

- **Board of Directors**  
**Desalination and Reclamation Committee**

July 12, 2005 Board Meeting

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8-9

### **Subject**

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Authorize entering into a Seawater Desalination Program agreement with Municipal Water District of Orange County

### **Description**

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Authorization is requested to enter into a Seawater Desalination Program (SDP) agreement with Municipal Water District of Orange County (MWDOC) to promote development and operation of its proposed seawater desalination project. The project would treat seawater for potable purposes using a membrane filtration system and disinfection process and would be located in the MWDOC service area. The project would produce about 28,000 acre-feet per year of new water supply, and would help to achieve Metropolitan's seawater desalination goal of 150,000 acre-feet per year under its Integrated Resources Plan.

This is one of the five projects ([Attachment 1](#)) selected through a competitive process initiated in November 2001, as part of Metropolitan's SDP. All five projects are anticipated to benefit the region by placing demand for imported water supplies, which reduces costs for water importation, increases overall regional water supply reliability and defers the need for Metropolitan's capital improvements.

These projects will operate under incentive agreements with basic contract terms as described in [Attachment 2](#).

These terms were developed through extensive discussions with the five project sponsor agencies and finalized by staff under board authorization granted in December 2002. The terms provide for:

- Pay for performance initiating upon production of qualifying desalinated water.
- Flexible performance targets for project construction and operation that allow Metropolitan to maintain, adjust or withdraw its financial commitment in light of the complex, changing conditions inherent in developing this resource.
- Intellectual property would be shared with all member agencies while protecting the interest of intellectual property owners.
- Establishment of precedent conditions which allow agreements to be executed prior to completing environmental documentation. Each agency would be required to submit completed and certified environmental documents for board consideration prior to receiving financial incentives from Metropolitan. Metropolitan would not be obligated to make incentive payments if the project sponsor fails to meet these necessary requirements.

MWDOC, in its proposal, requested a contribution of \$250 per acre-foot over 25 years for the project. The agreement terms would allow for adjustments to MWDOC's requested amounts through an annual reconciliation that compares project costs with Metropolitan's water rate. Metropolitan's annual contribution to the project would be up to \$7 million and would be included in future operations and maintenance budgets.

The next step is to execute a SDP agreement with MWDOC. Pursuant to agreement terms, MWDOC would subsequently provide Metropolitan with a detailed project description and certified environmental documentation for board consideration and action as a responsible agency under CEQA guidelines.

**Policy**

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By Minute Item 44356, dated February 13, 2001, the Board adopted updated policy principles for brackish and seawater desalination.

By Minute Item 44465, dated May 15, 2001, the Board approved the Seawater Desalination Action Plan and authorization to commence program development.

By Minute Item 44578, dated August 20, 2001, the Board approved the Seawater Desalination Program and administrative guidelines.

Board Letter 10-2, dated September 10, 2003, summarized results for the 2001 RFP process.

By Minute Item 45115, dated December 10, 2002, the Board authorized finalizing contracts terms and principles for Seawater Desalination Program agreements.

By Minute Item 45828, dated July 12, 2004, the Board adopted the Integrated Water Resources Plan Update.

**California Environmental Quality Act (CEQA)**

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CEQA determination for Staff Recommendation:

The proposed actions are not defined as a project under CEQA because they involve the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on the environment, the proposed actions are not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). Prior to approval of funding for specific desalination projects by the Board, 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.

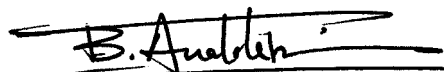
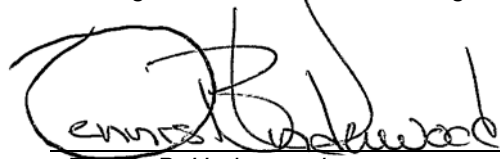
The CEQA determination is: Determine that the proposed actions are not subject to the provisions of CEQA pursuant to Sections 15378(b)(4) and 15061(b)(3) of the State CEQA Guidelines.

**Staff Recommendation/Fiscal Impact**

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Adopt the CEQA determination and authorize the Chief Executive Officer to enter into a Seawater Desalination Program agreement with Municipal Water District of Orange County.

**Fiscal Impact:** Up to \$7 million per year for 25 years, equating to a total commitment of \$175 million.

	6/15/2005
B. Anatole Falagan for Stephen N. Arakawa Manager, Water Resource Management	Date
	6/20/2005
Dennis B. Underwood CEO/General Manager	Date

**Attachment 1 – Seawater Desalination Program Selected Projects**

**Attachment 2 – Seawater Desalination Program Basic Contract Terms**

**Seawater Desalination Program  
Selected Projects**

<b>Member Agency</b>	<b>Project Yield (AFY)</b>	<b>Production Year</b>
Los Angeles Department of Water and Power *	28,000	2015
Long Beach Water Department	10,000	2012
Municipal Water District of Orange County	28,000	2013
San Diego County Water Authority	56,000	2010
West Basin Municipal Water District	20,000	2011
<b>Total</b>	<b>142,000 **</b>	

\* LADWP initially applied for 12,000 AFY. In 2005, it increased its proposed project capacity to 28,000 AFY to achieve economies of scale. This increase was coordinated with the other four member agency project sponsors.

\*\* The proposed 142,000 AFY production largely achieves Metropolitan's seawater desalination target of 150,000 AFY under its Integrated Resources Plan Update.

**Seawater Desalination Program  
Basic Contract Terms**

ARTICLE	DESCRIPTION
Recitals	Establishes Metropolitan's board-adopted Seawater Desalination Program Policy Principles as a basis for agreement and includes items pertinent to entering into the agreement
1. Definitions	Definition of keywords used in the agreement, such as Eligible Yield, Project, End Users, SDP Contribution, Fiscal Year, Ultimate Yield, Desalinated Seawater, Seawater, Project Unit Cost, etc.
2. Conditions Precedent	<p>A. Requires agency to provide Metropolitan with detailed project description, project milestones **, and environmental documents before receiving financial incentives from Metropolitan</p> <p>B. Requires agency to obtain all necessary permits for construction and operation of the project</p>
3. Representations and Warranties	<p>A. Right to produce, distribute, and sell project yield</p> <p>B. Non-discrimination clause</p> <p>C. No harm to local groundwater production</p>
4. Ownership and Responsibilities	<p>A. Ownership of project facilities</p> <p>B. Project responsibilities including design, CEQA compliance, permits, construction, operation and maintenance</p> <p>C. Metering requirements</p> <p>D. No delivery or exchange of project water outside sponsoring agency and Metropolitan service area</p> <p>E. Semiannual progress report</p> <p>F. Contingency plan for alternative water supply if operation is disrupted</p>
5. Invoicing Process	<p>A. Project startup notification</p> <p>B. Monthly invoices and payment methods</p> <p>C. Incentives paid as credit on member agency's monthly water service invoice from Metropolitan</p>
6. Reconciliation Process	<p>A. Data submittal requirements</p> <p>B. Annual reconciliation process and adjustments to incentive payments</p> <p>C. Incentive payments adjustment for grants received</p>
7. Coordinating Committee	<p>A. Resolve issues related to project cost and reconciliation</p> <p>B. Mediation process to settle disputes</p>

ARTICLE	DESCRIPTION
8. Record Keeping and Audit	A. Establish and maintain accounting records of project production, deliveries and costs B. Right to inspect and audit C. Record retention requirements
9. Use of DBO/DBOF *	A. Notification if a DBO/DBOF vendor is to be used B. DBO/DBOF competitive procurement process C. DBO/DBOF to comply with agreement terms D. Sponsoring agency solely responsible for compliance
10. Term and Amendments	A. Up to 25 years of incentive payments B. Agreement commencement and termination dates C. Performance targets for project construction and operation that provides flexibility to adjust or withdraw Metropolitan's financial commitment D. Amendment with written mutual agreement E. Parties may mutually decide to terminate agreement based on progress in meeting project milestones **
11. Intellectual Property	Responsibilities and obligations of Agency regarding use of intellectual property developed by the project
12. Rate Structure Integrity	Rate structure integrity clause
13. Use of Metropolitan Facilities	Parties must enter into a separate agreement
14. Metropolitan's Imported Water Entitlements	Protection of Metropolitan's imported water supplies as related to project implementation
15. Hold Harmless and Liability	Indemnification clauses
16. Notice	Information for correspondence
17. Successors and Assigns	Successors and assigns
18. Integration	Supersedes prior negotiations, representations, and agreements
19. Severability	Partial agreement invalidity does not affect agreement validity
20. Governing Law	Action in Los Angeles County

\* DBO means design, build and operate

DBOF means design, build, operate and finance

\*\* Project milestones will be submitted by the Agency as part of their detailed project schedule, and would include key steps necessary for project implementation such as feasibility study, environmental documentation, permitting and regulatory approval, third-party agreements, power purchase agreement, site selection, design, construction, and operation.