

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

May 11, 2004 Board Meeting

9-6

Subject

Authorize (1) an increase of \$1.4 million in Approp. 15400 and entering into contracts with four title companies; and (2) execution of agreements related to the Palo Verde Irrigation District Land Management, Crop Rotation, and Water Supply Program in accordance with revised principles [**Conference with real property negotiators: Ronald Gastelum, Chief Executive Officer; Jeffrey Kightlinger, General Counsel; property: real estate interests within the Palo Verde Irrigation District service area; negotiating party: Palo Verde Irrigation District; under negotiation: price and terms re potential agreements to be heard in closed session pursuant to Government Code Section 54956.8.**]

Description

In October 2002, the Board authorized the CEO entering into agreements with PVID and individual PVID landowners based on certain contractual principles, and approved \$94.3 million for the implementation of the Palo Verde Irrigation District Land Management, Crop Rotation, and Water Supply Program (Program). Out of the \$94.3 million, \$86.8 million were earmarked for sign-up payments, \$6.0 million for community improvement programs, and \$1.5 million for the setup costs of the Program. The estimated setup cost at that time was based on acquiring title reports for 29 percent of a landowner's participating properties subject to a fallowing easement. Staff now recommends acquiring title reports for all potentially participating properties to ensure that participants have control over all properties they enroll in the Program. Consistent with the October 2002 board-approved guidelines for funding community improvement programs and based on input from the local community improvement programs' committee, staff now recommends that the socioeconomic effects of the Program and the effectiveness of implemented community improvement programs be assessed once every five years. Any additional funding in excess of the \$6 million would require future board approval.

Entering into Contracts with Four Title Companies

To provide Metropolitan the flexibility to achieve Program implementation by summer 2004, staff recommends entering into contracts with four title companies (Commonwealth Land Title Company, First American Title Insurance Company, Lawyers Title Company, and Stewart Title Company). Each contract would be for services up to a maximum of \$300,000. The three title companies that are currently under contract with Metropolitan would continue to support our needs; however, they do not have the capability of doing the increased title work for a summer 2004 startup. If water supply conditions or other considerations dictate implementation by the summer of 2004, these new title companies would be directed to perform the work.

Increase of \$1.4 Million in Approp. 15400

Of the currently appropriated \$1.5 million for Program setup, about \$0.6 million has already been spent with \$0.9 million remaining. In order to conduct title searches for all properties in the valley if needed, an increase of \$1.4 million in Approp. 15400 would be required. The \$1.4 million increase would ensure sufficient funds are available to pay for the title reports and signup costs for all landowners that potentially could participate in the Program. If required, these funds would be obtained from the water transfer fund. This approach would support the most expeditious implementation of the Program setup.

Approve Revised Contractual Principles

Based on negotiations with Palo Verde Irrigation District since October 2002, certain changes are proposed to the October 2002 approved contractual principles. **Attachment 1** shows the proposed changes in a strikeout/underline fashion. One of the proposed changes involves a change in the Program's initial annual O&M payment from \$550 to \$602 per non-irrigated acre so the Program reflects implementation delays and updated water usage values. As a result of the Quantification Settlement Agreement negotiations, Program implementation was delayed from 2002 to 2004. In addition, updated information for landowners' historic water usage increased the quantity of water anticipated to be saved by the Program. When considering the time value of these increased costs and water supply benefits, the Program's present worth unit cost of water would not be increased.

Policy

By Minute Item 44542, dated July 10, 2001, the Board approved Principles of Agreement for a Land Management, Crop Rotation, and Water Supply Program with Palo Verde Irrigation District, and appropriated \$500,000 for the preparation of environmental documentation and other preliminary activities for the Program.

By Minute Item 45053, dated Oct. 22, 2002, the Board authorized entering into agreements for the Palo Verde Irrigation District Land Management, Crop Rotation, and Water Supply Program and community improvement programs; and the expenditure of \$94.3 million to fund the implementation of the programs (Approp. 15400).

By Minute Item 45517, dated Sept. 23, 2003, the Board approved the QSA and related agreements among Imperial Irrigation District, Coachella Valley Water District, San Diego County Water Authority, and Metropolitan. Under the QSA, Metropolitan could acquire Colorado River water from PVID during the Quantification Period without objection by IID and/or CVWD.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Pursuant to the provisions of CEQA and the State CEQA Guidelines, a Final Environmental Impact Report (Final EIR) for the Proposed Palo Verde Irrigation District Land Management, Crop Rotation, and Water Supply Program (Program) has been prepared and certified, along with an adopted Findings of Fact (findings). The present board actions are based on minor administrative and fiscal changes, i.e., authorizing Metropolitan to enter into contracts with four title companies, providing increased funding, revising payments to voluntary Program participants, and implementing minor revisions to the contractual principles, and not on any substantial changes to the approved Program itself. Accordingly, no further CEQA documentation is necessary for the Board to act with regard to the proposed actions.

The CEQA determination is: Determine that the proposed actions have been previously addressed in the certified Final EIR and adopted findings and that no further environmental analysis or documentation is required.

CEQA determination for Option #2:

None required with respect to not increasing the funding, not approving revised payments to voluntary Program participants, nor implementing minor revisions to the contractual principles.

Same as Option #1 with respect to entering into contracts with four title companies.

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and

- a. Authorize an increase of \$1.4 million in Approp. 15400 and entering into contracts with four title companies; and
- b. Approve an initial annual payment of \$602 per non-irrigated acre and the other revisions to the contractual principles.

Fiscal Impact: up to \$1.4 million

Option #2

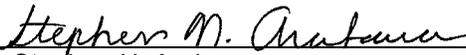
Adopt the CEQA determination and

- a. Do not authorize an increase of \$1.4 million in Approp. 15400; and authorize entering into contracts with four title companies; and
- b. Do not approve an initial annual payment of \$602 per non-irrigated acre and the other revisions to the contractual principles.

Fiscal Impact: None

Staff Recommendation

Option #1

 Stephen N. Arakawa Manager, Water Resource Management	5/7/2004 Date
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 Ronald R. Gastelum Chief Executive Officer	5/7/2004 Date
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Attachment 1 – Proposed Changes to the October 22, 2002 Board Approved Principles

BLA #2613

[Proposed Changes to the October 22, 2002 Board Approved Principles](#)

**Proposed Principles for the
Palo Verde Irrigation District/Metropolitan Water District
of Southern California Land Management,
Crop Rotation and Water Supply Program**

The Metropolitan Water District of Southern California (Metropolitan) and Palo Verde Irrigation District (PVID) desire to implement a 35-year Land Management, Crop Rotation and Water Supply Program (Program) with the objectives of (1) developing a flexible water supply for Metropolitan up to approximately 111,000 acre-feet per year through the non-irrigation of a portion of PVID's Valley lands, and (2) assisting in stabilizing the farm economy within the Palo Verde Valley through sign-up payments and annual payments for the water supply. Two types of agreements would be executed: (1) a Program Agreement between Metropolitan and PVID, and (2) Landowner Agreements between PVID and/or Metropolitan and participating landowners, whichever is appropriate to comply with all legal requirements, providing that these principles and following contracts comply with each other. Metropolitan and PVID desire to implement the Program based on the following contractual principles.

1. Program Agreement Contractual Principles

- a. Term of Program Agreement would be 35 years. Effective date would be conditioned on obtaining necessary concurrences, approvals, assurances, and permits required to implement the Program.
- b. Following the fifth year of the Program, Metropolitan may fully terminate the Program Agreement upon five years' written notice to PVID without any further Program obligations.
- c. Implementation of the Program is additionally conditioned on a minimum of 47,000 acres of the 91,000 irrigated valley acres participating in the Program. With 47,000 acres participating in the Program of which up to 35 percent could be non-irrigated in a year, a maximum of approximately 69,000 acre-feet of water per year could be saved.
- d. With full participation in the Program by landowners and at Metropolitan's request, the non-irrigated acreage would not exceed 24,000 acres per year in any 25 years and 26,500 acres per year in any 10 years during the life of the Program.
- e. Water conserved each year by the Program would be determined on an annual basis.
- f. PVID would not demand the saved water by the Program or transfer or otherwise furnish saved water to any third party other than Metropolitan. ~~If a reduction in PVID's Colorado River water supplies is imposed by the U.S. Bureau of Reclamation, saved water available to Metropolitan would be proportionally reduced.~~
- g. PVID would provide Metropolitan with related Program data including water used in PVID, listing of crops grown within PVID, and the effect of the Program on groundwater levels throughout PVID.

- ~~h. Metropolitan would have the first right of refusal to participate in any additional water supply programs developed by PVID during the period of the Program on the same terms and conditions offered other potential participants of additional water supply programs.~~
- h. Metropolitan would reimburse PVID for its actual incremental administrative costs due to the Program payable at the beginning of each contract year.
- ~~j. A Memorandum of Agreement summarizing the major terms of the Program would be recorded in offices of the county recorders of Riverside and Imperial counties.~~
- ~~k.i.~~ Other miscellaneous matters regarding venue; insurance; precedence; severability; and attorneys' fees would be included.

2. Landowner Agreement Contractual Principles

- a. Landowner can enroll in the Program up to 29 percent of Landowner's irrigated acreage, unless there is insufficient interest in the Program in which case Landowner can enroll up to 35 percent of Landowner's irrigated acreage. Insufficient interest exists when less than 26,500 non-irrigated acres are enrolled in the Program. At Metropolitan's option, a minimum of seven percent and a maximum of 29 percent of Landowner irrigated acreage would not be irrigated every year with the same land not being irrigated for a minimum of one year and a maximum of five years at Landowner's option. Landowner may request Metropolitan's approval to reduce or eliminate its non-irrigated acreage in any year. Metropolitan, upon a minimum of one-year notice, would have the option to increase or decrease the amount of non-irrigated acreage within the seven and 29 percent limits. Once increased, the increased area would not be irrigated for a minimum of 2 years. Metropolitan would exercise its options such that the average non-irrigated acreage over the life of the Program would equal at least 13 percent of Landowner irrigated acreage.
- b. Landowner would execute and record a "Non-Irrigation Easement" ~~as well as a "Monitoring and Performance Easement"~~ on a defined 29 percent of Landowner's irrigated acreage for the life of the Program. Existing encumbrances such as leases and deeds of trust would be subordinated to the easements. Enforcing the easement would result in the non-irrigation of the land subject to the recorded easement.
- c. Landowner would be responsible for payment of taxes, PVID water toll payments, vegetation abatement, dust control, and all other costs related to the non-irrigated lands.
- d. Landowner would comply with the requirements for minimum size of a field that would not be irrigated. A history of farming, verified to Metropolitan's satisfaction, would be required for fields not to be irrigated under the Program.
- e. Landowner would provide Metropolitan and PVID with related Program data as requested.
- f. Landowner would be paid a one-time sign-up payment of \$3,170 per acre multiplied by the maximum number of acres that would not be irrigated in a year (up to 29 percent of the Landowner's total irrigated acreage). Metropolitan would be responsible for the payment of Landowner's sign-up payments. At Landowner's option, the sign-up payment would be paid in equal installments over two to five years with 2.8 percent

interest for the second year installment and 1.5 percent interest per year for the third through the fifth year installments.

- g. Landowner would be paid an annual payment of \$~~550~~602 per acre multiplied by the acreage not irrigated in that year under the agreement, ~~in two equal installments of \$275 per acre on January 31 and July 31~~September 1. Metropolitan would be responsible for the payment of Landowner's annual payments. The annual payment would be adjusted by 2.5 percent per year annual compounded escalation for the first ten (10) years. Beginning in year eleven (11) of the Program, said payment would be adjusted once every ~~two (2)~~ years based on the ~~arithmetic average of the~~ consumer price index – all urban consumers, all items, Los Angeles-Orange County, CA of the preceding ~~two (2)~~ years, with a minimum amount of two and a half (2.5) percent and a maximum amount not to exceed five (5) percent.
- h. Landowner would be responsible for ensuring that Lessees comply with Landowner Agreement.
- i. Metropolitan's enforcement remedies would include specific performance; enforcement of easement; ~~liquidated damages~~ and right of setoff as to annual payments. Dispute resolution would include arbitration.
- j. A Memorandum of Agreement summarizing the major terms of the Landowner Agreement would be recorded in offices of the county recorders of Riverside and Imperial counties.
- k. Metropolitan would fund its contracting costs to administer the Landowner Agreements and implement the Program.
- l. Other miscellaneous agreements regarding matters such as venue, insurance, precedence, indemnification, severability, and attorneys' fees would be included.