

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

May 13, 2003 Board Meeting

9-4

Subject

Authorize entering into an agreement for the State Water Project Joint Powers Authority

Description

The State Water Project contractors propose forming a SWP Joint Powers Authority (JPA), which could provide a mechanism to maximize the reliability and efficiency of the SWP. The Department of Water Resources would contract with the JPA to undertake specified projects and services. DWR and many of the SWP contractors would benefit from this approach. The JPA would specifically help resolve significant challenges in the near future, such as hiring freezes, budget constraints, and more complex power operations. The JPA would be a powerful mechanism to improve SWP efficiency and reliability by providing greater stakeholder influence.

A summary of the SWP Joint Powers Authority Agreement is attached ([Attachment 1](#)). The Agreement would provide the organizational framework for the JPA. Potential JPA activities could include providing contractual services; operating and maintaining portions of the SWP; acquiring, constructing, owning, operating, maintaining and replacing facilities; and acquiring water and water rights. The SWP contractors foresee taking on responsibility in incremental steps, with the JPA initially providing consulting services. As experience is gained, the SWP contractors would consider expanding the activities and responsibilities of the JPA.

The JPA would enter into general contracts with DWR to provide tasks that benefit all the members of the JPA. For certain projects, DWR would enter into specific contracts where one or more JPA members, as a subset, would be responsible for activities relating to specific reaches or sections of the California Aqueduct where only the subset of members are stakeholders. Metropolitan's CEO would provide Metropolitan's Board with routine reports, progress and plans of actions regarding the JPA's activities affecting Metropolitan.

SWP JPA Organization

The proposed Agreement would provide for the JPA governing body to consist of a board of directors that represents various "classes" of members. Each class would represent between one and eight contractors, depending on the contractor's size and region. Metropolitan, being the only member in its class, will always be represented on the board. The agreement also provides for a General Manager of the JPA, staff, and consultants as necessary.

Voting and Legal Aspects

All directors would have an equal vote on the JPA board; however, board actions may be overturned by referendum of the members. The members could overturn actions, by either a majority vote, or cumulatively as a majority of State Water Contract Table A Amounts. This procedure provides Metropolitan with a sufficient high-level influence and protection. This type of voting arrangement has proven to work well for the State Water Contractors, Inc. (SWC, Inc.). It is the foundation for large and small contractors working together to constructively resolve important issues. In regards to specific projects or programs, only those participating in the specific project could vote. The board of directors would have the authority to disapprove specific project agreements upon determination that the project agreement has substantial adverse financial impacts upon members not participating in the specific project agreement.

Financial Aspects and Delegation of Authority

SWC, Inc. would provide a loan of \$400,000 for start-up costs. This will increase Metropolitan's fiscal year 2003/04 SWC, Inc. dues by \$191,000, which is in proportion to our share of SWP Table A water supply. Metropolitan's Board will be asked to approve the SWC, Inc., dues in July 2003. The JPA would repay the loan. Dependent on the number of contractors participating in the JPA, Metropolitan's financial exposure for start-up cost could increase from \$191,000 to \$254,000. As initial actions, the JPA is anticipated to provide consulting services to guide future SWP energy management practices, benchmark facility performance metrics, and support facility planning. These services would be fully reimbursed by DWR; hence there would be no net cost to the JPA. Additional delegation of authority to the CEO regarding JPA expenditures in excess of start-up costs will be developed for consideration at subsequent board meetings.

Policy

Metropolitan Water District Administrative Code § 5112: State Water Contract Payments

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). Prior to future JPA projects seeking funding or other approvals from Metropolitan, CEQA documentation will be prepared by the Lead Agency and processed in accordance with CEQA and the State CEQA Guidelines. As the Responsible Agency, Metropolitan's Board will then review and consider the CEQA documentation before taking further action.

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and

- a. Authorize entering into an agreement consistent with the attached summary of the JPA Agreement, in form acceptable to the General Counsel; and
- b. Authorize the CEO to support JPA start-up expenditures and the JPA providing consulting services.

Fiscal Impact: An increase between \$191,000 and \$254,000, dependent on the number of contractors that participate in the JPA.

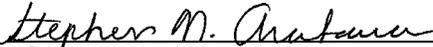
Option #2

Do not authorize the CEO to enter into agreement.

Fiscal Impact: None

Staff Recommendation

Option #1


Stephen N. Arakawa
Manager, Water Resource Management

4/16/2003
Date


Ronald R. Gastelum
Chief Executive Officer

4/28/2003
Date

Attachment 1 – Summary of the SWP Joint Powers Authority Agreement

BLA #2234

Summary of Proposed Joint Powers Agreement for the State Water Contractors Operating Authority

The proposed joint powers agreement (JPA), which creates a new separate governmental entity, is based upon requirements of the Joint Powers Law (Government Code Sections 6500, *et seq.*). In many respects it is modeled upon the State Water Contractors (SWC) bylaws. This is a summary of the agreement.

1. Purposes and Powers of the JPA

The purposes of the JPA Agreement are to establish a framework for possible future provision of various services to the State. These services would be provided pursuant to agreements the entire JPA, or groups of its members, would enter into with the State. They could include operation and maintenance of portions of the SWP and the acquisition and operation of related facilities as well as acquisition of water and water rights. These latter activities could be either by the Authority alone or in cooperation with the State, the United States or other entities. The Authority will have all of the powers necessary to accomplish these purposes, including the power to enter into contracts, incur debts and liabilities, to hire staff and consultants, to issue bonds, notes and other indebtedness.

2. Specific Projects

The Authority can undertake specific projects that may involve less than all the Members of the Authority, provided that no Member shall be required to be involved in a specific project without its approval. The details of each specific project involving less than all Members must be set forth in a Project Agreement executed by the participating Members and approved by the Board of Directors as to non-financial impact upon nonparticipating Members. Each participating Member may appoint a representative to the committee administering the specific project.

3. Membership in the JPA

The JPA creates an Authority consisting of those State Water Project contractors that elect to become parties to the JPA. In order to become effective, the JPA must be executed by five or more SWCs having a combined total of at least 75 percent of the Maximum Annual Table A Amounts of all SWCs. Members may withdraw from the Authority by giving 30 days written notice, provided that such withdrawal does not in any way impair any contracts or other indebtedness of the Authority then in effect.

The Members of the Authority are divided into eight classes in the same manner as now provided for in the SWC bylaws. The full membership shall meet at least once annually and more often as needed. Each Member shall appoint a representative [or an alternate] to represent it at membership meetings. A quorum for meetings of the Members consists of a majority of the representatives. The voting in the membership meetings will be one vote for each Member.

4. Governance of the Authority

- (a) Board of Directors: The Authority is to be governed by a Board of not less than three, nor more than nine directors. Each class of Members shall elect one director and alternate(s), except Class 8 (Southern California East Branch Contractors) shall elect two directors and alternates. Metropolitan and Kern County Water Agency are the sole members of their respective classes and thus appoint their own directors. This is the same procedure that is provided for in the SWC bylaws. If no contractors from a class elect to join the Authority, there will be no director from that class on the Board of Directors. The term of office for directors is one year. Nominations for directors are to be made by the Members in each class for the director for that class. Vacancies on the Board are to be filled by the Members of the appropriate class.

- (b) Board Meetings: Since the JPA is a public agency, membership and Board meetings will be subject to applicable requirements of the Brown Act. A quorum for Board meetings shall consist of a majority of the directors. All acts of the Board must be made by a majority of the directors present at a meeting where there is a quorum.
- (c) Review of Actions of the Board: On the demand of any Member, any action of the Board shall be subject to a referendum by the Members. The Board's action will be nullified if either a majority of the Members or Members who have a majority of the Maximum Annual Table A Amounts of all of the Members vote against it. This is similar to the provisions in the SWCs' bylaws.
- (d) Officers. The officers of the Authority will be a president, a vice-president, a secretary, a general manager, a treasurer and an auditor. Any of the offices may be held by the same person, provided that the president may not also serve as the treasurer or the auditor. The Authority shall have a general manager appointed by the Board who shall serve as the chief executive officer of the Authority. The Board may employ such other persons as required to carry out the functions of the Authority.

5. Financial Provisions

- (a) Funds and Budget: All funds of the Authority will be deposited with the treasurer, who shall be bonded. The general manager will submit a proposed budget each year to the Board, and the Board will present it to the Members for final approval.
 - (b) General Administration and Expense Account: The JPA authorizes the Board to establish a general administration and expense account with the initial contributions to that account to be allocated among the Members in proportion to their respective Maximum Annual Table A Amounts. Subsequent contributions shall be allocated among the Members in accordance with benefits and shall require the approval of a majority of the Members and of Members who have cumulatively a majority of the Maximum Annual Table A Amounts of all of the Members in order to be effective. Any Member that does not make its contribution to the working capital account within sixty days after the beginning of the fiscal year shall be deemed to have withdrawn from the Authority.
 - (c) Bonds and Indebtedness. The Authority may issue bonds, notes and other forms of indebtedness, if such issuance is approved at a meeting of the Members by at least two-thirds of all the Members, and by the Members who cumulatively have at least 75 percent of the Maximum Annual Table A Amounts of all Members. Any bonds or indebtedness to be issued for a specific project must be approved by the Members who are parties to the Project Agreement by whatever vote is required as set forth in that Project Agreement.
 - (d) Refunds: No refund or repayment of any portion of the Authority's assets will be made when a Member ceases to be a party to the Agreement.
6. Liabilities of Members. The liabilities of the Authority are not intended to become the liability of any of the Members, but if pursuant to applicable Government Code sections, any liabilities of the Authority are placed upon the Members, they shall be allocated in proportion to each Member's respective Maximum Annual Table A Amount. Members not participating in a Specific Project would not have any liability for that project.
7. Amendments and Termination: Amendments can be made to the Agreement by a vote of two-thirds of the Members representing at least 75 percent of the Maximum Annual Table A Amounts of all Members. The Agreement can be terminated in the same manner.