

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

February 11, 2003 Board Meeting

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**8-11**

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**Subject**

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Authorize entering into an agreement for the Foothill Area Groundwater Storage Project with Foothill Municipal Water District under Proposition 13

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**Description**

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The Governor's Annual Budget Act, released in May 2000, appropriated to the Department of Water Resources local assistance grant funds from Proposition 13. From these funds, the state allocated \$45 million to Metropolitan to help finance Southern California water reliability projects targeting groundwater conjunctive-use projects within Metropolitan's service area. These conjunctive-use projects will improve the water supply reliability for the entire region by creating additional dry-year supply, as targeted in the Integrated Resources Plan.

In April 2001, the Board directed staff to finalize agreement terms with the sponsoring entities that were selected through the Prop. 13 competitive Request for Proposal process. Included in the selection is the Foothill Area Groundwater Storage Project sponsored by Foothill Municipal Water District. This conjunctive-use program is recommended to receive \$1.7 million from the Prop. 13 funds allocated to Metropolitan. The program includes the construction of an Aquifer Storage and Recovery well, VOC treatment system, and a pump station upgrade in the Foothill service area. This program is in addition to the larger program Metropolitan is pursuing in the Raymond Basin to store up to 75,000 acre-feet.

The Foothill Area Groundwater Storage Project would enable Metropolitan to store up to 9,000 acre-feet of water in the Raymond Basin when surplus water is available and produce 3,000 acre-feet per year for overlying demand during dry, drought or emergency periods. On Aug. 24, 2001, Foothill submitted the signed Program Term Sheet ([Attachment 1](#)) for this project to Metropolitan. The Program Term Sheet briefly describes the key articles of the agreement, consistent with Metropolitan's Principles for Groundwater Storage approved by the Board in January 2000, and is the basis of the agreement. The submittal of the signed Program Term Sheet by Foothill signifies the intent to execute an agreement to develop the conjunctive-use project. Metropolitan has also prepared the agreement consistent with the Program Term Sheet for the Foothill Area Groundwater Storage Project for execution by the Chief Executive Officer. The agreement is available for review at the Executive Secretary's office. Under the agreement, Foothill will be responsible for the preparation of the CEQA documentation as the lead agency and the design, construction and operation of the facilities. This program would add to the conjunctive-use projects the Board approved last year with the City of Long Beach and Three Valleys Municipal Water District.

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**Policy**

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By Minute Item 43668, dated August 17, 1999, the Board adopted a Statement of Needs for the CALFED Bay-Delta Program.

By Minute Item 43860, dated January 11, 2000, the Board approved strategies for implementing Groundwater Storage Programs within Metropolitan's service area.

By Minute Item 44210, dated October 17, 2000, the Board adopted Resolution 8706 to accept the grant for funds from Proposition 13.

By Minute Item 44427, dated April 10, 2001, the Board gave authority to finalize agreement terms for Groundwater Conjunctive-Use Projects using Proposition 13 Funds.

### **California Environmental Quality Act (CEQA)**

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CEQA determination(s) for Option #1:

Pursuant to the provisions of CEQA and the State CEQA Guidelines, Foothill is acting as the Lead Agency for the Foothill Area Groundwater Storage Project and has prepared and processed a Mitigated Negative Declaration entitled "Foothill Municipal Water District Conjunctive Use Project Mitigated Negative Declaration" and an Addendum to the MND. The MND was distributed for a 30-day public review period that began on Oct. 7, 2002. The Addendum was subsequently prepared to clarify minor modifications to the proposed project. The Lead Agency adopted the MND, Addendum, and approved the project on Jan. 15, 2003. Metropolitan, as a Responsible Agency under CEQA, is required to certify that it has reviewed and considered the information in the MND and Addendum, and adopt the Lead Agency's findings prior to approval of the proposed agreement. These documents are available in the Executive Secretary's office for review.

The CEQA determination is: Review and consider information provided in the Lead Agency's 2003 MND and its 2003 Addendum, and adopt the Lead Agency's findings related to the proposed agreement with Metropolitan.

CEQA determination for Option #2:

None required

### **Board Options/Fiscal Impacts**

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#### **Option #1**

Adopt the CEQA determination and authorize the CEO to enter into an agreement consistent with the terms listed in the Program Term Sheet ([Attachment 1](#)) and in a form acceptable to the General Counsel for the Foothill Area Groundwater Storage Project.

**Fiscal Impact:** Would contribute toward the implementation of the IRP, insure timely disbursement of state funding from Prop. 13, and move forward the development and implementation of the Foothill Area Groundwater Storage Project.

#### **Option #2**

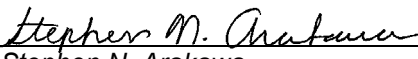
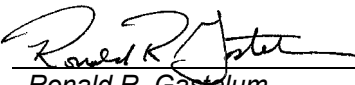
Do not authorize the CEO to enter into agreement.

**Fiscal Impact:** None

### **Staff Recommendation**

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Option #1

	1/14/2003
Stephen N. Arakawa Manager, Water Resource Management	Date
	1/22/2003
Ronald R. Gastelum Chief Executive Officer	Date

### **Attachment 1 – Terms of Agreement for the Foothill Area Groundwater Storage Project**

BLA #1414

**Proposition 13  
Groundwater Storage Program  
Term Sheet**

ARTICLE	DESCRIPTION
<b>I. Recitals</b>	Establishes Metropolitan's Board-adopted Groundwater Storage Principles as basis for agreement and includes items as necessary from the participants of the agreement.
<b>II. Effective Date and Term</b>	A. 25-year Term with renewal by mutual consent
<b>III. Conditions Precedent to Project Funding Obligation</b>	<p>A. CEQA</p> <p>B. DWR commitment - DWR agreement conditions fulfilled</p> <p>C. Permits and Approvals - All authorizations shall have been obtained</p> <p>D. No litigation</p> <p>E. No Existing Force Majeure Event</p>
<b>IV. Program Planning and Construction</b>	<p>A. Planning</p> <ol style="list-style-type: none"> <li>1. General description</li> <li>2. Operational Capacity thresholds</li> <li>3. Submission of Plans, Schedule and Budget – By September 1, 2003 agency shall deliver engineering, construction, schedule and budget to Metropolitan</li> <li>4. Metropolitan shall review and approve schedule and budget only. Metropolitan shall submit schedule and budget to DWR for approval</li> </ol> <p>B. Construction - Program Agency is responsible for the construction. Metropolitan and DWR retain inspection right. Metropolitan has no ownership interest in the Program facilities</p>
<b>V. Project Construction Funding Procedure (not including Maintenance/Energy Cost Funding)</b>	<p>A. Metropolitan Funding Obligation - Sets Metropolitan maximum funding obligation</p> <p>B. Contribution from Agency - Sets Agency contribution (if any)</p>

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ARTICLE	DESCRIPTION
	<p>C. Cost Overruns - Agency liable for overruns</p> <p>D. Disbursement Protocol</p> <ol style="list-style-type: none"> <li>1. Agency submits 90-day budget for Metropolitan approval. Metropolitan approves or disallows and forwards to DWR. DWR approves and sends money to Metropolitan. Metropolitan forwards money to agency</li> <li>2. Agency must certify expenditures</li> <li>3. Funds held in a construction trust account</li> <li>4. Ten percent retainage by DWR</li> </ol>
<p>VI. Operation of Project</p>	<p>A. Operating Committee <i>ACPA and agency participants</i></p> <ol style="list-style-type: none"> <li>1. Two members from Metropolitan and two members representing <del>the Basin</del> - disputes according to Article XIV</li> <li>2. Annual Planning Meeting, Operating Budget, and Schedule - Committee to develop and manage O&amp;M plan for year, including Agency baseline, schedule and budget</li> <li>3. Committee duties               <ol style="list-style-type: none"> <li>a. Account for storage and extraction and losses</li> <li>b. Annual reconciliation of water accounts, energy and operations expenses</li> <li>c. Confirm Baseline Assurances</li> <li>d. Prepare annual Program operating report</li> <li>e. Coordinate timing, locations and nature of storage</li> </ol> </li> </ol> <p>B. Program Agency Obligations</p> <ol style="list-style-type: none"> <li>1. Operate and maintain facilities in good condition</li> <li>2. Provide for repairs</li> </ol>

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	<ul style="list-style-type: none"> <li>3. Maintain the Agencies' facilities as necessary</li> <li>4. Certify water delivered into Metropolitan account</li> <li>C. Metropolitan Obligations                             <ul style="list-style-type: none"> <li>1. Pay for maintenance of Program facilities</li> <li>2. Pay for power to pump water</li> <li>3. Pay annual administrative fee (ratio of \$100,000 per 25,000 AF of yield)</li> </ul> </li> <li>D. Payment of O&amp;M: Agency may choose to receive payment in form of credit on water bill</li> <li>E. Annual Reconciliation - Reconcile actual storage and O&amp;M costs</li> </ul>
<p><b>VII. Groundwater Storage and Extraction</b></p>	<ul style="list-style-type: none"> <li>A. Storage of water - Metropolitan can store up to 25 percent of its total capacity rights per year on fifteen days notice</li> <li>B. Extraction of Stored Water - Metropolitan can extract up to 33 percent of its total capacity rights per year on fifteen days notice</li> <li>C. Agency will certify storage and extraction deliveries</li> <li>D. Payment for Stored Water - Agencies pay full service rate</li> <li>E. Disposition of water in storage at termination of agreement</li> </ul>
<p><b>VIII. Other Uses of Facilities</b></p>	<ul style="list-style-type: none"> <li>A. Agencies may use facilities, but may not use the facilities in a manner that would negatively impact Metropolitan financially. Agencies responsible for O&amp;M when they use facilities.</li> </ul>
<p><b>IX. Baseline Assurances</b></p>	<ul style="list-style-type: none"> <li>A. Agency covenants not to operate the facilities in a manner that would negatively impact Metropolitan financially.</li> <li>B. Agency pays full service rate for water if they operate the facilities in a manner that would negatively impact Metropolitan financially.</li> </ul>

**Proposition 13  
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ARTICLE	DESCRIPTION
<b>X. Representations, Warranties and Affirmative Covenants of Parties</b>	
<b>XI. Record Keeping and Audit Provisions</b>	
<b>XII. Indemnity</b>	<ul style="list-style-type: none"> <li>A. General Indemnity</li> <li>B. Program Agency indemnity of Metropolitan</li> <li>C. Metropolitan indemnity of Agency</li> </ul>
<b>XIII. Insurance</b>	<ul style="list-style-type: none"> <li>A. General Required Coverage</li> <li>B. Environmental Liability Insurance - Commercially available to cover on- and off-site clean up of pollution arising from the program and losses from tort claims. Liability insurance will also cover payment of future costs to upgrade Program water quality, seismic, fire/hazardous materials handling or other regulatory/safety rules. Metropolitan and Agency share cost.</li> <li>C. Extra Expense Insurance</li> <li>D. Specific Policy Requirements</li> <li>E. Deductibles/Self Insurance</li> <li>F. Metropolitan copies of insurance certificates</li> <li>G. Acceptability of Insurers</li> </ul>
<b>XIV. Defaults and Remedies</b>	<ul style="list-style-type: none"> <li>A. Dispute Resolution - Disputes will be handled by 1) Operating Committee, 2) Mutually acceptable consultant, or 3) Arbitration</li> <li>B. Termination - If there is a breach of contract by the Agency, Metropolitan may terminate with written notice. Agency to purchase water over 3 year period and pay liquidated damages.</li> <li>C. Liquidated Damages - Agency repays the program construction costs</li> </ul>

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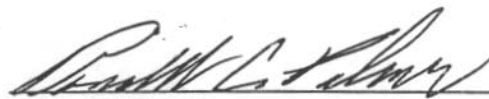
ARTICLE	DESCRIPTION
XV. Force Majeure Events	A. Provisions for Force Majeure Events
XVI. Miscellaneous	A. Miscellaneous Legal Provisions
Exhibits	A. DWR Funding Letter B. RFP C. Agency Proposal D. Metropolitan Award Letter E. Initial Storage Account (Cyclic) F. Accounting and Certification for Storage and Extraction

Concur:

Concur:



Ronald R. Gastelum  
Chief Executive Officer  
The Metropolitan Water District  
of Southern California



Ronald C. Palmer  
General Manager  
Foothill Municipal Water District

Aug 17, 2001  
Date

Aug. 24, 2001  
Date