

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

February 12, 2002 Board Meeting

9-5

Subject

Authorize entering into a one-year Environmental Water Account demand shifting agreement with California Department of Water Resources

Description

Approval is requested to authorize the Chief Executive Officer (CEO) to enter into a one-year Environmental Water Account (EWA) Demand Shifting Agreement (Agreement) with the Department of Water Resources (DWR) consistent with the terms provided in [Attachment 1](#). In January 2001, the Board authorized the CEO to enter into a similar EWA demand shifting agreement with DWR. Pursuant to that agreement, DWR performed according to the terms of agreement and Metropolitan was paid \$4,250,000 to defer delivery of 50,000 acre-feet (AF) of its 2001 State Water Project (SWP) supplies. Metropolitan's SWP supplies in 2001 were protected from pumping restrictions due to the Endangered Species Act and its shift water has been fully returned. This arrangement contributed substantially to the success of the 2001 EWA. The proposed Agreement would be substantially the same as the 2001 agreement. In particular, the Agreement would allow the DWR to reschedule deliveries of up to 100,000 AF of Metropolitan's 2002 SWP supplies to help support the EWA. At Metropolitan's discretion, an additional 100,000 AF of Metropolitan's 2002 SWP supplies, totaling 200,000 AF, could be made available to DWR for rescheduling. The Agreement would satisfy a key prerequisite for achieving an operational EWA, which is critical to maintaining Endangered Species Act assurances for supply reliability during CALFED's Stage 1.

The DWR and other CALFED member agency representatives have initiated staff-level discussions with Metropolitan to develop the general terms of the Agreement. During these discussions, DWR indicated that the most expedient way to accomplish the Agreement is to amend the initial 2001 agreement since the agreement terms and language are essentially the same. Staff has emphasized that any EWA services agreement would require management and Board approval. Accordingly, staff has not made any commitments during these discussions. The proposed Agreement terms are included in [Attachment 1](#) and include the following critical components:

- The Agreement would be amended for one year;
- DWR would pay Metropolitan \$10/AF up front for water Metropolitan makes available for rescheduling;
- DWR would pay Metropolitan an additional \$65/AF for water DWR notifies Metropolitan it intends to reschedule;
- If DWR fails to return the rescheduled water to Metropolitan within one year, DWR would pay a penalty payment;
- DWR and Metropolitan will use their best efforts to ensure that the water which DWR returns to Metropolitan is of equal or better quality to the SWP water deferred by Metropolitan; and
- All costs of the Amended Agreement are to be paid by non-SWP funds.

Policy

The Board's policy direction regarding the CALFED Bay/Delta Program, adopted on July 13, 1999 instructs staff to "Develop a range of options to meet future water quality and reliability needs for the service area." This Amended Agreement would help to ensure that CALFED's member agencies with fishery regulatory responsibilities will be able to provide water supply reliability assurances for Bay/Delta exporters, including Metropolitan. Further, the "Statement of Needs for the CALFED Bay-Delta Program", adopted by the Board on August 17, 1999, specifically endorses an Environmental Water Account.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Pursuant to the provisions of the CEQA, the DWR, acting as Lead Agency, issued a Negative Declaration for the proposed action on November 16, 2001. In compliance with sections 15070 through 15075 of the State CEQA Guidelines, the Negative Declaration was adopted and the proposed action was approved by the Lead Agency on January 17, 2002. Metropolitan, as Responsible Agency under CEQA, is required to certify that it has reviewed and considered the information contained in the Negative Declaration and adopts the Lead Agency's findings prior to approval of the proposed action. The first two pages of the Lead Agency's adopted Negative Declaration are found in [Attachment 2](#). The complete Negative Declaration is available for review in hardcopy and on CD-ROM at the Executive Secretary's office.

The CEQA determination is: Review and consider information provided in the adopted 2001 Negative Declaration and adopt the Lead Agency's findings related to the proposed action.

CEQA determination for Option #2:

None required.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the CEO to amend the EWA Demand Shifting Agreement with DWR consistent with the terms in [Attachment 1](#), and in form approved by the General Counsel.

Fiscal Impact: As currently proposed, the Amended Agreement could result in DWR paying Metropolitan \$75/AF of Metropolitan's SWP entitlement deliveries that are rescheduled to support the EWA. Assuming that either 100,000 AF or 200,000 AF are rescheduled, DWR would pay Metropolitan \$7.5 million or \$15.0 million, respectively. The Amended Agreement may result in minor increases in operational costs, which would be more than offset by the payments to Metropolitan.

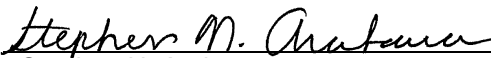

Option #2

Do not authorize the CEO to amend the EWA Demand Shifting Agreement with DWR.

Fiscal Impact: No fiscal impact.

Staff Recommendation

Option #1

 Stephen N. Arakawa Manager, Water Resource Management	1/14/2002 <i>Date</i>
 Ronald R. Gastelum Chief Executive Officer	1/20/2002 <i>Date</i>

Attachment 1 - MWD/DWR Proposed EWA Amended Agreement Terms

Attachment 2 - Initial Study and Negative Declaration: Source Shifting Agreement with Metropolitan Water District of Southern California for the Environmental Water Account

BLA #1416

MWD/DWR PROPOSED EWA AMENDED AGREEMENT TERMS	
Agreement Term	Description
1. Service Provided by Metropolitan	Shift the timing of MWD's SWP deliveries to benefit fish.
2. Term	One-year.
3. Amount of MWD Water Shifted	A minimum of 100,000 AF ("Initial Water"), and at MWD's discretion up to an additional 100,000 AF ("Additional Water") if MWD receives 65 percent or more of its Table A entitlement.
4. Fees	\$10/AF "Option Fee", \$65/AF "Shift Fee". If 200,000 AF is shifted, total fees are \$15 million.
5. Payback Schedule	Initial Water: payback is due December 31, 2002. Additional Water: payback is due April 1, 2003.
6. Penalties	If DWR fails to return water on schedule, \$75/AF is assessed annually until water is returned. MWD has the right to secure replacement supplies and invoice DWR for actual costs of replacement supplies, plus a 10 percent administrative charge.
7. Water Quality	Payback water is intended to be of equal or better quality. MWD has the right to reschedule payback supplies to protect water quality.
8. Incremental Costs	DWR agrees to recover any incremental costs (e.g. power-related) of implementing the EWA to the SWP Contractors.
9. Third-Party Impacts	MWD agrees to prepare its 2002 SWP delivery schedule based on conditions without agreement. Agreement structured to not cause adverse impacts on allocation or delivery of SWP water, including interruptible water, to other SWP contractors.
10. Funding	To be derived from non-SWP sources.

**State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES**

PROPOSED NEGATIVE DECLARATION

**Source Shifting Agreement with Metropolitan Water District of Southern California
for the Environmental Water Account**

Project Description: Lead State Agency, California Department of Water Resources (Department) and Metropolitan Water District of Southern California (Metropolitan) propose to enter into an agreement whereby Metropolitan will defer delivery of up to 200,000 acre-feet of its State Water Project (SWP) entitlement water in 2002 (Project). The water would be made available for use by the Environmental Water Account (EWA), a project implemented under the CALFED Bay-Delta Program. The EWA (managed by the regulatory agencies U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and California Department of Fish and Game (DFG)) will use the water for the purpose of fish protection. The agreement would allow the Department to call upon Metropolitan to defer delivery of at least 100,000 acre-feet of water. If Metropolitan's SWP allocation as of April 30, 2002 is sufficiently large to provide increased flexibility in Metropolitan's requested schedule, Metropolitan may defer up to an additional 100,000 acre-feet of water. The water may be deferred at a maximum rate of 25,000 acre-feet per month from January through August 2002 unless the rate and associated deferral schedule are changed by mutual agreement of the Department and Metropolitan. During the time that Metropolitan is deferring water, Metropolitan will rely upon local sources of water to meet its demands.

Depending on water supply conditions and water demand, the Department will return the deferred entitlement water, pay an annual fee to defer return of the water, or pay replacement costs for Metropolitan's purchase of replacement water as mutually agreed upon by the Department and Metropolitan. The Department will provide Metropolitan with a preliminary water repayment schedule on May 1, 2002 and an updated water repayment schedule on September 15, 2002. The Project costs will be paid for with non-contractor funds. Metropolitan and the other SWP contractors will not incur increased costs because of the EWA Program nor will there be an increased incremental cost upon the SWP or Central Valley Project (CVP).

Metropolitan will not receive more than its contractual entitlement as a result of this Project or increase its SWP delivery request. The Department and Metropolitan concur that the Project will not alter the timing or amounts of SWP water available to other contractors.

The Finding: The Project will not have a significant adverse impact on the environment.

Basis for Finding: While the Project changes the timing of the delivery of water to Metropolitan, it will not change the volume of water delivered. Metropolitan has adequate alternate local supplies and storage to draw on during the January through August 2002 deferment period. The deferment will not result in reduced deliveries that would negatively affect other water contractors. The water levels in SWP and Metropolitan supply reservoirs will remain within normal operational levels. Potential negative environmental effects such as groundwater overdraft, erosion, subsidence, dust, excessive power use, or water supply problems will not occur. Environmental consequences of the CALFED Bay-Delta Program were presented in CALFED's Programmatic EIS/EIR, adopted in 2000.

Therefore, this Negative Declaration is filed pursuant to Section 15070 et seq. of the Guidelines for Implementation of the California Environmental Quality Act.

The public review period for this proposed Negative Declaration and Initial Study will end December 17, 2001. All comments or questions should be directed to Department of Water Resources, Delores Brown, 3251 "S" Street, Sacramento, CA 95816-7017 (916/227-2407 and fax 916/227-7554). Copies of the Initial Study are available at the above address. CALFED's Programmatic EIS/EIR can be reviewed at the CALFED Bay-Delta Program, 1416 Ninth Street, Room 1147, Sacramento, CA.



Barbara J. McDonnell
Chief, Environmental Services Office

Date Nov 16, 2001