

San Diego County Water Authority
and
Imperial Irrigation District

JOINT RESOLUTION
Addressing

Cooperative Water Conservation and Transfer Program

This Joint Resolution is adopted by the San Diego County Water Authority ("Authority") this 21 day of July, 1996, and the Imperial Irrigation District ("District") this 23 day of July 1996. The Authority and the District are sometimes referred to in this resolution as the "Parties" and as the "Agencies."

RECITALS

WHEREAS, on September 19, 1995, the Parties entered a Memorandum of Understanding memorializing their intention to jointly explore the viability of a cooperative program for water conservation within the District and for the delivery of a portion of the District's entitlement to Colorado River water to the Authority;

WHEREAS, the District seeks to protect the District's water rights and improve the economic well being of the Imperial Valley by conserving water and promoting and supporting opportunities for the delivery of water supplies to the Authority;

WHEREAS, the Authority seeks a long-term water supply of 500,000 acre-feet to allow for appropriate long-term planning and that is reliable, certain and specific as to quantity and quality and affordable and certain as to cost to meet San Diego County's need, as well as for the general well being of Southern California;

WHEREAS, the Parties have committed themselves to an open and complete dialog with those who would be impacted through such a program;

WHEREAS, the Boards of Directors of the Agencies have provided policy direction to their respective staffs to develop the essential terms of the agreements which would implement such a program;

WHEREAS, staffs have conducted technical studies and participated in extensive public outreach programs to identify a possible framework for program implementation;

WHEREAS, staffs have prepared a draft of "Summary of Draft Terms" for consideration by the Boards of Directors and the broader communities of interest; and

WHEREAS, the Parties desire that the Summary of Draft Terms be given broad review and consideration and, based upon the outcome of that review, possibly form the basis for the final agreements necessary for implementation of a Cooperative Water Conservation and Transfer Program.

NOW, THEREFORE, BE IT RESOLVED, that the staffs of the Authority and the District are directed to proceed as follows:

1. Disseminate broadly the draft Summary of Draft Terms and seek the views of interested parties as to any areas of concern which the Boards of Directors of the Agencies should take into consideration as they act in the future;
2. Brief the Boards of Directors of the Agencies on the input received from interested parties; and
3. Based upon the results obtained from actions 1 and 2, above, prepare a form of such final agreements that would be necessary for implementation.

IN WITNESS THEREOF, the Parties have approved this Joint Resolution as of the day and year first written above.

SAN DIEGO COUNTY WATER AUTHORITY

IMPERIAL IRRIGATION DISTRICT

By: 

Mark Watton, Chairman

By: 

William R. Condit, President

ATTEST: 

Secretary

ATTEST: 

Secretary

San Diego County Water Authority
and
Imperial Irrigation District

COOPERATIVE WATER CONSERVATION AND TRANSFER PROGRAM

SUMMARY OF DRAFT TERMS

Overview

On September 19, 1995, the Authority and the District entered into a Memorandum of Understanding to explore the potential for a joint Water Conservation and Transfer Program ("Program"). Since that time, the Agencies have prepared technical analyses and conducted extensive public involvement programs. Based upon that information and in response to policy direction from their respective Boards of Directors, the staffs of the Agencies have developed a draft of possible terms under which a Program could be implemented.

The purpose of this document is to summarize the draft as to price, term and quantity as well as certain of the other relevant terms and make the summary available for broad public review and comment. Based upon the input that is received through that dialog, the terms would be revised and the resultant concepts would be incorporated into the form of Final Agreement for the Agencies' consideration. The essential terms for such a program, as developed by the staffs of the Agencies are as follows:

Quantity and Schedule of Transferred Water

To meet future demands, the Authority seeks a firm, affordable and price certain water supply of 500,000 AF/Y. Depending upon factors such as landowner participation, environmental compliance, community support, and availability of approvals agreed to be obtained, it is expected that between 200,000 AF/Y and 500,000 AF/Y of firm water supply will be available to the Authority, the actual maximum quantity to be incorporated into the Final Agreement. The Agencies agree that the water conservation programs of the District shall not include permanent retirement of farm land. *Subject to the availability of transportation on terms satisfactory to the Authority for the water supplied by the District, the District will offer to the Authority and the Authority will purchase, all water made available by the District, not to exceed 500,000 AF/Y, as provided below.*

The water available shall be delivered by the United States to the Authority at an acceptable delivery point commencing in 1999 at a quantity of 20,000 AF/Y, or a greater amount mutually agreed upon, increasing each year by 20,000 AF/Y for ten years, to a total of 200,000 AF/Y and thereafter, subject to the needs and water quality objectives of the Authority, increasing each year by an estimated increment of 8,000 AF/Y to the total to be made available by the District. Thereafter, delivery of such total will continue each year unless the delivery is reduced or discontinued pursuant

to the recapture and other termination provisions described herein. The District will accelerate delivery at the request of the Authority. The parties recognize that the Authority, in order to secure transportation to deliver the supplies to San Diego and to attain such water quality objectives, may have to buy several hundred thousand acre feet from others, at least for a time.

The right and ownership to all water will remain with the District, subject to the right of the Authority to have delivery and use the water as agreed. All water delivered to and used by the Authority shall be a part of the District's Present Perfected Rights to Colorado River water. The District expects to create conserved water as defined in California Water Code Section 1011 in quantities equal to the deliveries to the Authority and, not inconsistent with such present perfected rights, all such conserved water is intended to be included in such delivery.

Delivery Location: Transportation

All water will be delivered by the United States to the Authority on the Colorado River at Imperial Dam or other location and it will be the responsibility of the Authority to arrange for transportation of such water from there to the service area of the Authority. Should the Authority desire to use the All American Canal to connect to any aqueduct to San Diego, the District would make capacity available or participate in capacity enlargement under an arrangement that takes into account the arrangement that currently exists with the City of San Diego.

Price

The Authority shall pay the District the following sums:

<u>Year #</u>	<u>Year</u>	<u>\$ Per AF</u>
1	1999	\$200
2	2000	\$212
3	2001	\$224
4	2002	\$235
5	2003	\$247
6	2004	\$259
7	2005	\$271
8	2006	\$282
9	2007	\$294
10	2008	\$306

If at any time during the above ten years the Authority's Colorado River Aqueduct transportation costs exceed \$75 per acre foot, the above prices for such time shall be reduced by the amount of such excess.

After the first ten years, the prices selected in accordance with the Ten Year Price Adjustment section below shall be paid.

The above prices are subject to the negotiation of a Ten-Year Price Adjustment clause that is satisfactory to both parties.

Ten Year Price Adjustment

Either party may, before the end of each ten-year period, suggest a new price. If the other party does not accept the suggested price, and if the parties, through good faith negotiations, do not select a new price, the new price shall be selected by arbitration ("Market Price"). The Market Price, whether selected by agreement or arbitration, shall be market-based, but, to lessen the impact on the agencies from radical swings in market conditions, shall not vary from the Market Price selected 10 years previously, or from \$306 in the case of the first ten-year adjustment, by more than 25% thereof. For example, at the first 10-year adjustment the limit on the selected Market Price shall be based on \$306, and shall be no greater than \$383 and no less than \$229, and, as a further example, if the Market Price selected at the first 10-year adjustment is \$360, then the Market Price selected at the next 10-year adjustment shall be no greater than \$450 and no less than \$270. Again, to lessen the impact of such swings in market conditions, the new selected price shall be phased in gradually over the first five years of the relevant ten year period. In case of upward price adjustments only, each of the first five-year phase-in payments shall be increased by 2% and the Market Price shall be increased as follows: by 2% for year 6, 4% for year 7, 6% for year 8, 8% for year 9 and 10% for year 10 ("Percentage Increase"). When the selected new price represents a downward price adjustment, the Market Price shall be so paid over the 10-year period without any percentage adjustments. Also, during years 6 through 10, the Authority in the case of an upward price adjustment, and the District in the case of a downward price adjustment, shall pay or credit, the other agency the difference between the selected new price and such five year phased-in payments.

Before the end of each ten-year period (except for the initial period), either party may also request that a market-based price be determined for each year of the expiring ten-year period ("Determined Price"). For each such year, the Determined Price shall not vary by more than 10% from the Market Price selected ten years previously. For example, if the Market Price applicable during such expiring 10-year period should be \$360, then the Determined Price for each such year shall be no greater than \$396 and no less than \$324. Then for each such year, the water delivery shall be repriced according to the Determined Price. The difference for each year between the repriced amount and the amount actually paid for such deliveries including any Percentage Increase, shall be paid or credited over the next 10-year period according to a method to be negotiated.

Subject to such variation limits, the Market Price and the Determined Price shall be that price indicated by comparison to then recent water transfers and other market activity data, after adjustment for all relevant factors, including but not limited to the value of reliability, priority, volume, duration, base load or peaking character, price and terms and water quality, and excluding transportation and taking into account the cost of delivering water to the Authority. The initial price, having been formulated during an emerging market, shall not be regarded as a market price indication.

Term of Agreement and Recapture/Termination Procedures

The initial term shall be 75 years from the commencement of deliveries with each agency, subject to the terms of the next paragraph, having the option after such initial term to reduce the total quantity by no more than two percent each year. Water so recaptured by the District shall be used solely for new municipal and industrial uses and shall be so used only after similar use is first made of all water hereafter transferred by the District to others. Notwithstanding the foregoing, the Agreement will terminate at the end of the 125th year.

If the Authority decides to construct a new conveyance facility for transportation of the water made available by the District, the term of the Agreement shall be 125 years from such commencement of deliveries and shall terminate at the end of the 125th year, with no right of recapture during the term.

Responsibilities for Environmental Compliance

Each agency shall be solely responsible for compliance with environmental laws for programs under the leadership of that agency. For example, the District will have lead responsibility for environmental compliance associated with any Final Agreement and the water conservation programs and the Authority will have lead responsibility for subsequent environmental compliance associated with transportation of water.

Each agency shall be solely responsible for the cost of environmental compliance undertaken by it.

Contingencies Which Could Prevent Implementation of Program

District Environmental Contingency: The obligations of the District to perform under the Program shall be voidable if environmental compliance cannot be accomplished, such decision to be in the sole discretion of the District.

Authority Transportation Contingency: The obligations of the Authority to perform under this Program shall be voidable if the Authority is unable to arrange for transportation of the water from the Colorado River to the Authority's system for the term of the Agreement through the Colorado River Aqueduct on terms satisfactory to the Authority or by other means satisfactory to the Authority.

Court Validation of Final Agreement: The obligation of the Agencies to perform under this program shall be voidable if validation or declaratory judgment as to the Final Agreement is not obtained; provided, however, that the Agencies have the option to agree to waive portions or all of such validation requirements. Judgments shall be obtained without expense to the Authority.

Interim Assignment of Authority's Rights

The Authority shall have the right to assign to any other Metropolitan Member Agency, on an interim basis, any of the Authority's rights and responsibilities under the Program.

Shortage Sharing

During any period when deliveries of Colorado River water to the District for reasonable beneficial use or the deliveries of Colorado River water to the Authority for reasonable beneficial use are curtailed by the Secretary of the Interior, pursuant to Article II(B)(3) of the decree in Arizona v. California, the Authority and the District will share the same percentage reduction in water availability, but, following court validation of the Final Agreement, the District will be responsible for all claims by any junior priorities in California or elsewhere that such deliveries should not be made.

Confirmation of Mutual Understanding

Although neither the District nor the Authority is bound by this Summary of Draft Terms, nevertheless, this Summary confirms their mutual understanding and desire to enter within 90 days from the respective Board's approval hereof into a more detailed formal and binding agreement (the Final Agreement) that is generally consistent with the provisions hereof as those provisions may be modified through public review and input.