MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

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

March 8, 2005 Board Meeting

7-7

Subject

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

Description

This letter requests authorization for the Chief Executive Officer to enter into a three-year Environmental Water Account (EWA) demand shifting agreement with the California Department of Water Resources (DWR), consistent with the terms provided in **Attachment 1**. In 2001 through 2004, the Board authorized the CEO to enter into one-year agreements with similar terms. In 2001, Metropolitan was paid $4.25 million to defer delivery of 50,000 acre-feet of its 2001 State Water Project (SWP) supplies. In 2002, Metropolitan was paid $1 million in option fees, but DWR did not request Metropolitan to defer any of its SWP deliveries. In 2003 and 2004, Metropolitan was paid $500,000 in option fees each year, but DWR did not request Metropolitan to defer any of its SWP deliveries.

The proposed agreement would be similar to the 2004 agreement, except that the agreement would cover three years instead of one to reflect the recent extension of Endangered Species Act (ESA) assurances. In particular, the agreement would allow DWR to reschedule delivery of up to 100,000 AF of Metropolitan's SWP supplies annually in 2005 through 2007 to help support the EWA.

The CALFED Record of Decision specifically indicates that a demand shift agreement for 100,000 AF is required if the EWA is to be considered "functional." Therefore, the agreement before the Board would satisfy a key prerequisite for achieving an operational EWA, which is critical to maintaining ESA assurances for supply reliability during CALFED's Stage One. ESA assurances have now been in place for four years and have provided supply reliability to the SWP. National Oceanic and Atmospheric Administration Fisheries, the US Fish and Wildlife Service, and the California Department of Fish and Game recently extended the EWA and the ESA assurances linked to the EWA for another three years, provided that the EWA remains operational.

DWR and other CALFED member agency representatives have initiated staff-level discussions with Metropolitan to develop the general terms of the agreement. The proposed agreement terms are included in **Attachment 1** and contain the following critical components:

- DWR would pay Metropolitan $5/AF up front each year for the option to reschedule up to 100,000 AF of Metropolitan deliveries;
- DWR would pay Metropolitan an additional $25/AF for water actually rescheduled;
- DWR will deliver any rescheduled water to Metropolitan before the end of the calendar year in which the water is rescheduled;
- Metropolitan will not be required to shift demands during certain years with low State Water Project Table A allocations; and
- Payback water is intended to be of equal or better quality. Metropolitan has the right to reschedule payback supplies to protect water quality.

Policy

The Board's policy direction regarding the CALFED Bay-Delta Program, adopted on July 13, 1999 (M.I. 43619) instructs staff to "Develop a range of options to meet future water quality and reliability needs for the service area." This 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.

By Minute Item 43688, dated August 17, 1999, the Board adopted the Statement of Needs for the CALFED Bay-Delta Program.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Pursuant to the provisions of CEQA, the State CEQA Guidelines and the National Environmental Policy Act, DWR, acting as Lead Agency, with the cooperation of the California Department of Fish and Game, the United States Bureau of Reclamation, the United States Fish and Wildlife Service and the National Marine Fisheries Services, prepared and processed a Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR) for the EWA. The Final EIS/EIR evaluated the environmental impacts associated with EWA assets including demand shifting agreements, also referred to as source shifting in the EIS/EIR. The Final EIS/EIR was certified and the EWA was approved by the Lead Agency on March 18, 2004. The Lead Agency also approved the Findings of Fact (findings) and adopted the Mitigation Monitoring and Reporting Program (MMRP). On April 13, 2004, Metropolitan, acting as a responsible Agency under CEQA, certified that it has reviewed and considered the information in the certified Final EIS/EIR and adopted the Lead Agency's findings and MMRP. The Board's adoption of Lead Agency's findings and MMRP in 2004 includes coverage for the current board action, which is solely based on entering into a three-year EWA demand shifting agreement with DWR consistent with the Final EIR/EIS. Hence, because the Board has already made a CEQA determination on the Final EIR/EIS for its actions as a Responsible Agency, no further findings or documentation are necessary for the Board to approve the proposed action

The CEQA determination is: Determine that the proposed action has been previously addressed in the certified 2004 Final EIS/EIR, findings, and MMRP and that no further findings or documentation are required.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the CEO to enter into a three-year EWA demand shifting agreement with DWR consistent with the terms described herein, and in form approved by the General Counsel.

Fiscal Impact: The agreement would result in DWR paying Metropolitan $500,000 each year for three years for the option to reschedule deliveries. Assuming that 100,000 AF is actually rescheduled each year, DWR would pay Metropolitan $3 million total per year. The 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 enter into a three-year EWA demand shifting agreement with DWR.
Fiscal Impact: No direct fiscal impacts. However, operational impacts could result if the lack of a demand shift contract leads to a non-operational EWA and a loss of ESA assurances, as discussed above.

Staff Recommendation

Option #1

Stephen N. Arakawa	2/10/2005
Manager, Water Resource Management	*Date*

Gilbert F. Ivey	2/11/2005
Interim Chief Executive Officer	*Date*

Attachment 1 – Metropolitan/DWR Proposed EWA Agreement Terms

BLA #3402

METROPOLITAN/DWR PROPOSED EWA AGREEMENT TERMS	
Agreement Term	**Description**
1. Service Provided by Metropolitan	Shift the timing of Metropolitan's SWP deliveries to benefit fish.
2. Term	Three years: 2005 - 2007.
3. Amount of Metropolitan Water Shifted	A maximum of 100,000 AF per year.
4. Limit on Performance by Metropolitan	Metropolitan will not be required to shift demands during certain years with low State Water Project Table A allocations.
5. Fees	$5/AF “Option Fee”, $25/AF “Shift Fee”. If 100,000 AF are shifted, total fees are $3 million.
6. Payback Schedule	Payback is due December 31 in the year the water is shifted.
7. Water Quality	Payback water is intended to be of equal or better quality. Metropolitan has the right to reschedule payback supplies to protect water quality.
8. Incremental Costs	DWR agrees to recover any incremental (e.g. power-related) costs of implementing the Environmental Water Account to the SWP Contractors.
9. Third-Party Impacts	Metropolitan agrees to prepare its 2004 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	From sources available to the Environmental Water Account.