

MEMORANDUM OF UNDERSTANDING
BETWEEN
IMPERIAL IRRIGATION DISTRICT
AND
SAN DIEGO COUNTY WATER AUTHORITY

This Memorandum of Understanding ("MOU") is made and entered by Imperial Irrigation District ("IID") and San Diego County Water Authority (the "Authority") this 17 day of September, 1995. The agencies are sometimes referred to individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, the Authority was organized for the purpose of augmenting San Diego County's minimal local water resources with a safe, reliable and sufficient supply of imported water.

WHEREAS, the Authority through its 24-member agencies supplies water to almost 2,700,000 San Diego County residents; and about 20% of the Authority's water supplies are used by local agriculture.

WHEREAS, the Authority is dependent upon the Metropolitan Water District of Southern California ("Metropolitan") for approximately 90% of its water supply.

WHEREAS, Metropolitan is almost entirely dependent upon two major water supplies namely (1) the Colorado River and (2) the State Water Project which brings water from Northern California.

WHEREAS, almost two-thirds of Metropolitan's current water supply comes from the Colorado River. Of that supply, greater than one-half belongs to other states and soon will no longer be available. Moreover, under existing contracts for Colorado River water, the supplies utilized by Metropolitan are junior in priority to all other California Colorado River water users and therefore the first to be cut off in times of shortage.

WHEREAS, the State Water Project is incomplete because of environmental, political, and institutional issues, with the result that Metropolitan does not receive more than one-half of its contracted-for State Water Project water.

WHEREAS, Metropolitan's current policy is that it is only committed to provide an amount of water that is substantially less than 100% of the full service demand of its customers and sometimes as low as 80% of such demand. Moreover, Metropolitan expressly states that it makes no guarantees of these supply levels.

WHEREAS, the water demand in Metropolitan's service area is scheduled to grow substantially in future decades. At the same time, the most recent Department of Water Resources report on the status of California's water supply highlights that available sources of water are expected to become even more constrained due to such factors as the Bay-Delta Accord and groundwater overdraft, among others.

WHEREAS, the successful negotiation of an agreement to transfer water under this MOU would alleviate pressure upon Metropolitan and its member agencies to develop equivalent water supplies from the Bay-Delta, and should, therefore, help facilitate a more timely resolution of the pending Bay-Delta issues including the eventual approval and funding of a through-Delta facility.

WHEREAS, in recent times Metropolitan has stated that "Metropolitan supports the obtaining of additional water supplies by its member agencies."

WHEREAS, Metropolitan has more recently formulated an Integrated Resources Plan ("IRP"), a key part of which is the development by its member agencies of independent supplies to meet part of their water demands, thereby reducing their dependence upon Metropolitan.

WHEREAS, the Authority is dependent upon Metropolitan for as much as 90% or more of its water; most other Metropolitan member agencies are far less dependent, many less than 50%, and many have adopted programs under Metropolitan's IRP that will continue to reduce their dependence upon Metropolitan.

WHEREAS, the Authority uses and pays for approximately 25% of Metropolitan's water supply. However, provisions of the Metropolitan Water District Act (the "MWD Act") leave the Authority without a proportional representation or voice in the establishment of Metropolitan's policies and with a cloud upon its legal right to a proportional share of water in times of shortage or drought.

WHEREAS, other provisions of the MWD Act define water use by agriculture as "*surplus*" water with delivery subject to being cut off by Metropolitan. This leaves San Diego County's farmers and agricultural businesses, which account for about 20% of the Authority's water sales, in the untenable position of never knowing whether water will be made available by Metropolitan from year to year.

WHEREAS, the Authority has a mission to secure a long-term water supply that is (a) reliable (b) certain and specific as to quantity and quality, and (c) affordable and certain as to cost to meet San Diego County's water needs, to provide protection against drought for municipal, domestic and agricultural users and to safeguard local industry and jobs, including agriculture, for the benefit of its local citizens.

WHEREAS, the Authority seeks a long-term water supply to allow for appropriate long-term planning and financing activities by both the Authority and local businesses.

WHEREAS, IID has a permanent senior water right to use on average approximately 3,300,000 acre-feet per year from the Colorado River, the majority of which are present perfected rights that must be satisfied in times of shortage before most other rights in the three Lower Basin states.

WHEREAS, IID seeks to maintain and improve the economic well being of the Imperial Valley by promoting and supporting opportunities to transfer the right to use Conserved Water, provided:

- a. all legal title and ownership to all Conserved Water remains with IID;
- b. the transfer is economically beneficial to the Imperial Valley;
- c. third party impacts, if any, are appropriately addressed;
- d. the price of the Conserved Water is based upon the fair market value as agreed between the parties; and
- e. environmental impacts, if any, are deemed to be satisfactorily addressed pursuant to federal and state law.

WHEREAS, Conserved Water means a water supply of the same priority as if used within IID created by the use of less water and/or the reduced usage of water, which less or reduced usage is of a type which is deemed to be "water conservation" as defined in Calif. Water Code § 1011.

WHEREAS, California law and water policies authorize, encourage and support the voluntary transfer of Conserved Water between willing buyers and willing sellers.

WHEREAS, the United States Department of Interior encourages water marketing.

WHEREAS, Metropolitan has encouraged water marketing as a key element of its Water Resources Plan.

WHEREAS, the Authority's Water Resources Plan includes water transfers as a part of the long-term solution to San Diego's water needs. The Mayor and City Council of the City of San Diego recently requested the Authority to further investigate water transfers on a priority basis and the Authority has agreed to do so.

WHEREAS, the Authority would continue to be a member agency of Metropolitan and would continue to rely upon it for a significant portion of its water supplies.

WHEREAS, IID and the Authority would utilize a water transfer to supplement and strengthen both the agricultural and industrial economic base of San Diego and Imperial Counties.

WHEREAS, the Authority anticipates a need for an additional water supply of up to 500,000 acre-feet per annum.

NOW, THEREFORE, BE IT RESOLVED THAT:

A. The parties agree to develop for consideration by their respective communities and Boards of Directors an "Agreement" under which IID would make available Conserved Water and the Authority would agree to purchase the use of such water on mutually acceptable terms, such Agreement to address among other things, the following:

1. The amount of Conserved Water which the Authority would receive.
2. The length of time covered by the Agreement ("Term").
3. The price to be paid to IID.
4. The legal means necessary to assure the Authority that the amount of Conserved Water it buys will be available to the Authority for the Term of the Agreement.
5. The Agreement shall comply with all applicable state and federal laws.

B. Although neither IID nor the Authority is bound in any way to proceed with the transfer of the right to use Conserved Water until final and complete documents are executed by both parties acting in their sole and absolute discretion, this MOU confirms their mutual understanding and desire to enter into good faith negotiations towards consummation of the necessary agreements. Such negotiations shall continue for a period of up to six months, but will in any event proceed in a timely and deliberate fashion according to a mutually agreeable timetable to be established by the Parties. Such period may be extended by mutual agreement. During such time including any extension, IID and the Authority may agree to negotiate with others regarding the provision or acquisition of any water supply in a manner that does not interfere with the negotiation and consummation of this transaction.

C. Transportation of the Conserved Water from IID to San Diego County would be by the most practical and economical means available and according to the circumstances and opportunities that may exist from time to time.

D. The parties anticipate that this MOU will be fully communicated by the parties to their respective constituents, Congress, state legislators, federal and state agencies, and others.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the day and year first above written.

IMPERIAL IRRIGATION DISTRICT

By: W. R. Condit

ATTEST:

W. R. Condit

Approved as to form and execution:

W. R. Condit

SAN DIEGO COUNTY WATER AUTHORITY

By: Mark Witt

ATTEST:

Janet R. Mathman

Approved as to form and execution:

V. J. Brown