

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

January 8, 2002 Board Meeting

9-7

Subject

Authorize the execution of an agreement based on the Sacramento Valley Phase 8 Short-Term Workplan Settlement Principles [**Conference with legal counsel-existing litigation; parties: water right holders in Bay-Delta watershed; to be heard in closed session pursuant to Gov. Code § 54956.9(a); State Water Resources Control Board consideration of alternatives to implement water quality objectives for the Bay-Delta Estuary and related matters**]

Description

Background. The State Water Resources Control Board (SWRCB) has held water rights hearings to implement its 1995 Bay-Delta Water Quality Control Plan (WQCP) since July 1998. In early 2000, SWRCB adopted Decision 1641 concluding the first seven hearing phases, including the adoption of the San Joaquin River Agreement for a 12-year settlement of the upstream San Joaquin River water rights responsibilities, and an agreement with the East Bay Municipal Utility District and others to resolve Mokelumne River issues. In the remaining phase, Phase 8, the SWRCB would allocate the responsibility to meet the WQCP flow requirements among all the significant remaining water users in the Bay-Delta watershed who have not yet entered into settlement agreements. SWRCB's Decision 1641 temporarily assigned full responsibility for meeting the WQCP requirements to the State Water Project (SWP) and Central Valley Project (CVP) through Nov. 30, 2001.

Recognizing the potential lengthy delay in achieving Metropolitan's objectives through the Phase 8 process, the Metropolitan Board authorized the Chief Executive Officer (CEO) to pursue a settlement with Sacramento Valley interests in order to seek equitable resolution of Phase 8 issues. In April 2001, the parties entered into the Phase 8 Stay Agreement (Agreement) that would allow dismissal of Phase 8, pending development and approval of short-term and long-term workplans.

Settlement Development Process. At the urging of the state administration and affected parties, SWRCB adopted Order 2001-05 on April 26, 2001 staying Phase 8. The order stays the resumption of Phase 8 for 18 months and will automatically dismiss Phase 8 at the end of 18 months unless SWRCB receives notice from the California Department of Water Resources (DWR) or the U. S. Bureau of Reclamation (Reclamation) requesting resumption of Phase 8. This order was made to facilitate the settlement agreement between the parties in Phase 8. The agreement between the parties requires the development of short-term and long-term workplans to develop and manage water resources to meet Sacramento Valley in-basin needs, environmental needs under the WQCP, and export supply needs for consumptive demands and water quality. A short-term workplan detailing projects that could provide benefits by the 2002 and 2003 water years was developed in Oct. 2001. A medium and long-term workplan is required by April 26, 2002, detailing projects that can be operational by Dec. 31, 2005 and Dec. 31, 2010, respectively. The workplans will incorporate a number of water management tools to produce multiple benefits including: groundwater/surface water conjunctive use; basin-wide water management; coordinated operation of storage facilities; and improved management of water diversion and distribution facilities including tailwater, transfers and exchanges, water conservation and new off-stream surface storage.

Objectives. Staff is working within the Agreement to achieve the board's four key policy objectives in this process: (1) relief from obligations to the WQCP; (2) protection of SWP supplies from illegal diversion; (3) improved information on upstream water use; and (4) equitable cost sharing of project development costs.

Content of the Short-Term Workplan. The short-term workplan comprises 45 projects that have been submitted for evaluation by the Workplan Development Team from 16 entities in the Sacramento Valley.

These projects can be divided into four categories: (1) conjunctive use projects involving development of groundwater supplies to be used in conjunction with surface water to provide for additional in-basin and export needs, including the WQCP relief; (2) system improvement projects involving the lining of canals, diversion modifications and improvement in water measurement; (3) groundwater planning and monitoring projects intended to better characterize the resource and allow for expansion of conjunctive use and water transfer activities; and (4) resolution of certain regulatory or institutional issues which present impediments to resolution of in-basin needs or water transfers.

About 185,000 acre-feet (AF) of water annually are expected to be produced by the conjunctive use projects in the Sacramento Valley and would be available for use under a settlement. Much of this water will produce new yield to the system, however, subsequent analyses of surface and groundwater interaction will be necessary to determine the extent this water would not have otherwise become yield to the SWP or CVP. The principles discussed below provide for adjustment in this event. An additional 100,000 AF of redirected or remanaged flows will also result from the system improvement projects. Some of this water may result in new yield. However, much of this flow is water that will temporarily remain in project storage or remain in the Sacramento River and not result in a net water supply benefit. These projects reduce diversions and otherwise provide in-stream environmental benefits which help improve overall riverine conditions.

Settlement Proposal. Negotiators for the settlement are divided into two general groups: (1) the Sacramento Valley interests -- a collection of water districts throughout the Sacramento Valley; and (2) Export interests -- including the Metropolitan Water District of Southern California, Kern County Water Agency, Santa Clara Valley Water District, Westlands Water District, Contra Costa Water District, Reclamation, DWR, and others. The California Department of Fish and Game and the U.S. Fish and Wildlife Service also have been participating in the negotiations due to their interest in maintenance of the WQCP flows and other environmental benefits of the settlement. On Dec. 14, 2001 negotiators reached agreement to jointly recommend for approval a specific statement of settlement policy principles ([Attachment 1](#) is a one-page summary of these principles and [Attachment 2](#) are the negotiated principles). Environmental and feasibility studies will be conducted by the applicable lead agencies on the various workplan projects to comply with the California Environmental Quality Act (CEQA), and as appropriate the National Environmental Policy Act (NEPA). If warranted by those analyses, the parties will determine whether to implement the various projects in the short-term workplan agreement.

Policy

The board previously authorized the CEO to pursue a settlement with the Sacramento Valley upstream interests (Board Letter 9-11, Jan. 2001). The board has also adopted detailed policies regarding the CALFED program (Board Letter 9-3, Jul. 1999), and the SWRCB water rights hearings process and settlements (Board Letter 8-4, Oct. 1995; Board Letter 8-9, Mar. 1996; Board Letter 7-11, Jan. 1998; and Board Letter 9-8, Jan. 2000).

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Once the principles are agreed to through the negotiation of the agreement, the environmental and feasibility studies will be conducted by the applicable lead agencies on the various workplan projects to comply with the CEQA, and as appropriate the NEPA. If warranted by those analyses, the parties will determine whether to implement the various projects in the short-term workplan agreement.

CEQA determination for Option #2:

None required.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the execution of an agreement based on the Sacramento Valley Phase 8 Short-Term Workplan Settlement Principles.

Fiscal Impact: Successful settlement of Phase 8 issues would positively affect Metropolitan’s costs in achieving SWP supply reliability. Unsuccessful settlement could lead to lengthy, costly and uncertain SWRCB and/or legal outcomes.

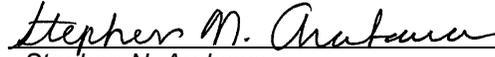
Option #2

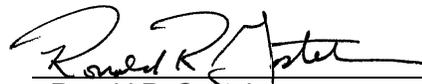
Do not adopt the proposed policy principles.

Fiscal Impact: Unsuccessful settlement could lead to lengthy, costly and uncertain SWRCB and/or legal outcomes.

Staff Recommendation

Option #1

 12/18/2001
Stephen N. Arakawa Date
Manager, Water Resource Management

 12/19/2001
Ronald R. Gastelum Date
Chief Executive Officer

Attachment 1 - Fact Sheet - Sacramento Valley Water Management Agreement Statement of Policy Principle

Attachment 2 - Sacramento Valley Water Management Agreement Statement of Policy Principles

FACT SHEET

Sac Valley Water Management Agreement

Statement of Policy Principles

I. OVERVIEW

- Upon approval by the governing boards, the following principles will be used to develop a Short-Term Settlement Agreement regarding Phase 8 of the SWRCB process to implement the 1995 Water Quality Control Plan (WQCP).
- During the term of the Short-Term Settlement Agreement, the parties intend to develop a long-term workplan and expanded program that will increase benefits to all the parties and provide the basis for a long-term settlement.

II. PROJECT TYPES & SUPPLIES

Conjunctive Management Projects

- 14 short-term projects will provide 185,000 AF per year
Block 1 for Local Use: 92,500 AF (50% of short-term supplies)
Block 2 for WQCP: 92,500 AF
- Available in normal, dry & critical year types at the request of the export water users; and in above-normal years if no negative impact on groundwater conditions.
- If exporters request Block 2 WQCP water, they must purchase an equal amount of Block 1 water.
- If the annual projected supplies will not be achieved, the upstream water users will work with the joint technical measurement and monitoring committee to make replacement supplies available.

System Improvement Projects

- 13 system improvement/water use efficiency projects to provide environmental benefit and operations flexibility to upstream water users.

Surface and Groundwater Storage Planning Projects

- 12 planning and monitoring projects to provide strategic information on managing conjunctive use programs.

Unmet Sacramento Valley Demands

- 2 longstanding Sacramento Valley in-basin water use issues were resolved in the Sutter Bypass region and the service area of the Tehama-Colusa Canal Authority.

III. FINANCES

Melded Water Cost to Export Interests: \$43/AF

- Block 1: \$50/AF above-normal; \$75/AF below-normal; \$100/AF dry; \$125/AF critical)
- Above prices reduced by public funding of capital costs (about \$17/AF)
- Block 2: 50% of O&M costs paid by upstream water users and 50% paid by export water users, less credits (about \$15/AF)

Capital. All necessary steps will be taken to secure funds from Prop 204, Prop 13 and other public sources.

IV. TERM & OFF-RAMPS

- 10-year short-term agreement (unless replaced by a longer-term agreement), subject to termination if:
- 1995 WQCP flow objectives are increased or decreased;
- If after annual review the export users determine the objectives of the program are not being achieved ;
- Matters outside this agreement affect the ability to implement the Settlement.

V. TRANSITION TO LONG-TERM AGREEMENT

- If additional projects are implemented, the benefits will be used to meet the joint objectives of the parties.
- In the long-term agreement, additional supplies will be developed for Block 2 WQCP subject to a negotiated cap.

VI. NON-PARTICIPATING SACRAMENTO VALLEY ENTITIES

- Non-participating Sacramento Valley entities who seek to transfer water outside the Sacramento Valley should be required to make water available for Block 2 WQCP purposes.
- Participating entities will have the first right-of-refusal to transfer additional supplies to export water users.

VII. PROTECTION OF SWP SUPPLIES

- Agreement on support for increased penalties and enforcement resources for policing illegal diversions
- Affirmation that upstream rights do not extend to Project storage.

**SACRAMENTO VALLEY WATER MANAGEMENT AGREEMENT
STATEMENT OF POLICY PRINCIPLES**

December 14, 2001

1.0 Preamble. To avoid prolonged litigation and to promote better management of California's water resources, representatives of those who possess water rights or are water users within the Sacramento River and its tributaries ("Upstream Water Users"), those south of the Sacramento-San Joaquin Delta who possess water rights or are State Water Project ("SWP") or Central Valley Project ("CVP") water users, the Contra Costa Water District and those who divert SWP water from the North Bay Aqueduct (collectively "Export Water Users"), the California Department of Water Resources ("DWR"), and the United States Bureau of Reclamation ("Reclamation") have developed this Statement of Principles ("Principles") for the implementation of the Sacramento Valley Water Management Program ("Program"). This Program envisions implementation of water management actions, representing an historic, far-reaching, water-management effort. The Parties intend that actions to implement the Program will be compatible with the CALFED Bay-Delta Program. These Principles will also serve as the basis for a water rights settlement agreement regarding Phase 8 of the State Water Resources Control Board ("SWRCB") process to implement the 1995 Water Quality Control Plan ("WQCP"). During the term of the Short-Term Settlement Agreement ("Short-Term Settlement Agreement"), the parties intend to develop a long-term work plan and expanded Program that will provide increased benefits for all parties and provide the basis for a long-term settlement agreement. The governing boards or directors of the agencies involved in these negotiations have final authority to approve the contemplated agreements. The undersigned negotiators of these Principles and other participants agree to fully explain and recommend adoption of the Principles to their governing entities.

2.0 Successive Agreements. Ultimately, full implementation of the Program involves four successive agreements.

2.1 Stay Agreement. In the Stay Agreement, executed in April 2001, the parties to that agreement committed to developing a settlement agreement to resolve issues related to implementation of the WQCP in lieu of proceeding with the adversarial Phase 8 process. The SWRCB issued an order staying the Phase 8 process in April 2001 enabling the settlement discussions to commence.

2.2 Short-Term Settlement Agreement. The Short-Term Settlement Agreement will be a master agreement establishing these Principles to guide implementation of short-term water management actions to meet local water supply needs and to make water available to the SWP and CVP, which, for the purpose of this Agreement, will be jointly responsible for meeting the requirements of the WQCP. It is anticipated that the Short-Term Settlement Agreement will be executed on or before March 15, 2002.

2.3 Short-Term Project Implementation Agreements. These agreements will be executed with individual districts to assure implementation of short-term projects on

terms and conditions acceptable to both the settlement parties and the individual districts. The Short-Term Settlement Agreement and the individual Short-Term Project Implementation Agreements shall not be effective until it is concluded that sufficient Short-Term Project Implementation Agreements have been executed to assure effective implementation of the Program.

2.4 Long-Term Agreements. These agreements will include a long-term agreement supplementing or replacing the Short-Term Settlement Agreement and a new set of individual Long-Term Project Implementation Agreements. The Long-Term Project Implementation Agreements will be executed with individual entities to assure implementation of long-term projects on terms and conditions acceptable to both the settlement parties and the individual entities.

3.0 Administration. To assure effective administration, the Program will include the following:

3.1 Management Committee. A Management Committee to provide oversight for the implementation of the agreement. The committee shall include representatives of the Upstream Water Users, Export Water Users, DWR, Reclamation, the California Department of Fish and Game, and the United States Fish and Wildlife Service. The Management Committee may create technical committees as necessary to fulfill its duties.

3.2 Short-Term Work Plan. The Short-Term Work Plan ("STWP"), completed on October 26, 2001, identified integrated water management projects that will enhance the Upstream and Export Water Users' ability to use their existing supplies to meet their existing and future water needs and enhance their water management flexibility. The STWP shall serve as the technical basis for implementation of short-term projects.

3.3 Technical Measurement and Monitoring Committee. A Technical Measurement and Monitoring Committee ("TMMC") of experts representing the parties will be created. The TMMC shall establish an upstream operational base-case to help measure the benefits of project implementation, develop criteria to determine what constitutes "new water," develop and implement monitoring programs for all projects, resolve technical disputes, and recommend changes in implementation as appropriate to the Management Committee.

4.0 System Improvement Projects. To the extent technically and economically feasible, the System Improvement Projects will be implemented consistent with the STWP. These water use efficiency measures will be implemented to provide maximum environmental benefit and to provide operations and maintenance benefits to participating Upstream Water Users. To the extent that the Management Committee, acting upon the recommendation of the TMMC, determines that these projects provide new water to the system, such "new water" will be credited toward the requirements in Sections 8.1 and 8.2.

5.0 Surface and Groundwater Storage Planning Projects. The planning projects identified in the STWP will be completed. These projects are intended, in part, to provide

strategic information to Sacramento Valley decision-makers and others to assure that implementation of the Program will protect and enhance the reliability and integrity of the region's water supply.

6.0 Unmet Sacramento Valley Water Demands. The parties recognize that the reasonable water needs in the Sacramento Valley must be met as part of any Agreement that also seeks to manage the region's assets for environmental and statewide benefit.

6.1 Sutter Bypass. For the term of this Settlement Agreement, the parties agree not to challenge the continued use of return flows by water users in the Sutter Bypass/Butte Slough region. The Sutter Bypass/Butte Slough water users shall pay an amount to be negotiated that will be credited against the non-Upstream Water Users' share of operation and maintenance cost of Block 2 water pursuant to Section 8.5.3. This provision shall be implemented in a manner that creates no legal precedent.

6.2 Tehama-Colusa Canal Authority ("TCCA"). As part of the Settlement Agreement, the TCCA will receive an increased supply not to exceed 25,000 AF annually at water rates based on Reclamation's "ability to pay" criteria. Such supplies shall be made available by assignment of existing Sacramento River Water Rights Settlement Contract CVP water supply to TCCA member agencies. This provision shall be implemented in a manner that creates no legal precedent regarding transfers of base or other project water supplies. As part of a long term settlement agreement benefits to TCCA member agencies may increase over time along with increased benefits to others.

7.0 Protection of SWP and CVP Supplies. In recognition of the need to protect SWP and CVP supplies from inappropriate use by others, it is agreed as follows:

7.1 Illegal Diversions. The parties agree that entities who do not hold adequate water rights should be prevented from illegally diverting water from the system. To reduce such diversions, the parties will cooperate in seeking significantly increased penalties for such illegal diversions and significant increases in resources for enforcement actions by the SWRCB.

7.2 Project Storage Releases. The parties agree that when releases are required from the SWP and CVP reservoirs to maintain Delta water quality, such releases must be protected from illegal diversions. The parties affirm the principle that upstream water rights do not extend to use of SWP and CVP storage releases, except in those circumstances where the upstream diverter has a contract with the SWP or CVP that expressly provides for such use.

8.0 Conjunctive Management Projects. To the extent technically and economically feasible, conjunctive management projects consistent with the STWP will be implemented. These projects will provide an estimated 185,000 AF of water dedicated to the uses specified in Section 8.1 in below normal, dry, and critical years as defined by the 40-30-30 Sacramento River Index in the 1995 WQCP. The TMMC will monitor implementation of the STWP projects. If subsequent estimates indicate the full supply of 185,000 AF will not be achieved, the Upstream

Water Users will work cooperatively through the TMMC to develop and make available replacement supplies.

8.1 Block 1 for Local Use. Fifty percent of the water supplies made available from the STWP projects (up to 92,500 acre feet) shall be for local use within the districts making the water available, consistent with Section 9.0. To the extent this water is not needed locally, it shall be made available to the Export Water Users, DWR or Reclamation for purchase under the terms and conditions of these Principles.

8.2 Block 2 for Water Quality Control Plan Water. Fifty percent of the water supplies made available from the STWP projects (up to 92,500 acre feet) shall be made available to the SWP and CVP who may elect to take and use such water to meet the requirements of the WQCP.

8.3 Obligation to Take Block 1 Water. In the event the Export Water Users, DWR or Reclamation elect to call for Block 2 water, the Export Water Users, DWR or Reclamation shall be required to purchase an equal amount of Block 1 water that the Upstream Water Users determine to be available.

8.4 Water in Above-Normal Years. During above-normal year types, the Export Water Users, DWR or Reclamation have the right to request that the Upstream Water Users make available Block 2 water. The Upstream Water Users shall not be obligated to make such water available if they determine, in their sole discretion, that such actions would have a negative impact on groundwater conditions. The Export Water Users, DWR and Reclamation however, shall have a right of first refusal for any conjunctive management based transfers up to the Export Water User's DWR or Reclamation Request from the Upstream Water Users at the melded Block 1 and Block 2 price described in Sections 8.5.3 and 8.5.4.

8.5 Finances. To pay for conjunctive use projects and the other actions required by the Program, the parties agree to the following:

8.5.1 Capital Costs. Consistent with the responsibilities of the agencies administering the funds, all necessary steps will be taken to secure funds from Proposition 204, Proposition 13, and other appropriate public sources to pay the capital expenses of STWP projects required for implementing the Program. The voters have recognized it is in the public interest to fund actions that improve water quality in the Delta and the reliability of supplies. Proposition 204, approved by the voters in 1996, provided \$25 million for the purpose of assisting in meeting the 1995 WQCP objectives such as through the implementation of a water rights settlement in the Sacramento Valley. Proposition 13 contains funds for implementation of conjunctive management, water use efficiency, and planning projects consistent with the projects envisioned here.

8.5.2 Use of Existing Wells. It is anticipated that existing wells owned by private landowners will be used to provide water for the purposes of the Program.

Accordingly, such landowners shall receive reasonable payments for operation and maintenance, rehabilitation (if needed), and capital costs associated with such wells. A process to determine a reasonable value for existing wells, or a portion thereof, utilized in this program will be established.

8.5.3 Operation and Maintenance (O&M) Costs for Block 2 Water. O&M expenses for Block 2 water will be paid 50 percent by Upstream Water Users and 50 percent by Export Water Users, subject to the credits described in Section 6.1. In Shasta Critical years (as defined in Sacramento River Water Rights Settlement Contracts on “drought” years in Feather River Contracts) the 50% O&M payment obligation will be tied to “out-of-pocket” costs. The TMMC will confirm the need to rely upon sources other than STWP sources in Shasta Critical years and also confirm the appropriateness of “out-of-pocket” costs.

8.5.4 Payments for Transfer Water. Export Water Users, DWR or Reclamation will pay for Block 1 water made available pursuant to Section 8.0 according to the following payment schedule:

- \$50/AF during years classified as above-normal;
- \$75/AF during years classified as below-normal;
- \$100/AF during years classified as dry; and
- \$125/AF during years classified as critical.

The payments made for Block 1 water will be reduced to reflect the amount of public funds used in 8.5.1 and 8.5.2, which is estimated to be \$17/acre-foot assuming a 30-year amortization period at six percent. The payments made for Block 1 water will be modified up or down from the base rate noted above based upon actual changes in operation and maintenance costs.

9.0 Term. The term of the Short-Term Settlement Agreement shall be ten years from the effective date, unless earlier replaced by a longer-term agreement. Consistent with the Stay Agreement, the Settlement Agreement may be subject to early termination: (i) if the SWRCB’s 1995 WQCP flow objectives are increased or decreased; (ii) if after annual review the Export Water Users, DWR or Reclamation determine the objectives of the Program are not being substantially achieved and can not be revised to do so; or (iii) matters outside the Settlement Agreement or Program materially affect the Upstream Water Users ability to implement this Settlement Agreement or the Program.

10.0 Environmental Compliance. In carrying out any actions arising under or which may result from the Agreement, any applicable environmental review including, compliance with the National Environmental Policy Act and the California Environmental Quality Act will be completed. Costs for such compliance shall be paid, to the extent feasible, from funds identified in Section 8.5.1.

11.0 Non-Participating Entities. The Parties agree that entities who were identified in the Phase 8 hearing process but who are not providing water through STWP projects, or otherwise contributing to the purpose of these Principles who seek to transfer water outside the Sacramento

Valley should be required to make water available for Block 2 project level purposes consistent with those Principles. The parties intend that before water is acquired for use outside the Sacramento Valley from non-participating entities, such transactions shall first be made available to participating entities on substantially the same terms and conditions. The provisions of this Section 11.0 shall not apply to Upstream Water Users that have resolved Phase 8 issues through separate settlement agreements approved by the SWRCB.

12.0 Transition to the Long-Term Agreement. As additional projects are implemented beyond the STWP, the benefits of such projects shall be used to meet the joint objectives of all participants as well as other purposes such as environmental benefits, including benefits to fish and wildlife, in the watershed of the Sacramento River, and CALFED programs. As additional projects are implemented a reallocation of Block 2 contributions of participating entities and an increase in the amount of water available for Block 2 and other purposes will take place. It is anticipated in the long-term agreement, additional water will be used for Block 2 purposes up to a negotiated limit.

13.0 Signatories. The undersigned, having negotiated in good faith, agree to explain these Principles in detail to their governing entities and to recommend their approval.

David Guy
Northern California Water Association

Mary Wells
Maxwell Irrigation District

Ted Trimble
Western Canal Water District

Van Tenney
Glenn-Colusa Irrigation District

Lu Hintz
Reclamation District No. 108

Tom Barandas
Natomas Mutual Water Company

Kevin O'Brien
Downey, Brand, Seymour & Rohwer LLP

Paul Bartkiewicz
Bartkiewicz, Kronick & Shanahan

Bill Baber
Minasian Law Firm

Sue King
Tehama-Colusa Canal Authority

Mark Atlas
Frost, Krup & Atlas

Stuart Somach
Somach, Simmons & Dunn

Ed Winkler
Regional Water Authority

Edmund Gee
U.S. Department of the Interior

Lowell Ploss
U.S. Bureau of Reclamation

Dianne Jacobs
California Department of Fish and Game

Gerald Johns
California Department
of Water Resources

Daniel G. Nelson
San Luis & Delta-Mendota
Water Authority

Thomas W. Birmingham
Westlands Water District

Joan A. Maher
Santa Clara Valley Water District

Timothy H. Quinn
The Metropolitan Water District
of Southern California

David Schuster
for Thomas N. Clark
Kern County Water Agency
and Thomas Hurlbutt
Tulare Lake Basin Water Storage District

Richard A. Denton
Contra Costa Water District

Laura King Moon
State Water Contractors