

WORKSHOP MEETING OF THE
BOARD OF DIRECTORS WITH MET DIRECTORS
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY
18700 Ward Street, Board Room, Fountain Valley, California
November 2, 2011, 8:30 a.m.

AGENDA

PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC PARTICIPATION/COMMENTS

At this time members of the public will be given an opportunity to address the Board concerning items within the subject matter jurisdiction of the Board. Members of the public may also address the Board about a particular Agenda item at the time it is considered by the Board and before action is taken.

The Board requests that all members of the public who want to address the Board complete a "Request to be Heard" form available from the Board Secretary prior to the meeting.

ITEMS RECEIVED TOO LATE TO BE AGENDIZED

Determine need and take action to agendize item(s), which arose subsequent to the posting of the Agenda. (ROLL CALL VOTE: Adoption of this recommendation requires a two-thirds vote of the Board members present or, if less than two-thirds of the Board members are present, a unanimous vote.)

ITEMS DISTRIBUTED TO THE BOARD LESS THAN 72 HOURS PRIOR TO MEETING

Pursuant to Government Code Section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection in the lobby of the District's business office located at 18700 Ward Street, Fountain Valley, California 92708, during regular business hours. When practical, these public records will also be made available on the District's Internet Web site, accessible at <http://www.mwdoc.com>.

(NEXT RESOLUTION NO. 1916)

INTRODUCTION OF MET DIRECTORS FROM THE CITIES OF ANAHEIM, SANTA ANA, AND FULLERTON

PRESENTATION/DISCUSSION/INFORMATION ITEMS

1. UPDATE ON MET'S LONG RANGE FINANCE PLAN

Recommendation: Review and discuss.

2. UPDATE ON MET'S REPLENISHMENT PROGRAM

Recommendation: Review and discuss.

3. AB 32 "CAP-AND-TRADE" IMPLEMENTATION AND ITS IMPACT ON METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Recommendation: Review and discuss.

4. MET ITEMS CRITICAL TO ORANGE COUNTY

- a. MWD's Water Supply
- b. MWD's Local Resource Development Strategy Task Force
- c. Long Range Finance Plan (Purchase Order and Rate Refinement Discussions)
- d. Colorado River Issues
- e. Bay Delta/State Water Project Issues
- f. MET's Ocean Desalination Policy and Potential Participation by MET in the South Orange Coastal Ocean Desalination Project (formerly Dana Point Desalination Project)
- g. Orange County Reliability Projects

Recommendation: Discuss and provide input on information relative to the MET items of critical interest to Orange County.

5. OTHER INPUT OR QUESTIONS ON MET ISSUES FROM THE MEMBER AGENCIES

6. METROPOLITAN (MET) BOARD AND COMMITTEE AGENDA DISCUSSION ITEMS

- a. Summary regarding October MET Board Meeting
- b. Review items of significance for the November MET Board and Committee Agendas

Recommendation: Review, discuss and take action as appropriate.

ADJOURNMENT

Note: Accommodations for the Disabled. Any person may make a request for a disability-related modification or accommodation needed for that person to be able to participate in the public meeting by telephoning Maribeth Goldsby, District Secretary, at (714) 963-3058, or writing to Municipal Water District of Orange County at P.O. Box 20895, Fountain Valley, CA 92728. Requests must specify the nature of the disability and the type of accommodation requested. A telephone number or other contact information should be included so that District staff may discuss appropriate arrangements. Persons requesting a disability-related accommodation should make the request with adequate time before the meeting for the District to provide the requested accommodation.



DISCUSSION ITEM

November 2, 2011

TO: Board of Directors

FROM: Kevin Hunt
General Manager

Staff Contact: Harvey De La Torre/
Michael Hurley

SUBJECT: UPDATE ON MET's LONG RANGE FINANCE PLAN

STAFF RECOMMENDATION

Staff recommends the Board of Directors review and discuss this information

REPORT

In August, the Long Range Finance Plan (LRFP) workgroup began to meet to work on the next phase of the LRFP and Rate Refinement process. Metropolitan's (MET) LRFP has two primary objectives:

- 1) Provide member agencies and the Board with a view of the next ten years regarding water sales, expenditures, revenues and risk
- 2) Consolidate and affirm MET's financing policies including debt policy and practices and asset/liability management

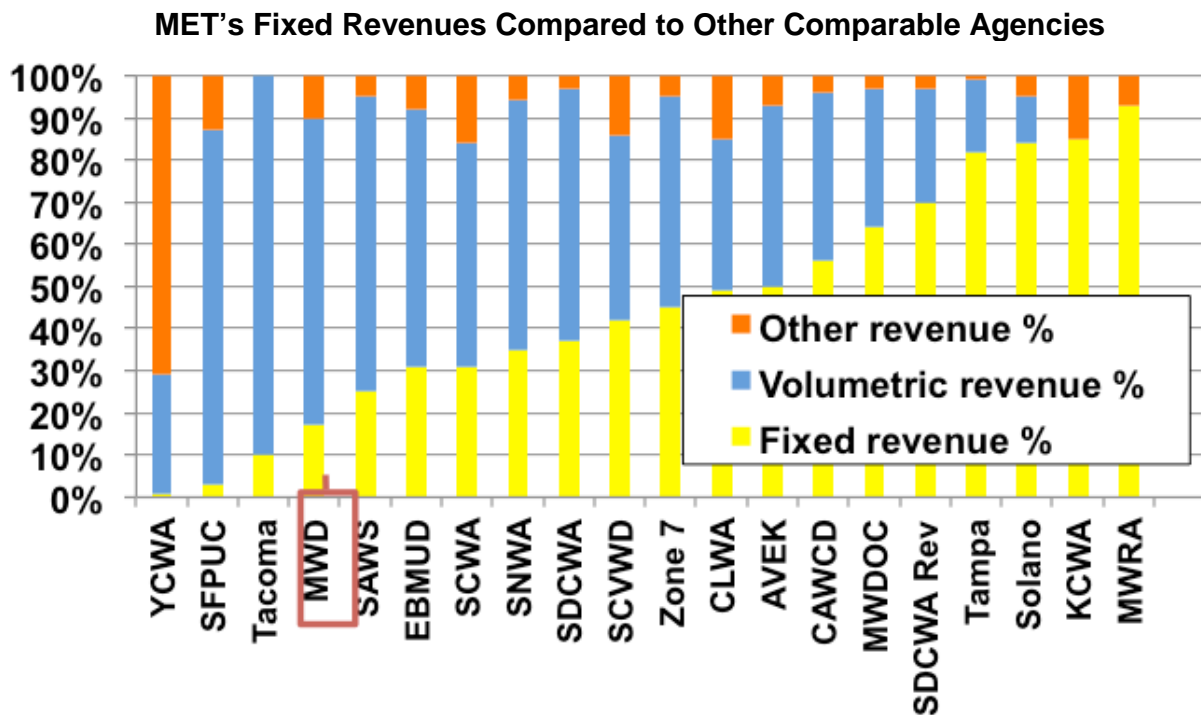
However, one of the driving issues that will need to be addressed in the current process is the status of the member agency "purchase orders," which are set to expire on December 31, 2012. Under the current rate structure, a member agency may enter into a voluntary purchase order with MET that allows that agency to purchase a greater amount of water at the lower Tier 1 Water Supply Rate. In exchange, that member agency agrees to purchase over the ten-year term of the contract, an amount of water equal to 60 percent of its highest firm demand for MET water in any fiscal year from 1989-90 through 2001-02 multiplied by ten. Member agencies are allowed to vary their purchases from year to year, but are obligated to pay for the full amount committed under the purchase order.

MWDOC was one of 24 member agencies that entered into a purchase order with MET under which MWDOC is required to purchase 1.49 million acre-feet (AF) by the 2012 expiration date. MWDOC met its contractual obligation in late 2009. Only one agency, City of Compton, is expected not to meet its purchase commitment; and MET staff plans to

Budgeted (Y/N):	Budgeted amount: N/A	Core <input checked="" type="checkbox"/> _	Choice <input type="checkbox"/> _
Action item amount:	Line item:		
Fiscal Impact (explain if unbudgeted):			

provide a status update as well proposed options to address their circumstances to the Board this month.

The main issue under review is the composition of MET’s fixed revenues and costs. Various MET Board members have asked for further information including a review of rate structures and revenue composition for comparable water agencies. MET recently completed a survey of 18 comparable wholesale or combined wholesale/retail water agencies from across the nation. For the purposes of the survey, revenues sources were broken down into fixed revenues, volumetric revenues, and other revenues. The results of the survey, as shown below, illustrates MET’s fixed revenues at approximately 17% of total revenues.



The survey also indicates that revenue composition varied considerably, but the following conclusions could be drawn:

- All utilities surveyed have some level of fixed revenues
- Fixed revenues range from one percent to 93 percent of total revenues, with most utilities falling in the range from 20 percent to 65 percent
- Utilities with high cost, long-term supply contracts rely more heavily on higher fixed revenues, including property taxes
- Water wholesalers whose customers have no water sources of their own and rely heavily on the wholesaler use mostly volumetric rates
- Water wholesalers whose customers have water supplies of their own tend to use more fixed revenues

The LRFP process will also review the impacts of water sales variability on MET's financial planning. Highly variable and/or declining water sales are trends seen nationwide and the topic of much research including the Water Research Foundation's Project #4405 Rates and Revenues: *Water Utility Leadership Forum on Challenges of Meeting Revenue Gaps*.

Among the strategies water utility officials from across the country have discussed to bridge the ominous financial gap are:

- Increased reserve levels
- Fixed charges for fixed costs
- Take-or-pay contract provisions
- Rate stabilization funds
- Greater PAYGO for capital projects

The LRFP discussion will continue into FY 2011/12 and MWDOC staff will continue to update the Board as appropriate.

Update on MET's Long-Range Finance Plan

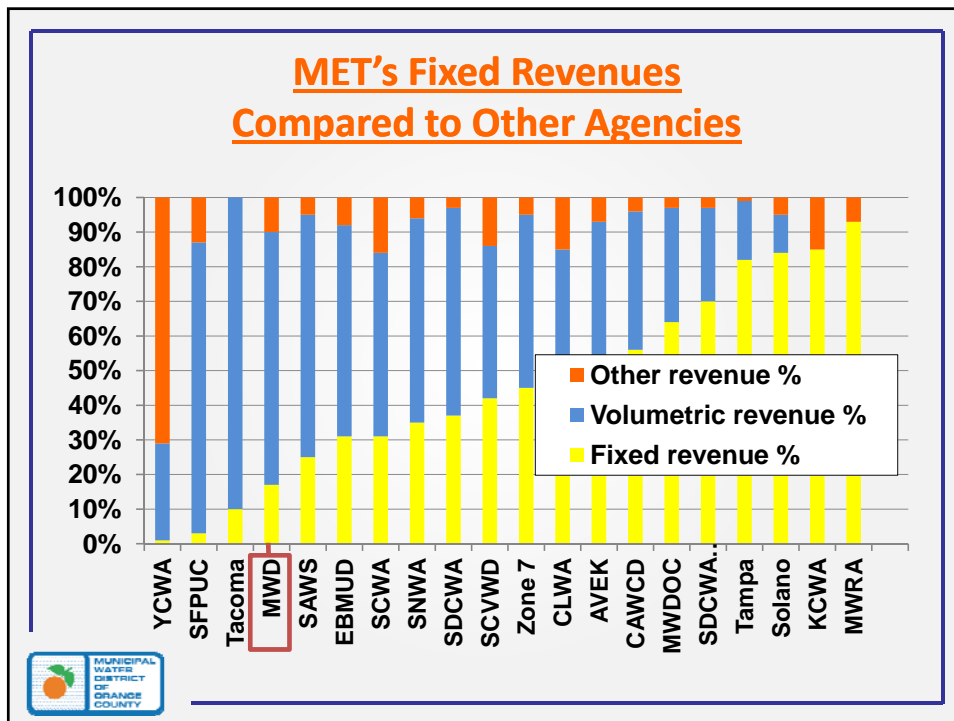
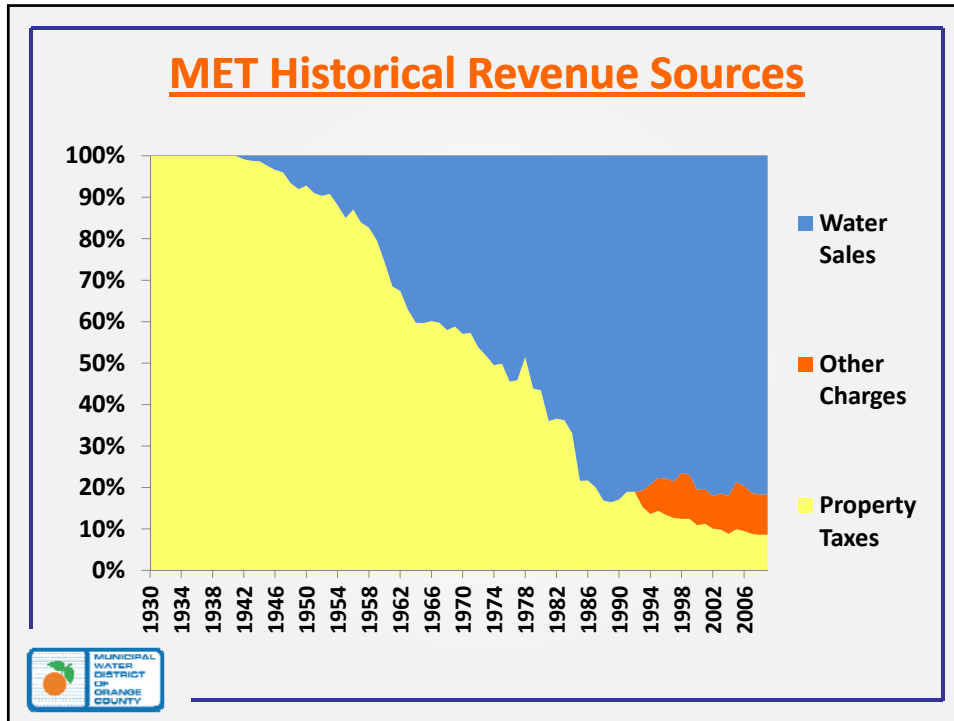
Municipal Water District of Orange County
Board Workshop on Metropolitan Issues
November 2, 2011

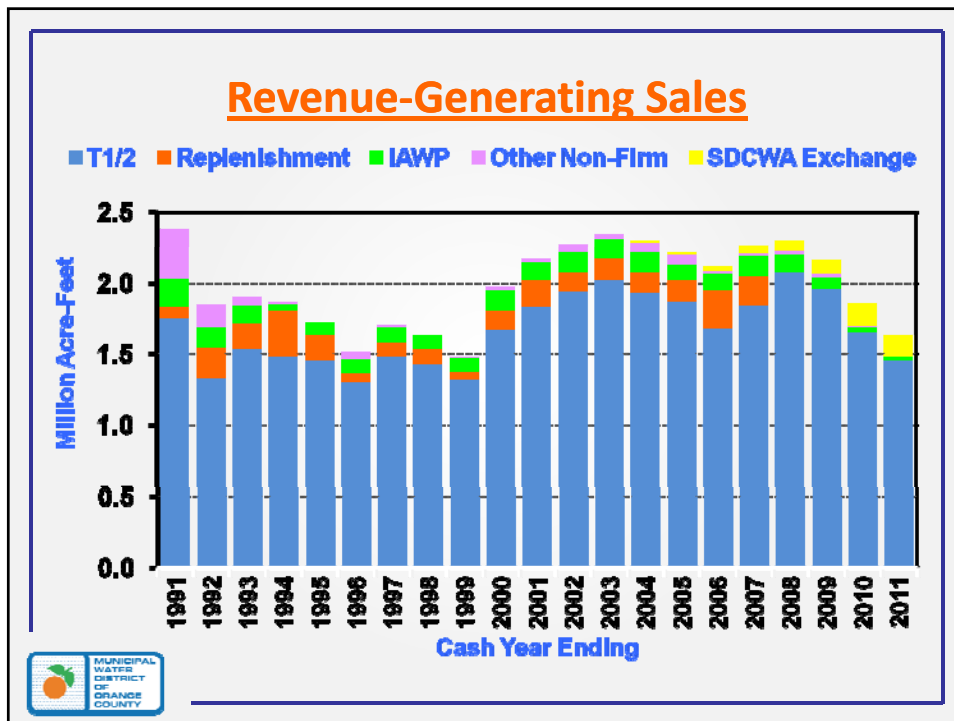
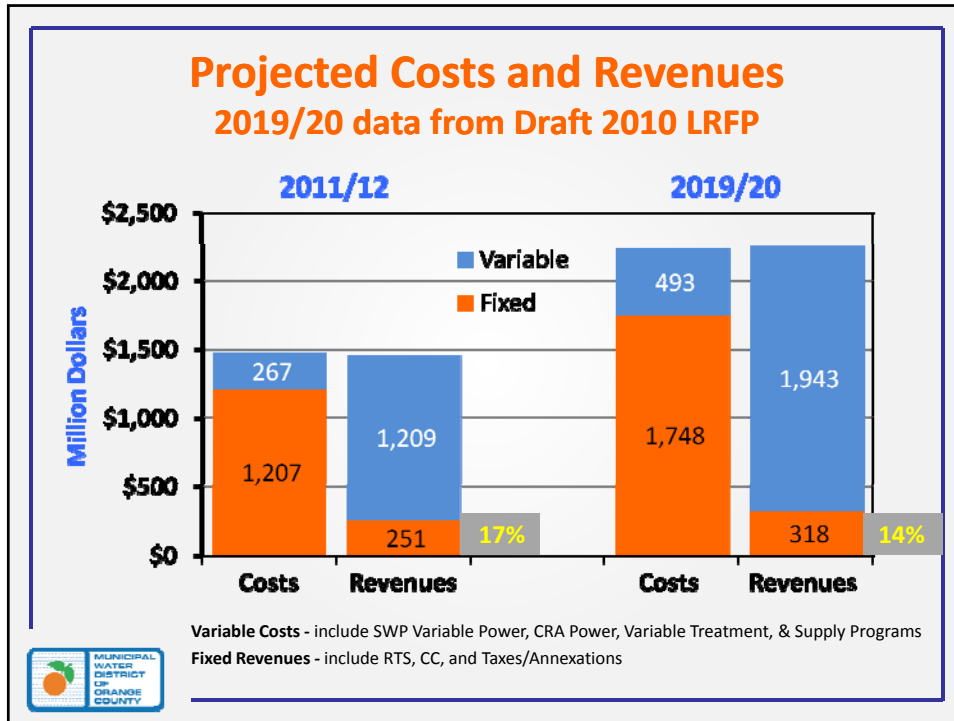


Issues on Table

- **Issues related to fixed revenue:**
 - Purchase Order status
 - Fixed revenue generation
 - Fixed commitment to pay for the system (contracts)
 - Review of financial policies
 - Tier 1 limit / trading Tier 1 limits
- **Issues related to cost causation:**
 - Growth charge for infrastructure
 - Treated water cost recovery
 - Look back period for Capacity Charge







Industry-Wide Trends/Considerations

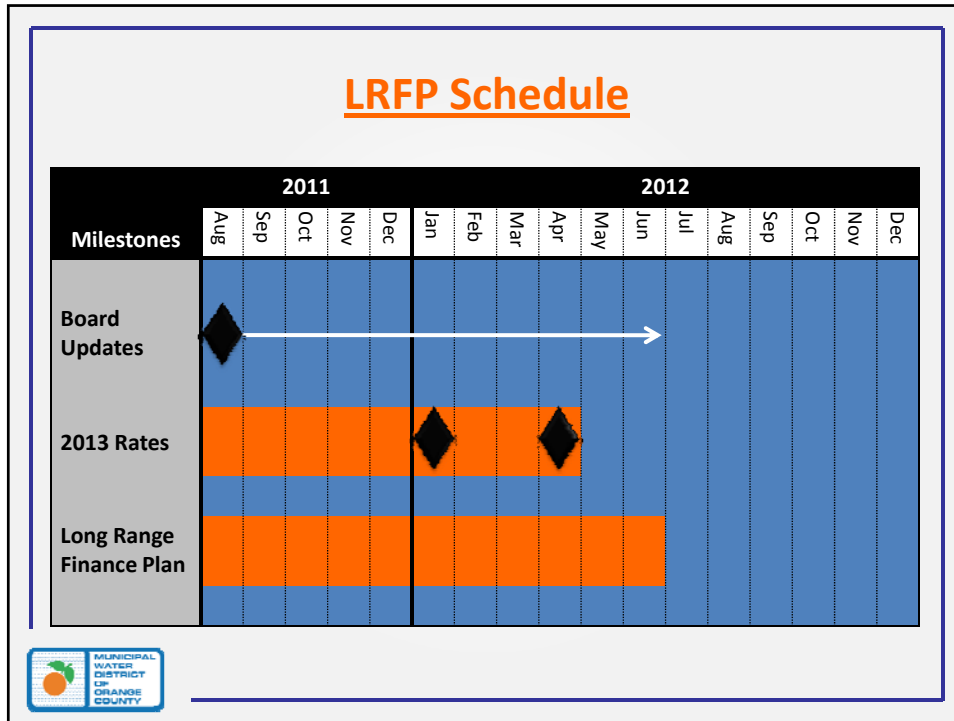
- Variability in revenue – potential sales “swings”
- Increased reserve levels
 - Rate stabilization funds
- Take-or-pay provisions for contract-wholesale customers
- Greater PAYGO for capital
- Fixed charges for fixed costs
 - El Paso: Water Supply Replacement Charge
 - Phoenix: Environmental Charge
 - Charlotte: 20% of debt service in Fixed Availability



Potential Advantages/Disadvantages of Additional Fixed Charges

- Advantages to Metropolitan
 - Reduces revenue volatility
 - Reduces rate spikes resulting from low sales
 - Improves MWD’s financials
- Disadvantages to Member Agencies
 - Transitions risk of revenue volatility to member agencies
 - Agencies without pass-through charges
 - May have more volatility in their own rates
 - Could trigger Proposition 218 notice processes







DISCUSSION ITEM

November 2, 2011

TO: Board of Directors

FROM: Kevin Hunt
General Manager

Staff Contact: Harvey De La Torre

SUBJECT: Update on MWD's Replenishment Program

STAFF RECOMMENDATION

Staff recommends the Board of Directors review and discuss this information

REPORT

As part of the process to help redesign the water replenishment program, MWD staff and the working group developed the following draft policy principles for the Board's review and adoption:

- **Regional Water Management Benefits:** The program should provide regional water management benefits, including:
 - Dry-year supplies at Metropolitan's call,
 - Flexibility to manage delivery of available supplies in a way that would provide additional storage beyond Metropolitan's regional storage capability, and
 - Delivery of supplies available to Metropolitan that are otherwise at risk of spill or loss
- **Equity for Member Agencies:** The program will be available to all member agencies and provide quantifiable regional benefits
- **Financial Integrity:** The program options should support the stability of Metropolitan's revenues and coverage of costs
- **Regional Value:** Program incentives should be based on sound economic principles and be proportional to the water management benefits provided
- **Operational Flexibility:** The program will enhance opportunities for Metropolitan to effectively manage water supplies under varied water supply conditions

Budgeted (Y/N):	Budgeted amount: N/A	Core <u>X</u>	Choice <u> </u>
Action item amount: N/A	Line item:		
Fiscal Impact (explain if unbudgeted):			

- **Complementary with Other Storage Programs:** Features of the program should be complementary with existing storage programs, such that past investments continue to yield reliability benefits

These draft policy principles were presented last month to the MWD's Water Planning and Stewardship Committee as an information item for review and comment. The Committee had the following suggestions:

- **Clarification of Regional Benefits**
 - Regional *Water Management Benefits*
- **Clarification of the role of program**
 - Complementary with existing regional storage portfolio, with emphasis on equity, regional value, and financial integrity
 - Operational flexibility to optimize regional water management benefits by integrating opportunities for local storage with the regional water portfolio
- **Interest in financial integrity and pricing details**
- **Concern for accountability and regional value**

MWD staff plans to revise these principles based on the Committee's comments and seek approval from the Board this month.

The details of the new water replenishment program are currently being discussed among the work group. MWDOC staff plans to outline some of these details being debated such as, regional benefits associated with each level proposed, program availability, performance criteria and incentive levels.

Update on MET's Replenishment Water Program

Municipal Water District of Orange County
Board Workshop on MET Issues
November 2, 2011



Draft Policy Principles

1. Regional Water Management Benefits:

The program should provide regional water management benefits, including:

- Dry-year supplies at Metropolitan's call,
- Flexibility to manage delivery of available supplies in a way that would provide additional storage beyond Metropolitan's regional storage capability, and
- Delivery of supplies available to Metropolitan that are otherwise at risk of spill or loss



Draft Policy Principles (Cont.)

2. Equity for Member Agencies:

The program will be available to all member agencies and provide quantifiable regional benefits

3. Financial Integrity:

The program options should support the stability of Metropolitan's revenues and coverage of costs

4. Regional Value:

Program incentives should be based on sound economic principles and be proportional to the water management benefits provided



Draft Policy Principles (Cont.)

5. Operational Flexibility:

The program will enhance opportunities for Metropolitan to effectively manage water supplies under varied water supply conditions

6. Complementary with Other Storage Programs:

Features of the program should be complementary with existing storage programs, such that past investments continue to yield reliability benefits



MET Board Comments

- **Clarification of Regional Benefits**
 - *Regional Water Management Benefits*
- **Clarification of the role of program**
 - **Complementary with existing regional storage portfolio, with emphasis on equity, regional value, and financial integrity**
 - **Operational flexibility to optimize regional water management benefits by integrating opportunities for local storage with the regional water portfolio**
- **Interest in financial integrity and pricing details**
- **Concern for accountability and regional value**



Program Element		Level 1	Level 2	Level 3
Regional Benefit	Measurable Dry-Year Reliability	✓		
	Increased Operational Flexibility	✓	✓	
	Increased Surplus Delivery when Available	✓	✓	✓
MWD Call on Storage		✓		
Rates	No Capacity Charge	✓	✓	✓
	Tier 2 Exempt	✓*	✓	✓
	No RTS	✓*	✓	
	Additional Incentive	Based on Central Valley Storage	Cash Flow Assistance	N/A
Supply Availability		Whenever MWD has water to store	When annual MWD storage capacity is limited	Short-term opportunities (e.g. Article 21)

Incentives under discussion

	Proposed Level 1	Proposed Level 2	Proposed Level 3
Capacity Charge Savings	\$13/AF	\$13/AF	\$13/AF
Tier 2 Exemption Savings	\$0 to \$125/AF	\$0 to \$125/AF	\$0 to \$125/AF
RTS Savings	\$42/AF	\$42/AF	None
Additional Incentive	> \$118/AF	Cash Flow Assistance	None
Total Savings	\$173/AF or greater	\$55 to \$180/AF	\$13 to \$125/AF

Note: The acre-feet savings above are based on an average MWDOC member agency cost



Next Steps

- **Continue discussions with the workgroup and MET staff**
- **Board Action on Draft Policy Principles – Nov. 2011**
- **Board Consideration of a new program – Dec. 2011**





DISCUSSION ITEM

November 2, 2011

TO: Board of Directors

**FROM: Kevin Hunt,
General Manager**

Staff Contact: David Cordero

SUBJECT: AB 32 “CAP-AND-TRADE” IMPLEMENTATION AND ITS IMPACT ON METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

STAFF RECOMMENDATION

Staff recommends the Board of Directors discuss and provide direction to staff as appropriate.

DETAILED REPORT

The California Air Resources Board (CARB) adopted on October 20 the final regulations for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms. This is commonly referred to as the “Cap-and-Trade” program which is one of the strategies California will use to reduce greenhouse gas (GHG) emissions in the state to 1990 levels by 2020. The program will create a statewide limit on sources responsible for 85 percent of GHG emissions. The cap-and-trade program will start on January 1, 2012 with enforcement and allowance compliance obligation starting on January 1, 2013 for electric utilities and large industrial facilities and January 1, 2015 for distributors of transportation fuel, natural gas and other fuels. The final rulemaking package will be submitted to the Office of Administrative Law (OAL) on October 28.

The plan will first institute a “cap” on emissions from certain sectors. Facilities subject to the cap will be able to trade permits (allowances) to emit GHG. Entities that are under their carbon allowance will be able to auction or “trade” surplus allowances to entities that require additional carbon allowances.

Greenhouse gases can be emitted during electrical power generation and will be required to be reported and regulated. This includes emissions associated with electricity that is

Budgeted (Y/N):	Budgeted amount: N/A	Core X	Choice __
Action item amount:	Line item:		
Fiscal Impact (explain if unbudgeted):			

imported to California. The Metropolitan Water District of Southern California (Metropolitan) will be subject to these regulations as some of the electricity it imports to power its electric pumps on the Colorado River Aqueduct has associated GHGs. The wholesale energy that it imports is used solely for water conveyance purposes. It is not marketed or resold to other entities in the state nor does it serve any type of retail load. However, Metropolitan has been classified as an entity that, starting in 2013, will be subject to the compliance requirements as well as having to obtain carbon allowances. Based on the amount of non-hydro electricity it imported in 2010 (750 MWh), Metropolitan estimates that it will result in a *new* cost of \$7.5 million in 2013 to obtain the necessary allowances to import the same amount of non-hydro electricity. The compliance obligation to acquire and surrender allowances will result in highly volatile costs to Metropolitan because of the variability of its energy imports and the anticipated increase in the auction price for allowances.

Metropolitan has actively participated in the development of the AB 32 rulemaking process. Most recently, it submitted an extensive comment letter (attached) outlining its concerns with the program and the impact of its implementation on Metropolitan and its ratepayers, the potential for duplicative regulation on the water sector, the process in which the regulations were developed, and CARB's lack of response to Metropolitan's earlier comments. CARB did not incorporate any of the changes requested by Metropolitan in its previous correspondence, including options for exemption, deferral, free allowances, or a special MOU. However, at its October 20 board meeting, CARB did adopt as part of the final regulations, an amended resolution that includes language directing the CARB Executive Officer to continue discussions to identify proposed amendments relating to the distribution of allowance value associated with Cap and Trade compliance costs from using electricity to supply water and that address the cost equity issues. The written adopted resolution is anticipated to be released shortly around the time CARB submits the final rulemaking package to OAL. According to Metropolitan's recent comment letter, Metropolitan is poised to "take whatever actions are necessary to protect the millions of Southern Californians who rely on Metropolitan's water from the adverse impacts of the ARB's regulations."

The following summarizes the major areas of concern expressed by Metropolitan in its most recent comment letter to CARB. However, the suggestions and requests that it offered were never incorporated into the final rulemaking package that was approved on October 20.

Metropolitan concluded that the cap-and-trade program is not viable or feasible for a public water supply agency and requested that it be exempted from the list of "covered entities" subject to the cap-and-trade requirements. To demonstrate its own unique status in the California energy markets and support its argument seeking an exemption, it asserted the following observations:

- Metropolitan is not a marketer of electricity, although it is classified as such under the Mandatory Reporting Regulation and Cap-and-Trade Program.
- Metropolitan does not purchase power for the purpose of resale.
- As a public agency, Metropolitan is legally required to pass all of its costs to ratepayers.

- Unlike retail electricity providers, including electric publicly-owned utilities, Metropolitan (based on ARB's decision) will receive no cost mitigation for its member agencies and ratepayers.
- As a public agency, Metropolitan should not be compelled to participate in the carbon market against for-profit market participants, including opt-in entities.
- Metropolitan's role, specifically the purchase of imported power to deliver water, is as a consumer of electricity, not a marketer, retail provider, or generator.
- The compliance obligation to acquire and surrender allowances will result in highly volatile costs to Metropolitan because of the variability of Metropolitan's energy imports for the CRA and the anticipated increase in the auction price of allowances. (For example, from 2005-2010 Metropolitan's historical imported non-hydro electricity has ranged from 0 to 750,000 megawatt-hours.)
- The emissions assigned to Metropolitan's imported electricity are already below its 1990 levels when Metropolitan had an agreement for coal energy from the Navajo Power Plant.

Metropolitan urged CARB to adopt specific language that would create a new reporting category and definition under the regulations but the request was not incorporated into the final rulemaking package. Metropolitan had proposed that it continue to report its imported electricity annually, to maintain the required records and verifications, and to pay the annual Cost of Implementation Fee for its imported electricity. It would also agree to certify that, if it altered its market behavior in a manner that would make it a true marketer of electricity, it would become subject to all of the requirements imposed upon covered entities. However, since Metropolitan would not be classified as an electricity marketer or an Electric Distribution Utility (EDU), it would not have a compliance obligation under the cap-and-trade program.

Metropolitan advocated that the development of a water sector-specific compliance program and/or a deferral of the regulations for the water sector until such regulations are developed would be appropriate. Metropolitan proposed to work with CARB and other water agencies to develop the program and work towards implementation starting in 2014-2015. Deferring actual implementation of water sector regulations would allow CARB staff to concentrate priorities and resources on implementing the cap-and-trade program for the electric and industrial sector in 2012-2013 and would avoid imposing unnecessary and inequitable costs, potentially through duplicative regulations, on the water sector. To that end, Metropolitan proposed the following:

Finally, in the absence of an exemption or deferral, Metropolitan asserted that the only equitable alternative is to provide free allowances since it is a wholesale water utility which provides a public service and, like the retail electric utilities, they serve a critical public purpose. Metropolitan believes that it is inappropriate for CARB to deny the publicly-owned providers of a critical public resource the same price relief for their customers that the electric sector will enjoy.

Other concerns expressed by Metropolitan include:

- The proposed regulations are fundamentally inequitable to Metropolitan and its ratepayers as the regulations will increase costs on both electric and water customers but it only provides offsetting price mitigation to electric customers.

- The proposed regulations will likely result in duplicative regulation of the water sector when water industry-specific regulations are developed and implemented in the near future. Metropolitan believes this will result in water customers being burdened with significant overall cost increases. Metropolitan estimates that the annual cost of purchasing allowances to cover its imported energy needs will be \$7.5 million in 2013 and in subsequent years between \$11 million and \$22 million, depending on auction prices and the amount of imported energy needed in a given year. The decision by CARB to neither exempt Metropolitan from the cap-and-trade regulations nor defer the applicability of those regulations raises the specter of even greater inequities. Specifically, Metropolitan, its customers, and other water agencies will be forced to bear the cost burden of cumulative regulations when the water sector-specific regulations are implemented.
- The development of the cap-and-trade regulations did not occur through an open process. Water utilities were not included in the early working groups that helped formulate the cap-and-trade price mitigation measures and free allowance allocations for utilities. These groups included publicly-owned utilities, investor owned utilities, and a Joint Utilities Group (JUG). Metropolitan has asserted that, in working directly with the JUG to craft price mitigation measures for their members, CARB staff may have impermissibly made decisions without engaging non-JUG members.

The Metropolitan Board is continuing to discuss the impact of the just approved cap-and-trade regulations and determine what measures it should take moving forward to continue protecting its ratepayers throughout southern California.



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

September 27, 2011

Clerk of the Board
Mr. James Goldstene, Executive Officer
Ms. Mary Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, California 95814

Comments Regarding ARB's Second 15-Day Modifications to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Dear Mr. Goldstene and Ms. Nichols:

The Metropolitan Water District of Southern California (Metropolitan) has reviewed the Air Resources Board's (ARB's) Second 15-Day Modifications to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Second Modifications), released on September 12, 2011, and provides the following comments for your consideration. Although the Second Modifications do not contain any changes to the cap-and-trade regulations requested by Metropolitan in any of our prior comments, the substance of the regulations and the manner in which they were adopted raise serious policy and legal concerns for Metropolitan, our member agencies, and our customers. Therefore, Metropolitan reiterates the strong objections to the deficiencies and inequities we have previously identified in these regulations.

Background

As the nation's largest provider of drinking water, Metropolitan distributes water from the Colorado River and Northern California to 26 member agencies (cities and water districts), and supplies more than one-half of the water used by nearly 19 million people in the 5200 square-mile coastal plain of Southern California. Metropolitan's regional water supply and distribution system includes some of the largest pumping plants and water treatment facilities in the United States. In order to bring Colorado River water to Southern California, Metropolitan often imports wholesale energy into California exclusively to serve the electrical pumping requirements of the Colorado River Aqueduct (CRA). This wholesale energy is not marketed or resold to other entities in California; it is used only by Metropolitan to bring water into Southern California, and does not serve any type of retail load.

Metropolitan has actively participated in the AB 32 rulemaking process, including the submittal of detailed written comments on the Cap-and-Trade Proposed Draft Regulation on January 11, 2010, on the Proposed Regulation to Implement the California Cap-and-Trade Program on December 14, 2010, and on the Initial Modifications on August 11, 2011. Metropolitan also provided comments on the AB 32 Scoping Plan in 2008, as well as on the ARB's Supplement to the AB 32 Scoping Plan Functional Equivalent Document on June 13, 2011.

As reflected at page 136 of the meeting transcript and as previously cited in our comments, ARB senior staff recognized at the December 2010 Board meeting that, with respect to the water sector, staff "sort of missed an important category of customers where we need to address the cost" and was "prepared to talk to them about that." In response to this, Metropolitan staff has engaged in numerous meetings with ARB staff to articulate our concerns and propose potential solutions for Metropolitan and our customers. ARB staff has not given those concerns serious consideration, as evidenced by the fact that Metropolitan's concerns have not been addressed in either the Initial Modifications or the Second Modifications.

Metropolitan's Prior Comments

As noted above, Metropolitan has previously submitted comments that detail our major concerns regarding the draft regulations and our proposed recommendations for addressing them. Those comments and concerns are summarized below.

1. Exempting Metropolitan from the list of "covered entities" is the best public policy option.

After careful internal review and discussions, Metropolitan concluded that the cap-and-trade regulatory scheme developed by ARB is simply not viable or feasible for a public water supply agency. As ARB staff has recognized, Metropolitan does not provide electrical service to any load other than the CRA pumping plants and is therefore not an electric utility. However, contrary to the classification to which we have been assigned in the cap-and-trade regulations, Metropolitan is also not a marketer of electricity. To demonstrate our unique status in the California energy markets and support our argument for an exemption from the cap-and-trade regulations, Metropolitan asserted the following in our August 11th comments:

- Metropolitan is not a marketer of electricity, although it is classified as such under the Mandatory Reporting Regulation and Cap-and-Trade Program.
- Metropolitan does not purchase power for the purpose of resale.
- As a public agency, Metropolitan is legally required to pass all of its costs to ratepayers.
- Unlike retail electricity providers, including electric publicly-owned utilities, Metropolitan (based on ARB's decision) will receive no cost mitigation for its member agencies and ratepayers.

- As a public agency, Metropolitan should not be compelled to participate in the carbon market against for-profit market participants, including opt-in entities.
- Metropolitan's role, specifically the purchase of imported power to deliver water, is as a consumer of electricity, not a marketer, retail provider, or generator.
- The compliance obligation to acquire and surrender allowances will result in highly volatile costs to Metropolitan because of the variability of Metropolitan's energy imports for the CRA and the anticipated increase in the auction price of allowances. (For example, from 2005-2010 Metropolitan's historical imported electricity has ranged from 0 to 750,000 megawatt-hours.)
- The emissions assigned to Metropolitan's imported electricity are already below its 1990 levels when Metropolitan had an agreement for coal energy from the Navajo Power Plant.

In light of Metropolitan's clear differences with both electric utilities and for-profit marketers, Metropolitan urged the ARB to adopt specific language that would create a new reporting category and definition under the regulations. Under this proposal, Metropolitan would continue to report our imported electricity annually, would continue to maintain the required records and verifications, and would continue to pay the annual Cost of Implementation Fee for our imports. Metropolitan would also agree to certify that, if we alter our market behavior in a manner that would make us a true marketer of electricity, we would become subject to all of the requirements imposed upon covered entities. However, since Metropolitan would not be classified as an electricity marketer or an Electric Distribution Utility (EDU), we would not have a compliance obligation under the cap-and-trade program.

2. The development of a water sector-specific cap-and-trade compliance program and/or a deferral of the regulations for the water sector until such regulations are developed is appropriate.

Metropolitan also proposed the creation of a compliance program to integrate water sector measures for energy efficiency and renewable energy projects, as specified in ARB's AB 32 Scoping Plan. This proposal is in fact consistent with the water sector measures that ARB proposed in the "Recommended Actions" section of the Scoping Plan for water. Metropolitan proposed to work with ARB along with other water agencies to develop the program and work towards implementation starting in 2014-2015. Deferring actual implementation of water sector regulations would allow ARB staff to concentrate priorities and resources on implementing the cap-and-trade program for the electric and industrial sector in 2012-2013 and would avoid imposing unnecessary and inequitable costs, potentially through duplicative regulations, on the water sector. To that end, Metropolitan proposed the following:

- Develop a compliance strategy or memorandum of understanding for Metropolitan as a consumer of wholesale electricity that integrates the imported energy issue into a comprehensive water sector program that includes measures identified in the AB 32 Scoping Plan, such as energy efficiency and renewable energy projects; and

- Defer Metropolitan/water sector measures until 2014 or 2015, after the cap-and-trade program is implemented.
3. In the absence of an exemption or deferral, the only equitable alternative is to provide Metropolitan with free allowances.

If ARB does not make these changes to exclude Metropolitan from the cap-and-trade program, or defer our compliance until comprehensive water sector specific measures are adopted, the only equitable alternative is to allocate free allowances to Metropolitan as a wholesale water utility. Wholesale water utilities are essential public services, and like the retail electric utilities they serve a critical public purpose. Metropolitan believes that it is inappropriate for ARB to deny the publicly-owned providers of a critical public resource the same price relief for their customers that the electric sector will enjoy.

ARB Staff Reaction to Metropolitan Concerns and Recommendations

The Initial Modifications, in Appendix A, focused exclusively on the alleged obstacles to providing free allowances to the water sector and did not address Metropolitan's exemption and deferral proposals. In our August 11th comments and in numerous meetings with ARB staffers, Metropolitan consistently and vigorously pressed the point that, as a public agency that provides water to much of Southern California, we should not be both treated as a for-profit marketer for purposes of regulation and denied the price mitigation provided to the public agencies that provide electricity to Southern Californians. Not only did ARB staff not provide Metropolitan with any of the revisions to the cap-and-trade regulations that we requested, it did not even address Metropolitan's arguments in the Second Modifications, notwithstanding the fact that the Second Modifications will likely be staff's final opportunity to address the comments of stakeholders prior to ARB's planned submission of the cap-and-trade regulations to the Office of Administrative Law (OAL) in October.

Metropolitan's Detailed Comments on the Second Modifications

1. The proposed regulations are fundamentally inequitable to Metropolitan and our ratepayers.

A consistent theme in the comments submitted by the wholesale water providers has been the inequity inherent in imposing increased costs on both electric and water customers, yet only providing offsetting price mitigation to electric customers. On page 16 of Appendix A to the Initial Modifications, ARB concluded that the publicly-owned water utilities are akin to electricity marketers, not distribution utilities, and that providing free allowances to the water agencies is inappropriate since the wholesale water utilities do not "maintain direct relationships" with their end-use customers and, thus, allocating allowances to these utilities might result in "the deterioration of the emissions price signals in the water sector."

This analysis is notable for its flawed assumptions and the facts that it omits or concedes. ARB's analysis does not deny that end-use water customers, like end-use electric customers, will be impacted by cap-and-trade-related cost increases; it does not propose to protect water customers by providing price mitigation to retail water providers; and it does not explain why "price signals" are more important than equity.

ARB's decision to sacrifice equitable treatment of all stakeholders in order to promote the vague economic concept of price signals is indisputably inconsistent with what AB 32 requires. Section 38562(b) of the statute provides that, "to the extent feasible," ARB must "[d]esign the regulations, including the distribution of emissions allowances, in a manner that is equitable." As the court found in a case involving a public agency's elimination of medical services, Morris v. Williams, 67 Cal.2d 733, 757 (1967), the language "to the extent feasible" means that an administrative agency must use every "feasible" effort to accomplish the directive. The court concluded that an administrative agency's discretion in the rulemaking process is circumscribed by the express requirements on the statute and that "'feasible,' in short, means capable of being done." Id. Thus, ARB can develop regulations that promote price signals, but it does not have the discretion to elevate this goal above the equitable treatment of all entities. Since equitable treatment of all public agencies is feasible, it trumps ARB's price signal goal.

Throughout the rulemaking process, ARB staff has expressed the concern that exempting Metropolitan from the coverage of the cap-and-trade regulations will create a gap in the regulations, since all emissions associated with imported energy will not be accounted for. In a conference call between Metropolitan and ARB staff, one ARB staffer indicated that exemptions would undermine the "purity" of the cap-and-trade program. ARB's concerns are unfounded. Section 38505(m) of AB 32 does specify that "statewide greenhouse gas emissions" include electricity that is either generated in state or imported. However, the statute does not require that all imported electricity be covered by a cap-and-trade program. The statute merely requires that all greenhouse gas emissions be reported and that these emission levels be reduced to 1990 levels by 2020. Section 38570 permits the ARB to include "market-based compliance measures" in the regulations, provided that the measures consider cumulative impacts, prevent increases in air pollutants, and maximize economic benefits. Ensuring that all emissions are captured within the market-based mechanism is not a requirement. Therefore, the ARB is not prohibited from exempting from cap-and-trade coverage emissions associated with an entity's imports, and it should do so where, as in this instance, including these emissions would result in inequitable treatment.

2. The proposed regulations will likely result in duplicative regulation of the water sector.

ARB has consistently minimized the cost impact of the cap-and-trade regulations on the water sector; it is clear, however, that water customers will be burdened with significant overall cost increases as a result of the regulations. In our December 14, 2010 comments, Metropolitan estimated that the annual cost of purchasing allowances to cover our imported energy needs would be between \$11 million and \$22 million, depending on auction prices. The decision by ARB to neither exempt Metropolitan from the cap-and-trade regulations nor defer the

applicability of those regulations raises the specter of even greater inequities. Specifically, Metropolitan, our customers, and other water agencies will be forced to bear the cost burden of cumulative regulations when the water sector-specific regulations are implemented.

In Section 17 of its Scoping Plan, ARB “recommends a public goods charge for funding investments in water management actions that improve water and energy efficiency and reduce GHG emissions.” ARB anticipates that such a charge “could generate \$100 million to \$500 million.” Given that energy efficiency measures will undoubtedly involve reducing GHGs associated with energy consumption, these measures will require Metropolitan to pay a significant amount of money for renewable energy at the same time that we are buying allowances for our imported energy. The likelihood of this additional cost burden is acknowledged in the Scoping Plan, which recommends a “mechanism to make allowances available in a cap-and-trade program” to, among others, “water suppliers,” and concludes that an “allowance set-aside will be evaluated during the rulemaking for the cap-and-trade program.” Other than the cursory, one-paragraph discussion in Appendix A to the Initial Modifications, no such evaluation has been done.

Similarly, the July 12, 2010 study “Implementing a Public Goods Charge for Water” (PGC Study), authored by three U.C. Berkeley economists on behalf of the Public Utilities Commission and the Water Energy Team of the Climate Action Team (WetCat), estimates that “approximately 20% of all electricity consumed in the state” is used for “water delivery, treatment, and use.” (PGC Study at 5). The study characterizes the “[g]reenhouse gas emissions from pumping, treating, and heating water” as a “negative externality” that must be taxed in order to accomplish the goals of AB 32. *Id.* at 6. With respect to the ultimate cost to water consumers, the study concludes that a \$680 million dollar per year public goods charge is necessary because, while publicly-owned water utilities have the ability to raise rates to fund GHG-reduction measures, “they are often reluctant to do so.” *Id.* at 4, 10.

Thus, ARB’s own Scoping Plan, as well as the study commissioned to implement it, have concluded that the water sector should be heavily taxed to fund GHG emissions-reducing measures. By determining in the cap-and-trade regulations that publicly-owned water utilities must incur costs to cover the emissions associated with moving water without providing any indication as to types and magnitude of additional costs that those utilities will incur as a result of to-be-developed water sector measures is grossly unfair. This is particularly true given the strong indications that Metropolitan will be required to mitigate emissions costs associated with our energy imports through both the cap-and-trade regulations and the water sector measures.

3. The development of the cap-and-trade regulations did not occur through an open process.

Metropolitan has provided comments to the Board in response to every iteration of the cap-and-trade regulations, including comments submitted to Assistant Executive Officer Kevin Kennedy on January 11, 2010 articulating most of the concerns that Metropolitan is still expressing today. Notwithstanding Metropolitan’s communications to him, Mr. Kennedy, as noted above, stated at the December 2010 Board meeting adopting the cap-and-trade regulations that, with respect to

the wholesale water utilities, ARB staff had “missed an important category of customers” and indicated a willingness to talk to wholesale water agencies. Metropolitan began meeting with ARB staffers following the Board adoption of the regulations and has since met with them several times to discuss Metropolitan’s concerns and to advocate specific proposals for addressing those concerns. At some of these meetings, ARB staff indicated that they were reluctant to make changes to the regulations that would be unpalatable to the EDUs, including the publicly-owned utilities, the investor owned utilities, and the Joint Utilities Group (JUG). Ultimately, ARB staff did not adopt any of the recommendations made by Metropolitan.

Metropolitan is very concerned that, in working directly with the JUG to craft price mitigation measures for their members, ARB staff may have impermissibly made decisions without engaging non-JUG members. The Public Meetings Act, as contained in Section 11120 of the Administrative Procedure Act (APA), provides that it is the intent of that law “that actions of state agencies be taken openly and that their deliberation be conducted openly.” AB 32 itself reinforces this directive by requiring that the ARB “adopt rules and regulations in an open public process.” The sequence of events leading to ARB’s determination that free allowances would only be given to Local Distribution Companies (LDCs) gives rise to the concern that stakeholders such as Metropolitan did not have an adequate opportunity to advocate their positions prior to a de facto decision made by ARB staff.

Following the issuance of a recommendation by the ARB’s Economic and Allocation Advisory Committee on January 2, 2010, the JUG, representing all of the major LDCs in California, began meeting with ARB staffers on a regular basis to discuss the allocation of free allowances. According to information made available to Metropolitan, the JUG met with ARB staffers on numerous occasions prior to the release of the draft cap-and-trade regulations in October of 2010. In a February 11, 2010 meeting, held seven days prior to the public Ad Hoc Committee meeting to discuss allowance allocation, the JUG provided ARB staff with a recommendation that largely tracks the draft cap-and-trade regulations with respect to free allowances. At an August 16, 2010 meeting, Mr. Kennedy indicated that ARB staff was hopeful that they could build on the agreement reached by the utilities. In advance of the spring 2011 workshops at which allowance allocation was publicly discussed, Metropolitan received information from a member agency indicating that ARB planned to meet with a subgroup of utilities prior to the public meetings to discuss allowance allocation.

One consequence of the failure to include the water sector in this process is that allowances associated with the emissions of the wholesale water utilities were allocated to other entities. ARB has in fact acknowledged this inequity in Appendix A to the Initial Modifications, where, in reference to the water utilities, it states that “each of these entities use electricity to transport water into and around California, and the emissions associated with this activity are included in the pool of allowances set aside for the electric sector.” This strongly suggests that the EDUs who participated in the emissions allocations discussions obtained not only the free allowances associated with their own electricity usage, but also a pro rata share of the allowances associated with the electricity use of the water utilities.

Metropolitan does not raise the issue of transparency in order to cast aspersions on either ARB staffers or JUG members. Metropolitan assumes that the representatives from ARB and the JUG were attempting to resolve issues pertinent to the retail electric utilities in a time-constrained environment in advance of the October 2010 issuance of the proposed cap-and-trade regulations. However, an unintended consequence of these closed meetings was that stakeholders, such as Metropolitan, which were not included in meeting announcements, were unable to voice their concerns and assert their interests in a process that led to the formulation of regulations with a profound impact on many entities outside of the JUG. While staff and the Board made the ultimate decision with respect to the regulations, they did so without the input of many affected parties.

4. Contrary to the requirements of the APA, ARB did not respond to Metropolitan's comments.

In addition to requiring open meetings, the APA requires that public agencies be responsive to public input. As the court articulated in Morning Star Co. v. State Board of Equalization, 38 Cal.4th 324, 333 (2006) (citing Gov. Code § 11346), “[i]f a rule constitutes a ‘regulation’ within the meaning of the APA it may not be adopted, amended, or repealed except in conformity with ‘basic procedural requirements’ that are exacting.” The court notes that one of those exacting requirements is that the public agency must “respond in writing to public comments,” and cautions that “[a]ny regulation or order of repeal that substantially fails to comply with these requirements may be judicially declared invalid.” Id. at 333.

Save for the one-paragraph discussion in Appendix A to the Initial Modifications regarding the propriety of allocating free allowances to water utilities, the ARB has not addressed the arguments repeatedly proffered by Metropolitan with respect to cap-and-trade. Although, as discussed below, allocating free allowances to wholesale water utilities provides a bare minimum of protection for water customers against rising costs, Metropolitan’s primary arguments regarding exemption and deferral have been completely ignored in the numerous iterations of the cap-and-trade regulations that the ARB has released in the last year. While the AB 32 implementation proceedings are governed by the APA, ARB’s blatant disregard for public input and administrative dictates in its development of the cap-and-trade regulations is highly analogous to ARB’s violation of CEQA in its approval of the Scoping Plan, as found by a court in Association of Irrigated Residents v. ARB, Statement of Decision, Case No. CPF-09-509562, Superior Court of California, County of San Francisco (March 18, 2011). There, as here, the ARB failed to adequately respond to public comments prior to making a determination. ARB’s repeated failure to address Metropolitan’s comments on the cap-and-trade regulations makes it susceptible to the same type of legal challenge.

5. In the absence of an exemption or deferral, providing free allowances to Metropolitan is the only equitable alternative.

In the absence of a decision to exclude Metropolitan from the category of “covered entities” or to defer our compliance obligations until water sector-specific measures are formulated, the only

equitable alternative is an allocation of free allowances. Metropolitan agrees with the ARB's apparent conclusion that we are distinct from the EDUs in important respects. However, it is fundamentally unfair for ARB to treat publicly-owned providers of a critical public resource in the exact same manner as for-profit marketers and, thereby, deny these providers and their customers any sort of price relief. In other words, if the ARB decides to impose the same compliance obligation on Metropolitan that it imposes on energy marketers and EDUs that import energy, it should protect Metropolitan's customers in the same manner that it protects the customers of the EDUs.

The inequity inherent in ARB's free allowance allocation approach is evident in a comparison with Metropolitan's member agencies that serve retail electric load. Many of these agencies have entitlements to energy resources outside of California. As importers, they will be required to acquire allowances to cover the emissions associated with this energy. This activity does not, however, result in these EDUs being characterized as "marketers," which are not entitled to receive free allowances. In addition, although these retail electric utilities will be able to use the free allowances they receive as EDUs to offset costs to their retail electric customers, as purchasers of Metropolitan water they will be unable to mitigate price increases to their retail water customers resulting from higher power prices at the wholesale water level.

Finally, ARB's articulation of the reasons that wholesale water utilities are ineligible to receive free allowances (*i.e.* no direct end-use customer relationship and thus no price signal) is inconsistent with the rationale provided for the regulations that have been developed. POU retail electric providers will be permitted to retire their free allowances in order to meet their compliance obligations as importers or generators, resulting in no price signals at the retail level. Although the ARB apparently intends for the POUs to use the value of the free allowances to offset rate shock associated with rate increases, there is nothing in the statute that compels this result, and few public agencies will increase rates unless they are required to do so. Thus, not only has ARB created a price signal metric for measuring the need for free allowances that is not found in the statute, but it has also applied that metric in an arbitrary, inequitable manner.

Conclusion

Metropolitan is sensitive to the ARB's statutory deadlines and cognizant of ARB's desire for purity in the design of the cap-and-trade regime. However, we have repeatedly requested, since January of 2010, that ARB address the inequities inherent in its proposed regulations and suggested numerous approaches to resolving these inequities. In response, the ARB has made decisions that negatively affect Metropolitan in a process in which Metropolitan was not invited to participate and without considering our comments on the inequitable results of that process.

In order to ensure that Metropolitan's ratepayers are not unfairly disadvantaged and subjected to cumulative cost impacts as a result of the cap-and-trade regulations, and to assure that the regulations are not susceptible to legal challenge, Metropolitan strongly urges the ARB to further modify its cap-and-trade regulations to address Metropolitan's concerns prior to the ARB's October submission of the regulations to the OAL. If such modifications are not made,

Mr. James Goldstene
Ms. Mary Nichols
September 27, 2011
Page 10

Metropolitan will take whatever actions are necessary to protect the millions of Southern Californians who rely on Metropolitan's water from the adverse impacts of the ARB's regulations.

If you have any questions on our comments, please contact Mark Parsons in our Legal Department or Janet Bell in our Safety and Environmental Services Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Kightlinger". The signature is fluid and cursive, with the first name "Jeff" and last name "Kightlinger" clearly distinguishable.

Jeffrey Kightlinger
General Manager

AB 32 “Cap-and-Trade” Implementation and its Impact on Metropolitan

**Municipal Water District of Orange County
Board Workshop on MET Issues
November 2, 2011**



What is AB 32?

- **The California Global Warming Solutions Act of 2006**
 - **Requires reduction in greenhouse gas (GHG) emissions to 1990 levels by 2020**
 - **Under jurisdiction of California Air Resources Board (CARB)**
 - **CARB Scoping Plan**
 - **“Cap-and-Trade” Program**
 - **Final regulation package adopted on October 20; submitted to Office of Administrative Review on October 28**
 - **Starts on January 1, 2012**
 - **Enforcement and allowance compliance obligation starts January 1, 2013**



About the Cap-and-Trade Program

- Green House Gas (GHG) can be emitted during electric power generation
- GHG are to be regulated and reported
 - Includes emissions associated with imported electricity
- GHG emissions to be covered with allowances
- Number of available allowances capped
- Allowances obtained through auction or trades
- Price of allowances set by market



How “Cap-and-Trade” Impacts Metropolitan

- Starting in 2012, Metropolitan must acquire allowances for imported supplemental energy on the Colorado River Aqueduct.
 - Estimate: 1 allowance for each 2 MWh
- 2012 allowances trading for ~\$20
- In 2010, Met imported 750,000 MWh supplemental energy → In 2013: \$7.5 million for allowances
- Other direct costs:
 - Implementation fee: \$65,000 total for 2008 & 2009



How “Cap-and-Trade” Impacts Metropolitan

- **Highly volatile costs to Metropolitan**
 - **Variability of energy imports**
 - **Anticipated increase in auction prices for allowances**



Metropolitan’s Activities

- **Metropolitan has been actively engaged in CARB rulemaking process.**
 - **Meetings**
 - **Testimony**
 - **Comment letters**
 - **Discussions to continue with CARB to identify proposed amendments to address cost equity issues, use of electricity for water supply**
- **Discussions with other parties**
- **Coordination with State Water Contractors and Department of Water Resources**



Metropolitan's Position on Cap-and-Trade Rules

- **Not viable/feasible for public water supply agencies.**
 - **Metropolitan should be exempt from "covered entities" and not regulated within electric sector**
- **Should not be treated as a marketer of electricity**
 - **Imports energy solely to serve own load**
 - **Public agency, providing critical service**
 - **Competing with for-profit commodity traders**
- **Should consider unique operations**
 - **Quantity of imported energy highly volatile**
 - **Emissions already below 1990 levels**
- **Proposed regulations inequitable**



Metropolitan's Suggestions to CARB

- **CARB did not incorporate requested changes:**
 - **Exemption**
 - **Deferral**
 - **Free Allowances**
 - **Special MOU**



Next Steps for Metropolitan

- Continue discussions with CARB
- Review all available options with the board
- Participate in ongoing regulatory activities
- Work with other parties



Questions?





DISCUSSION ITEM

November 2, 2011

TO: Board of Directors & MWD Directors

FROM: Kevin Hunt
General Manager

Staff Contact: Harvey De La Torre/
Warren Greco

SUBJECT: MWD Items Critical To Orange County

STAFF RECOMMENDATION

Staff recommends the Board of Directors to review and discuss this information.

SUMMARY

This report provides a brief update on the current status of the following key MWD issues that may affect Orange County:

- a) MWD's Water Supply
- b) MWD's Local Resource Development Strategy Task Force
- c) Long Range Finance Plan (Purchase Order and Rate Refinement Discussions)
- d) Colorado River Issues
- e) Bay Delta/State Water Project Issues
- f) MWD's Ocean Desalination Policy and Potential Participation by MWD in the South Orange Coastal Ocean Desalination Project (formerly Dana Point Desalination Project)
- g) Orange County Reliability Projects

ISSUE BRIEF # A

SUBJECT: MWD's Water Supply

RECENT ACTIVITY

2011 Replenishment Water Program Deliveries

Metropolitan has announced that it has delivered all of the 225,000 acre-feet of replenishment water per the Board action in May 2011. Twelve MWD member agencies, including MWDOC and the three Orange County Cities Anaheim, Santa Ana and Fullerton, submitted orders to purchase replenishment water which totaled over 362,300 AF. According to OCWD staff, Orange County received over 93,000 AF of replenishment water, the most of any MWD member agency.

UPCOMING ACTIVITY

MWD Replenishment Working Group

As part of the Board's action to make replenishment water available this year, the member agencies and MWD staffs were asked to develop and present a new replenishment program to the MWD Board by the end of the year.

A working group has been formed with the member agencies and groundwater basin managers to develop draft water policy principles and craft elements for a new replenishment program. The work group has been meeting every two weeks and is discussing details of a multi-tier program. Among the items under discussion include years of availability, rate and incentive amounts, performance criteria, and regional benefit conditions.

MWD staff will present draft policy principles for the Board's review and adoption at this month's Board meeting.

Water Supply Outlook

The Department of Water Resource (DWR) officially declared 2011 as a "Wet Year" and all of the State's key reservoirs are at or near capacity. MWD has declared Diamond Valley Lake "operational fill" (94% of Capacity) and Dry-Year storage is expected to reach a historic high of 2.4 MAF by the end of year.

Based on the conditions of 2011, the water supply outlook for 2012 is projecting to be encouraging for MWD. Lake Oroville's current reservoir levels will allow DWR to start off with a high State Water Project initial "Table A" allocation – 50%. Colorado River Supplies are also projecting to be healthy with a 50% chance of surplus water in 2013. With water demand continuing to be below 2.0 MAF in 2012, MWD is anticipating having another year where supplies will exceed demands.

ISSUE BRIEF # B

SUBJECT: Local Resource Development Strategy Task Force

UPCOMING ACTIVITY

On October 19, MWDOC staff attended the MWD Local Resource Development task force where group of member agencies and MWD staff reviewed the pros/cons with each proposed financial alternative:

1. Status Quo: Provide up to \$250/AF for project yield, on a “sliding-scale” based upon documented project cost and contract terms up to 25 years
2. Reduced Maximum Incentive: Reduce maximum incentive below \$250/AF for project yield, at a fixed amount
3. Reduce Agreement Term: Set Maximum contract terms at less than 25 years
4. Competitive Proposals: Establish a competitive selection process for projects
5. Construction Fund (Revolving Fund): Provide a portion of the project capital costs with a repayment obligation to MWD within a set period of time
6. Co-ownership: Provide a portion of the project capital costs in exchange for an equity position in the project. Develop project jointly with member agencies or other government entities
7. Full Ownership: Develop, own, and operate projects directly as a component of MWD water supply, and sell produced water to agencies
8. MWD Build, Operate, and Transfer: MWD build and operate a project and will sell/transfer the project to the agency after it recovers its investment

The purpose of evaluating each alternative is to determine which financial approaches should be recommended to the MWD Board for review and consideration. The group also plans to revisit the Local Resource program incentive limit of \$250/AF as well as review MWD’s recycled water policy principles.

ISSUE BRIEF # C

SUBJECT: Long Range Finance Plan – Purchase Order and Rate Refinement Discussions

RECENT ACTIVITY

MWDOC staff will provide a detail report on MWD's Long Range Financial Plan at this month's Board Workshop on MWD Issues.

ISSUE BRIEF # D

SUBJECT: Colorado River Issues

RECENT ACTIVITY

Competing Resolutions Regarding Salton Sea Mitigation

On September 13, Imperial Irrigation District (IID) adopted a resolution directing staff to petition the State Water Resources Control Board (SWRCB) to eliminate the requirement that mitigation water be delivered to the Salton Sea between 2014 and 2017, and to allow IID to deliver any available non-conserved water to the Salton Sea for water transfer mitigation purposes during the period through 2014.

On September 28, Coachella Valley Water District's (CVWD) board responded with its own resolution opposing the elimination of the mitigation water deliveries to the Salton Sea. CVWD advocates that the QSA parties continue to meet all the mitigation obligations, and urges the state to do the same by funding its share of mitigation costs and implementing a restoration plan. As of today, the state has taken no action to implement any other restoration project for the Salton Sea.

CVWD Approves Exchange with MWD

On September 13, CVWD's board approved the agreement to pre-deliver three year's worth of QSA Exchange water in 2011. Therefore, MWD will deliver three years of QSA Exchange water in 2011 (a total of 105,000 acre-feet), which will result in no deliveries being made in 2012 or 2013. CVWD will pay MWD for the costs of delivering water per the 2003 Exchange Agreement, at a rate of \$270 per acre-foot. Also included in the agreement was a reimbursement to CVWD for reducing its call on the IID-Metropolitan Conservation program by 12,000 acre-feet in 2010, at the rate of about \$66 per acre-foot. Altogether, Coachella will pay MWD \$27.5 million.

ISSUE BRIEF # E

SUBJECT: Bay Delta/State Water Project Issues

RECENT ACTIVITY

Bay Delta Conservation Plan

On August 11, the U.S. Department of the Interior, the U.S. Department of Commerce, the California Natural Resources Agency, and state and federal water contractors announced a schedule for completion of the combined Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) for the Bay Delta Conservation Plan (BDCP) by June 2012. The agreement also identifies how the remaining planning activities will be funded.

On October 7, 2011, the BDCP released the “Effects Analysis Review” materials for public review. The effects analysis is a critical component for the BDCP that was not included in the Working Draft that was released in November 2010. The Effects Analysis is intended to provide the best scientific assessment of the likely effects of BDCP actions on the species of concern and ecological processes of the Bay-Delta system.

On October 24, Congressional members representing the Delta region submitted a letter urging the Obama Administration to withdraw the planning agreement signed in August. Representatives Jerry McNerney, George Miller, Mike Thompson, Doris Matsui and John Garamendi wrote that the BDCP agreement, “...offers the signatories unprecedented influence over the process, and it raises expectations of favorable outcomes.”

Delta Smelt Numbers Rise in Recent Survey Catch

An annual survey of Delta fish by the Department of Fish and Game (DFG) showed a large rebound in the number of Delta smelt. During the fall, DFG biologists tow nets in the Sacramento-San Joaquin River Delta sampling for a variety of threatened fish. The results are used to calculate an abundance index. September’s index for the Delta smelt was 50, compared to only six in 2010, and an index of only one in 2009. The September catch was the biggest since 2001, but it is still small by historic standards. The September index is only the first of four monthly indices.

Biologists attribute the rise in Delta smelt to a variety of factors. Increased Delta flows from a wet year, more food, less competition from an invasive clam, and less chance of entrainment by Delta export pumps. Large volume of water flowing into the delta also diluted ammonia released from a Sacramento-area sewage treatment plant, boosting production of algae and organisms at the base of the delta's food chain.

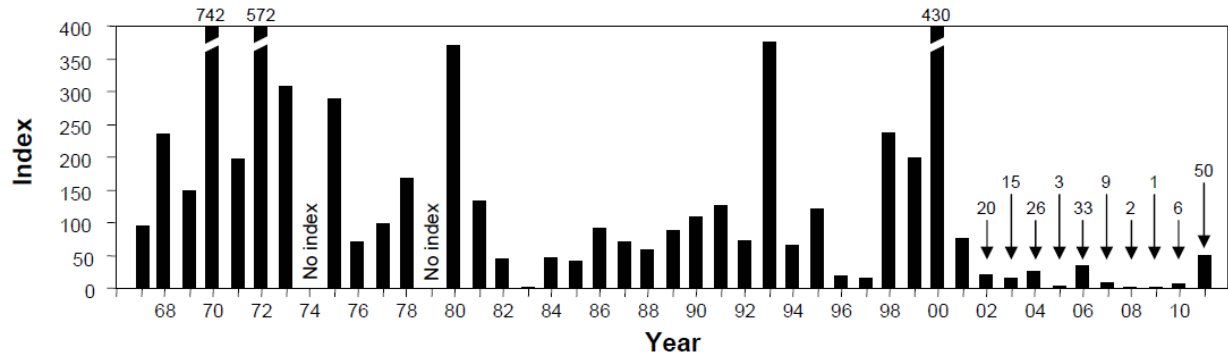


Figure 1 FMWT September abundance indices of delta smelt.

ISSUE BRIEF # F

SUBJECT: MWD's Ocean Desalination Policy and Potential Participation by MWD in the South Orange Coastal Ocean Desalination Project (formerly Dana Point Desalination Project)

RECENT ACTIVITY

MWD's Committee on Recycling and Desalination will be held in November.

MWDOC has continued its discussions with MWD staff on concepts for MWD to help its member agencies with desalination activities. Potential areas of assistance include water quality testing, system integration work, funding, and development of foundational issues to lay the groundwork for future development of ocean desalination projects and on regulatory and permitting issues. MWD staff has been very active with CALDESAL on regulatory issues.

ISSUE BRIEF # G

SUBJECT: Orange County Reliability Projects

RECENT ACTIVITY

1. Second Lower Cross Feeder

A meeting of the owners of capacity in the East Orange County Feeder No. 2 and other potential stakeholders in Orange County was held on September 1 to discuss project concepts for the Second Lower Cross Feeder Project. The group agreed that the discussions were well supported and should continue. The next meeting will be set in about the December timeframe.

2. Central Pool Augmentation Project

MWD staff is expected to provide an update in December to the Engineering and Operations Committee on reserving key plant and tunnel portal sites for the Central Pool Augmentation program.

3. Baker WTP & Introduction of Local Water into the MWD System

Nothing new to report.

**Summary Report for
The Metropolitan Water District of Southern California
Board Meeting
October 11, 2011**

SPECIAL GUEST

Michael Connor, Commissioner, Bureau of Reclamation addressed the Board.
(Agenda Item 4A).

COMMITTEE ASSIGNMENTS

Director Lowenthal was added to the Communications and Legislation Committee.

Director Camacho was added to the Organization, Personnel and Technology Committee.

Director Wright was added to the Real Property and Asset Management Committee.
(Agenda Item 5C)

REAL PROPERTY AND ASSET MANAGEMENT COMMITTEE

The Board authorized the General Manager to accept offers for the purchase or lease of surplus property identified as The Metropolitan Water District of Southern California's Parcel No. 1600-1-100, Orange County Assessor Parcel No. 323-012-14, a house near Robert B. Diemer Water Treatment Plant. **(Agenda Item 8-1)**

The Board authorized entering into an exclusive negotiating agreement with Diamond Development, LLC, for the development of a college campus at Diamond Valley Lake.
(Agenda Item 8-2)

ENGINEERING AND OPERATIONS COMMITTEE

The Board awarded \$2,159,000 contract to Doty Bros. Equipment Company for construction of the Filter Outlet Chlorination and Chemical Trench projects at the Joseph Jensen Water Treatment Plant (Approps. 15346 and 15442). **(Agenda Item 8-3)**

COMMUNICATIONS AND LEGISLATION COMMITTEE

The board voted to express opposition to H.R. 2890 (Clarke, D-MI) – Homeland Security and Public Water Systems. **(Agenda Item 8-4)**

The board voted to express support for H.R. 1907 (Calvert, R-CA) - Infrastructure Facilitation and Habitat Conservation Act of 2011. **(Agenda Item 8-5)**

The board voted to express support for H.R. 1340 (Young, R-FL) - End Unnecessary Costs Caused by Report Mailing Act of 2011. **(Agenda Item 8-6)**

The board voted to express support for H.R. 2664 (Napolitano, D-CA) – Reauthorization of Water Desalination Act of 2011. **(Agenda Item 8-7)**

The board voted to express opposition to S. 711 (Lautenberg, D-NJ) – Secure Water Facilities Act. **(Agenda Item 8-8)**

LEGAL AND CLAIMS

The Board authorized the Interim General Counsel to initiate litigation, one matter, regarding the defective design of a Metropolitan facility to protect Metropolitan’s interests. **(Agenda Item 8-9)**

CONSENT CALENDAR

In other action, the board:

Appropriated \$870,000; and awarded \$428,551 contract to Mehta Mechanical Company, Inc. for Stage 1 repairs of pipe expansion joints at Julian Hinds Pumping Plant (Approp. 15374). **(Agenda Item 7-1)**

Appropriated \$360,000; and authorized final design and procurement of standby generators at the Temescal and Corona Power Plants (Approp. 15441). **(Agenda Item 7-2)**

Appropriated \$949,000 for an Environmental and Safety Management Information System as part of the Information Technology Strategic Plan; and authorized an agreement with Trinity Consultants for \$475,000 (Approp. 15411). **(Agenda Item 7-3)**

Approved to amend the Conflict of Interest Code in Chapter 2 of Division VII of the Metropolitan Water District Administrative Code for statutory compliance and approval of the Fair Political Practices Commission. **(Agenda Item 7-4)**

Authorized increase of \$100,000 in the maximum amount payable under professional services contract with Duncan, Weinberg, Genzer & Pembroke, P.C. for electric utility legal services. **(Agenda Item 7-5)**

OTHER ACTION

In other action, the board:

Approved performance evaluations as appropriate for General Manager and General Auditor.
(Agenda Item 10-1)

Approved compensation recommendation for General Manager.
(Agenda Item 10-2)

THIS INFORMATION SHOULD NOT BE CONSIDERED THE OFFICIAL MINUTES OF THE MEETING.

Board letters related to the items in this summary are generally posted in the Board Letter Archive approximately one week after the Board Meeting. In order to view them and their attachments, please copy and paste the following into your browser
<http://edmsidm.mwdh2o.com/idmweb/home.asp>



Regular Board Meeting

November 8, 2011

12:00 p.m. -- Board Room

Tuesday, November 8, 2011 Meeting Schedule		
7:00-8:00 a.m.	Rm. 2-413	Dir's. Computer Training
8:30 a.m.	Rm. 2-145	L&C
10:00 a.m.	Rm. 2-456	C&L
12:00 p.m.	Board Room	Board Meeting
1:00 p.m.	Rm. 2-145	BRRC

MWD Headquarters Building

• 700 N. Alameda Street •

Los Angeles, CA 90012

1. Call to Order

- (a) Invocation: Annette E. Eckhardt, Occupational Safety & Health Specialist, Water System Operations Group
- (b) Pledge of Allegiance: Director James T. Edwards

2. Roll Call

3. Determination of a Quorum

4. Opportunity for members of the public to address the Board on matters within the Board's jurisdiction. (As required by Gov. Code § 54954.3(a))

5. OTHER MATTERS

- A. Approval of the Minutes of the Meeting for October 11, 2011. (A copy has been mailed to each Director)
Any additions, corrections, or omissions
- B. Report on Directors' meetings attended at Metropolitan expense for month of October

- C. Approve committee assignments
- D. Chairman's Monthly Activity Report
- E. Appointment of Board Vice Chairman

6. DEPARTMENT HEADS' REPORTS

- A. General Manager's summary of Metropolitan's activities for the month of October
- B. Interim General Counsel's summary of Legal Department activities for the month of October
- C. General Auditor's summary of activities for the month of October
- D. Ethics Officer's summary of activities for the month of October

7. CONSENT CALENDAR ITEMS — ACTION

- 7-1** Appropriate \$1.12 million; authorize five pipeline cathodic protection projects; and award \$274,000 contract to Unique Performance Construction, Inc. for cathodic protection of West Valley Feeder No. 2 (Approp. 15441). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and

- a. Appropriate \$1.12 million;
- b. Award \$274,000 contract to Unique Performance Construction, Inc. to install current drain stations on West Valley Feeder No. 2;
- c. Authorize construction of current drain stations on Lake Skinner Bypass Pipeline No. 2;
- d. Authorize final design of current drain stations for the Sepulveda Feeder North and Second Lower Feeder; and
- e. Authorize preliminary design of cathodic protection for the Orange County Feeder.

- 7-2** Amend Metropolitan Water District Administrative Code to add or revise provisions relating to contractor debarment rules, the procurement of materials, products, or services by a specific brand or trade name and contractor responsibility determinations. (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and approve the additions to The Metropolitan Water District of Southern California Contracting Rules (new Administrative Code Sections 8170-8180) and amendments to Administrative Code Sections 8140 and 8142 as set forth in Attachment 1 to the board letter.

- 7-3** Adopt resolution establishing a new retirement health benefit vesting requirement for future retirees under the Public Employees Medical and Hospital Care Act. (OP&T)

Recommendation:

Option #1:

Adopt the CEQA determination and resolution establishing a new retirement health benefit vesting requirement for future employees and changing the percentage of employer contributions payable for post-retirement health benefits for each retired employee to be based on the employee's years of credited service pursuant to Government Code Section 22893.

- 7-4** Adopt resolution enacting the reduction in Metropolitan health benefits premium contained in the newly authorized Memoranda of Understanding. (OP&T)

Recommendation:

Option #1:

Adopt the CEQA determination and resolution reducing Metropolitan's health benefits premium contribution for employees and annuitants under Government Code Section 22892(a).

- 7-5** Adopt resolution implementing the Time-in-Grade Exception for employee member contribution to Public Employees Retirement System. (OP&T)

Recommendation:

Option #1:

Adopt the CEQA determination and resolution providing for change in Metropolitan's system of paying the employees' PERS contribution by continuing to pay the 7 percent PERS contribution for existing employees and not paying the employees' 7 percent PERS contribution for employees hired after January 1, 2012 (until the employee accrues five years of total service).

(END OF CONSENT CALENDAR)

8. OTHER BOARD ITEMS — ACTION

8-1 Authorize entering into a ground lease agreement for approximately 7,000 gross acres of Metropolitan's Palo Verde property. (RP&AM) [Conference with real property negotiators; MWD Parcel Nos. PVID-1-110 and PVID-1-130; agency negotiators: Gilbert Ivey, Ralph Hicks, John Clairday; negotiating parties: HayDay Farms, Inc. (current lessee); under negotiation: price and terms of payment; to be heard in closed session pursuant to Gov. Code Section 54956.8]

(To be mailed separately)

8-2 Authorize entering into an option agreement for lease of 10 acres of Metropolitan's Potrero Creek property for a concentrated photovoltaic (CPV) solar project, subject to project approvals. (RP&AM) [Conference with real property negotiators; Riverside County Assessor Parcel Nos. 421-240-005 and 421-240-029, portion; agency negotiators: Gilbert Ivey, Ralph Hicks, and John Clairday; negotiating parties: Silix Systems Limited; under negotiation: price and terms of payment; to be heard in closed session pursuant to Gov. Code Section 54956.8]

(To be mailed separately)

8-3 Consider City of Compton's request to withdraw purchase order agreement. (F&I)

Recommendation:

Option #1:

Adopt the CEQA determination and authorize the General Manager to execute a withdrawal of Compton's Purchase Order effective January 1, 2003 and assess Compton an administrative fee of \$5,000.

- 8-4** Appropriate \$3.7 million; and award \$2,556,618 contract to J. F. Shea Construction, Inc. to rehabilitate hydraulic gates at Eagle Rock Tower and Puddingstone Spillway (Approp. 15441). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and

- a. **Appropriate \$3.7 million; and**
- b. **Award \$2,556,618 contract to J.F. Shea Construction, Inc. to rehabilitate the gates at Eagle Rock Tower and Puddingstone Spillway.**

- 8-5** Appropriate \$4.53 million; and award (1) \$1,696,023.23 contract to Fibrwrap Construction, LP for joint repairs to the Foothill and Sepulveda Feeders; and (2) \$886,200 contract to Fibrwrap Construction, LP for joint repairs to the Allen-McColloch Pipeline (Approp. 15471). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determinations and

- a. **Appropriate \$4.53 million;**
- b. **Award \$886,200 contract to Fibrwrap Construction, LP for carbon fiber joint repairs on the Allen-McColloch Pipeline; and**
- c. **Award \$1,696,023.23 contract to Fibrwrap Construction, LP for carbon fiber joint repairs on the Foothill and Sepulveda Feeders.**

- 8-6** Appropriate \$2.28 million; and award \$1,784,495 contract to Abhe & Svoboda, Inc. for repairs to three siphons on the Colorado River Aqueduct (Approp. 15438). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and

- a. **Appropriate \$2.28 million; and**
- b. **Award \$1,784,495 contract to Abhe & Svoboda, Inc. for repairs to three siphons on the Colorado River Aqueduct.**

- 8-7** Appropriate \$4.4 million; and award \$3,348,791 contract to W. M. Lyles Co. for replacement of transition and manhole structure covers on the Colorado River Aqueduct (Approp. 15373). (E&O)

Recommendation:

Option #1:

Adopt the CEQA determination and

- a. **Appropriate \$4.4 million; and**
- b. **Award \$3,348,791 contract to W. M. Lyles Co. for replacement of transition and manhole structure covers on the Colorado River Aqueduct.**

- 8-8** Approve policy principles for a replenishment program. (WP&S)

Recommendation:

Option #1:

Adopt the CEQA determination and approve the proposed policy principles for a replenishment program.

- 8-9** Report on *Solano County Water Agency, et al. v. Department of Water Resources*, Sacramento Superior Court Case No. 34-2008-0001338 CU-BC-GDS; and authorize increase of \$500,000 for a total of \$1,650,000 in maximum amount payable under contract with Ellison, Schneider & Harris to represent Metropolitan and other participating state water contractors. (L&C)
[Conference with legal counsel—existing litigation; may be heard in closed session pursuant to Gov. Code Section 54956.9(a)]

- 8-10** Report on existing litigation; and authorize (1) an increase in maximum amount payable under contract with Manatt, Phelps & Phillips, LLP for legal services by \$750,000 to an amount not to exceed \$2,090,000; and (2) an increase in the maximum amount payable under contract with Shaw Environmental for expert services by \$300,000 to an amount not to exceed \$400,000 for representation of Metropolitan in *Orange County Water District v. Northrop Corporation*, Orange County Superior Court Case No. 04CC00715. (L&C)
[Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code Section 54956.9(a)]
(To be mailed separately)

9. BOARD INFORMATION ITEMS

- 9-1 Report on Local Resources Development Strategy Task Force. (WP&S)

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

NOTE: At the discretion of the Board, all items appearing on this agenda and all committee agendas, whether or not expressly listed for action, may be deliberated and may be subject to action by the Board.

Each agenda item with a committee designation will be considered and a recommendation may be made by one or more committees prior to consideration and final action by the full Board of Directors. The committee designation appears in parentheses at the end of the description of the agenda item e.g. (E&O, F&I). Committee agendas may be obtained from the Board Executive Secretary.

Writings relating to open session agenda items distributed to Directors less than 72 hours prior to a regular meeting are available for public inspection at Metropolitan's Headquarters Building and on Metropolitan's Web site <http://www.mwdh2o.com>.

Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Board Executive Secretary in advance of the meeting to ensure availability of the requested service or accommodation.