



- Review and Analysis of the 2009 Governor's Drought Water Bank

### Summary

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This report provides a review and analysis of the 2009 Governor's Drought Water Bank.

### Detailed Report

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In February, the Board authorized the General Manager to: (1) enter into an agreement with the California Department of Water Resources (DWR) to pursue up to 300,000 acre-feet of 2009 Central Valley water transfer supplies from the 2009 Governor's Drought Water Bank (Bank); and (2) pay DWR initial administrative fees and water purchase deposits. In April, the Board authorized the General Manager to purchase up to 300,000 acre-feet of Bank supplies consistent with the terms provided to the Board.

#### Bank Performance

When DWR initiated the Bank in late-2008, 25 buyers and 30 sellers indicated that they were interested in participating in the Bank and it was anticipated Bank purchases could reach up to 600,000 acre-feet. DWR Bank secured over 800,000 acre-feet in 1991. In the end, the 2009 Bank only purchased 74,100 acre-feet from 21 sellers on behalf of 9 buyers. The primary reasons for low Bank purchases include:

- **May and June Delta pumping restrictions** – These environmental restrictions and the inability to back up transfer water in reservoirs during May and June would have resulted in losing approximately 40 percent of the transfer water made available via crop land idling, making such transfers significantly more expensive;
- **Continued drought conditions** – Many sellers did not receive notification they had 100 percent supply allocations until April 2009, which made it difficult to commit selling water early in 2009;
- **High rice prices** – Rice prices were at record levels during the negotiations and sellers were not motivated to sell despite increasing the 2008 price of \$200 per acre-foot to \$275 per acre-foot; and
- **Improved "real water" verification measures** – DWR has adopted more stringent criteria to determine which water transfers provide "real water", thereby avoiding "paper water" transactions.

In the end, Metropolitan purchased 36,926 acre-feet or approximately 50 percent of the total Bank supplies at \$275 per acre-foot for a total cost of \$10,154,650. Since these supplies incurred both 20 percent Delta carriage losses and 3 percent California Aqueduct conveyance losses, Metropolitan received 28,655 acre-feet for an effective unit cost of approximately \$355 per acre-foot.

#### Ongoing Bank Issues

While all Bank supplies were received by Metropolitan by the end of September, there are two ongoing Bank issues:

- **Litigation** - On April 13, Butte Environmental Council, California Sportfishing Protection Alliance and California Water Impact Network ("Petitioners") filed suit in Alameda County Superior Court alleging that DWR, the Resources Agency and the Governor improperly relied on the "emergency" exemption of CEQA in approving the Bank. This lawsuit seeks a writ of mandate to set aside this approval and prohibit implementation of the Bank. Metropolitan and a wide array of potential Bank participants were named as "real parties in interest". In June, the State Water Contractors joined the lawsuit on behalf of its 27 member agencies, including Metropolitan. On June 8, the parties participated in a mandatory settlement conference, but did not reach agreement on the substance of Petitioners' claims. On August 25, DWR filed a motion to dismiss the lawsuit on the grounds that the Bank is exempt from CEQA. The State Water Contractors, Metropolitan and others joined in that motion. Following a hearing

## Board Report (Review and Analysis of the 2009 Governor's Drought Water Bank)

held on September 29, the Court took the matter under submission. In addition, since all deliveries from the Bank have been completed, various participants in the Bank have filed a motion to dismiss on the ground that the lawsuit is now moot.

- **Administrative Costs** – Initially, DWR estimated Bank administrative costs would not exceed \$5 per acre-foot. Based on the February board action, Metropolitan entered into an agreement with DWR which required Metropolitan to make a deposit based on this estimate and committed Metropolitan to pay DWR for any administrative costs above this estimate. DWR's latest accounting for these costs are approximately \$20 per acre-foot. Metropolitan staff has met with DWR to better understand the higher than anticipated administrative costs. The key factors include:
  - Needing to spread fixed costs over smaller than anticipated Bank purchases of 74,100 acre-feet;
  - Administering agreements with 21 sellers, which provided less water than anticipated; and
  - Cost of the litigation discussed above, including paying for the Attorney General's Office to assist DWR in the litigation and funding a portion of the seller's administrative costs.

### Lessons Learned and Next Steps

It is clear that the 2009 Bank fell short of meeting total Bank demands. As noted above, there were multiple factors that contributed to the low availability of Bank supplies.

While there were multiple factors for low Bank supplies, the May and June Delta pumping restrictions will continue to be the primary factor limiting north-of-the-Delta water transfer supplies in future years. These restrictions effectively result in a 40 percent tax on crop idling transfers from Sacramento River water sellers, which represent the largest potential north-of-the-Delta water transfer supply.

Looking to 2010, Metropolitan and other Bank participants have requested that DWR not implement a 2010 Bank. Metropolitan staff is preparing to pursue 2010 water transfer supplies under a State Water Contractors Buyers Group as approved by the Board in 2005 and 2008. While this approach is not guaranteed to avoid future litigation by environmental groups, it should help reduce administrative costs and improve relations with sellers who were also frustrated with the 2009 Bank. Preliminary negotiations are underway, and in December, staff will seek board authorization to enter into an agreement with the State Water Contractors to pursue 2010 water transfer supplies and pay initial administrative deposits.