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**By Fax and U. S. Mail**

Ms. Maureen A. Stapleton  
General Manager  
San Diego County Water Authority  
3211 Fifth Avenue  
San Diego, CA 92103-5718

**Re: San Luis Re Indian Water Rights Settlement**

Dear Maureen:

Your May 9, 1996 Memorandum to the Board of Directors of the San Diego County Water Authority concerning the Proposed Agreement to Facilitate Implementation of the San Luis Rey Indian Water Rights Settlement is misleading, contains several inaccuracies as well as significant material omissions and does not address the most crucial questions. We hoped that you would take a more balanced, constructive and objective approach, which would describe the pros and cons of the proposed agreement and enable the members of the Authority's Board to make a reasonable and informed judgment.

The purpose of this letter is to offer our perspective, to respond to your comments and criticisms and to provide you and your Board members with important information that is not included in your memorandum. We respectfully request that you distribute copies of this letter to your Board members as soon as possible. We urge the members of the Authority's Board to reach their own independent conclusions based on the best interests of the Authority and its member agencies.

Your memorandum correctly states (on pages 2 and 4) that MWD would be obligated under the proposed agreement to deliver up to 16,000 acre feet of water in perpetuity to the Indian Bands regardless of whether Metropolitan is able to bank the water in Lake Mead. Although you point out (on page 3) that MWD would receive the full price charged member agencies of the water (excluding ad valorem taxes and annexation charges)<sup>1</sup>, you fail to mention that the Authority already delivers water on the same terms to federal installations (such as Camp Pendleton) and at least one Indian Reservation (San Pasqual through the Valley Center MWD). You do not address the issue of why water deliveries to the five Indian Bands should be treated differently, especially in view of the

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<sup>1</sup>Federal and Indian lands are exempt from state and local property taxes.

benefit in the form of banking rights which will be conferred on MWD under the proposed agreement.

Your memorandum correctly states (at pages 2, 3 and 4) that the latest draft agreement differs from previous drafts in that its effectiveness is not contingent on MWD's implementation of the All American Canal Lining Project. By not presenting any reasons for that change, your memorandum conveys the misleading impression that MWD acted unilaterally to deprive itself and its member agencies of this potential water supply. In fact, as you know, the Lining Project was dropped because: (i) the Authority's partner, IID, notified MWD in December 1995 that it would not renew its agreement with MWD but instead would pursue a new arrangement in conjunction with the Authority; (ii) the Authority, IID, and other members of the Colorado River Board as well as the facilitator, Mr. Sofaer, urged MWD not to pursue the Lining Project as part of the proposed agreement;<sup>2</sup> and (iii) the Authority and other MWD member agencies questioned the advisability of including the Lining Project in MWD's Capital Improvement Program. In short, the Authority asked MWD and the Settlement Parties to drop the Lining Project from the proposed agreement, and now that MWD and the Settlement Parties have done so, the Authority is taking issue with MWD and the Settlement Parties for agreeing to its own request.

After implicitly criticizing MWD and the Settlement Parties for not including a new water supply in the proposed agreement (other than banking), your memorandum then mentions (at page 3) the provision which enables the parties to develop new water and/or power supplies in a skeptical, disparaging tone without any discussion or analysis. The purpose of this provision is to build on the partnership established under the proposed agreement by providing incentives for MWD and the Settlement Parties to join together to develop less expensive water or power sources for their mutual benefit as future opportunities are presented. What is wrong with this concept?

By far the most critical omission in your memorandum is the absence of any mention (especially on page 3) of the most important difference between the current and previous drafts -- the addition of

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<sup>2</sup>Later on in your memorandum (page 5), you urge MWD to work with and through the Colorado River Board.

banking rights for all Colorado River contractors.<sup>3</sup> This provision was added as a direct result of a discussion at the March 13 meeting of the Colorado River Board at the suggestion of the Authority's representatives and others. We cannot fathom why this significant change would not even be noted in your memorandum.

Your memorandum states (on page 3) that the proposed agreement would cause increased shortages to MWD member agencies because the Lining Project was dropped. This statement completely overlooks the banking provisions. The banking rights granted to MWD under the proposed agreement would significantly increase Colorado River water supplies available to MWD agencies under drought conditions.

One of the most blatant examples of the bias underlying your memorandum is the reference (on page 4) to the possible adverse impact of the proposed agreement on a groundwater basin utilized by an unnamed Authority member agency. The member agency in question, Yuima MWD, actually supports the proposed agreement and the San Luis Rey Settlement, an important fact omitted from your memorandum. Yuima has legitimate concerns which have been discussed with the Settlement Parties and which the Settlement Parties are committed to addressing. Yuima recognizes, however, that resolution of the longstanding San Luis Rey water rights dispute significantly increases the likelihood of cooperative management of common surface and groundwater resources by the Indian Bands and their neighbors. For the same reason, among others, representatives of another nearby member agency, Valley Center MWD, have expressed support for the proposed agreement and settlement. Escondido and Vista also strongly support the settlement, a consideration conspicuously absent from your memorandum.<sup>4</sup> Escondido and

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<sup>3</sup>Section 3(A)(4) of the current version of the proposed agreement states:

. . . [T]he United States shall bank for other entities with rights to Colorado River water (Colorado River Contractors) the following categories of water:

. . .

(4) Subject to the Secretary's approval, such additional water made available by any Colorado River Contractors by implementing extraordinary conservation measures, including land fallowing.

<sup>4</sup>The Settlement Parties would like an explanation for the evident disparity in your treatment of the Authority's member agencies. Why do you point out, albeit inaccurately, what you view as the possible adverse impact on Yuima while not even mentioning the tremendous importance and value of the proposed agreement and settlement to Escondido and Vista?

Vista view the proposed agreement in part as a way of preserving their local water supplies, which indirectly benefit the Authority and all of its member agencies. It seems to us that the Authority would have to have very persuasive and powerful reasons to oppose the proposed agreement notwithstanding the support of its four most directly affected member agencies.

Your memorandum states (at page 4) that there is a risk of a future demand by the Settlement Parties for deliveries through facilities of the Authority and its member agencies of the proposed agreement is later modified by MWD and the Settlement Parties. This "objection" is a stretch even when judged by the "standards" applied elsewhere in your memorandum. First of all, it is aimed at an entirely hypothetical modification of the proposed agreement, not at the agreement that is currently being considered. No agreement could possibly pass this test. Second, as previously noted, all four member agencies whose facilities could be used for future deliveries or exchanges -- Yuima, Valley Center, Escondido, and Vista -- support the proposed agreement. Third, the Settlement Parties and MWD tried hard to include the Authority as a party to the proposed agreement. After numerous unsuccessful efforts, the Authority asked to be excluded. The Settlement Parties and MWD accommodated the Authority's request and made no provision for the use of any Authority facilities. Now the Authority is complaining that it might be affected by future hypothetical modifications because it is not a party to the proposed agreement

It appears that the Authority is not able to make up its mind. The only constant is its opposition to whatever MWD and the Settlement Parties propose.

Your memorandum complains (at page 4) that the Authority could become involved in litigation because the proposed agreement does not hold the Authority harmless. The Settlement Parties do not believe there are any risks which warrant that form of protection at this time. The major concern of which we are aware is the obligation to wheel water pursuant to the Katz bill. That issue will not even arise until a separate agreement is executed providing for the delivery of water to a reservation. If the use of the Authority's facilities is sought, the wheeling issue can be addressed at that time.<sup>5</sup> Moreover, under the Katz bill the Authority would be entitled to be compensated for the use of its facilities. We also question the appropriateness of exempting a public entity organized under state law from an obligation imposed by

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<sup>5</sup>Under the proposed agreement, MWD is only obligated to make water deliveries to the reservations directly from MWD facilities. Pala, the reservation with the largest potential water demand which is most likely to call for imported water under the proposed agreement, can easily be served by a direct connection to the MWD portion of the San Diego Aqueduct. The other four reservations are more likely to rely on local San Luis Rey surface and/or groundwater.

a state statute. If the Authority has other concerns, we would be glad to discuss them.

Your memorandum also complains (at page 4) about the potential consequences if Pipeline 6 is not constructed. The construction of Pipeline 6 became uncertain when the Authority entered into the MOU with IID. It will be resolved as part of the negotiations between the Authority and MWD. More fundamentally, the Authority and its member agencies would be better off under the proposed agreement than if Escondido and Vista were to lose their litigation with the Bands and the United States and their local San Luis Rey water supply. That consideration also escaped notice in your memorandum.

From the standpoint of MWD and its member agencies, the most important aspect of the proposed agreement is the right to bank water conserved from the IID I program and reduced Colorado River diversions for salinity control purposes. That is the real substantive issue; everything else is a smokescreen apparently designed to justify a predetermined result. Unfortunately, your memorandum fails to provide your Board members with a clear and objective analysis of the banking issue, particularly as it relates to IID I and salinity control water.<sup>6</sup>

MWD obtained a right to bank in its 1931 contract with the Secretary, but that right was made subject to terms and conditions to be imposed by Interior. In 1989, MWD tried to implement its 1931 banking right as part of the IID I conservation program but did not succeed.<sup>7</sup> As a result, MWD is getting a very small return on its major capital investment in the IID I Conservation Program. Most of the water conserved as a result of that program, about 100,000 acre feet per year, benefits other system users. Similarly, MWD gets very little benefit from foregoing diversions of Colorado River water in favor of more expensive State Project water to achieve salinity control. In 1995, for example, MWD reduced its Colorado River diversions by about

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<sup>6</sup>Your treatment of banking is limited to the following two bullets:

- MWD's need to pay to receive banking rights which it maintains it already has, when others may achieve the same objective without such payments. (Page 4.)
- The proposed banking provisions are not consistent with the California position on banking. (Page 5.)

We do not know what the California position on banking is or how it is inconsistent with the banking provisions in the proposed agreement. At Assemblyman Cortese's hearing in March, and at various times since then, most, if not all, of the California Colorado River contractors have expressed their support for banking.

<sup>7</sup>MWD was able to bank the water saved from its Palo Verde land following program, but only for a limited time.

140,000 acre feet. If IID I and salinity control water could be banked and then diverted in water short years, all MWD member agencies, most especially the County Water Authority, would have a much more dependable and reliable supply.

MWD staff has concluded that the best, and perhaps the only, way to obtain banking of IID I conserved water and reduced diversions for salinity control purposes is by facilitating the San Luis Rey water rights settlement pursuant to the proposed agreement. MWD staff also has concluded that the financial benefits of banking IID I and salinity control water significantly exceed the costs incurred under the proposed agreement and that there is a high probability that the banking provisions of the proposed agreement will survive a judicial challenge initiated by Arizona or anyone else.<sup>8</sup> If you disagree with those judgments, you should say so -- and why -- clearly and directly, not by cleverly phrased bullets, disparaging comments and innuendo.

The most glaring defect of your memorandum is its silence on these matters of overriding importance. Given the overall context and tone of your memorandum, the only reasonable inference to be drawn from that silence is that you have no basis for disputing the conclusions and judgments of the MWD staff.

We do not doubt that you sincerely believe that it is in the Authority's best interest to do everything within its power to prevent MWD from obtaining the right to bank IID I and salinity control water. However, we doubt that the Authority's opposition to the proposed agreement is predicated on the "justifications" set forth in your memorandum which are so obviously flawed. Rather, it appears to us that a strategic decision has been made to try to use the banking issue to enhance the Authority's negotiating position vis-a-vis MWD on low cost wheeling, the IID water transfer, rate refinement and other related issues. If that is your position, again, please say so.

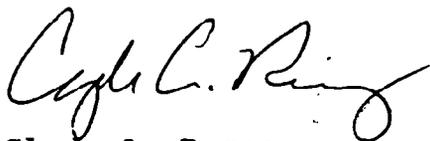
For what it is worth, we believe that there is a substantial risk that the Authority will inflict great damage on itself as well as all other MWD member agencies by continuing to oppose banking of IID I and salinity control water. Given the emphasis placed on the importance of banking in your April 30 presentation to the MWD Board, it also seems self-defeating for the Authority to work so hard to thwart the Settlement Parties' efforts to obtain banking rights for all Colorado River Contractors.

In any event, it is unfortunate that your memorandum does not promote a constructive discussion and debate or provide a basis for an

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<sup>8</sup>The Settlement Parties agree with that assessment as is shown by the provisions of the proposed agreement which relieve MWD of the obligation to make payments to the Indian Water Authority if the rights to bank IID I and salinity control water are declared invalid or enjoined.

informed and reasoned decision. Please note our disappointment in the quality of the product that is being presented to your Board as the basis for its decision on this critically important issue.



Clyde A. Romney  
Congressional Facilitator  
for San Luis Rey Settlement

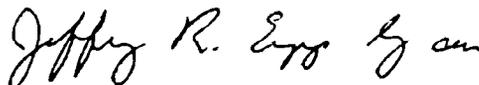
Very truly yours,



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