



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

7/10/2012 Board Meeting

8-2

Subject

Authorize entering into a water sale agreement with United States Forest Service to provide a maximum of one acre-foot of water per year for drinking and sanitation to the River Gorge Trailhead Project

Executive Summary

The San Diego County Water Authority (Authority) and Ramona Municipal Water District (Ramona) requested that Metropolitan enter into a contract to supply water to the United States Forest Service (Service) for a comfort station at a trailhead in the Cleveland National Forest, located near the boundary of Ramona. Referred to as the River Gorge Trailhead Project (Project), the comfort station would require less than one-tenth of an acre-foot per year or less than half of one equivalent dwelling unit, which is the minimum amount Ramona requires for annexation. The trailhead is also outside of Ramona's sphere of influence, and Metropolitan's service area. Given the location and small amount of water requested, the Authority and Ramona are requesting water service via contract, rather than formal annexation. Section 131(a) of the Metropolitan Water District Act and Section 4211 of the Metropolitan Administrative Code provide Metropolitan with authority to provide water service to a federal government agency, here, the Service, under these circumstances.

Description

On November 9, 2010, Ramona's Board of Directors authorized Ramona staff to negotiate a four-party agreement with the Service, the Authority, and Metropolitan for water service outside of Ramona's boundary to support the trailhead improvements. Thereafter, the Authority and Ramona requested that Metropolitan enter into an agreement to provide water supply to the Service.

The Service owns and maintains a 199.06 acre parcel (parcel) zoned as national forest and state parks outside the service area of Metropolitan, the Authority, and Ramona but in close proximity to existing Ramona distribution facilities. The San Diego River Gorge trail starts just outside of Ramona's service area ([Attachment 1](#)). The trailhead does not have sanitation facilities, or available potable supplies. The Service has constructed trailhead improvements that include construction of parking facilities, kiosks, a shaded picnic area, three hose bibs, and a public restroom with two vault toilets (with no sinks, flush toilets or sewer connection). The Service requested potable water service from Ramona for the hose bibs located at the trailhead. All of the proposed improvements are completed except connection of the hose bibs to Ramona's system, which is being held off pending approval of this proposed agreement.

Under Section 131(a) of the Metropolitan Water District Act, Metropolitan is authorized to enter into water service contracts outside its service area with the federal government. Section 4211 of Metropolitan's Administrative Code ([Attachment 2](#)) authorizes the General Manager to enter into contracts for water service for less than 100 acre-feet per year with federal or state agencies outside Metropolitan's service area so long as the entity:

1. Pays Metropolitan's rate per acre-foot for the class of water in effect at the time of delivery, plus a reasonable capital facility charge and a minimum monthly standby rate if the connection is not used during a billing period.

2. Agrees to hold Metropolitan harmless from all claims and damages resulting from interruptions in water deliveries and from all damages resulting directly or indirectly from Metropolitan's delivery of water to the state or federal governmental agency.

In this instance, the Service cannot agree to hold Metropolitan harmless because doing so would conflict with the federal Anti-Deficiency Act that prohibits the Federal Government from assuming any speculative liability in the absence of express statutory authority. However, the Service has agreed to accept the water without any warranties and to take responsibility for its delivery to the public at the comfort station (**Attachment 3**). This agreement would require the Service to comply with all outages and interruptions in service, and to be responsible for all public outreach necessary for any future outage.

Attachment 4 is a summary of the key terms.

Policy

Metropolitan Water District Act Section 131. [Sales to United States, State of California and Private Corporations and Public Agencies]

Metropolitan Water District Administrative Code Section 4211: Sale of Water to State or Federal Governmental Agencies

California Environmental Quality Act (CEQA)

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, the proposed action is not subject to CEQA because it involves 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).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to enter into a water sale agreement with United States Forest Service to provide a maximum of one acre-foot of water per year for drinking and sanitation to the River Gorge Trailhead Project.

Fiscal Impact: Minor increased revenues from water sales.

Business Analysis: Minor increased water sales and assistance with important local project.

Option #2

Do not authorize agreement.

Fiscal Impact: Loss of minor water sales revenues.

Business Analysis: Potential delay or impediment to trailhead comfort station.

Staff Recommendation

Option #1



Deven N. Updayhay
Manager, Water Resource Management

6/26/2012
Date



Jeffrey Kightlinger
General Manager

6/28/2012
Date

Attachment 1—Project Map

Attachment 2—Excerpts of Metropolitan’s Act and Code

**Attachment 3—USFS River Gorge Trailhead Project Water Supply Agreement
No Warranties/Assumption of Responsibility Provision**

Attachment 4—USFS River Gorge Trailhead Project Water Supply Agreement Term Sheet

Ref# wrm12618977

Project Map



EXCERPTS OF METROPOLITAN'S WATER DISTRICT ACT
AND ADMINISTRATIVE CODE

Metropolitan's Act

Sec. 131. [Sales to United States, State of California and Private Corporations and Public Agencies]

(a) A district may provide, sell, and deliver water and water service to the United States of America or to any board, department or agency thereof or to the State of California for any use or purpose pursuant to contract therefor.

The contract may be for permanent service, but shall provide for the furnishing of the water or water service upon terms and conditions and at rates which will apportion an equitable share of the capital cost and operating expense of the district's works to the contractee. Every contract shall provide that at the end of five years from the date of its execution and every three years thereafter there shall be such readjustment of the contract, upon the demand of either party thereto, either upward or downward as to rates, as the board of directors of the district may find to be just and reasonable in order to effectuate the equitable apportionment of the capital costs and operating expense.

(b) A district may provide, sell, and deliver water and water service, by a contract not to exceed 50 years, to any private corporation or public agency, or combination thereof, for use in connection with, or ancillary to, the generation of electric power at plants which are located outside of the district but which generate power the major portion of which is used directly, or indirectly through exchange, within the district, or for pumping, producing, treating, or reclaiming water for use within the district. The contracts shall not aggregate more than 100,000 acre-feet of water from the Colorado River and more than 60,000 acre-feet of water from the State Water Resources Development System in any one year during that period. Every contract shall provide that agricultural waste water, brackish ground water, or other water not suitable for domestic, municipal, or agricultural purposes shall be utilized for powerplant cooling to the extent practicable, and if not immediately available, the waste or brackish water, as it becomes available and to the extent practicable, shall replace the fresh water then being used for that purpose. The water and water service shall be furnished by the district at charges not less than those corporations or agencies would pay in general taxes to the district, the substantial equivalent of what those corporations or agencies would pay, directly or indirectly, as a result of a service charge or assessment imposed by and within the district, and the water rate of the district applicable to the classification of water delivered to those plants if the plants were located within the district, and in the case of a public agency within the district, if the plants were located within that agency. No contract shall be entered into pursuant to this subdivision to provide, sell, and deliver water and water service for use within the service area of any agency which has a contract with the State of California for a water supply under the State Water Resources Development System without the prior written consent of that agency and the Director of Water Resources of the State of California.

(c) All water contracted for under this section shall be deemed not to be surplus water available for sale pursuant to Section 132. For purposes of this section the term "public agency" shall mean a county, city, district, local agency, public authority or public corporation.

Amended by Stats. 1974, ch. 929 and Stats. 1984, ch. 271.

Note: Stats. 1974, ch. 929 also provides: 2. It is the intent of the Legislature, recognizing the need to maintain, preserve, conserve and otherwise continue in existence open space lands outside the boundaries of the Metropolitan Water District of Southern California for the production of food and fiber, that in the enactment of this act, the district shall not be empowered, in the exercise of the authority granted by this act, to modify, alter, or affect any priority to water for agricultural purposes outside the district's boundaries, or cause an increase in the district's entitlement to water in excess of that to which the district would be entitled in the absence of such authority.

It is also the intent of the Legislature that nothing in this act either affects existing water rights in the state or gives the Metropolitan Water District of Southern California any additional powers or duties other than the authority to provide, by contract, water outside its boundaries for use in connection with the generation of electric power.

Metropolitan's Administrative Code

§ 4211. Sale of Water to State or Federal Governmental Agencies.

Subject to the provisions of Section 131 of the Metropolitan Water District Act, the General Manager is authorized to enter into contracts for the sale of water for any purpose or use with the United States of America or with any board, department, or agency thereof or with the State of California. Such contracts shall contain at a minimum the following terms:

1. The State or Federal Governmental Agency shall furnish, install, and remove, at no expense to Metropolitan, the facilities required to pump, measure, and transport the water.
2. Metropolitan's option to sell water to a State or Federal Governmental Agency shall be limited to a total quantity of 100 acre-feet per year, per connection, per agency.
3. The price of the water shall be Metropolitan's rate per acre-foot for the class of water in effect at the time of delivery, plus a reasonable capital facility charge and a minimum monthly standby rate if the connection is not used during a billing period.
4. The State or Federal Governmental Agency shall hold Metropolitan harmless from all claims and damages resulting from interruptions in water deliveries and from all damages resulting directly or indirectly from Metropolitan's delivery of water to the State or Federal Governmental Agency.
5. The agreement shall be terminable by either party upon giving written notice to the other party thirty days prior to the effective date of termination.

M.I. 42055 - September 10, 1996.

USFS River Gorge Trailhead Project Water Supply Agreement
No Warranties/Assumption of Responsibility Provision

No Warranties/Assumption of Responsibility. Water service is being provided to the Service with no warranties, express or implied, including, but not limited to, any warranties regarding water quality and water availability. To the extent allowed by federal and state law, the Service acknowledges and assumes responsibility for the delivery and use of water past the point of delivery, defined as the Water Connection point identified on the Utilities Plan attached as Exhibit 3, which is incorporated herein by reference. The Service further acknowledges that there may be interruptions in water delivery for any cause, including, but not limited to, due to emergency conditions or necessary repairs or maintenance of upstream facilities. Pursuant to Section 4503 of the Metropolitan Administrative Code, the Service is prepared to sustain up to a seven-day interruption in Metropolitan deliveries due to necessary repairs or maintenance of upstream facilities. Metropolitan will provide as much advance notice as reasonable and feasible, and will notify the Service in advance of any planned outages. San Diego County Water Authority and Ramona will use their reasonable best efforts to provide the Service with advance notice prior to a planned or emergency outage but neither shall be liable to the Service nor any other party for failure to provide such advance notice. Nothing set forth herein shall be deemed to create any responsibility or liability on the part of Metropolitan, San Diego County Water Authority, or Ramona, other than that which may already be provided for by law, for the delivery of water and extension of water services to the Service. The Service shall be solely responsible for ensuring the public is aware of any outages of supply and for any claims arising from any outages.

USFS River Gorge Trailhead Project Water Supply Agreement
Term Sheet

- The Service may purchase up to a maximum of one-foot of water per year.
- Subject to the Service's payment, Ramona will provide metered domestic water service to the improvements and will provide water conveyance facilities as necessary to establish domestic water service.
- Ramona shall bill the Service at the same acre-foot rate it imposes on its domestic water customers which is consistent with Section 4211(3) of the Metropolitan Administrative Code in light of the administrative burden avoided by Metropolitan by billing through the Authority and Ramona.
- The water delivered pursuant to this agreement will not be attributed to allocations of water to the Authority under the accounting of Metropolitan's Water Supply Allocation Plan or a subsequent allocation policy instituted by the Metropolitan Board of Directors.
- Ramona shall provide, on an annual basis, certified bi-monthly meter records of water use by the Service to Metropolitan and the Water Authority no later than January 31 of each year.
- The Service is solely responsible for obtaining any permits, environmental requirements or approvals necessary for the implementation of this Agreement and/or the Reimbursement Agreement.
- This Agreement will continue for an initial term of 20 years unless earlier terminated or unless extended in writing based on mutual agreement of all parties.
- As noted above, water service is being provided to the Service with no warranties, express or implied, including, but not limited to, any warranties regarding water quality and water availability, and the Service acknowledges and assumes responsibility for the delivery and use of water past the point of delivery.
- The Service acknowledges that there may be interruptions in water delivery for any cause, including, but not limited to, emergency conditions or necessary repairs or maintenance of upstream facilities, and is prepared to sustain up to a seven-day interruption in Metropolitan deliveries as required by Section 4503 of the Metropolitan Administrative Code.
- The Service shall be solely responsible for ensuring the public is aware of any outages of supply and for any claims arising from any outages.
- Pursuant to Section 4211(5) of the Metropolitan Administrative Code, the agreement shall be terminable by any party upon giving written notice to the other party thirty days prior to the effective date of termination.