The Metropolitan Water District of Southern California

September 11, 1984

To: Board of Directors (Water Problems Committee)

From: General Manager and General Counsel

Subject: Analysis of Option Agreement between the Galloway Group, Ltd., and San Diego County Water Authority

The General Manager and Assistant General Manager Myron Holburt met with representatives of the San Diego County Water Authority at their request on August 28. At that meeting, a proposed agreement of the "Galloway Group" was explained to us, whereby the latter would contract to make Colorado River water, to be stored in Upper Basin, available to the Authority at Lake Havasu; Metropolitan would be called upon to "wheel" such water to the Authority.

Although we were given a draft of the Galloway proposal for the first time, both Mr. Holburt and the General Manager brought up a number of serious problems they believed were inherent in the proposal. The meeting concluded with the General Manager indicating Metropolitan's cooperation would be subject to a determination of the effect the proposed agreement would have on Metropolitan's interests; that an analysis and report would be made for this purpose.

Attached is the joint report of the General Manager and the General Counsel.

Carl Boronkay

Warren J. Abbott

CB/MBH:ub

Attachment

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I. INTRODUCTION

On August 29, 1984, the Board of Directors of the San Diego County Water Authority authorized the execution of an Option Agreement between the Authority and the Galloway Group, Ltd., a Colorado Corporation. A copy of the press release issued by the Authority is attached to this report. In return for the payment of $10,000 (which is reimbursable if the option is exercised and Galloway then fails to meet certain conditions), the Option Agreement allows the Authority, by exercising the option on or before October 15, 1984, to enter into a Water Service Agreement with Galloway which is in substantial conformity with Exhibit A attached to the Option Agreement.

Exhibit A, the Water Service Agreement ("Agreement") recites that Galloway is the owner or appropriator of various rights from the White and Yampa Rivers in Colorado, which rights have been decreed or applied for, and that Galloway has proposed to construct, is in the process of constructing or has purchased facilities for the delivery, and storage of water from those rivers and tributaries.[1/] Galloway agrees to deliver and the Authority agrees to purchase, between a minimum of 300,000 acre-feet and a maximum of 500,000 acre-feet of water annually.[2/] It is stated that "The water to be delivered by [Galloway] hereunder shall be in addition to California's entitlement and be taken from the entitlement of the Upper Basin

states pursuant to the rules, regulations, laws, treaties, decrees and compacts which govern the allocation of water of the Colorado River."

Initial deliveries are stated to be up to 50,000 acre-feet of water per year from the White River. Galloway is obligated at its cost to deliver the water to the Authority at Lake Havasu. The Authority is responsible for all costs to store, transport and deliver the water from Lake Havasu t the intended place of use in San Diego County.

The Authority agrees to use the water delivered by Galloway only for municipal, industrial, commercial, irrigation, domestic and other beneficial uses ". . . to meet the demands of its separate member agencies located in San Diego County, California."[3/]

Galloway represents that it will proceed to complete construction of facilities in the Upper Basin of the Colorado River capable of meeting all the Authority's requirements under the Agreement and will make all necessary arrangements and secure all rights, permits, licenses and approvals necessary to be able to deliver the water to the Authority. The Authority represents that it will ". . . use its best efforts to make the necessary arrangements with MWD to transport the water delivered by Supplier at Lake Havasu to delivery points in San Diego County . . . including negotiations or condemnation of joint use

of the MWD Colorado Aqueduct and other facilities." The Authority is further obligated to secure all necessary rights, permits, licenses, and approvals to transport the water from Lake Havasu to San Diego County.

Galloway may terminate the contract 40 years after the date of first delivery of water or thereafter with 15 years prior notice. Galloway may also, if necessary to meet Upper Basin demands, with 5 years notice, reduce deliveries by up to 50,000 acre-feet per year from the average deliveries for the immediately preceding 5 years, but to not less than 250,000 acre-feet per year. The Authority may terminate the Agreement after 40 years, with 10 years prior notice.

II. LEGAL AND INSTITUTIONAL CONSIDERATIONS

The documents included in "the Law of the River", which apportion water and control the storage and release of Colorado River water, consist of many contracts, statutes, an international treaty, federal regulations, interstate compacts and a U. S. Supreme Court decree. To accomplish the delivery of water from Colorado (or Utah or Wyoming) to San Diego County contemplated in the Agreement will involve many changes to the Law of the River. Since the changes will require concurrence by up to seven states and other parties in those states who expect to use the water described in the Agreement, there will be many years of major legal battles in order to attempt to carry out the terms of the Agreement.

A. State of Origin

1. Water Rights. Colorado has no permit system for the act of appropriating water. In order to obtain an enforceable priority, however, a judicial decree, after an extensive hearing process, must be obtained from the appropriate District Water Court. The State engineer is responsible for administering the decreed rights and must approve the plans for the construction and completion of all reservoirs.[4/] A conditional priority right may be obtained subject to completing the proposed storage or diversion project.

We note that the Agreement recites that Galloway has some decreed rights and has applied for others. In order to obtain a priority, Galloway will be required to comply with Colorado's adjudicatory procedures. This is a problem since the Colorado River Water Conservation District in Glenwood Springs, Colorado, claims the water rights in association with the proposed Yampa River reservoir.

2. Anti-Export Statute

In 1983, the State of Colorado amended its anti-export water statute. Under that statute no water may be exported from Colorado without first obtaining an adjudication from the appropriate water court for the right to use water outside the state. The water judge, prior to approval of the application, must find:

(a) The proposed use of water outside the state is authorized by interstate compact or credited as a delivery to another state, or that the proposed use does not impair the ability of Colorado to comply with decrees or interstate compacts which apportion water between Colorado and other states;

(b) The proposed use of water is not inconsistent with the reasonable conservation of water resources of Colorado; and

(c) The proposed use of water will not deprive citizens of Colorado of the beneficial use of water apportioned to Colorado by interstate compact or judicial decree.

Thus, to effectuate the delivery of water from Colorado to the Authority as contemplated under the Agreement, a judicial decree authorizing the export of this water from Colorado would need to be obtained.

B. Colorado River Compact

The 1922 Colorado River Compact between the seven Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, which was consented to by Congress in the Boulder Canyon Project Act of 1928 subject to approval of the legislatures of California and five other states,[5/] apportioned the flow of the Colorado River System between the Upper and Lower Basins. Of significance here are four provisions:

1. An apportionment " . . . from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum."

2. A proviso that if a treaty is entered into between the United States and Mexico recognizing the rights of Mexico to the use of any waters of the Colorado River System, such water is to be supplied first from waters which are surplus to the amounts apportioned between the two Basins. If the surplus is insufficient, the deficiency is to be borne equally by the two Basins. Such a treaty was ratified by the two countries in 1945 and provides for delivery to Mexico of a guaranteed annual quantity of 1,500,000 acre-feet per year.

3. A proviso that the Upper Basin States will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of 10 consecutive years.

4. A proviso that "the States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses."

These provisions pose significant hurdles in relation to the Galloway Agreement.

The Agreement states:

> This agreement shall be interpreted so as to permit the water delivery and payment therefore and to be in conformity with all compacts, treaties, contracts, laws, judgments and decrees. In particular this agreement is not to be read as being violative of Article III(e) of the Compact of 1922 in that the Upper Basin is not withholding water from the Lower Basin, but rather providing storage space for water put to beneficial use.

This statement is contradictory within itself since it is an interpretation of the Law of the River that is certain to be challenged. The above quote from the Agreement is apparently based on a dual theory that (a) storage of water alone in the Upper Basin is itself a beneficial use and therefore immunizes the storage from the prohibition against withholding water by the Upper Basin, and (b) that once held in storage the water is removed from the priorities and requirements of the Law of the River. We believe both parts of the theory are faulty. The prohibition against withholding contained in Article III(e) is designed to protect the Lower Basin from loss of water which could be put to beneficial use in the Lower Basin but which is being arbitrarily withheld by the Upper Basin and not put to beneficial use there. Furthermore, once water is released to the Colorado River from storage, and particularly into the mainstream in the Lower Basin, it is fully subject to use and appropriation in accordance with the priorities established by the Law of the River. If this were not so, all the water stored in Lake Powell would be exempt from the Lower Basin priorities,

yet its major purpose was to provide storage to meet the requirements and priorities of the Colorado River Compact.

The Galloway Group has indicated that the Upper Basin States could protect their rights under the Colorado River Compact by entering into agreements with Galloway to furnish water to California. Protection of Upper Basin rights is one of the basic purposes of the Compact and is covered by the language of the Compact, which apportions "in perpetuity" 7,500,000 acre-feet of water per annum to both the Upper Basin and the Lower Basin. In addition, the Upper Basin Compact provides that "the failure of any state to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other state, nor shall it constitute a forfeiture or abandonment of the rights to such use."

To ensure that the additional 300,000 to 500,000 acre-feet per year of water of the Agreement is in fact available at Lake Havasu could require that the obligation to release 75,000,000 acre-feet every 10 years at Lee Ferry be increased. If it is found necessary to increase that figure, an amendment of the Compact would be required, and this would involve the approval of the legislatures of the seven states and the consent of the Congress. Some of the states that would have

to agree would be losing the use of the water that would be assigned to the Authority. There have been no amendments to the Compact since its signing in 1922.

Also, the question is presented as to how to share the United States-Mexico Treaty burden. The Upper Basin Compact has a provision for allocating shortages which would presumably be invoked if its uses had to be reduced to meet the Upper Basin's share of the Treaty obligation. The effect of this on the water delivery obligations of the Agreement is not spelled out and would need to be addressed in the final agreement or by an amendment to the Upper Basin Compact or by another interstate agreement.

C. Upper Colorado River Basin Compact

In 1948, the states located in the Upper Basin (Arizona, Colorado, New Mexico, Utah and Wyoming) entered into a compact which was approved by Congress in 1949. It apportioned between those states the 7,500,000 acre-feet of water per year apportioned to the Upper Basin for beneficial consumptive use pursuant to the Colorado River Compact. Arizona was given the right to 50,000 acre-feet per year. The other states were each given a fixed percentage, with Colorado's being 51.75 percent.

The Agreement presents two fundamental issues that must be addressed. The Agreement provides that the water to be delivered to the Authority shall be taken from the entitlement of the Upper Basin states. This might require either an

amendment to the Upper Basin Compact or an interstate agreement to accomplish this same result. There have been no amendments to the Compact since its signing in 1948.

Also, each Upper Basin state would have to agree not to use an amount equivalent to the water released to the Authority since one of the basic thrusts of the document is that each state can use the unused water of other states. An amendment to the Compact would require approval of the legislatures of the five states, as probably would any separate agreement, either guaranteeing that this water would not be diverted by other Upper Basin states or otherwise consumptively used in the Upper Basin. Since a Compact amendment or any agreements between the states would involve interstate water, Congressional approval would also be required.

D. Criteria For Coordinated Long-Range Operation of Colorado River Reservoirs

Pursuant to the requirement of the 1968 Colorado River Basin Project Act, and after extensive consultation and meetings with the Basin states, the Secretary of Interior has adopted regulations known as the Operating Criteria which is designed to coordinate long-range operation of the storage reservoirs in the Colorado River Basin by the United States. These detailed criteria are keyed to the fundamental documents of the Law of the River, so the delivery of any water under the Agreement from Colorado to Lake Havasu would require amendments to those regulations.

E. Diversions From Lake Havasu

The actual diversion of the waters delivered pursuant to the Agreement at Lake Havasu involves two distinct areas: (1) apportionment of Colorado River waters between the Lower Basin States, and (2) division of California's apportionment between users in California.

1. Lower Basin States Apportionment

In consenting to the Colorado River Compact, Congress provided for its becoming effective upon the approval of the legislatures of six instead of all seven states, due to Arizona's then recalcitrance, if California was one of the six. Further, Congress required as a condition of the effectiveness of the Boulder Canyon Project Act that the Compact be approved by all seven states, or if by six including California, that California by an act of the Legislature agree to limit its annual consumptive use to 4,400,000 acre-feet, plus one-half of any surplus. This was accomplished in 1929 through the California Limitation Act.

The 1964 decree of the United States Supreme Court in Arizona v. California, provides that if sufficient water is available for annual consumptive use of the 7,500,000 acre-feet, there shall be apportioned 2,800,000 acre-feet for use in Arizona, plus 50 percent of any surplus[6/], 4,400,000 acre-feet for use in California, plus 50 percent of any surplus, and 300,000 acre-feet for use in Nevada. Any mainstream water used within a state is charged to that state's apportionment. It

further enjoins the states and all parties and water users from diverting any water not authorized by the United States for use in such states. The Colorado River Basin Project Act of 1968 gives California's 4,400,000 acre-feet priority over diversions for the Central Arizona Project.

The Agreement provides that the water to be delivered "shall be in addition to California's entitlement of Colorado River water." Since all the mainstream water in the Lower Basin is apportioned among the three Lower Basin States by the 1964 decree in Arizona v. California, any additional apportionment to California would require an amendment to the Supreme Court decree in Arizona v. California to authorize the additional diversions in California. There has been no amendment to the decree with respect to basic water rights between the states since the decree was promulgated in 1964. Such an amendment to the decree would require the approval of all the parties, the United States, five Indian tribes, the California Colorado River users, and the States of Arizona, California, and Nevada. This means that Arizona and Nevada would have to agree to give California some of their apportioned water. An alternative would be to attempt to reopen litigation of an issue that the Supreme Court spent 12 years in evaluating before arriving at its decision.

An amendment to the California Limitation Act would also be required. Since the California Limitation Act is expressly made for the benefit of the United States and the

other six Colorado River Basin states, the approval of the United States and the Legislatures of the six states would be required in addition to an act of the California Legislature. Finally, an amendment of of the Boulder Canyon Project Act by the Congress to authorize the amendment to the Limitation Act would be required.

2. California Priorities

If California's apportionment were increased as described above, there remains the problem of priorities within California. The Boulder Canyon Project Act and the decree in Arizona v. California prohibit the delivery of Colorado River water in the Lower Basin to any water user without a contract with the United States. In 1931, the seven parties seeking Colorado River water delivery contracts with the Secretary of the Interior (Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley Water District, The Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego and County of San Diego) agreed to establish priorities for California's share of Colorado River water. This Seven Party Agreement, was accepted by the Secretary of Interior, and is included in the water contracts of the parties. It sets forth priorities as follows:

(a) Priorities 1-3, the so-called agricultural priorities, a maximum of 3,850,000 acre-feet of water per year for beneficial use in Palo Verde Irrigation District, Yuma Project, Imperial Irrigation District and Coachella Valley Water District.

(b) Priority 4, to the Metropolitan Water District and City of Los Angeles, 550,000 acre-feet per year. This priority is held by Metropolitan.

(c) Priority 5: (i) To the Metropolitan Water District and the City of Los Angeles, 550,000 acre-feet per year and (ii) to the City of San Diego and County of San Diego, 112,000 acre-feet per year. This priority is held by Metropolitan.

(d) Priority 6, to Imperial Irrigation District and Palo Verde Irrigation District, 300,000 acre-feet per year; and

(e) Priority 7, all remaining water available for use within California, for agricultural use in the Colorado River Basin in California.

These priorities are subject to any prior rights of holders of present perfected rights, including certain Indian reservations.

The Authority would be obligated, before diverting any water at Lake Havasu, to enter into a contract with the Secretary of Interior. Since the entire California entitlement has been allocated by present perfected rights and the existing contracts under the Seven Party Agreement, it would be necessary to amend that agreement with the consent of the parties and the United States. Moreover, when California is restricted to 4.4 million acre-feet a year, there will not be sufficient water available to meet a portion of priority 4 and all of the

remaining priorities. To insure the availability of water delivered to the Authority under the Galloway Agreement, it would be necessary for Metropolitan and the agricultural agencies to allow the Authority to obtain a priority higher than or equal to Metropolitan's priority 4.

III. IMPACTS ON METROPOLITAN

A. Water Supply and Use

The basic water rights situation on the Colorado is that there are existing rights held by Upper and Lower Basin states, and entities within the seven states that, together with amounts required under the United States-Mexico Water Treaty, exceed the average flow of the river. These rights have not yet been exercised, so that currently there is an excess of supply over use, and all of the major reservoirs are essentially full.

There is in existence a complex system of priorities administered by the Secretary of Interior, some of which were described in the previous section. The Secretary stores water behind federal dams and delivers water in accordance with the documents that comprise the Law of the River. Each basin, state, and water user has a right to use water. If the water is not used by a senior water right user, the water is stored for future use as protection against droughts, or is made available to the next priority user. Under the present system developed over a period of 62 years, there is no basis for any sale of water from any Colorado River Basin state or entity within that

state, to a California agency, since it either is water that a California agency has a right to use, or the right belongs to users in another state.

When the Central Arizona Project was authorized in 1968, it was recognized by Congress that the water supply for the project would in large part come from unused Upper Basin water, and that in time the Central Arizona Project would experience shortages. California (in particular, Metropolitan) has used the unused water of the other six states for many years to obtain water beyond its basic apportionment. In the future, when California is limited to its basic apportionment of 4.4 maf per year, it will be Arizona and Nevada that will be relying upon unused Upper Basin water for their basic apportionments.

There will also be conflicts with the Upper Basin over the Agreement, since all of the Upper Basin states have plans to use the water apportioned to them prior to the 40-year period of the Agreement. New Mexico is already close to using all of the apportioned water available to it.

Essentially, the facilities to be constructed on the White and Yampa Rivers under the Agreement will not add any additional water to the regulated supply of the Colorado River. The water involved, with or without the Agreement, will flow into Lake Powell, be regulated there and released as determined by the Secretary of Interior into Lake Mead. In any year that the 300,000 to 500,000 acre-feet of water described in the Agreement is considered by the Secretary of Interior to be

surplus, then California, and more precisely Metropolitan, would be entitled to one-half of that surplus. In any year that the Secretary does not consider the 300,000 to 500,000 acre-feet to be a surplus, then California would receive its basic apportionment of 4.4 million acre-feet a year and the 300,000-500,000 acre-feet would remain in storage in Lake Mead, to be available for future use by Arizona and Nevada to meet their basic apportionments. The only way that the Authority would be able to receive this water under the Agreement would be for Metropolitan to agree to the Authority taking its place in the priority Agreement and reducing the supply that Metropolitan would take, or for Arizona and Nevada to agree to reduce the amount of water that they would take.

B. Impacts on Ongoing Colorado River Water Supply Programs

The Agreement is premised on the right of a holder of a higher priority selling water to a party without a priority and thus preventing the holder of a lower priority to use the water. This is contrary to Metropolitan's interests on future programs and is contrary to Metropolitan's position already taken with respect to proposed sales of water by Indian tribes for use off the reservation. We are currently working on several programs which, if successful, would lead to more Colorado River water being available for Metropolitan. In each case, Metropolitan is heavily dependent upon the previously discussed documents included in the "Law of the River" to obtain water and to obtain it without cost. Briefly, these programs are:

1. Salvaged Water From Imperial Irrigation District

Metropolitan is currently having discussions with Imperial Irrigation District concerning the proposal whereby it would pay for water conservation programs in Imperial and receive the use of the saved water. We stated to Imperial that, in accordance with the Law of the River, we do not intend to buy water, and they do not have any right to sell unused water. The contracts that Imperial, Palo Verde, and Coachella have with the United States gave those agricultural agencies the right to divert only the quantities of water that are required to meet the beneficial uses on the lands within their respective districts. Any water not required for beneficial use by the agricultural agencies will be available for use by Metropolitan, the next in line on the priority list. Our negotiations with Imperial could well be impaired if a water purchase agreement that would circumvent long held priorities is being negotiated with Upper Basin interests.

2. Unused Agricultural Water

We are also seeking to develop procedures whereby Metropolitan could use water in any year in which the California Colorado River agricultural agencies do not use the 3,850,000 acre-feet apportioned to them. Again, our position is that under the Law of the River, only Metropolitan is entitled to use this water, and use it without any compensation to those agencies.

3. Surplus Colorado River Water

The Law of the River provides that Metropolitan will receive half, and probably more, of the available water any time that the Secretary decrees that there is a surplus. Currently, there are no rules as to how a surplus is to be determined. However we intend to seek regulations that would be favorable for Metropolitan obtaining such surplus water, again, without any cost and consistent with the Law of the River. The water which Galloway seeks to sell is unused Upper Basin water and would be part of the surplus water.

4. Unused Arizona and Nevada Water

The Supreme Court's decree in Arizona v. California states that the Secretary may let one state use the unused water of another state. Such water will be available for a number of years, and if the Secretary chooses to let Metropolitan have such water, it would be without any cost.

5. Change in Hoover Flood Control Criteria

We have a plan that would involve a change of the United States Corps of Engineers' flood control regulations for Hoover Dam. This change would mean more water available for Metropolitan, under certain situations, with negligible impact on others. Obtaining a change in flood control regulations is difficult under the best of circumstances; it will not be likely without support of the other states. Such support will not be forthcoming if we are in a battle to obtain their water.

C. Impact on State Water Project

For years Metropolitan, other State water contractors, and many individuals and organizations have worked toward completion of the State Water Project (SWP). The majority of the tunnels, aqueducts, regulating reservoirs, pumping stations and powerplants needed to deliver the contractual yield of the SWP are already constructed. What is lacking are the facilities needed to conserve surplus water that would otherwise flow to the ocean and provide capacity through or around the Delta.

The status quo in the Sacramento-San Joaquin Delta is unacceptable to virtually everyone with an interest in the Delta. We are committed to a program for enhancing water management and improving water transfer capabilities in the Delta, which will add approximately 500,000 acre-feet per year of dry-period yield to the SWP. Delta improvements are a low cost water supply with an estimated capital cost of $64 per acre-foot with energy costs to bring the water to Southern California adding another $75 per acre-foot. Metropolitan needs all of the support it can muster to help to complete the SWP. Any proposal, such as that contemplated in this Agreement, which tends to negate the importance of completing the SWP, is useful to those who are opposed to the Project.

IV. MAJOR WATER POLICY CHANGES

Following through with all of the actions required to implement the Agreement would require major legal and institutional changes that could result in years of legal and political battles. It would also involve changes in a 20-year

policy of working together with other Basin states. In 1964 the Decree in Arizona v. California was handed down ending that 12 year legal battle. Metropolitan and the other California agencies that use Colorado River water decided that it was time for California to stop battling with Arizona and the other Basin states both legally and politically and instead try to work with the other states to resolve our problems through negotiation and cooperation rather than through litigation and political battles. Metropolitan, both through the Colorado River Board of California and its own efforts, has received many benefits during the past two decades by following this policy. Some of the benefits are:

a. The 1968 federal legislation that gave Metropolitan priority over the Central Arizona Project;

b. The 1970 operating criteria that gave Metropolitan a firm right to use all the water it needed until after the Central Arizona Project commenced operations;

c. A salinity agreement with Mexico that did not give additional water to Mexico;

d. A salinity control program which is very beneficial to Metropolitan;

e. Progress on river augmentation studies;

f. Cooperation with Arizona and Nevada in opposing claims for additional water by the Indian Tribes.

g. Federal legislation on future Hoover power provisions that are favorable to Metropolitan;

The ramifications of implementing the Agreement, would result in a radical change in current water policies. California instead of working together with other states could soon find itself in the middle of a new Colorado River water war. The fight would be with Arizona and Nevada, whose water would be taken if the Agreement were to be implemented as well as with the Upper Basin states that would consider their future threatened by this Agreement.

The other six states of the Colorado River Basin, and the media in those states, generally view any action by a California water agency as an action by California. They have been suspicious that California will try a "water grab." The major focus of this proposal, as stated earlier, is on the Lower Basin where either Metropolitan would have to give up water or Arizona and Nevada would have to give up water. Since the intent is to obtain more water for California, this means that Arizona and Nevada would have to give up some of the water destined for the Central Arizona Project and the Southern Nevada Project. It needs to be remembered that in 1968, Arizona agreed to legislation that gave California a priority for its 4,400,000 acre-feet a year over the Central Arizona Project, of which Metropolitan has a priority of 550,000 acre-feet a year, when there are shortages on the Colorado River in exchange for California support for authorization of the Central Arizona Project. This arrangement was agreed to by the Authority and Metropolitan, both through their own actions and through the

actions of their representatives on the Colorado River Board of California. Since that time, Metropolitan's representatives have appeared annually before congressional committees, recommending that Congress appropriate funds for the Central Arizona Project.

The water supply available to the Central Arizona Project is projected to diminish from 1,600,000 acre feet/year to less than 500,000 acre-feet per year sometime in the next century. This lower amount is equivalent to the quantities listed in the Agreement. Any attempt by California to circumvent the Law of River and reduce water for Arizona would be considered to be a violation of our agreement with Arizona.

CONCLUSION

Any effort to obtain an adequate water supply for Southern California must be closely scrutinized because of the impact that any one proposal may have on other Metropolitan policies and programs.

The Colorado River is almost entirely regulated and its yield is insufficient to meet existing contractual rights. Because of this oversubscription the system of priorities of use, there is no possibility of "new" water and the attempt of a holder of a priority to circumvent the priority system and "sell" water to an "outsider" would inherently violate the rights of those holding lower priorities.

This is the situation with the Galloway proposal under review. Any water apportioned to the Upper Basin that is not used or stored for use there, in a manner consistent with the

Law of the River, is required to be released for use in the Lower Basin in accordance with the priorities of the Lower Basin and, among the California agencies, in accordance with the Seven-Party Agreement. This means that any water to be delivered under the Agreement from the Upper Basin to the Authority could properly be claimed by Nevada, Arizona, or Metropolitan.

Moreover, Metropolitan has long relied on the validity of the system of priorities to its advantage. Thus, we have long used water that is within the basic apportionments of the other six states. We plan to continue to rely on this system in connection with pending programs to obtain the additional Colorado River water. The advantageous position that we now have would be undermined were we to accept the notion that an entity with a higher water use priority, whether they be in the Lower Basin or the Upper Basin, has a right to sell water within their entitlement amount rather than allow it to flow to lower priority users.

The Galloway proposal would involve major changes in the complex documents controlling the storage and delivery of water that have been developed over the past 62 years through years of negotiation, litigation and political battles. States that would lose water under the proposal would certainly challenge it. This would involve massive, lengthy, and in our opinion, ultimately unfruitful litigation. It would also negate years of efforts to build a relationship of trust and

cooperation between California and the other Colorado River Basin states, which relationship has been very beneficial to California and Metropolitan. It would mean that San Diego County Water Authority and Metropolitan would, in effect, be reversing their support for the Central Arizona Project now that the project is almost complete. Arizona agreed on 1968 federal legislation to give California, and therefore Metropolitan, complete priority over its project in return for that support. Any action by California agencies that would circumvent the Law of the River and jeopardize water relied on for the Central Arizona Project would be seen as a breach of integrity.

Finally, the Galloway proposal, however doubtful its prospect of success, would be seized upon by opponents of the State Water Project to promote their contention that no increase in water exportation from Northern California is necessary.

1. A letter of August 29, 1984, from the attorney for Galloway recites that Galloway was ". . . incorporated to commence the financing and construction of reservoir storage projects in the Yampa River storing more than 1,300,00 acre-feet of water."

2. The attorney's letter of August 29, 1984, and the Authority's press release refer to providing between 50,000 and 100,00 acre-feet per year additional water from each of the States of Utah and Wyoming. The only reference to sources in the Agreement, however, is to rights in Colorado. Consequently, we have not analyzed Utah or Wyoming law in reference to any water rights.

3. This restriction on the use of water to San Diego County raises a question as to practical assignability. Paragraph 17 of the Agreement prohibits assignment of the Agreement by the Authority to any person or entity except that all or a portion may be assigned to The Metropolitan Water District of Southern California or one or more of its separate agencies. If so assigned to Metropolitan or one of its agencies, could the water only be used in San Diego County?

4. Since the Yampa and White Rivers are tributary to a navigable river, the Colorado, approval of the United States for construction of dams and diversion structures may also need to be obtained under Sections 9 and 10 if the 1899 Rivers and Harbors Act. This would also require compliance with both federal and state environmental requirements. In addition, since the proposed project involves the generation of hydroelectric power, it would be necessary to obtain a license from the Federal Energy Regulations Commission under Federal Power Act.

5. The Compact was approved by all states other than Arizona in the 1920's. The Arizona Legislature approved it in 1944.

6. If requested, Nevada is entitled to 4 percent and Arizona's share is changed to 46 percent of any surplus Colorado River water.

ATTACHMENT

NEWS FROM: San Diego County Water Authority
2750 4th Ave., San Diego, CA 92103

San Diego County Water Information Service □ Contact Pete Rios — 297-3218

August 29, 1984

FOR IMMEDIATE RELEASE . . .

Today the Board of Directors of the San Diego County Water Authority approved an option to purchase water from a private water development project proposed to be constructed in Colorado. The option is for a firm supply of 300,000 AF per year out of a total available supply of 500,000 AF. Cost of the option was $10,000, and it must be exercised with an agreement by October 15, 1984. The present annual water use by all the member agencies of the Authority is about 500,000 AF.

Galloway Group of Meeker, Colorado, is the firm proposing the construction of a reservoir with a capacity of 1,082,000 AF on the Yampa River in northwestern Colorado. The safe yield of the proposed project is estimated at 360,000 AF per year. Water stored in the reservoir would be released downstream on demand by the Authority, flowing to Lake Havasu where it would be pumped through the Colorado River Aqueduct. The project could be operational by 1990. The cost of the supply to the Authority would be 90% of the price charged by the Metropolitan Water District for water delivered to the Authority.

Agreements are to be signed between the Galloway Group and the Governors of Utah and Wyoming to include 50 - 100,000 AF per year of water from each of those states in the project. This would increase the safe yield to over 500,000 AF per year and provide funds to those states for water development.

A key provision in the draft agreement attached to the option is the ability of upstream users to recall the water for future use in the upper basin states of the Colorado River. Upstream users could use the supply as needed in the future by giving adequate notice to the Authority. Thus, the project construction would be funded by full utilization of the capacity of the project by San Diego in the early years when little of the water could be used beneficially in the upper states. However, future water needs of Colorado, Utah, and Wyoming, primarily for energy development, would not suffer from early development. The Authority would gain no permanent rights to the water.

The option and the agreement could be assigned to the Metropolitan Water District for the benefit of the entire south coastal area. The new supply would be greater than MWD's share of the proposed improvements to the state water project that failed to gain legislative approval in Sacramento earlier this month. With conserved water from Imperial Valley now under negotiation between MWD and the Imperial Irrigation District, the Yampa River supply would complete offset losses of Colorado River water to Arizona after 1985. While water from the Yampa River project is 5 years in the future, early deliveries of up to 50,000 AF per year from a smaller reservoir now ready for construction could arrive by 1987.

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