

- **Board of Directors**  
**Executive Committee**

May 15, 2001 Board Meeting

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9-7

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**Subject**

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Authorize entering into the Interim Surplus Guidelines Forbearance Agreement with the United States and the Arizona Department of Water Resources

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**Description**

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The Secretary of the Interior's (Secretary) January 2001 "Record of Decision, Colorado River Interim Surplus Guidelines Final Environmental Impact Statement" (Interim Surplus Guidelines), anticipated that:

- Metropolitan would enter into a forbearance agreement (Agreement) with the states of Arizona and Nevada, and
- the Secretary may be a party to those portions of the Agreement that concern the allocation of water under the U.S. Supreme Court Decree in *Arizona v. California* (Decree).

The purpose of the Agreement is to create specific contractual responsibilities between Metropolitan and Arizona regarding the implementation of the Interim Surplus Guidelines. An agreement with Nevada will be brought to the board at a later date. These contractual responsibilities include the intentional forbearance from the use of Colorado River water by Metropolitan and Arizona that they might otherwise be entitled to divert under existing law and contracts. To the extent that the use of Colorado River water is intentionally forborne by one of the parties to the Agreement for the exclusive use of the other, the Secretary shall, under authority of Article II(B)(6) of the Decree, make that water available to the intended recipient in accordance with the terms of the Agreement. Many of the Agreement's contractual responsibilities include provisions of the Interim Surplus Guidelines and are not repeated here.

The Agreement specifically defines the circumstance where Metropolitan would limit its use of Colorado River water to mitigate the impacts on Arizona of any shortage condition declared by the Secretary following the use of surplus water by Metropolitan during the interim period that would not have been available absent the Interim Surplus Guidelines. Under the Agreement, Arizona would waive a portion of its rights to surplus Colorado River water to permit Metropolitan to divert such water, and waive any claim against Metropolitan for shortages of Colorado River water arising from the release of surplus water. The Secretary would deliver Colorado River water consistent with this Agreement.

The Arizona Department of Water Resources requires a Joint Resolution of the Arizona Legislature to enter into such an agreement with Metropolitan and the Arizona Legislature will adjourn in early May. The board's authorization to enter into the proposed Agreement will allow the Arizona Legislature to issue a Joint Resolution before it adjourns. The Agreement also requires that the Quantification Settlement Agreement be in effect no later than December 31, 2002.

The proposed action is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. In particular, the proposed action consists of the leasing, licensing, and operating of existing facilities with no expansion of use beyond that existing at the time of the lead agency's determination. In addition, it will not have a significant effect on the environment. As such, this proposed action qualifies as a Class 1 Categorical Exemption (section 15301) of the State CEQA Guidelines.

**Policy**

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By Minute Item 43767, dated October 18, 1999, the Board approved the use of the *Key Terms for Quantification Settlement Among the State of California, IID, CVWD, and MWD* (Key Terms) as the basis for completing a new Quantification Settlement Agreement among the parties. Metropolitan supports the implementation of Interim Surplus Guidelines for the Colorado River reservoir system that increases the availability of water in the Lower Basin on an interim basis (Minute Item 42820).

**Board Options/Fiscal Impacts**

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**Option #1**

Determine that the execution of the Interim Surplus Guidelines Forbearance Agreement with the United States and the Arizona Department of Water Resources is categorically exempt from CEQA (section 15301 of the State CEQA Guidelines) and authorize the General Manager to enter into the proposed Agreement in a form approved by the General Counsel.

**Fiscal Impact:** None. Consideration of subsequent agreements would entail fiscal impacts, which will be reported to the Board at the time authorization to enter into each agreement is presented for the Board's consideration.

**Option #2**

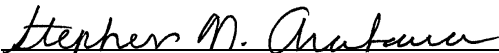
Direct the General Manager to renegotiate the terms of the Agreement.

**Fiscal Impact:** Additional staff time to renegotiate the Agreement with a delay in the implementation of California's draft Colorado River Water Use Plan. Potential loss of water under the Interim Surplus Guidelines as Arizona would not have to forgo use of a portion of its share of 46 percent of the surplus water made available by the Secretary in accordance with the Decree if the Agreement is not executed.

**Staff Recommendation**

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Option #1

  
Stephen N. Arakawa  
Manager, Water Resource Management

4/20/2001  
Date

  
General Manager

4/23/2001  
Date