



● **Board of Directors**  
***Water Planning and Stewardship Committee***

December 8, 2009 Board Meeting

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**8-6**

**Subject**

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Authorize execution of an amendment to (1) Planning Agreement for Bay-Delta Conservation Plan; and (2) Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay-Delta Conservation Plan

**Description**

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Since 2006, Metropolitan staff has been working with other export water contractors, the state and federal project operators, fish and wildlife regulatory agencies, environmental representatives, and other interested parties to develop the Bay-Delta Conservation Plan (BDCP).

In October 2006, Metropolitan's Board authorized the General Manager to execute the "Planning Agreement Regarding the Bay-Delta Conservation Plan" (Planning Agreement). The Planning Agreement establishes the process for developing the BDCP and its content, such as goals and objectives, scope, covered actions, and species to be included. The Planning Agreement has a three-year term that will expire in December of this year. The parties agree that it would be appropriate to extend the term of the Planning Agreement for an additional two years, until December 2011. All other terms of the agreement would remain the same.

Metropolitan's Board also authorized the General Manager to execute a "Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay-Delta Conservation Plan" (Cooperation Agreement) in November 2006. The Cooperation Agreement establishes protocols for funding, management, and decision-making among the potentially regulated agencies (Metropolitan, fellow state and federal export contractors, Mirant Delta [a power company operating within the Bay-Delta], DWR and USBR) in the development of the BDCP. The Cooperation Agreement also has a three-year term that will expire in January 2010, which the parties desire to extend for one more year until January 2011. In addition, the Cooperation Agreement allocates 10 percent of the funding obligation to Mirant Delta, with the remaining costs to be split equally between the state and federal export contractors. The parties propose to amend the cost split to set Mirant Delta's share at the lesser of 10 percent or \$300,000 for each 12-month period beginning January 1, 2010, to ensure Mirant's continued participation in the development of the BDCP. Metropolitan's cost allocation would increase by approximately 7 percent as a result of this adjustment. All other terms of the agreement would remain the same.

When adopted and implemented, the BDCP will assist in ensuring that Metropolitan's water supply from the SWP remains reliable and that a more stable regulatory environment will exist to allow future water quality and supply projects to proceed and to preserve and enhance Delta fisheries. The proposed amendments to extend the term of Planning Agreement and Cooperation Agreement will provide the time necessary to complete the BDCP and obtain the regulatory approvals necessary for its implementation.

**Policy**

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By Minute Item 46843, dated October 10, 2006, the Board authorized the General Manager to execute the draft Planning Agreement Regarding the Bay-Delta Conservation Plan.

By Minute Item 46878, dated November 14, 2006, the Board authorized the General Manager to execute the draft Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay-Delta Conservation Plan.

By Minute Item, dated May 11, 2004, the Board adopted general principles related to the CALFED Bay-Delta Program.

### California Environmental Quality Act (CEQA)

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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, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

### Board Options

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#### Option #1

Adopt the CEQA determination and authorize the General Manager to execute the proposed amendments to the:

- a. Planning Agreement Regarding the Bay-Delta Conservation Plan; and
- b. Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay-Delta Conservation Plan.

**Fiscal Impact:** Potential increase of up to \$100,000 to \$1.8 million (Metropolitan's estimated contribution to total completion costs) due to the change in Mirant's cost share allocation

**Business Analysis:** The BDCP will assist in ensuring that Metropolitan's Water Supply from the SWP remains reliable and that a more stable regulatory environment exists to allow future water quality and supply projects to proceed and to preserve and enhance Delta fisheries.

#### Option #2

Do not authorize the General Manager to execute the:

- a. Planning Agreement Regarding the Bay-Delta Conservation Plan; and
- b. Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay-Delta Conservation Plan.

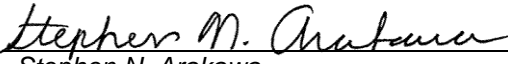
**Fiscal Impact:** No immediate impact, but failure of the BDCP could result in higher water costs in the future.

**Business Analysis:** If the Planning Agreement and Cooperation Agreement are not extended for the proposed additional years, the ability to complete the BDCP and achieve the anticipated benefits would be seriously compromised.

**Staff Recommendation**

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Option #1

  
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Stephen N. Arakawa  
Manager, Water Resource Management

11/24/2009  
Date

  
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Jeffrey Kightlinger  
General Manager

11/24/2009  
Date

BLA #6968