

**MEMORANDUM OF UNDERSTANDING OF ESSENTIAL
TERMS OF A CONTRACT BETWEEN MWD AND SDCWA**

As a final and complete settlement and compromise of their respective claims regarding the transportation of up to 200,000 acre feet of conserved water purchased by the San Diego County Water Authority ("SDCWA") from the Imperial Irrigation District ("IID") to San Diego County, SDCWA and the Metropolitan Water District ("MWD") (together "the Parties") agree to execute a contract ("the Contract") for the delivery of up to 200,000 acre feet of water per year by MWD to SDCWA with the following essential terms:

- I. The Basic Transaction:
 - A. SDCWA has entered into an agreement with IID (the "IID/SDCWA Agreement") to acquire water that will be conserved by IID from reasonable and beneficial uses (the "Conserved Water").
 - B. For each year of the term of the Contract, SDCWA will transfer all of the Conserved Water, up to 200,000 acre feet per year, to MWD and MWD will take the Conserved Water that is made available by SDCWA in a manner consistent with the Department of Interior's operations schedule. SDCWA will report to MWD, prior to March 31 of each year of the Contract, the method by which any Conserved Water that was transferred to MWD in the prior year was conserved.
 - C. MWD will deliver to SDCWA, from whatever sources and using such facilities as MWD determines, water of like amount and quality to the Conserved Water MWD receives from SDCWA. Those deliveries will be made on a schedule to be agreed upon by the Parties that provides for the regular, proportionate and routine delivery of water as a core SDCWA supply.
 - D. The Parties' duties under the Contract will be subject to force majeure.
 - E. SDCWA shall not terminate the transfer to MWD of any Conserved Water it receives from IID unless SDCWA elects permanently to transport any portion of that water to San Diego County through facilities other than the Colorado River Aqueduct. SDCWA may, in

its sole discretion, permanently discontinue any portion of the transfer of Conserved Water to MWD that it continually and regularly transports to San Diego County through facilities other than the Colorado River Aqueduct. The Parties will agree to reasonable procedures whereby SDCWA will notify MWD of its intent permanently and regularly to transport any Conserved Water through such other facilities.

- II. The Contract shall become effective on the fulfillment of the contingencies outlined in section IV or at the beginning of the Initial Term of the IID/SDCWA Agreement (the "Initial Term"), whichever is later (the "Contract Effective Date"), and shall terminate 30 years after the beginning of the Initial Term.
- III. The water to be delivered to SDCWA under the Contract shall be treated for the purposes of all of MWD's ordinances, plan, programs, rules and regulations, including the then-effective MWD Water Surplus and Drought Management Plan (the "Plan") but excluding MWD's Interim Agricultural Water Program, as independently owned local water in the same manner as the independently owned local water supplies of other MWD member agencies. In times of water shortages, subject to the reasonable limitations imposed by the Plan to maintain continued reliability over an extended drought period, MWD shall use storage and any other available MWD water supplies before interrupting firm deliveries to its member agencies.
- IV. The Contract shall not become effective before the following conditions are met:
 - A. The promulgation and application by the Secretary of the Interior (the "Secretary") of surplus criteria, including river re-operations, that are sufficient, together with those other water supplies that are under the control of MWD, to assure that the Colorado River Aqueduct is full at least through 2015; and
 - B. The establishment and completion of a process, acceptable to the Secretary and the State of California, in which the Colorado River Board and the California public agencies that hold contracts with the Secretary

for delivery of Colorado River water would participate, which quantifies or otherwise resolves Colorado River agricultural water entitlements in a manner that will assure that water conserved from reasonable and beneficial uses can be transferred from an agricultural to an urban agency.

- C. The execution of the Contract in final written form by November 1, 1998.
- D. Both of the following:
 - 1. The legal authorization, appropriation and binding commitment of the State funding specified in Paragraphs V.C.3.a. and b.; and
 - 2. The resolution, through one or more written agreements among MWD and the Imperial Irrigation District, the Palo Verde Irrigation District, the Coachella Valley Water District and the San Luis Rey settlement parties, reached after consultation with the Director of the California Department of Water Resources (the "Director") and the Secretary, of the allocation of the water to be made available to MWD through the lining of the All American Canal and the Coachella Branch of that canal pursuant to Paragraph V.C.3.a.

V. Contract Payments

- A. The Parties will agree to the following payment terms if and only if the funding specified in Paragraphs V.C.3. a. and b. is authorized and made available.
- B. The Contract Price .
 - 1. For the first 20 years of the Contract, the price per acre foot of water delivered to SDCWA shall be \$90 increased by 1.55% for every year after 1998.
 - 2. For years 21 through 30, the price per acre foot of water delivered to SDCWA shall be equal to \$80 per acre foot increased by 1.44% for every year after 1998.

C. Changes to reflect the price of water.

1. In any year after the 10th year of the Contract, either party can require a change in the Contract Price, to be effective in that year and the nine years thereafter, that is equal to the change in the price of Conserved Water that IID or SDCWA secured or would have been permitted to secure at the most recent prior opportunity to adjust the price of Conserved Water under the IID/SDCWA Agreement. In determining the change in the price of Conserved Water, the average per acre foot value of payments over the previous ten year period (the prior Average Annual Price of Conserved Water), shall be compared to the Average Price of Conserved Water as projected over the next ten years. The difference between the previous Average Annual Price and the projected Average Annual Price shall cause either of the following changes:
 - a) If the permitted change in the price of Conserved Water under the IID/SDCWA Agreement was or could have been positive, the Contract Price shall be reduced by a like amount.
 - b) If the permitted change in the price of Conserved Water under the IID/SDCWA Agreement was or could have been negative, the Contract Price shall be increased by a like amount.
2. After the 20th year of the Contract, the Contract Price shall be adjusted as necessary to reflect reasonable changes in MWD's net costs (excluding any costs of the State Water Project system) due to catastrophes or material changes in relevant governmental regulatory requirements applicable to the conveyance of water to San Diego County at a point near the San Luis Rey River, on a proportionate basis as the water conveyed to San Diego by MWD under the Contract bears to all water delivered by MWD. Any disputes over such adjustments shall be submitted to binding arbitration by the Director.

3. State funding.

The proposed transaction is a necessary condition of the California 4.4 Plan. The benefits of that plan can only be realized if the State of California recognizes its interest in the transaction as a critical part of the State's water resources and environmental protection efforts. The Contract will not become effective before the State is legally committed to provide the following funding required to support the State's interest in the transaction:

- a) The Director will provide \$200 million of financing for, and arrange for the completion of, by not later than 2006 or such later date as may be required by extraordinary circumstances which could not have been reasonably anticipated, the lining of the All American Canal, and the Coachella Branch of that canal. The allocation of the water conserved from those linings shall be determined by the agreement or agreements required by Paragraph IV.D.2.
- b) The Director will provide \$35 million of financing for, and arrange for the completion of, by not later than 2006 or such later date as may be required by extraordinary circumstances which could not have been reasonably anticipated, the installation of re-charge, extraction and distribution facilities for groundwater conjunctive use programs necessary to implement the California 4.4 Plan and arrange for the transfer of all of the water stored through those projects to MWD for the benefit of its member agencies.
- c) In the event the contingencies for a transfer of Conserved Water to SDCWA under the IID/SDCWA Agreement have not been satisfied in full prior to December 31, 2006, MWD and any other recipient under the agreement or agreements reached pursuant to Paragraph IV. D.2 (other than the San Luis Rey settlement parties) of the water made available through the State funding pursuant to Paragraphs V.C.3. a. and b. will pay to the State of California, at the

direction of the Legislature of the State of California, a portion of that State funding to be determined by the Legislature of the State of California.

- d) In the event the contingencies for a transfer of Conserved Water to SDCWA under the IID/SDCWA Agreement have not been satisfied in full prior to December 31, 2006, nothing in this Memorandum will limit the authority of the Legislature of the State of California to allocate or re-allocate water.
- VI. Nothing in the Contract shall be construed to amend the IID/SDCWA Agreement. MWD will not object to SDCWA's assertion that the Contract will facilitate the satisfaction of the transportation contingency in the IID/SDCWA Agreement and MWD agrees that the Contract may be relied upon by SDCWA to support that assertion before the "Effective Date" of the IID/SDCWA Agreement as "Effective Date" is defined in that Agreement. Insofar as the IID/SDCWA Agreement is consistent with and implemented in accordance with state and federal law and the California 4.4 Plan, MWD shall not oppose approval or implementation of that Agreement before the State Water Resources Control Board, the Bureau of Reclamation, the Department of Interior or in any other judicial or administrative proceedings.
- VII. SDCWA will use reasonable best efforts to support all reasonable efforts by MWD to promote and secure surplus conditions on the Colorado River with the objective of maintaining a full Colorado River Aqueduct.
- VIII. The Parties shall exercise reasonable best efforts to resolve all disputes arising under this Contract through mediation by the Director. In the event mediation is unsuccessful, then they reserve their respective rights to all legal and equitable remedies except as expressly provided herein.
- IX. The transaction contemplated by the Contract will be subject to the California Environmental Quality Act and all other applicable law.

- X. Commencing in 1999, the Parties shall report as requested to the Legislature of the State of California on the implementation of the Contract.

The Parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of August 12, 1998:

SAN DIEGO COUNTY WATER AUTHORITY

By: Christine M. Frahm
Christine M. Frahm, Chair

METROPOLITAN WATER DISTRICT

By: John V. Foley
John V. Foley, Chairman¹

¹ The authority of Chairman Foley to execute this Memorandum has been granted by the Board of Directors of the Metropolitan Water District subject to the condition that any legislative authorizations required to provide the funding anticipated by this Memorandum be consistent with the terms and conditions contained in this Memorandum.