in undertaking the MOU is to develop infrastructure improvements and/or programs that will improve surface water and groundwater supply reliability and affordability for its member units, and will permit enhanced water management capabilities.

C. On June 19, 2001, the Executive Committee of the ASSOCIATION and on August 20, 2001, the Board of Directors of MWD authorized execution of the “Principles Regarding Proposed Cooperative Water Management Activities Between the Kings River Water Association, On Behalf of its Member Units, and The Metropolitan Water District of Southern California” (“Principles”).

D. The Principles are intended to establish a basis for developing cooperative water management activities among 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 intend to enter into this MOU to develop and implement a Work Plan that will evaluate the feasibility of potential water management activities.

F. The Parties intend to pay for developing and carrying out 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 member units of the ASSOCIATION may choose not to participate in individual programs or projects identified in the Work Plan. Therefore, it is appropriate that the ASSOCIATION not incur any costs or liabilities to administer this MOU or to develop the Work Plan that would be borne by all of its member units. However, as MWD, the ASSOCIATION and individual ASSOCIATION member units 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 develop and implement this MOU and 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 the ASSOCIATION 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 the ASSOCIATION 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 developing and carrying out the Work Plan, but in no case shall be more than \$1,000,000.

2. Notwithstanding paragraph 1, MWD may, at its discretion, provide advance funding from its own funds to begin developing and implementing this MOU and 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 developing and implementing 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 the ASSOCIATION for the purpose of developing and implementing 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 develop and carry out the Work Plan, subject to the limit specified in paragraph 1, shall be deposited to, and accounted for in, a separate fund maintained by the ASSOCIATION solely for the purposes of developing and 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 work under this MOU prior to such termination. Before any Relevant Funds are expended, they shall be included in a budget specifically providing for such funds and approved by MWD's Chief Executive Officer and KRWA's Watermaster.

5. The Technical Coordinators designated pursuant to paragraph 8(b) shall review and approve invoices for, and authorize payment of, Relevant Funds. Each month a list of all Work Plan expenditures will be compiled and presented to the Technical Coordinators for approval. The Technical Coordinators shall initial the invoices or otherwise provide written authorization approving the invoice.

6. MWD and the ASSOCIATION shall jointly develop and manage a budget for the expenditure of Relevant Funds; however, ASSOCIATION 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 develop and implement the Work Plan. Accordingly, written approval of both MWD and the ASSOCIATION shall be required to retain or hire consultants who are compensated with Relevant Funds. Written approval of both MWD and the ASSOCIATION shall be required to dismiss such consultants or to change the terms of such consultants' contractual arrangement.

(b) Consistent with Recital G, the ASSOCIATION will receive Relevant Funds to pay for the reasonable costs of their staff and consultants incurred in the administration of this MOU and in development and implementation 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 Technical Coordinators. 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 Technical Coordinators.

Management of Consultant Contracts

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

(a) The ASSOCIATION 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 the ASSOCIATION and MWD before being submitted to the consultants. As provided in paragraph 7 above, MWD's written approval is required before the ASSOCIATION may enter into contracts for Work Plan tasks. As also provided in paragraph 7 above, written approval of both the ASSOCIATION 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) Each Party shall designate a Technical Coordinator who shall be responsible for day-to-day management, facilitation and implementation of the consultant

agreements and the Work Plan tasks. The Technical Coordinators shall take all actions necessary to facilitate prompt and effective implementation of the Work Plan, including, for example, approving invoices for payment of Relevant Funds; review and collection of the Parties comments on consultants' work product; managing day-to-day communication with consultants; and recommending appropriate actions with respect to implementation of the consultant agreements and the Work Plan. MWD and the ASSOCIATION shall notify the other in writing of the appointment or change in appointment of its respective Technical Coordinator. All decisions of the Technical Coordinators shall be by consensus.

(c) The ASSOCIATION 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 the ASSOCIATION will cooperate in reducing, to the greatest extent practicable, the risk from claims arising as the result of the Work Plan. However, consistent with Recital G, in the event of claims by third parties relating to the Work Plan, MWD will defend, indemnify and hold the ASSOCIATION and its member units, 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 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 the ASSOCIATION, one of its member units, or a party under their sole control. The provisions of this paragraph 9 shall govern claims arising in connection with 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 the Work Plan.

General Provisions

10. The ASSOCIATION 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 the ASSOCIATION and MWD, and (b) provided the ASSOCIATION 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 October 17, 2001 and shall remain in effect until 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.

The Metropolitan Water District
of Southern California

Kings River Water Association

Ronald R. Gastelum
Chief Executive Officer

Tim O'Halloran
Watermaster

Date

Date

ATTACHMENT A**PRINCIPLES REGARDING
PROPOSED COOPERATIVE WATER MANAGEMENT ACTIVITIES
BETWEEN THE KINGS RIVER WATER ASSOCIATION, ON BEHALF
OF ITS MEMBER UNITS, AND THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA****MUTUAL GOALS**

The attached Principles are agreed to in furtherance of developing cooperative water management activities (Activities) between the Kings River Water Association (Association), on behalf of its member units, and the Metropolitan Water District of Southern California (Metropolitan) that will enhance and optimize their respective water supplies and water management capabilities. These mutually advantageous Activities will explore water management opportunities utilizing Kings River water (perhaps in combination with other water sources) that have both short- and long-term benefits and address water supply and water quality management issues. Activities may include, but are not necessarily limited to: sharing information; preparing feasibility studies; conducting modeling and technical analyses; implementing pilot projects; and designing and constructing water management facilities. The Activities will be pursued in an open process with full participation of interested parties.

Metropolitan's primary interest in pursuing the Activities is to develop water management programs, including water quality exchanges, with the Association and/or the Association's member units, that could result in a net improvement to the quality of water supplies Metropolitan receives via the California Aqueduct. The Association's primary interest in pursuing the Activities is to develop infrastructure improvements and/or programs that will improve surface water and groundwater supply reliability and affordability for its member units, and will permit enhanced water management capabilities.

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. Similarly, nothing herein reduces the importance of pursuing

improvements to water storage and conveyance facilities or other improvements on the Kings River that will improve the reliability of Kings River water supplies for the benefit of the Association's members and those they serve. Further, it is the intent of both parties for the Activities and programs proposed in connection therewith to be consistent with, and to facilitate activities under, the Kings River Fisheries Management Program and the associated Framework Agreement adopted May 28, 1999.

By: _____
Tim O'Halloran
Watermaster
Kings River Water Association

By: _____
Ronald R. Gastelum
Chief Executive Officer
Metropolitan Water District
of Southern California

Date: _____

Date: _____

PRINCIPLES

1. The Activities will be consistent with the “Principles Governing Flood Water Arrangements Between the Kings River Water Association and Parties Outside the Kings River Service Area,” approved by the Kings River Water Association’s Executive Committee on March 21, 2000 (Attachment).
2. The Activities will enhance water management capabilities of the Association, its member units and Metropolitan.
3. The Activities will be consistent with the “Kings River Fisheries Management Program” and the associated “Framework Agreement,” adopted May 28, 1999, as it may be amended from time to time. Whenever feasible, the Activities will enhance or supplement that Program.
4. The Activities may include exploration, evaluation, and development of infrastructure improvements and/or programs that will improve surface water and groundwater supply reliability and affordability for the Association's member units and those they serve.
5. The Activities may include pursuing water management actions, including exchanges, which provide Metropolitan with water quality improvements at the Edmonston Pumping Plant at a cost acceptable to Metropolitan.
6. The Activities will not negatively impact water supply, operations, or financial conditions of the Association, its member units or Metropolitan.
7. The Association’s participation in the Activities will not restrict the Association or its member units from pursuing water storage and water supply projects involving Kings River water independent of the Activities or with other parties, and will not restrict or affect in any way the operation of the Kings River by the Association and its members as they see fit. Metropolitan, which holds no rights to Kings River water or storage, will not acquire any such rights as a result of the Activities except as expressly agreed to in writing by the Association.
8. Any program implemented as a result of the Activities will result in water quality for each Association member unit that is acceptable to that member unit.
9. The Activities will be consistent with sustaining long-term groundwater management capabilities for all beneficial uses within the Kings River service area.
10. The Activities will be conducted in a manner that will not jeopardize the water rights or contractual water supplies relied upon in order to make water available to the Association’s member units or Metropolitan.

11. The Activities will not negatively impact the availability, quality or costs of existing water supplies to other San Joaquin Valley interests, fully recognizing the water rights and contractual water supplies of the Association, its member units and Metropolitan.
12. Metropolitan will coordinate all Activities through the Association, including Activities with individual Association member units or parties claiming rights to Kings River water through Association member units.
13. The Association will act as a clearinghouse for all Activities on behalf of its member units including, but not limited to, distributing information relating to any of the Activities received from Metropolitan to its member units.
14. The Association acknowledges the existence of a relationship between Metropolitan and the Friant Water Users Authority that is similar to the relationship between Metropolitan and the Association with respect to the Activities. The Activities are not intended to adversely impact or undermine the potential success of the relationship between Metropolitan and the Friant Water Users Authority.
15. 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.
16. The Association and Metropolitan have the right to terminate the Activities and their relationship with respect thereto at any time until such time as the parties enter into a long-term contract. Upon any such termination, neither the Association nor Metropolitan will assert any obligation of the other under these Principles.
17. The Activities will be developed and carried out in an open process that provides for public participation of all interested parties.
18. All Activities 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. Neither party will have the right to bind the other without the other's express written consent.
19. These Principles establish a set of voluntary parameters by which the parties intend to conduct themselves in connection with the Activities. These Principles do not create a binding agreement between the parties.

ATTACHMENT**Approved by the KRWA Executive Committee March 21, 2000****PRINCIPLES GOVERNING FLOOD WATER ARRANGEMENTS BETWEEN THE KRWA AND PARTIES OUTSIDE THE KINGS RIVER SERVICE AREA**

All arrangements developed by the Kings River Water Association with parties located outside the Kings River Service Area involving the use of Kings River flood flows will comply with the following principles:

1. All such arrangements will be voluntary, and will be administered by the KRWA. All facilities or property within the Kings River Service Area utilized in such arrangements will be owned or controlled by the KRWA, one or more of the member units, and/or other acceptable local agencies.
2. All such arrangements will be consistent with the water rights licenses issued to the KRWA by the State Water Resources Control Board, the Blue Book Agreements (including without limitation the Flood Water Agreement, the Framework Agreement and the Implementation Agreement), the Corps of Engineers' Reservoir Regulation manual, and all other agreements, criteria or authorizations governing Kings River operations.
3. All such arrangements will be structured to protect, preserve and make more secure the water rights and water supplies relied upon by KRWA member units and their water users.
4. All such arrangements will advance programs and policies of importance to the KRWA and its member units (such as flood control and the fisheries management program), while maximizing water supplies available to KRWA member units and their water users.
5. All such arrangements will be structured to ensure that they cause no unmitigated adverse impacts to any KRWA member units or their water users, and that they benefit the Kings River Service Area as a whole (recognizing that benefits can take many different forms).
6. All such arrangements will maintain or improve the existing reliability of Kings River water supplies and, to the maximum extent feasible, will retain Kings River water for use by KRWA member units and their water users.
7. All such arrangements will only utilize Kings River floodwater, which is otherwise unusable within the Kings River Service Area by member units or their water users.
8. All such arrangements will be selected based on criteria to be developed and approved by the KRWA. Those criteria will include (i) cost/benefit ratio, (ii) ability to proceed in a timely manner, (iii) environmental impacts/enhancement, (iv) preference to adjacent agricultural water users, and (v) other factors contributing to a project's feasibility. In addition, each KRWA member unit will maintain a right of first refusal for each arrangement.